

THE HEARING RESUMED AS FOLLOWS ON THE 16TH NOVEMBER, 2000,

AT 10:30 AM:

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CHAIRMAN: Morning everyone.

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MR. O'NEILL: Morning Sir.

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The witnesses to be called in today's session will be Ms. Terry Prone and Mr. Michael O'Keeffe, who is the current Chief Executive of the IRTC.

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Earlier in the week other witnesses had been scheduled for today, but unfortunately due to their unavailability it is necessary to re-schedule them for a later time. So I expect, Sir, today will be a relatively short session.

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So the first witness it is intended to call is Ms. Terry Prone.

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CHAIRMAN: On the same subject, am I correct in saying we will be sitting in future from now to Christmas on Mondays?

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MR. O'NEILL: Yes, that is your directive.

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CHAIRMAN: I think that parties might just note that, as it hasn't been the practice to date, we might be left with nobody to talk to.

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MR. O'NEILL: Ms. Terry Prone please, could you come

forward to the witness-box.

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TERRY PRONE, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY
MR. O'NEILL:

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CHAIRMAN: Good morning Ms. Prone.

1 Q. MR. O'NEILL: Good morning Ms. Prone.

A. Good morning Sir.

2 Q. I wonder if you could perhaps pull the microphone a little
closer to you or have - we are having just a little
difficulty in hearing your responses?

A. Is that better?

3 Q. Perfect. You are with Car Communications, isn't that so?

A. Yes.

4 Q. And that's a position you have been in for some years,
isn't that correct?

A. Yes.

5 Q. And you were one of the founder members of the IRTC, isn't
that so?

A. Correct.

6 Q. That was a position to which you were appointed by the then
Minister, Mr. Ray Burke, isn't that correct?

A. Yes.

7 Q. Can you indicate what recollection you have of the
circumstances leading to your appointment? Did you meet
with Mr. Burke?

A. No, I was telephoned, I believe, from the Department, and
then when I agreed to do it I was asked to come in and be
officially appointed by Mr. Burke, and I met him on that
occasion.

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8 Q. Right. We know that there was an inaugural session of the IRTC held at Newbridge House in Donabate, and that took place on the 17th of October of 1988, and you attended that with all of the other persons who were appointed, isn't that so?

A. I am sure you are right.

9 Q. Yes. The minutes certainly, I think, record your attendance there, and we can put up the minutes at page 2097? You will see on the screen before you, Ms. Prone, a document will come up, and it is the minutes of a meeting on the 17th of October, 1988, page 2097. You see the venue is Newbridge House, and in attendance was Mr. Justice Henchy, the Chairman, and you are the next person listed as being present?

A. Mm-hmm.

10 Q. Yes. Obviously, because of your skills in the communications field, you had a particular qualification for this body, isn't that so?

A. Thank you.

11 Q. What range of communications activities is Car Communications involved in, or was involved in at that time in 1988?

A. It was involved in presentation skills and other communications training courses. And it had a public relations division as well.

12 Q. Yes. And when you attended at the first of the meetings here, there were a number of resolutions which were passed at that meeting. If we go down through the document in question, we will see that the first matter dealt with was that the Minister made a speech there to everybody present,

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isn't that right? Do you remember that?

A. I'm afraid I don't.

13 Q. No. They usually do, so you may take it that on this occasion it was no different, there was an inaugural address by the Minister, and after that the formal letters appointing you were distributed, though of course you had known for some time beforehand of your intended appointment and it was validated on this date, the 17th of October.

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The standing orders reference here then, follows with the following statement, "It was decided to defer final consideration of standing orders until the next meeting. It was agreed, however, that the minutes of a meeting should be with the Commission three days before the following meeting and that minutes should be a record of decisions only." You see that?

A. I do.

14 Q. Do you remember whether there was any particular debate or discussion on this form of minute keeping being adopted by the Commission?

A. I don't remember there being much debate about it. There was a fairly speedy agreement that it would be a good thing, as I recall.

15 Q. Right. And were you a contributor to that debate or did you agree that this would be the most appropriate method of minute keeping for the future activities of the IRTC?

A. I probably would have agreed, I don't remember contributing.

16 Q. Fine. The next issue then dealt with at the minutes was the appointment of the bankers to the IRTC, and the

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resolution recorded here is that Ulster Bank Limited be appointed as banker to the Commission. And we learned that this was not only Ulster Bank as such, but rather the Ulster Bank branch at Clochrane, the Dublin Airport branch that was to be nominated. Do you recollect that motion being proposed?

A. No.

17 Q. Mr. Donal O'Sullivan who was one of your fellow members gave evidence yesterday that he was the proposer of that particular motion, and that he did so having been requested by the then Minister, Mr. Burke, to put forward the bank in question as the appropriate bank for the Commission. Was that something you were aware of at the time that you decided --

A. I learned it for the first time when I read the newspapers this morning.

18 Q. Right. Equally if we move onto the appointment of the accountants, it seems on Mr. O'Sullivan's account, he also proposed Deloitte Haskins and Sells as the accountants and financial advisors to the Commission, and he did so having been given this name and having noted down the name at a meeting he had with the Minister. Were you aware that this particular firm had been selected by the Minister as being an appropriate body to be nominated before your Commission?

A. No.

19 Q. No. Again, in relation to the solicitors, Mr. O'Sullivan proposed Mr. Michael O'Connor of John S O'Connor & Company be appointed as the solicitors to the Commission, having been requested to do so by the Minister. Were you aware of

that?

A. No.

20 Q. Was there any discussion that you can recall at this meeting as to why it was that these particular bodies or entities or individuals, were being proposed as opposed to any other individuals?

A. No. Certainly nobody said "Well, why don't we look at somebody else."

21 Q. Right. Was there any inquiry as to what the qualifications or aptitude, for example, of this firm of accountants would be for the range of financial advices that might be sought of them by the Commission?

A. There may have been, I don't recall.

22 Q. Do you remember there being a vote on this particular issue, or not, on any one of these appointments?

A. No, I assumed, until you asked the question, that it had been done by consensus, because all other decisions eventually were done by consensus, but if that was prior to our deciding on consensus, then there may have been a vote, but I don't know.

23 Q. I see. The consensus decision was one which was taken sometime later, and if we look to page 5561, you will see that these are the minutes of a meeting which took place on the 24th of November, 1988, and under paragraph heading 8, "Deciding on Applications" it says: "It was agreed that decisions regarding the successful application should be made by consensus of the Commission members."

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Firstly, that seems to limit the decision making by consensus to the appointment of successful applicants

rather than the whole broad range of decision making that the Commission was engaged in. Now, it may be arising just from the wording of the resolution, but equally it may have been the result of a specific decision to that effect.

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Can you remember this being debated firstly, or the reasons why it was considered that there should be a specific resolution allowing for successful application decisions to be made by consensus?

A. I am sorry, you asked me two things and I have forgotten the first one.

24 Q. The first one is whether there was a specific decision that consensus should be the way that one approaches applications for appointing, as opposed to the other method of voting, which would be to take an individual vote in respect of other decisions? Was there a positive decision, in other words, to distinguish between the elective process which should be followed for candidates as opposed to an elective process for other issues before the Commission?

A. I don't recall the debate, and obviously my answer is tainted by what subsequently happened, which was, as I recall it, that all decisions were made by consensus, not just the decisions on applicants.

25 Q. I see. The standing orders had provided for the, for a method of voting on issues, isn't that right?

A. So I subsequently found out.

26 Q. I see. In any event, having been appointed to this body, I take it at the time you learned of what the functions of the individual members were and what collective decisions

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they would have to reach on particular issues, isn't that right?

A. Yes.

27 Q. And the selection process is one of the issues which fell to be decided by the Commission. They were obliged to appoint successful applicants, if there were those who qualified to a number of positions, firstly as the person entitled to the national TV franchise; secondly, the person entitled to the national radio franchise; and thirdly, a disparity group of applications for various forms of local license, isn't that right?

A. Yes.

28 Q. And the Tribunal is concerned at this point in time with the decision-making process that was followed in relation to the national radio franchise. And it transpired that that was the first business of the Commission, isn't that right?

A. Yes.

29 Q. And we learned from the documentation, that a procedure was set up whereby an advertisement was placed looking for interested candidates, they in turn would submit their request for an application form, that one would be sent where appropriate, that they would complete the application form in a particular format in the form of a submission and that would be sent in to the Commission, isn't that the way it worked?

A. Correct.

30 Q. There was, I think, an apparent level of urgency about this particular aspect of the Commission's work, isn't that so?

A. I don't recall.

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31 Q. You don't recall. The sequence of events in time appear to be that you were appointed on the 17th of October, the closing date for submissions for the national radio franchise was the 16th of November, some two months later, and the decision was made - sorry December, the decision was made one month later. So it all took place with commendable expedition.

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Now, do you remember when the applications were sent out and the submissions received in December, whether there was an arrangement already put in place by the Commission in November that when the applications came in, or the submissions came in on behalf of the parties, that the Secretariat of the Commission would review the applications and would prepare firstly a comparative analysis of the various contenders? Do you remember that?

A. I am sorry, I don't.

32 Q. You don't. It does appear to have been recorded in the meetings, and the record of the meetings indicated that in the week following after the receipt of the submissions, there would be circularised to each member the original applications, the analysis by the Secretariat, and that in fact took place. Were you aware of that?

A. I must have been. I don't recall the gloss on the submissions by the Secretariat.

33 Q. Right. Well, we can look at that documentation then. If we move to page 3908? You can see this document is headed "National Radio Station Applications"?

A. Mm-hmm.

34 Q. And it is a document which was sent to the Chairman and

Commission members. It was signed by Mr. Michael O'Keeffe, and it was dated the 22nd of December, 1988, which is at the bottom of the page.

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Now, the evidence has been that this letter, or this memorandum rather, was accompanied by backing documentation, and you will see from it that it analysed the applicants under a number of headings.

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Firstly it identified the applicants who were the subject of the review here under four individual entities, the first of which was Century Communications Limited; the second, Radio 2000 Limited; the third, National Radio Franchise Consortium; and the fourth, Radio Nova International. And Radio Nova International was one of the applicants who was considering a satellite medium of broadcasting, whereas the other three were intending to use terrestrial systems. Does that accord with your recollection of events at the time?

A. Yes.

35 Q. And in this memorandum the author says that, "The comparisons are done under a number of headings, these are: General aims. News and current affairs. Music policy. Irish language and culture. New opportunities for talent. Purchase and sale of material. Education/religious affairs. Typical programme schedule. And readiness date."

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Now, I think that followed in a general way, the format of the application form which had been sent out to the various

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parties, isn't that right?

A. Yes.

36 Q. And each of the parties in replying used the same headings and paragraph numbering system that had been set forth in the template which was represented by the application form, isn't that right?

A. Yes.

37 Q. So, the Secretariat then went on to look at each of these applications and to compare like-with-like, where possible, and to set them out in a format for the members. And if we turn to the next document, which is 3909, we will see the analysis of the first matter dealt with. That was "General Aims and Intentions", and here the numbering applied is the numbering which was attributed to the various applicants, so that No. 1 refers to Century, No. 2 refers to Radio 2000, and No. 3 refers to the Consortium.

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And what the author of this memorandum has done has been to read their applications individually and to set out here what they dealt with under the particular headings. You see that? So it allowed for you as a Commission member, to immediately compare like-with-like or like with dislike or unlike, as the case may be, of each of the candidates who were reviewed in this particular document, isn't that right?

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You could see, for example, if there was a difference between them, that on the one hand Century was stating that its proposal was for a radio service which would be "distinguished by being entertaining, authoritative,

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national, Irish, and targeted proposal to open up the broadcasting, creating new audience segments in addition to legitimate competition with RTE."

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Whereas their competitor immediately below proposes a "pioneering schedule of exciting new programmes with good balance of music and talk. They see a widening of the range of audiences with the new station responding to new EC arrangements 1992, strong bilingual, multilingual aspect of the new service." By way of example that is what the review comprised of, isn't that right?

A. Mm-hmm.

38 Q. And it went through each of the headings which are referred to in the previous document, that is news and current affairs, music policy, Irish language, etc.. And this was a document which was circulated to the members, either on the 22nd of December or immediately thereafter, with the intention that they would be considered in some detail, at the next meeting of the IRTC, which was scheduled to take place on the 5th of January of 1989.

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Now, can you remember whether you considered the documentation which was sent to you in advance of this meeting taking place on the 15th, on the 5th rather of January?

A. Yes, I would have. I would have.

39 Q. And it would appear from the minutes of the meeting of the 5th of January, that there was a detailed review or examination of the respective candidates' applications?

A. Yes.

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40 Q. Does that accord with your memory of events?

A. Mmm.

41 Q. And having conducted that review from your point of view, was it possible for you to highlight any deficiencies or particular attributes which existed in favour of one candidate being successful, whereas others should not succeed?

A. What I now recall was that I would have had reservations about No. 1.

42 Q. You would have had reservations about Century?

A. Yes.

43 Q. Yeah. What were the reservations that you can recall about at this point in time?

A. They relating to programming, almost exclusively.

44 Q. I see. The programming policies involved, this was something that had been analysed under the heading "Typical Programming Schedule", by the Secretariat. They produced a document which set out the various types of programming envisaged. What did you find to be deficient in Century's application in relation to programming?

A. It seemed to me, as I recall, to be predicated almost entirely on Gay Byrne being part of it, although Gay Byrne was clearly not named in the submission, and secondly, and probably deriving from that, it mirrored RTE 1's existing programming very closely, which I thought was a fatal marketing error.

45 Q. I see. That, I take it, was a reservation that you aired in the body of the Commission, is that right?

A. Yes.

46 Q. And was that a view that was shared by others, did you

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understand, or was it just one of the matters that was being considered by them?

A. It was just one of the matters. The meetings before the public presentations by the consortia tended to be brainstorming, putting down thoughts rather than actually fully debating anything. We were at pains not to make decisions at that stage.

47 Q. Right. There was, in fact, only one meeting of the Commission at which they had available to them the entire of the application documentation and the analysis of the Secretariat before the oral presentation. It took place on the 12th of January, and this meeting on the 5th was the first and only opportunity where all of the parties met in possession with the documentation comprising the applications and the analysis?

A. I am so sorry. When I said "meetings" plural, I meant in relation to all of the licenses.

48 Q. Yes. In relation to the particular national radio franchise license, the minutes record that there was an analysis, rather a review of the applications. I will just find that for you now?

A. Thank you.

49 Q. It is at page 2103. And these are the minutes of the meeting of the 5th of January, and they start off with a reference to Mr. O'Donovan recording his personal and business association with two of the applicants, the Commission noted his statement and agreed that he should continue to partake in the decision-making process. The next reference is: "The four applications for the national radio franchise were considered in detail. No decision

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would be made pending the hearing of the applications in the National Concert Hall on the 12th of January."

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There then was a reference to the Secretary pursuing the question of the availability of an Irish based news service for the new station. If we centre for a moment on the reference here to the consideration of the four applications, whilst the detail of the examination is not set out here, in any form, it is recorded that the applications were considered in detail, does that accord with your memory of it, that each of these applications received a full consideration at this particular meeting?

A. I don't think I was at that meeting.

50 Q. I see. That is true. "Apologies were received from Ms. Terry Prone." So you didn't have an opportunity then of contributing at that point to the discussion or analysis or review of the four applications, isn't that so?

A. Not to be physically present, but I would, in that situation usually have telephoned if I had a very particular view, that was always open to somebody who couldn't attend the meeting.

51 Q. Right. Do you have a memory of doing so or just that was your usual practice?

A. Yes.

52 Q. The next minute we see recorded is at page 2104, which was the minutes of the meeting of the 18th of January of 1989, and that was where the decision was made to grant the franchise, subject to contract, to Century Radio, following discussion on the applicants for the national radio franchise. "The Commission agreed to award the franchise

to Century Communications Limited, subject to contract."

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Now, between those two minuted meetings, there had been the oral presentation in the National Concert Hall which took place on the 12th of January which is not minuted as a meeting, but we know that after the oral presentation the Commission met, I think for coffee and some light refreshments afterwards, and do you remember there being some discussion at that point in time on the respective merits of the applications and of the presentations which had been made to the body of the Commission by the individuals concerned?

A. There was a very informal sharing of immediate reactions, yes.

53 Q. Okay. Was there any attempt to try and reach a final decision or consensus at that point or was it deferred to the later meeting?

A. It was deferred.

54 Q. Right. Having heard the presentation of Century and the presentation of the other candidates at that point, did you yourself have any view? Did you revise the opinions that you might have formed on the consideration of the written submission?

A. No.

55 Q. I see. At the meeting on the 18th of January, you were in attendance at that particular meeting. Have you any recollection of there being outstanding matters left to be resolved with Century by the IRTC after their oral presentation; in other words, did you know of any directive to the Secretariat or request of the Secretariat that a

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further meeting should take place with Century to resolve or elaborate upon any outstanding matter?

A. If I was aware of it at the time I don't recall it, I am sorry.

56 Q. I see. Do you remember at the meeting of the 18th of January whether any additional information was produced to the general body of the meeting which had been generated after the meeting or the presentation on the 12th?

A. May I seek clarification?

57 Q. Yes, of course. There is documentation which was generated after the meeting of the 12th, and this is to be found firstly at page 5600?

A. Thank you.

58 Q. Century Communications Limited, Ms. Prone, you may remember, had a number of advisers, including a technical advisor who was Mr. Ray Hills, who was formerly employed by an entity known as the Independent Broadcasting Authority Consultancy Service in the UK, and that gentleman was providing advice to Century Communications in relation to their application. And the document which is presently on screen is a fax communication from Mr. James Stafford, it is dated the 13th of January, 1989, at 12:15 hours, that is the morning following the meeting, the public submission in the Concert Hall, and the message that is enclosed there reads as follows:

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"Oliver Barry's office are faxing you details of the RTE charges." That is a reference to a document prepared by RTE following a meeting which the Department of Communications, where RTE advanced figures for the

provision of transmission services to independent broadcasters, and that was faxed in this document by Oliver Barry's office to Mr. Hills. It was a document which was apparently in the possession of Mr. Barry on the 12th, and he had received it from the IRTC.

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If we move on from that, because I don't think that it is particularly something you were aware of. The message reads: "I have just returned from a very satisfactory" - and the underlining is on the original document which was faxed - "meeting with the Chairman and Secretary of the Commission. Decision will be announced next week."

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Now, did you as a member of the Commission know that the decision was in fact going to be announced "next week"? I take it a decision hadn't been made at that point in time?

A. I don't know the answer to that. I assume that we had planned to make a decision. I didn't know that - I don't recall that it was said that we were sure to be announcing it.

59 Q. Right. And in your view at that particular time, and that is in and around the 13th, did you as a Commission member, have any idea of who the likely successful candidate was going to be?

A. No.

60 Q. No. It was entirely open, was it, or had it been reduced even by one from the original four?

A. It may have been reduced by one, but only by one, and it was very much still open.

61 Q. Right. The message goes on to read: "The Chairman and

Secretary require with greatest possible urgency as much information as possible before close Monday" - I should say this fax was being sent on Friday - "to challenge the RTE figures and justify the ú300,000 as the correct charge."

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Now, this query was obviously being directed, if the message is accurate, by the Chairman and Secretary to Mr. Stafford, to stand up the figures of ú300,000 for RTE charges and to effectively challenge the RTE figures which were considerably greater than that. Do you remember any resolution being passed or decision being taken by the members on the 12th that such an inquiry should be pursued

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A. No.

62 Q. -- on the following day? I see.

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That document, I think, indicates that there was in fact some communication between the Chairman and the Secretary of the IRTC with one of the candidates after the oral submissions had been made in public on the 12th. Were you aware of any such meetings having taken place, either at the time, that is the 13th, or prior to the decision-making process concluding on the 18th?

A. I may have been aware, I don't recall. However, you use the phrase, "any such meetings"?

63 Q. Yeah.

A. That paragraph, the IRTC would never have authorised the Chairman and Secretary to attend a meeting or to seek that kind of information for that purpose. The implication of that paragraph, as I understand it, is that in a sense the

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Chairman and Secretary are acting together with Century, they are seeking to validate Century's position against RTE. I was certainly never aware of any such move, and I would be surprised if the Chairman and Secretary did that.

64 Q. Now, this fax communication lead to certain steps being taken firstly by the recipient of the fax, Professor Hills. It transpired that he was obliged to honour an earlier commitment to go to Hong Kong on the Saturday, and therefore he was not in a position to deal with the matter himself, save to attend a meeting with the IBACS staff where he briefed them, and you will see that in the following documentation.

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Firstly on page 6071, this is a fax from Mr. Hills to Century Communications. Sorry, that was on the 12th, I beg your pardon. We can leave it on screen because what it, the message indicates that in "2": "I will let you have my hotel fax number in Hong Kong, and would appreciate hearing if and when there is any news." That confirms the fact that there was, where he was going.

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The following document then at 6072 is again a fax from Mr. Hills to Century Communications Limited. And the message reads: "Figures received from Oliver. RTE have made it difficult to compare with earlier ones by changing their approach to certain items; for example, funding of the capital purchases, direct payment of electricity, etc..

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Heading 2: Had long meeting with IBACS this afternoon and briefed them as fully as I was able. I left them copies

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of your fax, the latest figures, all the earlier ones tabled at our several meetings and other relevant information. Mr. Thomas is coordinating the preparation of the document you seek."

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At "3" it sets out the brief which he had given to Mr. Thomas. "The brief they are working to is

(A) Are the capital costs about right? They will not address the issue of how and over what span of years they are repaid. I confirm a working life of 20-years for the new plant.

(B) Ignore any aspect of historic costs, since your argument is one of principle.

(C) Assess operating and maintenance costs on a marginal basis, i.e. what are the additional costs that RTE will have to meet because of the new service?

(D) Ensure that the bottom line is of the order of ú375,000 which is the figure in the business plan."

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Paragraph 4. "Please talk to John if we have misinterpreted your brief."

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So that Mr. Mills at that point engaged the IBACS with a brief, and those were the terms of the brief. You see that?

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Now apparently, Mr. Stafford received a response from IBACS, that is Mr. Thomas, and he enclosed that report, which was in fax form, to the IRTC with his fax of the 17th of January of 1989, so that he met the deadline, I think.

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Well, in fact they had missed it, but on the following day, they faxed in a letter from Mr. Stafford, which enclosed an IBACS report.

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If we look firstly to the IBACS report at page 6079. This is a fax document from the Independent Broadcasting Authority Consultancy Services, from Mr. Thomas, and he is "enclosing herewith our memorandum commenting on the cost of the transmitter service given in your fax message of the 13th of January."

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And the next document then at 6080 is the memorandum itself. Now, I don't think it is necessary to go down through this in detail, Ms. Prone, because in effect it is not a document which sets out a justification for the £375,000, it is in fact a very limited review of certain figures, and it is a review which received adverse comment, certainly from Professor Hills, who had expected to receive quite a different document from IBACS, but he did not do so.

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And we will see at document 6082, this was a fax from Mr. Hills at the New World Hotel, which I think was in Hong Kong, to Mr. Stafford, where he congratulates him on the well-deserved award of the license. He goes on to deal with the fax that we have previously reviewed under paragraph heading 2.

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"I was appalled to see the very poor response from IBACS on the issue of RTE costs. I have to tell you that most

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of it was my own text prepared on the Saturday morning as an aide memoire and delivered by hand to John Thomas on our way to the airport. I had expected him to put much more flesh on my bones. I apologise for their poor showing, is it sufficient? If not, I will prepare something more detailed as soon as we return to the UK on the 1st of February. Please let me know."

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There is no record of any more detailed document being prepared by Professor Hills following this, so we are left with the IBACS document as being the document which was intended to stand up the IRTC - sorry, the IBACS figures, the Century figures, and its justification apparently was this memorandum which is criticised by Professor Hills.

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Mr. Stafford in forwarding this document to IBACS on the - to the IRTC, I should say, on the 17th of January, 1989, did so at page 6078, and here we see a letter from Century Communications Limited, dated 17th of January, 1989, to Mr. Sean Connolly, the Secretary.

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It says: "Dear Mr. Connolly, I enclose a copy of the IBA fax just received here this morning. In addition I would like to make the following observations.

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1. The transmission system for public service broadcasting is an investment which has already been paid for by license fees. It is maintained by the license fees, it not the property of RTE, they are the merely the custodian of a national asset. The additional costs associated with

public service broadcasting, as opposed to commercial broadcasting, the difference of delivering a signal to 63 percent of the County or 98.5 percent of the country is what license fees have been traditionally about, and I feel this argument is irrefutable.

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2. In our discussions with RTE they told us that they can finance the capital investment in equipment at a cost of 7 percent per annum. However, they sought to amortise the equipment over the five year period, whereas it has a life of 20-years. The cost of amortizing €100 of investment at 7 percent over 20-years is €9.44 per annum.

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I would also draw your attention to the Sunday Tribune press report that the Downtown Radio transmission charges for the whole of Northern Ireland is €100,000. The IBA advise me that involves four transmitters. Our proposal of €375,000 as a transmission charge is consistent with the Downtown transmission cost."

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So it would appear certainly that Mr. Stafford had his own views as to how one should approach the €375,000. These are contained in this document which was sent to the Secretary on the 17th, obviously in anticipation of a meeting which was to take place on the 18th.

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Now, have you any recollection of this letter or its content, or indeed the enclosure from IBACS forming any part of the discussion at the meeting of the IRTC on the 18th?

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A. No.

65 Q. Is it possible that it was discussed and this documentation was produced?

A. It is quite possible, this whole area was one where I regarded myself as having no competence whatever, and so I wouldn't have contributed or been greatly enlightened by the figures that were discussed.

66 Q. Right. You had no particular expertise in transmission charges as such?

A. No.

67 Q. But did you consider the more general question rather than the detail of it, and that was that here you had an applicant for a license who would have to reach some agreement with RTE if it was to be able to deliver the programming through their system, isn't that right?

A. Yes.

68 Q. And it would appear certainly, that they were the persons who were offering the least for the service that would have to be acquired, isn't that so?

A. Yes.

69 Q. They would have to come the greatest distance if they were to reach an agreement with RTE?

A. Yes.

70 Q. Do you remember that issue being discussed at all at the meeting either after the oral presentation on the 12th or at this meeting on the 18th?

A. At the meeting of the 18th it was discussed, yes.

71 Q. Yes. And what can you remember about the discussion vis-a-vis the chances that Century would be able to conclude a satisfactory meeting or resolution, I should

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say, with RTE? Was it considered that they would be able to reach a deal with RTE, given that there was such a great gap between their €375,000 figure and the much greater figure being sought by RTE?

A. My recollection is that there was a growing belief that they would.

72 Q. Okay. And do you know what the basis for that was? Why was it felt that such an arrangement was possible?

A. The view would have been expressed at the table that RTE were pushing their luck and that they would be helped to see sense.

73 Q. Yes. Do you know - firstly, did you share that belief and if you did, do you know what that belief was based on, because certainly from the documentation which has been provided it does not appear that the IRTC ever sought independent financial advice as to whether the RTE charges were excessive or otherwise?

A. I wasn't competent to share the belief, my worry was that we seemed to be veering towards giving a license when a major area wasn't resolved.

74 Q. Was that a fear that you had at the time?

A. Yes.

75 Q. On the 18th?

A. Mm-hmm.

76 Q. The major area being the failure to reach agreement with RTE, is that right?

A. Yes, because if they didn't reach agreement with RTE, or even if they did in certain circumstances, it would blow a hole in the figures on the basis of which we were giving them the license.

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77 Q. Yes. Well, did you propose adjournment of the matter?

Was this a concern that you felt strongly enough about to suggest that the Commission should not proceed further to deal with any application until they had resolved the transmission issue?

A. No, I didn't feel strongly enough about it.

78 Q. So the decision process went on then, and we know that the ultimate successful candidate was Century. Were you a proponent of Century at the end of the day? Did you agree that they should be the party who should be appointed?

A. I was not a proponent, I was an eventual member of the consensus.

79 Q. And can you recollect whether it took long to reach that consensus?

A. I believe it did take a long time.

80 Q. Right. And was there a full discussion on all of the issues?

A. Yes.

81 Q. And was everybody a participant in that discussion?

A. Yes.

82 Q. Was there any particular individual who was driving the proposition that Century should be appointed as opposed to others?

A. No.

83 Q. I see. Thank you Ms. Prone.

A. Thank you.

84 Q. There may be some further questions, just stay there for a moment.

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MR. O'HIGGINS: I have no questions, Sir.

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MR. FOX: I have only one question, Chairman.

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THE WITNESS WAS CROSS-EXAMINED BY MR. FOX AS FOLLOWS:

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85 Q. MR. FOX: I act for Mr. Burke. You said in your statement that you forwarded to the Tribunal, "that nobody ever made representations to me on behalf of Century Radio", isn't that correct?

A. Yes.

86 Q. Thank you Ms. Prone.

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CHAIRMAN: Thank you.

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THE WITNESS WAS EXAMINED BY MS. EGAN AS FOLLOWS:

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87 Q. MS. EGAN: Ms. Crone, sorry just before you leave the witness-stand, I have just one or two questions for you on behalf of the IRTC.

A. Sorry.

88 Q. Section 6 of the Radio and Television Act sets out the criteria to which the Commission must have regard when awarding a license, and Gillian Bowler outlined yesterday that in broad terms those criteria were programming criteria, ownership criteria and financial criteria.
Section 6 of the Act doesn't mention transmission fees as being one of the criteria that has to be taken into account in awarding a license, and you stated that you didn't feel you had any expertise in transmission fees, and that you weren't concerned, overly concerned about transmission

fees, and I just wanted to point out to you that you didn't need to be overly concerned about transmission fees, having looked at Section 6 of the Act?

A. Thank you.

89 Q. It is not one of the factors to be taken into account.

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MR. O'NEILL: This seems to be a conclusion that is being put to the witness, rather than a question, Sir. I think it would be fairer to the witness firstly if her attention was drawn to the section that My Friend is hoping to base this contention on, which is at page 5578, which we can put on the screen.

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MS. EGAN: Thank you.

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MR. O'NEILL: And the relevant section is Section 6 (B), if you want to acquaint yourself with the terms.

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90 Q. MS. EGAN: Section 6 (B) sets out at sub paragraphs A to J

the matters to which the Commission was to have regard in awarding the license. I don't wish to take too much time reading through every one of them, but broadly, subsection A deals with the character. "B" deals with expertise, experience and financial resources. "C" deals with programming. "D" deals with programming in the Irish language. "E" deals with new opportunities for Irish talent. "F", "G" and "H" indeed deal with the desirability or lack of, of having any one person controlling a particularly large portion of the media. "F" deals with community interests and - sorry, "I" deals with community

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interests. And "J" deals with any other matter that the Commission considered relevant.

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Would you have been aware of Section 6 of the Act at the time you made your decision on the license?

A. Yes, a lot more than I am aware of it now.

91 Q. I see. And would I be correct in saying that transmission fees is not specifically mentioned in that act?

A. Not that you have read it, no.

92 Q. You mentioned that at the meeting on the 18th of January which decided on the Century license, you had certain reservations relating to Century. Were you able to fully and freely express those reservations at the time?

A. Yes.

93 Q. You say in your statement to the, your written statement to the Tribunal, that in relation to the Century license, "It didn't strike me at that point that any inappropriate methods might have been used to achieve the consensus." You say a little later that all members of the Commission in your experience were straight and rigorous in their interrogation of proposal documents, and fair in their decision making. Do you agree with, still hold by that statement that you made then?

A. Yes.

94 Q. Thank you very much Ms. Prone.

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CHAIRMAN: Thank you very much, Ms. Prone, for coming along. We much appreciate your attendance.

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As it happens to what I might call the "mid-term break",

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would we just adjourn for a quarter of an hour and then we
will go on with the next witness.

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MR. O'NEILL: Very good Sir.

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THE HEARING THEN ADJOURNED FOR A SHORT BREAK AND RESUMED
AGAIN AS FOLLOWS:

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MR. O'NEILL: Mr. O'Keeffe please.

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MICHAEL O'KEEFFE, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MR. O'NEILL:

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95 Q. MR. O'NEILL: Good morning Mr. O'Keeffe.

A. Morning.

96 Q. You are presently the Chief Executive of the IRTC, isn't
that correct?

A. That's correct, yeah.

97 Q. And I think that your initial involvement with the IRTC
commenced in 1988, at which point you were a Higher
Executive Officer in the Department of Communications, is
that so?

A. I had been a Higher Executive Officer in the Department of
Public Service at the time and was transferred to the new
body which was being established, the IRTC. I never
actually served in the Department of Communications.

98 Q. I see. You were seconded from the Department in any event
to serve on this new body which was to be set up, the IRTC?

A. That's correct, yes.

99 Q. And am I correct in saying that in 1988 the Secretariat at
that time comprised of three officers, there were two with
the status of Assistant Principal, that is Mr. Sean
Connolly and Mr. Paul Appleby, there was one with the
status of Higher Executive Officer, yourself, and there
were three clerical staff?

A. That's correct, broadly speaking, yes.

100 Q. And their status or hierarchy within the Commission was
that the senior post in the Secretariat was that of the
Secretary, isn't that right?

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A. That's correct, Mr. Connolly, yes.

101 Q. In those days there was no provision for a Chief Executive?

A. There was a provision, but Mr. Justice Henchy operated as an Executive Chairman. Initially it was deemed there wouldn't be a Chief Executive, in actual fact Mr. Connolly was subsequently appointed Chief Executive sometime in 1989.

102 Q. I think there was an application certainly to have that position created for him?

A. Yes, that's correct, yes.

103 Q. And the initial hierarchy was a Secretary, who was Mr. Connolly, and then there was Mr. Appleby and yourself. You worked as a team, is that correct?

A. Correct, yes, yeah.

104 Q. And initially, as I understand it, the operations of the IRTC were conducted out of the Department of Communications' premises at Scotch House, isn't that right?

A. That's right. We had one office, we subsequently got half another office when we got a couple of extra people. Certainly for the period, from the time I started, which was about August of '88, a couple of months before the Board was appointed, through to February of 1989 we operated from the Department's offices in Scotch House.

105 Q. Right. Now, the establishment day order for the Commission was Statutory Instrument No. 269 of 1988, signed on the 17th of October, isn't that right?

A. That's correct, yeah.

106 Q. And you tell us that you and the fellow members of your Secretariat in anticipation of the appointment or creation of this board had been working in varying degrees from

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August onward, isn't that right?

A. Yes. Just to clarify that, myself and Mr. Connolly and one clerical member of staff were working from August, we were joined, I think in November, by Paul Appleby, and the clerical, other clerical staff came through sort of October, November, December that period.

107 Q. Now, the first meeting we know took place on the 17th of October, 1988, that was the inaugural meeting and that was preceded by a speech by the Minister. Were you present on that occasion?

A. No, no.

108 Q. And obviously when the Commission went into session, you did not attend any of those meetings other than at the request of the Board, if you were to deliver a specific report?

A. That's correct, yes.

109 Q. And Mr. Connolly as Secretary to the Commission sat in on the various board meetings, and it was he who recorded the minute of the meetings, isn't that so?

A. That would be correct, yes, yeah.

110 Q. And we will be hearing from Mr. Connolly in due course. You, I take it, learned after the first meeting that there were a number of appointments that would be necessary for you to know about, and for you to liaise with, had been made, namely the bankers, the solicitors and the accountants to the Commission, isn't that right?

A. That's right. We had a general policy that after a meeting, it establishes itself from the first meeting, but after each meeting the management team, if you like, would meet and review the various decisions that would have been

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taken.

111 Q. Right. You were then directed, I think, to deal with the bank, and you had dealings with the Ulster Bank in Clochrane, is that right?

A. That's correct, yeah, yeah.

112 Q. And I think that given that your office at that time was in Scotch House, it was not an immediately workable proposition from the point of view of the day-to-day banking activities that the Commission would have to carry out with its bankers, isn't that right?

A. Well, we raised that issue with them initially, that obviously they were based at Dublin Airport, we were based initially in Scotch House, then in Marine House, and we met with Mr. Moody, and agreed an arrangement whereby we would have the facilities, if you like, or the day-to-day facilities for banking within, I think initially the College Green branch, subsequently Baggot Street when we moved across, but that the account itself would be maintained within the Dublin Airport branch.

113 Q. Right. So the interface with the bank took place either at College Green in the initial period or in Baggot Street thereafter?

A. Yes, that's correct.

114 Q. Though the account was held in Clochrane?

A. In Clochrane, yes, exactly.

115 Q. Right. Now, as the affairs of the IRTC progressed, it became apparent that the first issue that was going to be dealt with was the grant of the new national radio franchise, isn't that so?

A. That's correct. The decision was taken at the first

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meeting to proceed with that initially.

116 Q. And you were involved in the documentation that was generated both as regards the drafting of the application form and the sending of that form to persons who qualified for receipt of it, isn't that right?

A. Yes, I think given the nature of all of the application process, we decided at management level to effectively divide up the degree of work and break out the different areas that we would do; as you are aware, that we were running quite a number of application processes through that first period, so we divided up the work among ourselves and on that basis, yes.

117 Q. And the work that you did specifically in relation to these applications was to consider the applications which had been received on the 16th of December?

A. Mmm.

118 Q. And to produce a comparative analysis by the 22nd of December which has been on screen?

A. Yes.

119 Q. Which is the document which was circulated to the members of the Commission in addition to the original applications itself?

A. Yes, although I would clarify that I prepared the programming document and the financial document was prepared by Paul Appleby, although that may not be clear from the --

120 Q. No, Mr. Appleby will be called to deal with the financial aspect.

A. Yes.

121 Q. Specifically you had no role in the preparation of the

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financial documentation or the comparative analysis that he carried out in relation to finance?

A. That's correct, yes.

122 Q. That was his role, though as I understand it, it may well have accompanied your document?

A. It did, that's correct, yeah.

123 Q. So that each member of the Commission before they sat down at this meeting on the 5th of January had available to them, the application format, the application completed and forming the submission of the individual, the analysis of that done by yourself, and the analysis on the financial side which was carried out by Mr. Appleby?

A. By Mr. Appleby, yes, yeah.

124 Q. The question of transmission charges with RTE is a matter which has been the subject matter of examination before the Tribunal over the past number of days, and I understand that that was not a matter on which you had dealings with either RTE or the Department, isn't that so?

A. That's correct, the issue of transmission was dealt with at different levels, if you like, I think at the - the first initial time when it was dealt with was at the meeting of the 8th of December at which there was a report prepared by, presented I should say, by the Chief Executive and the Executive Chairman, following a meeting with RTE the previous day, and there was a record of a minute there. There were subsequent discussions which I think are, which generally took place, which involved the Executive Chairman and the Chief, the Secretary Chief Executive --

125 Q. Yes.

A. -- in consultation with Mr. Lackan who was the technical

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consultant.

126 Q. Right. As I say, these are matters with which you did not have a direct involvement but were dealt with by Mr. Connolly, who will be called to deal with these matters, and by Mr. Justice Henchy who was Chairman, isn't that right?

A. Yes, obviously I would have been aware because there was an on-going relationship between us at management level, I would have been quite aware of the various activities and the various issues that were arising in relation to all of these matters, so I would have been quite familiar with the matters as they arose.

127 Q. Whilst you were aware of them, the actual decision-making process was that of the Chairman and the Secretary. And they implemented those decisions, isn't that right?

A. That's correct, yes.

128 Q. The ultimate decision was made to grant the franchise to Century, and that was on the 18th of January, isn't that right?

A. That's correct, yeah.

129 Q. And that there was a process of negotiation which took place over a period of time?

A. Mmm.

130 Q. Both as between RTE and the applicant, and also as between the applicant, then the successful franchise holder, and the IRTC as regards its contract, isn't that right?

A. That's correct, yes.

131 Q. And I think Mr. Appleby in the main dealt with the contractual arrangements as between Century and IRTC, isn't that right?

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A. Yeah. What I would say is that Paul probably dealt with a lot of the face-to-face with Eugene Fanning who was the solicitor for Century. The Chairman who was, as I suppose for emphasis, he was an Executive Chairman, took quite a role in the whole contract negotiations as well in terms of the broad policy. We also had Ray Fulham, Senior Counsel, assisting with us in that process, so that was, if you like, the team of people that would have been involved in it. I think Paul would have done the sort of face-to-face, the direct negotiations with them.

132 Q. Right. On the issues that we have dealt with so far, the transmission charges and the setting up of the Commission itself, you had an involvement to the extent that you indicated so far. After the appointment of the particular franchise holders, a successful franchise holder, what role did you personally, as distinct from the other members that we have mentioned, carry out?

A. In the relationship with Century Radio, certainly my first, while I was in my initial role in the IRTC I would not have had a great direct role with them. I would have been involved in, I think certainly I dealt with, they were looking for medium wave frequencies for a period of time, I had some direct role with their engineering staff in relation to that, but until such time as, I suppose, as Paul left the organisation I wouldn't have had as much of a day-to-day role with the group at that point as I would have had at a later stage.

133 Q. Yes. When was it that Mr. Appleby left?

A. Paul left in, I think early 1990.

134 Q. I see.

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A. Yes, that would be correct.

135 Q. Thank you Mr. O'Keeffe.

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MR. FOX: Chairman, I have a number of questions for Mr. O'Keeffe.

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CHAIRMAN: Anybody else?

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MS. EGAN: I have one or two questions.

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MR. O'HIGGINS: I have no questions, Sir.

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THE WITNESS WAS CROSS-EXAMINED BY MR. FOX AS FOLLOWS:

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136 Q. MR. FOX: Mr. O'Keeffe, would you agree that the allegation concerning the licenses for sale on the price list is a total nonsense and totally outside the realm of your experience of the IRTC since its inception?

A. I believe it is total nonsense, I have never heard of such an allegation until the lawyers for the Tribunal suggested it to me last June. I have been working in the industry for 12 years and I have dealt with all of the applicants, both successful and unsuccessful, over that period, and I just think it is an utter nonsense.

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MR. O'NEILL: Before My Friend proceeds, Sir, I have to point out that evidence has not been lead by the Tribunal through this witness, on that issue, and if My Friend is seeking to adduce evidence really of opinion or comment as to whether or not there was a particular belief in this

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witness' mind as to whether there was such activity going on, I don't believe that it assists the Tribunal in its probative work to know what the mind view of the current Chief Executive of the company may well be. Simply it is not germane, I submit, Sir, to the issues that you have to

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CHAIRMAN: I agree with that too. This witness is a witness of fact only, he is not a witness of opinion, he is not a witness of conclusion. Conclusions are my function, and he is simply - his remit is entirely factual.

MR. FOX: Might I respond to Mr. O'Neill's statement, Chairman?

CHAIRMAN: No. "No" is the answer to that.

MR. FOX: Yes, but I could say then, Chairman - could I address you on this matter? That Mr. O'Keeffe has addressed this matter in his own statement which he forwarded to the Tribunal.

CHAIRMAN: I am not interested in what Mr. O'Keeffe addressed in his statement, I am interested in him as a witness of fact. That's the beginning and end of the matter.

137 Q. MR. FOX: Very good Chairman. I will move on Chairman.

Now, Mr. O'Keeffe, is it true to say that the circumstances

surrounding the issue of the license which you would have been aware of, as Chief Executive, to Century Communications Limited was totally above board, without fear or favour?

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CHAIRMAN: That is a request to express an opinion, and it is not a matter of fact.

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138 Q. MR. FOX: Then could I ask, Mr. O'Keeffe, then Chairman; could I ask you, Mr. O'Keeffe, was this conducted within the confines of the Commission and free from any outside influences as far as you are aware?

A. As far as I am aware the process was conducted in accordance with the process that was set out both in the Act and in the guide to submissions that was sent to all applicants.

139 Q. Now, you said in your statement to the Tribunal --

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MR. O'NEILL: Well, Sir, if the question is going to be framed on the basis that the provision of a statement to the Tribunal entitles a party to air the entire content of that statement, it is a misconceived belief. Statements are furnished to the Tribunal on issues which may well never find themselves in the public domain, and the mere fact that it happens to be provided to the Tribunal in statement form is not to be used as a conduit necessarily to raise before the Tribunal matters which are not the concern of the Tribunal and which you have determined need not require public scrutiny.

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One can see the principle behind that, Sir, is that if that principle was not adopted anybody could send in statements of, on any irrelevant matters and then use the fact that the Tribunal had received such a statement as a basis for a platform upon which to launch particular views which are not of concern to the Tribunal.

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I just indicate that to My Friend, Sir, and require him to ensure that the questions are material to any issue that this witness can assist the Tribunal with, namely issues of fact, and not to perhaps use it as an opportunity of venting opinion.

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I may have been unfair to My Friend in suggesting that that is what he is going to do, but in anticipation that that is the purpose of using the fact of the statement being in the possession of the Tribunal as the basis of making it relevant, I just would like to qualify that.

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MR. FOX: Chairman, this witness has addressed the matter of transmission costs in his statement to the Tribunal which is very --

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CHAIRMAN: As a matter of fact, I have a note here, he didn't deal with the transmission issue, that was his evidence. This is exactly what we are talking about.

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MR. FOX: But as --

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CHAIRMAN: The answer is "no", you may not ask him. He

has given evidence, I have a note of it. According to my screen, it is page 37. I don't actually have the text obviously. I made a note at the time. "No role in the financial documentation or comparative finance. I didn't deal with transmission issue. Decision-making was the Chairman and the Secretary." Those are my notes. And those are the confines within which you must operate.

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MR. FOX: Very well, Chairman. In that context, Chairman, I note obviously what you have ruled in relation to this matter, but nonetheless, I must raise objection in that context, that this witness dealt effectively with the issue of transmission costs in his statement.

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CHAIRMAN: Mr. Fox, the witness has deposed on oath, if you want me to - I can scroll back the actual text. The text here is very small, I will have to get it on this screen - I noted it at the time.

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MR. FOX: Very well, Chairman.

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CHAIRMAN: The question was: "The question of transmission charges with RTE is a matter which had been the subject matter of examination before the Tribunal over the past number of days, and I understand it was not a matter on which you had any dealings with either RTE or the Department, isn't that so?"

Answer: That's correct. The issue of transmission was dealt with at different levels, if you like, I think at - the first initial time it was dealt with was the meeting of

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the 8th of December at which there was a report presented by the Chief Executive and the Executive Chairman, following a meeting with RTE the previous day, and there was a record of a minute there. There are subsequent discussions which I think are, generally took place involving the Chief Executive in consultation with the Executive Chairman and the Secretary Chief Executive, yes, in consultation with Mr. Lackan who was the technical consultant."

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As I say, there were, there are matters with which you did not - now that is the text, I can't get it to go back further, that is the text. You said quite clearly, because I made a note at the time, you didn't deal with the transmission issue, didn't deal with decision making, it was a matter for the Chairman and the Secretary.

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MR. O'NEILL: In ease of My Friend, Sir, I have to say the witnesses who did actually deal with transmission charges will in fact be called and available for cross-examination, and if My Friend wishes to put any proposition stemming from their evidence to them?

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CHAIRMAN: All I want to do is confine cross-examination to this witness in relation to what he had personal knowledge, and what he has given evidence of before the Tribunal. Whatever he may have said in the statement is quite a different matter. That's the situation as far as I am concerned.

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You will have both Mr. Appleby and Mr. Connolly in the witness-box in the next couple of days.

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140 Q. MR. FOX: Very good, Chairman. Obviously I fully accept your ruling on that confinement, and I will move on.

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Mr. O'Keeffe, as Chief Executive of the IRTC, would you agree that it was government policy at the time that there should be established independent national radio?

A. It was government policy that there should be independent national radio and independent national television in addition to a local radio regime.

141 Q. And would you agree also that the real issue of course, which you did not deal with directly, I mean you have said that in your own evidence, was the level of access charges, that that was the real issue, even though you did not deal with that --

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MR. O'NEILL: If this is not a matter which the witness dealt with, Sir, again my objection is raised to any --

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CHAIRMAN: I fully endorse your objection for the simple reason, if this mode of cross-examination is permitted we will stay here until Kingdom Come. We must stay with the relevant evidence given by a witness if you are going to cross-examine him, and that is a firm ruling and I will not depart from it.

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MR. FOX: Chairman, I have no intention of going into the matter of access charges with this witness, but I think it

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has been apparent by all the evidence heard by the Tribunal

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CHAIRMAN: Well, how much further does it advance my knowledge of anything? The person who will be dealing with this will be a witness, you can ask him the questions which he knows fully what it is all about. This witness has specifically said - now I really am going to get quite firm on this, and there is going to be no nonsense.

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142 Q. MR. FOX: Very well, Chairman, I won't proceed along that line of questioning as you direct.

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Mr. O'Keefe, would you agree broadly speaking, broadly speaking now, I am not referring to any particular issues with the evidence of the IRTC members that has been given before the Tribunal --

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MR. O'NEILL: Again whether he does or does not, Sir, is not a matter which is of concern to you. This witness' opinion as to whether he agrees with another witness' testimony or not is not a relevant or material matter for you. Of course, Mr. O'Keefe may well have his own views and they may ultimately be shared by you, Sir, in due course of deliberation, but this is not an instance where these views have to be, can be advanced. I am sure there are many alternative views which could be advanced.

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It is our unique function to decide what attention to pay to the relevant evidence adduced by particular witnesses,

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and what emphasis to give to it, and what conclusion to draw from it. The fact that one witness may have a view about another witness' testimony can never be relevant for a Tribunal, for the very good reason that it would be usurping your function, for other persons to offer their view as to how you should decide the evidence of others.

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I am objecting to this line of questioning.

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CHAIRMAN: I am upholding your objection.

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MR. FOX: I beg your pardon, Chairman?

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CHAIRMAN: I said I am upholding the objection.

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MR. FOX: Very well. Thank you very much, Mr. O'Keeffe.

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MR. O'HIGGINS: I have no questions, Sir.

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THE WITNESS WAS EXAMINED BY MS. EGAN AS FOLLOWS:

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143 Q. MS. EGAN: I have some questions for the witness, Chairman.

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Mr. O'Keeffe, I wonder if you can briefly outline for the Chairman please, the background to the decision of the Commission to embark upon the licensing process for a national station first?

A. Yes, at the first meeting there was reference to the requirement to license national radio and national

television. And clearly there was a demand equally that the legislation involved the pirate, closing down the local radio or pirate radio stations that existed at the time.

The reason that the national radio was chosen first ahead of local radio was really a time factor, it was a desire of the Commission to have all of the stations starting up, if you like, as close as possible to one another, and the view was taken that the --

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MR. O'NEILL: Before the witness starts offering views, we have already established the factual basis upon which this witness' evidence has been given. He was not present at the meetings of the Commission. He cannot therefore, offer a view as to what the thinking behind decisions were. Of course he may have a belief as to what their view was, but he is not an appropriate witness to be offering views as to the intentions or the thinking behind the decision maker who has reached a conclusion or that conclusion being passed down through the Secretariat by him.

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It is appropriate, if one wished to examine the thinking of the Commission, to ask questions of the individual decision makers, the Commission members themselves. But to offer in the guise of evidence, a summation or an analysis or a belief which a gentleman engaged in the Secretariat had at the time does not advance your inquiry one whit, but merely offers another interpretation, perhaps a correct one, perhaps an incorrect one, but an interpretation of the mindset of others, and that is not the purpose of calling

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evidence before you.

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And accordingly, whether it be put in the guise of seeking background information or what have you, it really is an attempt to offer yet another view or synopsis of a factual matter which has already been canvassed in detail before you. I would ask that Ms. Egan in directing her questions to the witness would do so limiting her queries to matters which can be answered by the factual account of what this witness did, rather than his belief or summation of what others decided in the course of their deliberations.

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CHAIRMAN: Ms. Egan, I think that's, that is very simply put by counsel, and I invite you at the moment, I invite you to follow it, and I hope I won't have to direct you.

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MS. EGAN: Chairman, I had hoped to be in a position to question Michael O'Keefe about what he personally knew about this matter. I wouldn't expect him to go beyond and to hypothesis on the opinions of others, but he was Higher Executive Officer of the Commission at the time, and I think had full personal knowledge of the background to this particular licensing process, and I wanted to question him about his own state of knowledge.

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CHAIRMAN: If you want to question him about a particular fact, an issue of fact but not an issue of opinion or his opinion. If you, if you can concentrate his mind on a particular sequence of facts or events and he can recite what his knowledge of those events are or the facts are,

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but not prescribe or advise me as to what the general opinion was. That is something that I am going to have to work out for myself, as to what did happen and what was appropriate, on the facts.

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144 Q. MS. EGAN: Very good, Chairman.

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Mr. O'Keeffe, to your knowledge, why was the decision made to embark on a national licensing process first?

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MR. O'NEILL: It is the same issue really. This was not the decision maker. The decision maker was another. The decision maker reached the decision that this should be dealt with first, that decision was conveyed to this witness. This witness is aware of the decision, he can say that such a decision was made. We know that such a decision was made. He can not indicate why it was made, what the intention of it was or what the purposes of it was, even though he may believe that it was for a particular point of view and he may believe that on the basis of what he was told by others.

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That is not primary evidence, it is not evidence upon which he can give any factual assistance. He merely is reciting what was said to him by others, if it came to him through that particular medium. There are witnesses whose evidence deals specifically with these matters, and questions directed towards establishing what this witness believed that the decision-making process was are not helpful to the Tribunal, in my respectful submission, Sir;

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they merely offer an account of necessity. It has to be the personal account of an individual, and it is a personal account upon a matter which he had no direct role to play, but merely was the recipient of that information.

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And again, it is just canvassing opinion and not evidence, Sir, and I renew the objection that I made to Mr. Fox's --

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CHAIRMAN: And I am going to uphold your objection.

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145 Q. MS. EGAN: Very good Chairman.

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Mr. O'Keefe, as a matter of fact how many stations were licensed by the Commission in its first year in broad terms? What was the licensing procedure embarked upon?

A. The Commission licensed 25 local radio stations, one national radio station, and awarded a contract to the television service, that didn't take place until a number of years subsequently. It embarked on a similar process in relation to all 25, effectively one following on the other. So there would have been a guide to submissions, there would have been an advertisement for expressions of interest, then an advertisement for applications, then an oral hearing process and then a decision, and that, they embarked on that process and ran it from about November when the first application went in, until the final one was completed in June of 1989.

146 Q. So over that period of time were all those licenses processed?

A. They were processed over a period of time of seven months

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effectively.

147 Q. Okay. Mr. O'Keeffe, Mr. O'Neill has already put questions to several witnesses as to why a particular question relating to transmission charges was not put to Century Radio at the oral hearings --

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CHAIRMAN: I have already --

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MR. O'NEILL: Sorry Sir.

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CHAIRMAN: -- I have already dealt with that. The witness has already told me on oath, that he didn't deal with the transmission issue. I have the actual note, and I can, if necessary I will go back to the text. Now, that's a ruling and I am going to stand by that ruling and enforce it.

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MS. EGAN: I understand that, Chairman. I think as a matter of fact Mr. O'Keeffe worked with Mr. Appleby and Mr. Connolly in the preparation of the documents which were put forward to the members of the Commission, and which documents then formed the basis of the questions for the oral hearings, and it is on that matter that I wish to question him, subject to your ruling.

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MR. O'NEILL: Well, as My Friend knows, Sir, there was a circular circulated, a questionnaire, amongst the persons who might have knowledge of the question that was going to be asked of prospective candidates at the oral hearing, and as to whether or not they were aware of why the quest

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was not asked. And My Friend must be aware from the response which was furnished to the Tribunal yesterday, that this witness' response to that query is "I am not aware of the circumstances of this decision." If that is so, I cannot see that the matter can be canvassed with this witness at this particular time.

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The groundwork has not been established to show that this was a question formulated by this particular witness, in fact it would appear he didn't formulate that particular question. But equally, he has indicated to the Commission, to the Tribunal rather, that he is not aware of the circumstances of the decision not to ask that question.

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It is for that reason, Sir, that he wasn't asked that by me in taking him through his direct evidence, because every witness before the Tribunal is a witness of the Tribunal, and the Tribunal will elicit from that witness all relevant facts and details which require decision or contribution by you on any issue which has been found in consideration of the documentation.

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The reason why this particular line of inquiry was not pursued with this witness was because we already have an answer in writing from him which indicates he does not know about it, therefore I am objecting to questions being aired publicly which can only result, if the witness is consistent, with him saying he knows nothing about why that question was not asked.

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MS. EGAN: Chairman, in that regard the response from Mr. O'Keeffe in relation to that particular question, his written response certainly does not say that he has no idea why the question was put, in fact he states four reasons why he believes the issue of transmission charges was not canvassed, and I am seeking to elicit those reasons in testimony, Chairman.

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MR. O'NEILL: Sorry, if I made the wrong reference in my submission to you. If My Friend will just alert me to the question again --

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MS. EGAN: It is under Clause 6 of Mr. O'Keeffe's written statement, question in respect of oral hearings.

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MR. O'NEILL: Very good. Sorry, I referred to the wrong response there, Sir, my apologies to My Friend. The response which was given was: "I was not directly involved in the transmission issue, but it is likely that I would have been aware of the position."

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Now, I don't think that that matter advances the thing further. It involves the concession that the witness was not directly involved in the transmission issue.

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MS. EGAN: I think Mr. O'Neill is still reading from the wrong section.

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MR. O'NEILL: Sorry, it is not my question.

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MS. EGAN: Question 6, heading questions in relation, in respect of oral hearings.

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MR. O'NEILL: Mr. O'Keeffe's statement - the response of Mr. Michael O'Keeffe, IRTC, to the questionnaire issued by the Tribunal of Inquiry --

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MS. EGAN: I am not talking about the questionnaire, I am talking about Mr. O'Keeffe's written statement.

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MR. O'NEILL: We are at cross-purposes, because a questionnaire was circulated, Sir, as you know, to various parties. Included in that questionnaire was a question in relation to why a question had not been asked - I will put the question firstly, it was: "Who drafted the following question as a possible question to be asked of Century at the oral presentation to take place on the 12th of January, 1989? Namely on page 37 of your proposal you state that 'The financial demands being made by RTE for the siting of the transmitters of the independent radio service will jeopardise the viability of whole project.' Are you saying here, if the Commission and the Minister find that these costs are to be justified that Century will not proceed with the whole project?"

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The question then was: "Do you know why this question was not asked of Century Communications Limited at the oral presentation?" The response is: "I presume it was somebody within the Secretariat, although I cannot recall

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who. Section 6 of my narrative statement of 15th November also addresses the issue."

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So that was the response, that there is a presumption that it was somebody in the Secretariat and that he can not recall who.

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Then if we move to Section 6 of his statement, I will see if I can find the reference to it there? At question, paragraph 6: "It was the policy of the Board that the Executive would prepare questions to be asked of applicants at oral hearings. With regard to Century I prepared questions on programming, while Paul Appleby prepared questions on financial matters."

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The Tribunal asked why the issue of RTE transmission charges was not raised with the applicants, "in particular there were significant discrepancies between Century Radio and the other applicants who proposed using the RTE sites." And then points are made by --

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MS. EGAN: It is those points, Chairman, that I was hoping to elicit from Mr. O'Keeffe in his oral testimony.

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MR. O'NEILL: Those points, with due respect, can only be based on a premise that the witness had nothing to do with the formulation of the questions, doesn't know why they were not asked, had no input in the preparation of the questions of programming, that is my --

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CHAIRMAN: Didn't deal with transmission.

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MR. O'NEILL: And didn't deal with transmission. So he may well have points that are relevant to an argument or a submission, but it is not a submission that concerns the Tribunal.

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CHAIRMAN: It is not evidence.

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MR. O'NEILL: Unless My Friend, in other words, can lay the groundwork by saying this witness was the person who drafted that particular question, which I don't believe to be the case, or was himself present when the Commission decided that it would not ask that question, which we know he can't have been because he wasn't at any of their meetings. I cannot see how this area can be explored with this particular witness.

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148 Q. MS. EGAN: Mr. O'Keeffe, who prepared the documents that were put to the Board in deciding on the oral questions?

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MR. O'NEILL: We are dealing with a specific issue, Sir, that is who prepared the question which was the subject matter of this inquiry, and that is Question No. 10, it is a simple question. Did this witness prepare it or did he not prepare it? If he did prepare it, we can proceed in an incremental basis. If he did not, it is pure comment for him to offer any view if he did not prepare it.

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CHAIRMAN: Mr. O'Keeffe, did you prepare Question 10?

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A. I do not recall that I did.

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CHAIRMAN: That's an end of the matter.

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149 Q. MS. EGAN: Mr. O'Keeffe, did you prepare the documents upon which the Commission based its decision on the awarding of the license or were you involved in that preparation?

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MR. O'NEILL: Again he can't say that without the individual documents being put forward, and we have established in evidence, that the documents which he did prepare were not the financial documents for a start, they were limited, as far as we know, to the document which has already been aired, and that is the comparative analysis minus the financial input, and that particular document does not deal with this issue. And therefore, it is a roundabout way, in my respectful submission, of trying to get to the same point, which has already been determined by you, Sir.

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CHAIRMAN: The question is not admissible.

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MS. EGAN: Sorry Chairman?

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CHAIRMAN: I said the question is not admissible.

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150 Q. MS. EGAN: Mr. O'Keeffe, did you prepare documents upon which the Commission made its decision that went to the Board when they made their decision? "Yes" or "no"?

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CHAIRMAN: Again that is a repetition of the previous question which I have just ruled as being inadmissible.

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MS. EGAN: I was asking the witness about a question of fact, Chairman, as to whether or not he prepared those documents or was involved in that preparation. These are not the documents for the oral question, Chairman. These are the documents for the final decision.

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CHAIRMAN: Well, there were a number of documents involved, you are going to have to specify what documents you are inquiring into. I am not going to get this in by a back door. There are people who can give you this information. It is a matter of getting the correct witness. Either they have been, and we will call them back or you await their arrival, one or the other, but you are not going to be permitted to bring in irrelevant evidence through a witness who is not competent to give it.

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MS. EGAN: Very good, Chairman, I asked this because my understanding is that Mr. O'Keeffe and Mr. Appleby would have jointly prepared these documents, and insofar as Mr. O'Keeffe had a role, I would have thought this was my opportunity to have that matter aired.

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CHAIRMAN: First of all, there is no evidence before me at the moment that they were jointly involved in anything. They appear to have done sections, according to the witness, or were dealing with sections. The one he was

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dealing with, he said, I think, I hope I am correct in this, was programming.

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151 Q. MS. EGAN: Very good, Chairman.

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Mr. O'Keeffe, if I could direct your attention please to the minute of the meeting of the 8th of December.

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CHAIRMAN: Could you give me a document reference?

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MR. O'NEILL: If she could give the page number?

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MS. EGAN: I am sorry - I'm afraid we don't have the page numbers on our system.

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MR. O'NEILL: Very good. I will obtain that for you.

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CHAIRMAN: Just a moment and we will get it for you.

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MR. O'HIGGINS: Sir, I think it is page 5567.

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MR. O'NEILL: That's correct, yes.

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MS. EGAN: I am very grateful. Thank you.

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CHAIRMAN: Right, 5567.

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152 Q. MS. EGAN: Paragraph four, which is on the second page, presumably 5568, deals with the RTE charges. I know, Mr. O'Keeffe, you weren't at this meeting, is that correct?

A. That's correct, yes.

153 Q. But I wish to ask you is that, there is a note here that

"It was agreed that the Chairman, Mr. O'Donovan, the Secretary and Mr. Lackan, would approach the Minister in relation to the RTE transmission charges."?

A. That's correct, yes.

154 Q. In that respect, can you outline the Chairman's position, was he Executive Chairman or Non-Executive Chairman?

A. He had the capacity of Executive Chairman.

155 Q. What does that mean in this context?

A. Well effectively he worked on a, I won't say a full-time basis, although it was almost full time at the period because the Board were meeting on effectively a weekly basis, so he was in quite a lot of the time, but certainly for the duration he would have been, when things settled down he would have been maybe three days a week, on IRTC business, but at that initial period he would have been there almost full time.

156 Q. And what was Mr. Lackan's role in this particular matter?

A. Mr. Lackan was technical consultant. He was, it was decided that the Board felt it needed advice of a technical nature. When the IRTC was established, the Department of Finance and Department of Communications felt that there wasn't, there should only be administrative staff in the IRTC, and accordingly we were not given any staff of a technical or engineering nature. The Board decided, I think at a meeting in November, that it required some expertise in this area and sought to appoint Mr. Lackan.

157 Q. And so far as the Board was aware or so far as you are aware, did Mr. Lackan possess the necessary expertise to

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advise the Board on transmission charges?

A. Mr. Lackan's primary area of expertise was in the technical, as opposed to the charges area. He would have had a knowledge of charges, but his primary expertise lay in the transmission studios transmission, the nuts and bolts, if you like, I think that would be fair to say.

158 Q. Right. And finally, Mr. O'Keeffe, as a matter of fact, are you personally aware of any payments being made to the Executive, the Chairman, or to Commission members in respect of any licensing process?

A. I am not aware of any payments of that nature.

159 Q. Thank you Mr. O'Keeffe.

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CHAIRMAN: Thank you.

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MR. FOX: Chairman, could I address you on one issue concerning the replies to the questionnaire which was circulated by Mr. O'Keeffe?

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Mr. Burke's lawyers were not provided with that particular document, the reply to the questionnaire, and I would like to be in a position to consider those replies and consider if necessary putting questions to this witness arising out of that document.

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I was provided with replies to questionnaires from Ms. Bowler, Mr. Connolly, Mr. Frank Cullen, Judge Devally, Mr. Murray, Mr. O'Donovan, Ciaran Mulvey, Terry Prone. I was not provided with replies to the questionnaire for Mr. O'Keeffe. I would like to inquire how that came about?

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MR. O'NEILL: I can give a very simple explanation to that, Sir. The questionnaire was one which was directed towards the members of the IRTC. A copy was sent to the Secretary of the IRTC, because he was a person who also might have been present at meetings, and the questionnaire was directed towards establishing what the decision-making process of the members was. And the persons who could give evidence in respect of that are firstly the members themselves, obviously, and secondly, to a secondary limited extent Mr. Connolly, because he happened to be present there also.

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The questionnaire was sent also to Mr. O'Keeffe, but since he was not there his views really were not views which needed to be circulated to anybody because they were not of any evidential value to the Tribunal.

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CHAIRMAN: That's the answer to you're - it is a perfectly appropriate practice.

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MR. O'NEILL: Equally I should say we received them yesterday afternoon, which was another reason for not circulating. There is nothing sinister in them. I am happy to give My Friend a copy. He does have a copy.

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MR. FOX: Sorry, in reply to Mr. O'Neill; I am not alleging anything whatsoever of a sinister nature. I gather it may have been an oversight. At the same time, I think it is very important that Mr. Burke's legal team be

provided with reports to all these questionnaires. We are an essential party to these proceedings, and I think it would be a serious matter if for some reason we are not provided with all the relevant information. Of course it wasn't of a sinister nature, but at the same time I think these documents should be provided as they are important to my position.

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MR. O'NEILL: As I say, we received it this afternoon. I think My Friend has it in his possession. If he did, he received it this morning. I can't say we could have given it earlier than that.

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CHAIRMAN: So-be-it.

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MR. FOX: Could I inquire, Chairman, if there are any more replies?

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CHAIRMAN: What?

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MR. FOX: Could I inquire if there are any more replies to questionnaires that perhaps we may not have? .

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MR. O'NEILL: No, I understand that all of the replies to this questionnaire were circulated to the parties.

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CHAIRMAN: Including Mr. O'Keefe's.

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MR. O'NEILL: It includes Mr. O'Keefe's, which has come in most recently. I don't believe we have in fact received

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responses from every single member even so far, but as they
have come to us we have circulated, and I will check --

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CHAIRMAN: I have no doubt about that.

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MR. FOX: Thank you Chairman.

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CHAIRMAN: The office practice is good.

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MR. O'NEILL: Thank you, Mr. O'Keeffe.

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CHAIRMAN: Any other questions from anybody else?

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Thank you very much for coming down. Much appreciated and
you have been great assistance.

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We will close. I understand we have, by virtue of
circumstances not within our control, we don't have any
further witnesses today.

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MR. O'NEILL: That is so, Sir, yes.

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CHAIRMAN: Right, we will resume tomorrow morning at 10:30
am.

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THE HEARING THEN ADJOURNED TO THE FOLLOWING DAY, FRIDAY THE
17TH NOVEMBER, 2000, AT 10:30 AM.

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