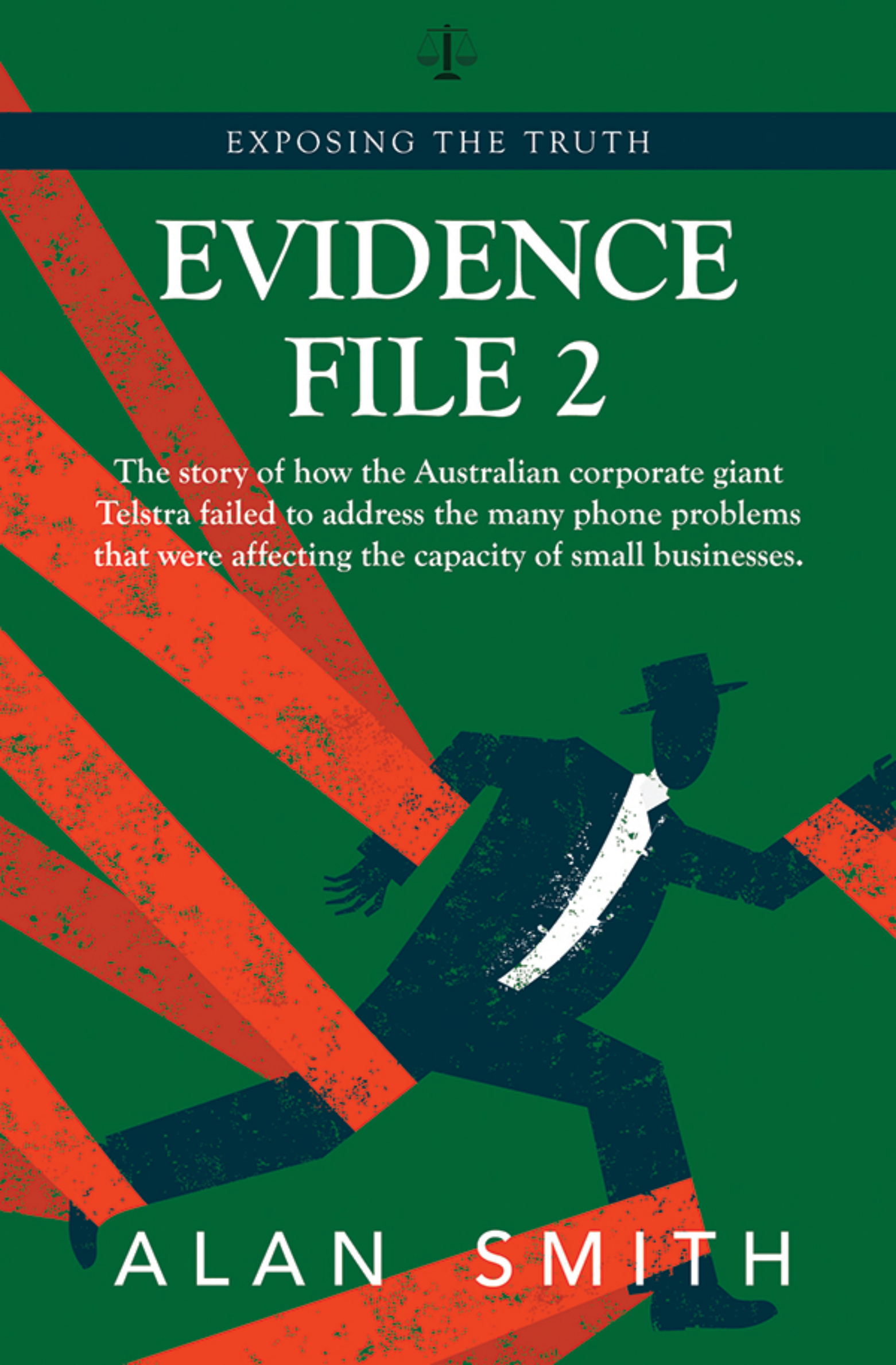
EXPOSING THE TRUTH

EVIDENCE FILE 2

The story of how the Australian corporate giant Telstra failed to address the many phone problems that were affecting the capacity of small businesses.



ALAN SMITH

Is Section 70 of the Crimes Act 1914 being exploited by public officials to the determent of Australia's constitution?

Did AUSTEL breach their statutory obligation under Section 335 or 342 of the Telecommunication Act 1991 No 98 of 1991?

Mr Graeme Samuel, AO
Chairman
Australian Competition & Consumer Commission



Exhibits 1 to 20

Identification of the cause would allow rectifying action to be taken and establishment of incidence would provide a basis for the calculation of any compensation which may be payable.

5.4 If the *original COT Cases'* stance (experiencing) were to be adopted, the first step would simply require Telecom personnel to experience that the claimed faults were indeed presenting problems to the business. The *original COT Cases* took the view that sufficient monitoring and testing of their services had taken place to allow Telecom to be satisfied that the problems were real. Also, given that in some cases the disputes extended for up to 7-8 years without Telecom identifying the cause of the faults, they were unwilling and financially unable to await Telecom's identification of the problem before compensation negotiations commenced. Moreover, they had a concern that if a settlement amount could not be agreed, the matter would be subjected to arbitration rather than a simple assessment of loss which they favoured. Their concern was that an arbitrator might find fault on the part of Telecom but might conclude that the fault was reasonable and therefore might award only a proportion of the losses they had incurred as a result of the service difficulties that they had experienced.

5.5 Telecom also wished to rectify as quickly as possible any faults affecting its service and to be satisfied that, at that point, all parties agreed on the fact that a normal service was being provided.

5.6 Given the extent of testing and monitoring which had taken place and Telecom's failure to identify the cause of the faults over a period of years, AUSTEL supported the *original COT Cases* in their stance.

The internal Telecom *loop*

5.7 Argument on that general theme continued. By letter dated 23 September 1992, Telecom's Group Managing Director, Commercial and Consumer, informed Mr Schorer as spokesperson for the *original COT Cases* -

> *"The key problem is that discussion on possible settlement cannot proceed until the reported faults are positively identified and the performance of your members' services is agreed to be normal. As I explained at our meeting, we cannot move to settlement discussions or arbitration while we are unable to identify faults which are affecting these services. At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards. Until we have an understanding of these continuing and possibly unique faults, we have no basis for negotiation or settlement.*

1-A

2 (13)

Facsimile

Telecom AUSTRALIA

To Ross Anderson

Company Telecom Portland

Facsimile 055 236 56

From Alan Barrow
P.T.T.O.I

Subject COT Case

K01489

Date 29 October 1993

Network Products
National Facsimile Support Centre
23 rd Floor 242 Exhibition St.
Melbourne. 3000
Australia
Telephone 03 634 6869
Facsimile 03 640 0867

Ross,

The following pages are copies of my fax machines journal and the protocol printouts of failed calls.

On the date of 28-OCT-93 we were trying to create a line failure condition that would re-produce the same error on the transmitting machine and no record on the receiving Mitsubishi machine (055 267 230). The reason for this was to show that a sending fax machine could get to the point of transmitting a page to the Mitsubishi fax machine without the Mitsubishi machine having any record of the call.

The COT case call in question was the 27-10-93 at 10:46 on the journal (it is suspected that the clock in this machine is approx ~~1Hour and 15 Minutes~~ in error). The duration of the transmitting machine page of 2:21 minutes suggests that the call failed at the end of the page, possibly when requesting a reply from the receiving end. The presence of the ID in the journal of "055 267230" indicates the call was connected to the Mitsubishi fax machine in question. The receiving Machine has no matching entry in its journal for this call.

A call was placed to 055 267230 and connectivity terminated at the beginning of the page but this resulted in an error of NG in the journal along with the ID of the calling fax machine. The only way to reproduce the conditions experienced above was to interrupt the power on the receiving Mitsubishi fax machine. This would result in an entry in the transmitting machine and no entry whatsoever in the receiving Mitsubishi machine.

During testing the Mitsubishi fax machine, some alarming patterns of behaviour were noted, these affecting both transmission and reception. Even on calls that were not tampered with the fax machine displayed signs of locking up and behaving in a manner not in accordance with the relevant CCITT Group 3 fax rules. A half A4 page being transmitted from this machine resulted in a blank piece of paper 4cm long, the relevant protocol printout in sample #2 shows that the machine sent the correct protocol at the end of the page. Even if the page was sent upside down the time and date and company name should have still appeared on the top of the page, it wasn't. During a received call the machine failed to respond at the end of the page even though it had received the entire page (sample #3). The Mitsubishi fax machine remained in the locked up state for a further 2 minutes after the call had terminated, eventually advancing the page out of the machine.

Regards
Alan Barrow

1 B

My Telstra account for my fax line, below, also covers the time span during which I sent these faxes.

Item **STD Calls - Itemised** *continued*

STD calls *continued*

Item	Date	Time	Place	Number	Rate	Min:Sec	$
	Telephone Service 03 5526 7285 *continued*						
247	21 Feb	06:15 pm	Melbourne	0398761853	Economy	1:17	0.33*
246	21 Feb	06:17 pm	Melbourne	0398761254	Economy	0:50	0.27*
245	21 Feb	06:39 pm	Colac	0352322449	Economy	1:08	0.30*
219	22 Feb	12:12 pm	Melbourne	0392877099	Day	8:40	2.55*
221	22 Feb	12:28 pm	Melbourne	0395266614	Day	2:34	0.88*
220	22 Feb	12:32 pm	Melbourne	0395266614	Day	0:07	0.18*
222	22 Feb	12:33 pm	Melbourne	0395266616	Day	9:30	2.78*
256	22 Feb	02:41 pm	Melbourne	0398761254	Afternoon	4:05	1.17*
271	22 Feb	03:40 pm	Warrnambool	0355616193	Afternoon	1:35	0.41*
273	22 Feb	04:31 pm	North Geelon	0352794444	Afternoon	0:55	0.37*
239	22 Feb	06:08 pm	Melbourne	0398761254	Economy	1:08	0.31*
194	22 Feb	09:12 pm	Warrnambool	0355614038	Economy	1:14	0.26*
207	24 Feb	07:42 pm	Melbourne	0395114335	Economy	17:22	2.55*
216	24 Feb	08:30 pm	Grovedale	0352414045	Economy	3:39	0.66*
264	24 Feb	08:34 pm	Melbourne	0395538030	Economy	34:05	3.00*
265	24 Feb	09:19 pm	Buderim	0754453198	Economy	14:03	2.10*
266	24 Feb	09:57 pm	Buderim	0754453198	Economy	1:09	0.31*
218	25 Feb	09:41 am	Melbourne	0392877099	Day	18:22	5.24*
217	25 Feb	10:00 am	Melbourne	0392877001	Day	2:13	0.76*
223	25 Feb	11:41 am	Grassmere	0355654227	Day	3:11	0.73*
224	25 Feb	11:58 am	Port Fairy	0355681057	Day	1:36	0.44*
196	25 Feb	12:26 pm	Melbourne	0392877099	Day	8:58	2.63*
263	25 Feb	01:07 pm	Melbourne	0392877099	Afternoon	1:05	0.42*
258	25 Feb	03:51 pm	Melbourne	0398761254	Afternoon	4:50	1.35*
259	25 Feb	03:56 pm	Melbourne	0398761853	Afternoon	1:02	0.41*
257	25 Feb	03:57 pm	Melbourne	0398761254	Afternoon	1:34	0.54*
231	25 Feb	06:46 pm	Melbourne	0392877001	Afternoon	0:52	0.37*
208	25 Feb	07:18 pm	Melbourne	0398761853	Economy	1:19	0.33*
195	26 Feb	08:39 am	Melbourne	0398761853	Day	0:57	0.41*
244	26 Feb	10:48 am	Melbourne	0398761254	Day	0:19	0.24*
243	26 Feb	10:55 am	Melbourne	0392877001	Day	0:47	0.37*
229	26 Feb	11:05 am	Melbourne	0392877099	Day	10:12	2.97*
228	26 Feb	11:20 am	Melbourne	0392877001	Day	1:57	0.69*
227	26 Feb	11:24 am	Canberra	0262711000	Day	0:10	0.20*
230	26 Feb	11:46 am	Melbourne	0392877099	Day	7:40	2.27*
197	26 Feb	01:04 pm	Melbourne	0392877099	Afternoon	7:55	2.13*
198	26 Feb	01:37 pm	Melbourne	0392877001	Afternoon	0:46	0.34*
277	26 Feb	03:38 pm	Melbourne	0392877099	Afternoon	0:35	0.30*
276	26 Feb	04:01 pm	Melbourne	0392877099	Afternoon	2:32	0.78*

1C

ID : GOLDEN

Number L1 : 613 9287 7881
Number L2 :

Date : 26-02-99 14:14

Date/Time	Subscriber	Mode	Pages	Durat.	Status	Note
25-02 15:29	3266229	FINE	1	2'14"	Correct	L1
25-02 15:39	613395889446	NORMAL	1	8'27"	Correct	L1
25-02 16:45	+61 7 3257 1583	NORMAL	8	1'37"	Correct	L1
25-02 17:11	61 3 98287389	NORMAL	3	8'49"	Correct	L1
25-02 17:17	61 3 92138849	FINE	1	8'49"	Correct	L1
25-02 18:12	+61 7 3257 1583	NORMAL	3	1'44"	Correct	L1
25-02 18:46	855 267238	NORMAL	1	8'47"	Correct	L1
26-02 7:51	93281881	NORMAL	1	8'47"	Correct	L1
26-02 8:28	61 6 249 7829	NORMAL	1	8'21"	Correct	L1
26-02 9:01	61 3 96805838	NORMAL	2	8'48"	Correct	L1
26-02 10:21	61 3 96328875	NORMAL	11	5'24"	Correct	L1
26-02 10:38	61 3 9432 4716	NORMAL	1	8'37"	Correct	L1
26-02 10:48	61 3 96328875	NORMAL	12	5'41"	Correct	L1
26-02 10:53	855 267238	NORMAL	1	8'42"	Correct	L1
26-02 11:06	61 3 96328875	NORMAL	3	1'12"	Correct	L1
26-02 12:01		FINE	1	8'39"	Correct	L1
26-02 13:36	855 267238	NORMAL	1	8'41"	Correct	L1
26-02 14:12	+61326652556	NORMAL	3	8'54"	Correct	L1

COT

Holmes, Jim

A00354

From: Pinel, Don
To: Hambleton, Dennis V
Cc: Holmes, Jim; Campbell, Ian
Subject: Tariff filing
Date: Monday, 20 December, 1993 1:02PM

Dennis.

I understand there is a new tariff filing to be lodged today with new performance parameters one of which commits to 98% call completion at the individual customer level.

Given my experience with customer disputes and teh recent BCI study, this is cause for concern. We will not meet this figure in many exchanges around Australia particularly in country areas.

I assume that it is too late to stop the filing (and we may not want to even if there is a downside) but this has teh potential to cause us major pain in the CoT area.

Don

2

Hunt & Hunt
LAWYERS

Partners
Edward S Boyce
James G.F. Hammond
Christine A. Galley
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Ewin
Wayne B. Cahill
Neville G.H. Debney
Lindsay L. Morgan
Grant D. Sefton
Charles Veevers
Andrew Logie-Smith

Consultants
Kenneth M. Martin
Richard J. Kellaway

Associates
Peter A. Cornish
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Gallichio
Roy Selt

18 January 1994

Our Ref: GLH
Matter No:
Your Ref:

BY FAX: 287 7001

Mr Graham Schorer
PO Box 318
North Melbourne VIC 3051

Dear Sir

"COT CASES"

I confirm I have been appointed by the Telecommunications Industry Ombudsman (TIO) as assessor under the terms of the agreement entitled "Fast Track Settlement Proposal".

I will be assisted by a project team under the direction of John Rundell of Ferrier Hodgson. The project team will include Mr Jan Blaha of DMR Group Australia Pty Ltd.

I am aware the parties are anxious for early resolution. My first priority will be to establish the process and procedure for conducting the assessment. In this regard I note paragraph 2(e) of the "Fast Track Settlement Proposal" provides that:

> "The review will be primarily based on documents and written submissions. Each party will have access to the other party's submissions and have the opportunity to respond.
>
> The assessor may, however, call for oral presentations by either party. Such presentations will not include cross-examination, and would not be open to the public or third parties. Representations of the parties will be at the assessor's discretion."

I have been provided by the TIO with a document entitled "Telstra Corporation Limited - 'Fast Track' Proposed Rules of Arbitration". I have not yet formed a view as to the suitability of this proposal. I would be happy to receive an alternative submission on behalf of the COT Cases but it might be more practical to await my comments on the Telecom proposal. Naturally I am anxious to establish a procedure which is acceptable to all parties.

melbourne
sydney
sydney west
brisbane
canberra
newcastle
represented in
adelaide
darwin

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 8711.
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3A

When I have formulated my views as to the appropriate procedure for conducting the assessment, I intend to meet formally with a representative of Telecom and a single representative of the four nominated COT Cases in order to finalise arrangements.

In the meantime I shall meet as soon as possible with Mr Rundell and Mr Blaha to discuss the roles of their respective organisations.

I consider it to be inappropriate for me to discuss the merits of the four actions with any involved party except in accordance with the agreed assessment procedure. I nevertheless wish to remain as accessible to the parties as possible. It may be necessary for a party to contact me personally from time to time for reasons unconnected with the merits of the actions. In such circumstances, I nevertheless reserve the right to provide any other party with a memorandum regarding the contact and the issues discussed.

At this stage I have no information at all regarding any of the claims. While the assessment procedure will of course provide for the formal presentation of material, it may be useful if the parties could informally provide me with any material which they jointly agree might be of assistance to me and the project team by way of background.

Yours sincerely

GORDON HUGHES

CC. S Black
J Rundell
J Blaha
W Smith
P Bartlett

3A

Hunt & Hunt
LAWYERS

Partners
Edward S Boyce
James G.F. Harrowell
Christine A. Gailey
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Ewin
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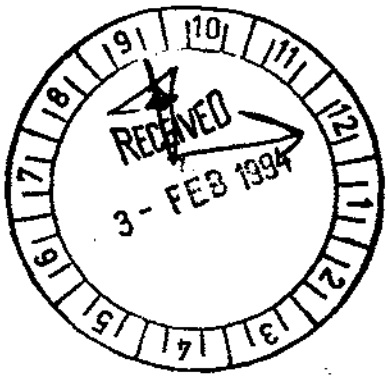
Peter A. Cornish
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Gallichio
Roy Seit

3 February 1994

Our Ref: GLH
Matter No:
Your Ref:

BY COURIER

Mr Graeme Schorer
C/- Golden Messenger
493 Queensberry Road
North Melbourne Vic 3000



Dear Mr Schorer

COT MATTERS

I am enclosing my proposal as to the "fast-track" arbitration procedure.

This procedure has been devised in consultation with Messrs Minter Ellison Morris Fletcher, solicitors for the Telecommunications Industry Ombudsman. The proposed procedure is acceptable to the Ombudsman and members of the Resource Unit.

I would be grateful if you would let me have your comments on the proposal as soon as possible. I am prepared to discuss the proposal individually with either of the parties. I am also prepared to convene a meeting involving both parties at short notice, if requested, in order to resolve any outstanding issues regarding the proposed procedure.

Yours sincerely

GORDON HUGHES

melbourne
sydney
sydney west
brisbane
canberra
newcastle
represented in
adelaide
darwin

11192042_GLH/KS
Level 21, 459 Collins Street, Melbourne 3000, Australia. **Telephone:** (61-3) 614 8711.
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3B

24 October 1997

Telecommunications Industry Ombudsman

John Pinnock
Ombudsman

Ms Pauline Moore
Secretary
Senate Environment, Recreation, Communications and the Arts Legislation Committee
Parliament House
CANBERRA 2600

CONFIDENTIAL

Dear Ms Moore

'Questions on Notice' by Senator Boswell

I refer to previous correspondence and discussions with the Committee's Research Officer, Ms Dunlop, concerning a series of questions put on notice by Senator Boswell and arising out of the Committee's proceedings of 26 September 1997.

I understand that the questions are treated as tabled questions and hence questions of the Committee.

The COT Arbitration Procedures contain provisions relating to the confidentiality of the proceedings, which bind the parties. Those provisions also bind the Arbitrators, the Resource Unit, the Special Counsel and the TIO in my role as Administrator.

I have also advised the Committee on a previous occasion that one of the COT claimants, Mrs Garms, has notified me in writing that she intends to join me as a party to Appeal proceedings she has commenced concerning the Arbitrator's Award.

Accordingly, I ask that the answers given below to the questions on notice be treated as confidential by the Committee and not be published.

1. In November 1995 I received correspondence from a COT member expressing concern about the Technical Resource Unit. The COT member:

   - expressed concern that the purchase by Pacific Star of Lane Telecommunications compromised the independence of the Technical Resource Unit;
   - stated that there were inaccuracies and biases evident in the Lane Telecommunications/DMR Technical Evaluation Report;
   - requested the Telecommunications Industry Ombudsman to dismiss the Resource Unit.

CONFIDENTIAL

Telecommunications Industry Ombudsman Ltd ACN 057 634 787

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4A

2. On 6 November 1995 I was advised by Mr Steve Black of Telstra that Lane Telecommunications and Pacific Star had already worked together on several Pacific Star contracts in Queensland and Western Australia and for the Federal Government.

3. I did investigate the commercial relationship between Telstra and Pacific Star. Based on the material provided to me by Telstra and Lane Telecommunications, it was established that:

- There were three Pacific Star separate operating entities, Pacific Star Mobile, Pacific Star Communications and Pacific Star Data Services.
- Pacific Star Mobile was a significant reseller of Telstra MobileNet products, but did not provide products or services to Telstra.
- Pacific Star Communications was in competition with Telstra.
- Pacific Star Data Services ("Pacific Star") was the entity which acquired Lane Telecommunications. Pacific Star was independent of Telstra. It facilitated services provided by carriers and vendors on behalf of clients. I was advised that the core requirement of this business was to be independent so that selection was based on the optimum provision of the required facilities, performance and cost.

Further than this, I do not have details of different commercial arrangements between Telstra and Pacific Star.

4. When providing a response to a COT member on 6 December 1995 I had requested information from Lane Telecommunications and Telstra as to whether any conflict of interest arose out of the purchase by Pacific Star of Lane Telecommunications. To the best of my knowledge and based on the information I had received at the time, I concluded there was no conflict of interest.

5. I do not have and have never had available any details concerning the Arbitrator and/or associated companies of-whom work for Telstra and/or associates and I am unaware of any such information.

6. Apart from the evidence I gave to the Committee on 26 September 1997 concerning the purchase of Lane Telecommunications by Ericsson Australia, I have recently been advised by one of the Arbitrators that he will be transferring his legal practice to Blake, Dawson, Waldron, Solicitors. I am aware that that firm is currently acting for Telstra in relation to a number of matters. Arrangements are being made to discuss with Blake, Dawson, Waldron any possible conflicts of interest.

7. I refer to my letter to the Secretary of the Committee dated 29 September 1997. I referred this question to the TIO Council for consideration at its meeting on 16 October 1997 and I advise that the Chairman of the Council will be writing to the Chairman of the Committee on this matter.

8. It is my recollection that I have never stated in person or by telephone to individual COT members and/or their representatives that the arbitration has failed. My views on the arbitration procedure are contained in my written submission made to the Committee on 26 September 1997.

4 A

9. Yes, from time to time I received complaints from foundation COT members, concerning a range of matters, including alleged non-compliance with the rules of the Fast Track Arbitration Procedures by Telstra and/or the Arbitrator and/or the Technical and Accounting Resource Unit. Identifying individual instances of complaints and detailing the response taken will require a large amount of administrative resources in searching TIO files. Please advise me whether the Committee requires the undertaking of this work and its relevance to the Committee's inquiry.

10. Yes, I have refused to provide COT members with a copy of Telstra's Preferred Rules of Arbitration. A copy of this document was not provided because it was of historical interest only, and the COT members did not advance any arguments as to why it was relevant to their arbitration. A copy is provided for the information of the committee.

Yours sincerely

JOHN PINNOCK
OMBUDSMAN

4A

08 December 1997

RE COT CASES

After spending 2 and a quarter hours plus travelling with Pinnock and Bartlett and Schorer at the TIO's office on Friday 5th Dec., on today's date spending in two phone calls over half hour with Schorer as to next step. He is to write as quickly as he can a draft proposing mediation and opening up the possibility that after mediation the mediator could then be if acceptable to both parties given that he would have a background of knowledge that he be made the assessor. I am to settle the letter when written.

Pinnock will not make available the first draft of the fast track arbitration procedure sent in early 1994 by the then TIO to Bartlett of Minter Ellison.

Telstra has refused to make the first draft available under FOI. Schorer says Pinnock has a copy and made it available to the Senate on a confidential basis.

Schorer is convinced that it will show a complete program altering the intention of the fast track settlement proposal and commercial assessment which was the subject of the November 1993 arrangement.

I have recommended to Schorer that he settle for almost anything that would be of use to get on with his business. He says he can quantify his call losses without any doubt (I would need to be shown this to believe it. What he cannot determine is the cause of the call losses being the fault of Telstra and rate. This is always spoken about as being showing evidence of the cause or link between Telstra and the losses. It is not a question of quantifying causes or links it is a question of identifying in simple language that the calls were lost because Telstra did not provide a service that enabled the calls to be received when made. Separately he also has consequential losses arising from the loss of business. I have suggested that we might take action in the Supreme Court or otherwise to get the FOI material which has been refused of the first draft of the fast track arbitration procedure that emerged at the beginning of 1994.

It should be noted that there is something in incongruous and unfair in Telstra being the cause directly or indirectly of Schorer's losses being able to set up "its prepared rules of arbitration" to dispose of the fast track settlement procedures which had been agreed to under Ausels arrangements. In other words the victim Schorer is at a disadvantage immediately. He does not have an equal footing with Telstra in the setting up of the arbitration process whereas up to a point he did have in the fast tract settlement procedure.

4B

Australian Government

Department of Broadband, Communications and the Digital Economy

our reference: FOI

Mr Alan Smith
Seal Cove Guest House
1703 Bridgewater Road
Cape Bridgewater
PORTLAND VIC 3305

Dear Mr Smith,

Freedom of Information Request No. 01-0910

I refer to your letter of 29 June 2009 seeking access under the *Freedom of Information Act 1982* (the FOI Act), to 'copies of all the documents Mr Pinnock provided to Ms Pauline Moore, Secretary to the Senate Environment, Recreation, Communications and the Arts Legislation Committee, between October and December 1997'.

Departmental staff have conducted a thorough search of departmental records, both electronic and hard copy, for documents falling within the scope of your request and have found no relevant documents. As a result, the decision-maker has refused your request under section 24A of the FOI Act. Please see the attached Statement of Reasons detailing the decision-maker's findings.

This decision is subject to review under section 54 of the FOI Act. A statement of your rights of review is attached.

Yours sincerely

Andrea Hookway
FOI Officer
Legal Services Group
Phone: 02 6271 1741
Fax: 02 6271 1012
Email: foi@dbcde.gov.au

31 July 2009

4C

File note

Telecom Arbitration

Date: 18 February 1994 **Matter no: 1673136**

On 17 February 1994, between the hours of 9:00 a.m. and 1:00 p.m., I attended the offices of Hunt & Hunt for the purpose of having a discussion in relation to the arbitration rules prepared by Hunt & Hunt (the "Rules").

The meeting started at 9:30 a.m. and in attendance were Gordon Hughes, Peter Bartlett, Ann Garms, Graham Schorer and myself.

Record of Meeting

Ann Garms started by attempting to read from a letter by R Davey (Austel) but was interrupted.

The history of the negotiations leading up to the fast track settlement procedure ("FTSP") was discussed.

Ms Garms stated that all the Cot Claimants wanted was a commercial settlement of the matter, not an arbitration. The FTSP came out of a proposal put by Mr Schorer to John Holmes and I Campbell.

Mr Schorer stated that the Cot Cases had wanted a loss assessor and not an assessment procedure prone to "fine print". The proposal put forward by the Cot Cases was not backed by Telecom and subsequently negotiations got off the rails. Then the Austel investigation began and the media became involved. R Davey acted as a facilitator between Telecom and the Cot Cases. Previously, a draft agreement had been put to the Cot Cases which Telecom had stated would not be changed (which turned out to be incorrect).

The FTSP came out of several meetings and was put forward by R Davey.

Mr Schorer and Ms Garms agreed that the FTSP was the agreed way to resolve the dispute between Telecom and the Cot Cases.

Mr Schorer advocated that instead of having a claim, a break and then a defence being filed, both parties ie. the Cot Case and Telecom should do their presentation at the same time to the assessor. Mr Schorer did not like the arbitration procedure and the procedure he advocated was consistent with his understanding of the FTSP.

It should be noted that the FTSP does not refer to an arbitrator but an "assessor".

5A

TELSTRA FOI M33440

Mr Hughes expressed his view that the powers of an arbitrator under the Commercial Arbitration Act made an arbitration a more effective way of determining the issues in dispute between the parties.

Mr Hughes stated the problems with an "assessor" were that it was a toothless position and that he was not convinced that it could guarantee the result as either party could withdraw or would not be bound by the result.

Mr Schorer asked if he could pull out of an "assessment" during the process if he did not like the way it was going. Mr Hughes and Mr Bartlett advised that this was not the case as he was contractually bound by whatever the terms of the assessment were.

Mr Hughes stated that an arbitrator had more powers and considering the current facts surrounding the Cot Cases ie. suspicions and the long period of antagonistic negotiations, the adjudicating party would need powers to ensure that all material relevant for the decision was obtained.

Mr Bartlett stated that Telecom and the Cot Cases wanted a method of resolution as a final settlement of the problem - no right of appeal, no resource to the Courts.

Ms Garms agreed with this conclusion.

Mr Schorer stated that he needed documents from Telecom to prepare his case and without this material, he could not go to arbitration. Mr Schorer had raised the issue of documents with Austel and was unsatisfied with Telecom's response.

Mr Schorer stated that there was nothing in the Rules which provided that the Cot Cases were to get the relevant documents. Mr Schorer was disappointed at this stage that since 18 November 1993 2 of the Cot Cases did not have any documents.

Mr Bartlett stated that this was a reason for starting the arbitration as the arbitrator could order the production of documents.

Mr Hughes stated that he was aware of the dispute between the parties but did not have any idea as to the nature and indicated that from this point in time, there were two ways to proceed in relation to the problem of outstanding documents:

(1) the procedure is put on hold until all the documents are exchanged in accordance with the FOI procedure; or

(2) the arbitration procedure commences and then the arbitrator gives appropriate directions for the production of documents.

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AM3344 FOI EXTRA

Mr Hughes indicated that one party can ask for documents once the arbitration has commenced. Mr Hughes advocated this course of action as more effective and that as arbitrator, he would not make a determination on incomplete information.

Mr Schorer asked Mr Bartlett why the FOI law was not as broad as the discovery procedure.

Mr Bartlett did not answer this question directly but confirmed that he believed it was wider and that documents would not be partially deleted as was claimed by Mr Schorer.

Ms Garms stated she had three concerns about the Rules as drafted:

(1) causal link;

(2) flow on effects of treatment by Telecom - adequately compensated; and

(3) Telecom's liability amended to give assessor the right to make recommendations.

Causal Link

In relation to this matter, Ms Garms stated that it was agreed that there would not be a strict application of legal burdens of proof, etc., in relation to the proving of the loss suffered by the Cot Claimants. Reference was made to discussions with Ian Campbell and two Senators. Ian Campbell admitted that Telecom had been remiss. Ms Garms stated that Telecom was in a difficult position and queried the current drafting of the Rules in relation to a requirement that the strict causal approach be applied.

Mr Schorer stated that Telecom was in a difficult position because a lot of the relevant documents either did not exist or had been destroyed.

Mr Bartlett referred to clause 2(c), (f), and (g) of the FTSP in relation to the causal connection. Ms Garms had received advice from R Davey that there was a difference between the FTSP and the old rules that had previously been prepared by Telecom, (not the Hunt & Hunt Rules).

Mr Schorer accepted that W Smith had been appointed as administrator. W Smith had invited the Cot Cases to talk to the TIO and had requested input in relation to the rules beforehand. Mr Schorer was disturbed that once Mr W Smith was in place, there was a document prepared by Telecom of proposed rules for the arbitration. Mr Schorer considered Telecom was already moving away from the spirit of the FTSP.

Mr Bartlett and Mr Hughes both stated that they had not received this document and had not read it and that it was irrelevant.

Ms Garms returned to discussion about causation which was her point no. 1.

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Sections 4 and 5 are an impact assessment and summary. We have ascertained that there were times when the service provided by Telecom to Mr Smith, quite aside from problems with CPE, fell below a reasonable level. These times ranged in duration from years in some cases, to 18 months in one case, to an estimated 70 days in one case, to shorter times in other cases. These durations of poor service were, in our judgement, sufficiently severe to render Mr Smith's service from Telecom unreliable and deficient.

Cape Bridgewater Documentation

The "Fast Track" arbitration proceedings are "on documents and written submissions". More than 4,000 pages of documentation have been presented by both parties and examined by us. We have also visited the site. Not all of the documentation has real bearing on the question of whether or not there were faults with the service provided by Telecom. We reviewed but did not use Mr Smith's diaries (Telecom's examination of Mr Smith's diaries arrived in the week of 17 April 1995). Like Telecom, we separate the problems caused by Mr Smith's CPE from those in Telecom's service and concentrate only on the latter. A comprehensive log of Mr Smith's complaints does not appear to exist.

The Technical Report focuses only on the real faults which can now be determined with a sufficient degree of definiteness. We are not saying anything about other faults which may or may not have occurred but are not adequately documented. And unless pertinent documents have been withheld, it is our view that it will not be feasible for anyone to determine with certainty what other faults there might or might not have been.

?

One issue in the Cape Bridgewater case remains open, and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about billing problems.

Otherwise, the Technical Report on Cape Bridgewater is complete.

A key document is Telecom's Statutory Declaration of 12 December 1994. Without taking a position in regard to other parts of the document, we question three points raised in Telecom's Service History Statutory Declaration of 12 December 1994 *[Ref B004]*.

"Bogus" Complaints

First, Telecom states that Mr Smith made "bogus" complaints [B004 p74, p78, Appendix 4, p10]. What they mean is his calls in June 1993 from Linton to test Telecom's fault recording. As others have indicated (see Coopers and Lybrand Review of Telecom Australia's Difficult Network Fault Policies and Procedures, November 1993, p6) "Telecom did not have established, national, documented complaint handling procedures [...] up to November 1992," and "documented complaint handling procedures were not fully implemented between November 1992 and October 1993." Furthermore, [p7] "fault handling procedures were deficient." Smith's June 1993 calls from Linton were, as he has stated, to test Telecom's fault reporting procedures, because people who had been unable to reach him told him that Telecom did not appear to be doing anything when they reported problems. We find Smith's tests in this instance to be unlikely to effect any useful results, but the term "bogus" does not apply.

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Hunt & Hunt
LAWYERS

Partners
Edward S Boyce
James G.F. Harroweli
Christine A. Gailey
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Ewin
Wayne B. Cahill
Neville G.H. Debney
Lindsay L. Morgan
Grant D. Sefton
Charles Veevers
Andrew Logie-Smith

Consultants
Kenneth M. Martin
Richard J. Kellaway

Associates
Peter A. Corniah
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Gallichio
Roy Selt

21 February 1994

Our Ref: GLH
Matter No:
Your Ref:

BY FAX: 287 7001

Mr Graham Schorer
Golden Messenger
493 Queensberry Road
North Melbourne VIC 3000

Dear Graham

COT MATTERS

I enclose the following:

(a) letter from Telecom dated 17 February 1994 commenting on the proposed "Fast Track" arbitration procedure;

(b) copy memorandum by Peter Bartlett of Messrs Minter Ellison Morris Fletcher concerning the COT Case response to the proposed procedure; and

(c) copy letter from me to Ferrier Hodgson Corporate Advisory summarising the outcome of my meeting with representatives of the Resource Unit in relation to the proposed procedure.

I have set out below a summary of the issues raised by the various parties and my recommendation (made after consultation with Mr Bartlett) in relation to those issues.

It is my opinion that the recommendations set out below are reasonable and should not present either party with any serious basis for concern. If these proposals are acceptable in principle, I shall instruct Messrs Minter Ellison Morris Fletcher to redraft the Arbitration Procedure, with a view to execution later this week.

I think it would be inappropriate for me to personally engage in further dialogue with the parties in relation to the contents of this letter. Please direct any comments direct to Mr Bartlett. I would be grateful if you would endeavour to communicate with him within 48 hours.

melbourne
sydney
sydney west
brisbane
canberra
newcastle
represented in
adelaide
darwin

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Facsimile: (61-3) 614 8730. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.
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Clause 5

In relation to the first paragraph, Telecom seeks amendments to provide that the arbitration will commence in relation to each claimant when that claimant has completed the formalities. It is not necessary to wait until all four claimants have completed the formalities.

Recommendation: agreed.

In relation to the third paragraph, Telecom seeks to reserve normal rights of appeal arising under the Commercial Arbitration Act.

Recommendation: agreed.

Clause 6

In respect of the first paragraph, Telecom proposes that the arbitrator have the discretion to permit a party's professional consultants to be present, with a reciprocal right for the other party to have its consultants present in such circumstances.

Recommendation: agreed.

Also in relation to the first paragraph, Ferrier Hodgson proposes that specific mention be made of the right of a member of the Resource Unit to be present, at the arbitrator's discretion.

Recommendation: agreed.

Clause 7

Concern has been expressed by the COT Case representatives about the time frame for submissions.

Recommendation: I am happy to introduce greater flexibility into the proposed time frame. This can be achieved by inserting an initial sub-clause to the effect that "the time frames for compliance referred to in this clause are subject to the overriding discretion of the Arbitrator and may be the subject of submission by the parties".

Telecom has suggested that clauses 7.1, 7.2 and 7.5 be amended to provide each party with the same rights to request documents from the other, such requests to be made through the arbitrator and to be subject to the arbitrator's discretion.

Recommendation: agreed.

Also in relation to clause 7.5, Ferrier Hodgson suggests that the arbitrator be required to stipulate a time frame in relation to the production of documents.

Recommendation: agreed.

In relation to the production of documents, Telecom recommends a specific exemption for documents protected by legal professional privilege.

Recommendation: agreed, subject to the right of the Arbitrator to hear submissions on whether particular documents are protected by legal professional privelege.

Clause 8

In relation to clause 8.2, Ferrier Hodgson suggests a re-wording to make it clear that the arbitrator will notify the parties in advance of any proposed inspection or examination by the Resource Unit and that the arbitrator should have the discretion to seek submissions from the parties in relation to finding of fact arising out of such inspection. Commenting on clause 8.4, Telecom believes the arbitrator should disclose to the parties all advice received in consultation with the Resource Unit (ie interpretative conclusions as well as findings of fact).

Recommendation: agreed.

Clause 9

Telecom objects to the claims being heard together as each case may involve different considerations of fact.

Recommendation: given that the claims will be heard simultaneously, the arbitrator should by leave of the parties concerned have the right to transpose common findings of fact from one case to another in appropriate circumstances.

Clause 10

The Claimants seek a specific reference to clause 2(g) of the Fast Track Settlement Proposal in the opening lines of clause 10 so as to clarify the parameters of the arbitrator's powers of assessment under this procedure.

Recommendation: agreed.

The Claimants seek the deletion of clause 10.2.3 on the grounds that the wording of clause 10.2.2 directly reflects clause 2(f) of the Fast Track Settlement Proposal and is therefore adequate.

Recommendation: agreed.

Clause 16

The COT Case representatives have, subsequent to the meeting on 17 February, withdrawn their objection to this clause.

Telecom has proposed additional provisions requiring formal confidentiality undertaking to be signed by all persons who are privy to the proceedings.

Recommendation: agreed.

Clause 19

Telecom is not satisfied with the proposal that in the event of a breach of confidentiality, its damages arising from the breach will be determined by an independent arbitrator. Telecom proposes that in the event of unauthorised disclosure, any obligations imposed upon Telecom pursuant to the procedure should be rendered null and void and any moneys paid to the claimants should be refundable.

Recommendation: agreed.

Clause 23

Telecom recommends that persons authorised to receive notices be specifically identified.

Recommendation: agreed.

Clause 24

The Special Counsel and members of the Resource Unit seek an exclusion from liability for any act or omission, to the same extent as the arbitrator.

Recommendation: agreed.

New Clause 25

Telecom seeks a return of documents within 6 weeks of publication of the award.

Recommendation: agreed.

Schedule A

The Claimants seek specific reference to clause 2(c) of the Fast Track Settlement Proposal (or a replication of the wording of that clause) in Schedule A.

Recommendation: agreed.

Schedule E

If Telecom's proposals regarding clause 5 are accepted, this Schedule would be deleted.

Recommendation: agreed.

Yours faithfully
HUNT & HUNT

Encl

David,
Relevant correspondence as discussed yesterday/today.
Simon.

Telecom AUSTRALIA

23 February 1994

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Facsimile (03) 632 3241

Mr Gordon Hughes
Hunt & Hunt
Level 21
459 Collins Street
MELBOURNE VIC 3000

Dear Mr Hughes

"Fast Track" Arbitration Procedure

I refer to your letter dated 21 February 1994 setting out your recommended amendments to the proposed procedure.

Subject to the following amendments and our agreement to the final wording of the procedure, Telecom is prepared to submit to the proposed procedure in respect of the "Fast Track" claims.

Clause 6

In relation to Ferrier Hodgson's suggestion that they be permitted as of right to be present at an oral hearing, if this suggestion is accepted then Telecom would also require its accountants to be present at such hearings. In the normal course of Telecom's business, accounting issues would be addressed by qualified accountants and therefore it is appropriate that, if Ferrier Hodgson are to be present to deal with accounting matters, then Telecom's accountants should also be present.

Clause 8

In relation to Ferrier Hodgson's suggested rewording of clause 8.2, the parties should retain the right to be able to make submissions in relation to any evidence considered at any inspection, and any findings of fact arising out of an inspection or other enquiry reached by the Resource Unit, and the wording of the clause should reflect this.

Telecom Corporation Limited
ACN 051 775 556

Clause 9

Telecom agrees to your recommendation on the understanding that findings of fact will only be considered common between the cases with the agreement of all the parties concerned. However, Telecom reiterates that the disputes are independent and concern different customers operating different telephone equipment from different parts of the telephone network, and running different businesses. It is considered unlikely that findings of fact will be common between any of the cases.

Clause 10

(a) Telecom agrees to the insertion of a reference to Clause 2(g) of the Fast Track Settlement proposal in the opening lines of Clause 10, conditional on a reference to Clause 2(f) also being included in that clause.

(b) In respect of Clause 10.2.2, Telecom notes that this clause does not fully reflect Clause 2(f) of the Fast Track Settlement Proposal as the COT claimants have suggested. The words "unless the assessor is able to conclude that Telecom caused the loss claimed there will exist no basis for a claim against Telecom" should be inserted in Clause 10.2.2.

Clause 2(f) of the Fast Track Settlement Proposal was intended by the parties to evidence an agreement that the standard of proof for determining the extent of call loss would be based on reasonable inferences drawn from the existing evidence. Telecom agreed with the COT claimants that, because not all call losses and other problems reported by the claimants are documented, they should not have to be put to strict proof of each and every call loss. However, clause 2(f) does not imply, and Telecom did not agree that any relaxation of other general principles of law (including causation) would apply. This position is supported by Austel and the surrounding correspondence. In order to clarify this, clause 10.2.2 should be amended to reflect the above position.

(c) In respect of Clause 10.2.3, I would appreciate your advice on what standards you intend to apply in relation to the arbitrations if this Clause is omitted.

In Telecom's view, generally accepted accounting principles, Australian accounting standards (to the extent they are applicable) and general principles of law (other than in relation to the issue of burden of proof as discussed above) must apply. Accordingly clause 10.2.3 should either be amended to reflect the parties' agreement in relation to burden of proof as discussed in this letter, or incorporated with clause 10.2.2.

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Clauses 16 and 17

I note that the objection to Clause 16 has been withdrawn and no side agreement with Mr Bartlett or the arbitrator is proposed. Confidentiality is an essential requirement of the arbitrations. In order to ensure confidentiality is maintained, Telecom requires the following amendments to be made:

(a) The words ", existence or subject matter" added after the word "conduct" in line 2 of Clause 16; and

(b) The words "and any other documents provided in, or oral evidence given in, the arbitrations by either party" added after the word "Documents" in line 3 of Clause 17.

Clause 24

Telecom is of the view that Special Counsel and the Resource Unit should be accountable for any negligence on their part in relation to the arbitration process, given that these parties are acting in their capacity as experts. Therefore, this clause should not be amended so as to include an exclusion from liability for Special Counsel and the Resource Unit.

Yours sincerely

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

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F.O.I. document AO3254 shows an internal TELSTRA letter from Don Pinel to Jim Holmes written on 28 September 1993. It indicates that a few weeks before TELSTRA agreed to a fast track settlement proposal they believed that *"our best option is still to force these cases down a legal, structured path."*

Holmes, Jim

From: Pinel, Don
To: Holmes, Jim
Cc: Parker, Harvey
Subject: Letter to Schorer
Date: Tuesday, 28 September, 1993 7:39PM

Jim,

Your proposed reply to Schorer is good although I asume it is more legalistic than Ian would like. I do not know of anyway to soften it without raising expectations.

One point not covered that you may like to consider is the question of "duress". This has been raised in a number of places and requires rebuttal.

Similarly the question of Telecom's regulatory and contractual protections from suit dont get a mention (it may not be necessary to raise these at this stage as they are certain to be provocative provided we dont allow expectations to fromthat we will relinquish such protection)

I also think that your section 2 sends conflicting messages. In one para you correctly identify the constraints on discussing a particular case with other than the specific customer . You do imply, however, that teh customers could give schorer some form of authority to act on their behalf. I am not sure that these two messages are consistent. Would a power of attorney, for example, allow disclosure to Schorer of settlemetn details covered by our form of release? I dont think so.

Perhaps I am getting too legalistic and defensive but we cant afford to let anything get away. However, our best option is still to force these cases down a legal, structured path.

Don

Page 1

A03254

7B

Campbell, Ian

From: Campbell, Iain
To: Campbell, Ian
Subject: FW: Gordon Hughes
Date: Thursday, 3 March 1994 9:16AM

DELIVERED TO IAIN CAMPBELL INSTEAD OF IAN CAMPBELL

From: Blount, Frank
To: Black, Stephen
Cc: 'Mason, Deirdre'; Zoi, Charlie; Vonwiller, Chris; Burdon, Steve; Campbell, Ian new: Pari
Carmel; Campbell, Doug; Krasnostein, David; Parker, Harvey; Rizzo, Paul; Scott, Sue
Subject: RE: Gordon Hughes
Date: Thursday, 3 March 1994 7:21AM

Stephen:

I am more and more of the view that some form of summit meeting be held between Warwick Smith, AUSTEL (Robin Davey), Gordon Hughes, David Krasnostein, me, and perhaps others to put this "foolishness" behind us.

Please advise.

Frank

From: Black, Stephen
To: Blount, Frank
Subject: FW: Gordon Hughes
Date: Wednesday, March 02, 1994 10:50PM
Priority: High

Frank

Copy for your information

Steve Black

From: Black, Stephen
To: Krasnostein, David
Cc: Parker, Harvey; Rizzo, Paul
Subject: Gordon Hughes
Date: Wednesday, 2 March 1994 10:48PM
Priority: High

David

As discussed it appears that Gordon Hughes and Peter Bartlett are ignoring our joint and consistent message to them to rule that our preferred rules of arbitration are fair and to stop trying to devise a s of rules which meet all the COTS requirements and with which we might agree if we were prepared t waive further rights.

Whilst at a personal level I am of the view that we should walk away I do not believe that this option suits Telecoms wider strategy in that it would appear to lead directly to a senate enquiry.

My course therefore is to force Gordon Hughes to rule on our preferred rules of arbitration.

I am having our preferred rules prepared now based on Bartlett's latest rules plus our amendments. I have also initiated an independent and authoritative view on these rules, which I expect will advise th these rules are fair. I will then send these directly to Gordon Hughes with a direct and blunt request rule on whether they are fair.

I expect this action to be finalised by tomorrow midday.

Steve Black

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MEETING TO DISCUSS FAST TRACK RULES OF ARBITRATION

Date: 22 March 1994
Attendees: [redacted], David Kramostein, Simon Chalmers, Peter Bartlett, Gordon Hughes, Warwick Smith, Jenny Heorighty?

Mr Bartlett stated that he agreed with the majority of the changes in Telecom's amended rules, however he did not agree with the provisions set out below.

1. Confidentiality

Mr Bartlett stated that he thought the confidentiality clauses in Telecom's amended rules were not consistent with the Fast Track Settlement Proposal. He stated that Mr Archibald QC's advice was that the clause proposed by Telecom was "not inconsistent with the Fast Track Settlement Proposal", which is different to the clause being consistent with the Fast Track Settlement Proposal.

Dr Hughes only commented to the effect that the differences between the confidentiality clauses in Telecom's amended rules and Mr Bartlett's earlier proposed rules were material.

Mr Kramostein stated that in the circumstances of conversations which Telecom had had with some of the claimants, and given their conduct leading up to entering into the arbitration process, the confidentiality provisions set out in Telecom's amended rules were justified.

Mr Smith stated that he thought it was fair to include wider confidentiality clauses in the rules than those expressly set out in the Fast Track Settlement Proposal. He stated that the confidentiality clauses in Mr Bartlett's earlier proposed rules appeared fair.

2. Establishing a Causal Link

Mr Bartlett stated that he thought the removal of the words "on reasonable grounds" from the phrase "will make a finding as to the causal link" appearing in clause 10.2.2 of Telecom's amended rules was not fair because it did not reflect the wording of the Fast Track Settlement Proposal. He said that Mr Archibald's advice did not cover this key clause of Telecom's amended rules. He acknowledged that neither he nor Mr Smith had been given access to correspondence leading up to the formation of the Fast Track Settlement Proposal.

Dr Hughes stated his view that the inclusion of these words would not make 'a jot of difference' to the outcome of the arbitration. He said that in giving effect to the words "on reasonable grounds" in this context, he would apply normal rules of law as that was the proper basis for his decision being on reasonable grounds.

Mr Smith stated that he would not endorse the rules as fair unless clause 10.2.2 repeated clause 2(f) of the Fast Track Settlement Proposal, and in particular that the words "on reasonable grounds" were inserted in the phrase "will make a finding as to the causal link". He asked Telecom to have regard to the assurances given by

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Dr Hughes as to how he would make a determination in relation to causal link based on "reasonable grounds".

3. **Punitive Damages**

Mr Bartlett stated that in his view punitive damages would not be recoverable under his earlier proposed rules.

Dr Hughes did not expressly state a position on this matter when it was raised, however he did subsequently say that none of the changes set out in Telecom's amended rules other than the amended confidentiality provisions, would make 'a jot of difference' to the outcome of the arbitration.

Mr Smith stated that in his view Telecom would not be disadvantaged by agreeing to arbitration without Telecom's new clause 10.3. He also subsequently commented generally that Telecom should have regard to the assurances given by Dr Hughes as to how he viewed the effect of the amendments.

6. **Exclusion of Liability for Arbitrator's Advisers**

Mr Bartlett stated that he was unhappy that Telecom did not appear prepared to allow his firm an exclusion from liability.

Dr Hughes stated that the resource unit was also not satisfied with a capped liability, but that he did not have a position in relation to this matter as it did not affect him or the performance of his functions.

Mr Smith stated that he thought it was reasonable for the advisers to incur some liability, and that the only matter left to be negotiated on this issue was the quantum of the liability caps.

Mr Black said that he thought the liability caps proposed by Telecom in the amended rules were already reasonable.

It was agreed that Mr Bartlett would produce a re-drafted set of rules which Mr Smith and Mr Bartlett would agree was fair. It was further agreed that the likelihood of negotiating an agreement as to the form of the rules which was acceptable to all parties, was small. Mr Smith indicated that he proposed to have the re-drafted rules simply put to both Telecom and the four COT Claimants for signature.

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22 March 1994

Mr Graham Schorer
Golden Messenger
493-495 Queensberry Street
NORTH MELBOURNE 3051

By Facsimile

Dear Graham

Fast Track Settlement Proposal

Attached are the comments on the Telecom draft, I delivered to Gordon Hughes on Friday, 18 March.

Clearly a number of the amendments suggested by Telecom are unacceptable. If Gordon can receive your comments on the Telecom draft, he can form a view as to what, in his view, is fair and reasonable.

Regards

Peter

Peter L Bartlett
enclosure

88

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8B

Clause 1

This is a minor drafting style point.

Recommendation: agree.

Clause 2

Telecom seeks to make it clear that the appeal provisions of the Commercial Arbitration Act apply. The amendment should be read in conjunction with clause 12.

Recommendation: agree.

Clause 5

Telecom has deleted a sentence which in reality did not add anything to the clause.

Recommendation: agree.

Clause 6

Should the Arbitrator form the opinion that he requires an oral hearing, Telecom seeks to require him to consult with the parties. The parties would not have a right to overrule the Arbitrator's view that there was a need for an oral hearing. They would only have the right to be consulted. Clearly the Arbitrator would carefully consider any views they expressed.

Recommendation: agree.

Telecom has added a sentence providing that if the Arbitrator allows one party to have legal representation, the other party may also have legal representation.

Recommendation: agree.

Telecom has also deleted "oral submissions" and inserted "oral evidence".

Recommendation: agree.

Clause 7.1

Replace "submission" with "submissions".

Recommendation: agree.

Clause 7.2.2

Clause (2)(c) of the Fast Track Settlement Proposal ('FTSP') provides that "the review will focus on losses alleged to have been incurred by the COT Cases due to faults or problems in his or her telephone service.

The Minter Ellison arbitration procedure refers to the statement of claim stating "the service difficulties problems and faults with the telecommunications service which are alleged to have occurred". While the Archibald opinion does not comment on this clause, the Telecom procedure seeks to amend clause 7.2.2 to refer to "the service difficulties problems and faults in the provision to the claimant of telecommunications services...".

Recommendation: agree. This brings the clause into line with schedule A clause 1.

Clause 7.4

Telecom has deleted "statement of".

Recommendation: agree.

Clause 7.5

Telecom seeks to confirm the right of the parties to obtain documents pursuant to the powers set out in the Commercial Arbitration Act. That has always been the intention.

Recommendation: agree.

Telecom also seeks to prevent the Arbitrator from requiring Telecom to produce documents "which are required to be kept confidential pursuant to any statute or subordinate legislation.

The Archibald opinion says that this addition is justified as Telecom is subject to restrictions on the disclosure of information under the *Telecommunications Act 1991 (Cth)* and the *Telecommunications (Interception) Act 1979 (Cth)*.

The claimants are highly critical of Telecom in connection with the production of documents under FOI. The foreshadowed amendment is wide enough to cover the FOI Act. I query what other Acts and subordinate legislation it could cover.

The material I can find that would be covered by the foreshadowed amendment would be documents related to interception. Insofar as such documents are relevant, the claimants should be entitled to see them.

Clause 8.2

This is a typographical error in the Telecom Procedure. Delete "of" from the second line, and insert "or".

Clause 8.5

Telecom seeks to obtain a confidentiality agreement from the Resource Unit prior to it receiving any documentation.

While I do not necessarily agree with the Archibald opinion, that the provision is consistent with clause 2(1) of the FTSP (I feel that it goes far further), the addition is justifiable.

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Recommendation: agree.

Clause 10.2.1

Telecom has added that the Arbitrator will also take into account "any reply and supporting documents ...".

Recommendation: agree.

Clause 10.2.2

This is potentially the most difficult clause. Clause 2(f) of the FTSP provides:

> "that in conducting the review the assessor will make a finding on reasonable grounds as to the causal link between each of the COT Cases claims and alleged faults or problems in his or her telephone service and, as appropriate, may make reasonable inferences based upon such material as is presented by each of the COT Cases and by Telecom, ie unless the assessor is able to conclude that Telecom caused the loss claimed, there will exist no basis for a claim against Telecom."

Clause 10.2.2 of the Minter Ellison arbitration procedure provides that:

> "... the Arbitrator:
>
> will make a finding on reasonable grounds as to the causal link between the claimants' claims and the alleged faults or problems with the relevant telephone service and, as appropriate, may make reasonable inferences based upon such evidence, as is presented by the parties together with any information obtained by the Resource Unit or any advice given to him by the Resource Unit."

Clause 10.2.2 of the Telecom draft provides that the Arbitrator:

"will make a finding as to the causal link between the alleged service difficulties, problems and faults in the provision to the claimant of telecommunication services and the losses claimed and for this purpose may make reasonable inferences based upon such evidence as is presented by the parties and any information or advice provided by the Resource Unit."

Telecom has deleted "on reasonable grounds" from the first line. Those words come from clause 2(f):

Recommendation: "on reasonable grounds" should appear in the first line.

I note that the Archibald opinion does not refer to Telecom's redrafted 10.2.2 except insofar as it refers to the proposed 10.2.3.

The Minter Ellison arbitration procedure (clause 10.2.2) closely follows clause 2(f) of the FTSP. While Telecom's procedure refers to "between the alleged service difficulties, problems and faults in the provision to the claimant of telecommunication services and the losses claimed and for this purpose ...", the Minter Ellison procedure refers to "between the claimants claims and the alleged faults or problems with the relevant telephone service and, as appropriate ...".

In reality, I do not see a significant difference.

Recommendation: As the Minter Ellison draft follows clause 2(f), I would not amend it. It is necessary however to consider schedule A. For discussion.

Clause 10.2.3

Telecom has recommended the following additional clause:

"the Arbitrator:

will not make a finding that Telecom is liable for a loss claimed by the claimant unless the Arbitrator is satisfied that Telecom Australia has caused the loss claimed."

The balance of clause 2(f) of the PTSP provides that "unless the assessor is able to conclude that Telecom caused the loss claimed, there will exist no basis for a claim against Telecom."

The Telecom additional clause is consistent with clause 2(f).

The reason why a clause to this effect was not included was the view expressed by the chairman of Austel, Mr R Davey, that there was not a need for a strict causal link.

I am not sure whether Telecom is justified in being so sensitive over the need for a causal link, in the light of clause 10.1.1.3. Telecom has not recommended any amendment to that clause.

Clause 10.2.2 already provides for the need for a "causal link".

Recommendation: for discussion.

Clause 10.3

Telecom has recommended a new clause 10.3. "The Arbitrator's award shall be compensatory and not punitive.".

I would have thought that the procedure already makes it clear that the award shall be compensatory only.

Recommendation: for discussion.

Clause 12

Telecom seeks to limit the claimants' costs of any appeal lodged by Telecom, to party/party costs.

Recommendation: agree.

The amendment proposed by Telecom does not establish how the party/party costs would be assessed, if a dispute arises.

Clauses 16, 17 and 18

Telecom has deleted clauses 16 and 17 and amended clauses 18 and 19 and added two new clauses. The Archibald opinion criticised clauses 16, 17 and 18. Those clauses were earlier drafted by Telecom and were added purely at the request of Telecom.

It is important to note that the only reference to confidentiality in the FTSP provides that "the amounts paid by Telecom under this agreement will be maintained confidential by the parties" (clause 21).

Clauses 16, 17 and 18 earlier suggested by Telecom, went much further than contemplated by the FTSP. However, the claimants agreed to the additional confidentiality clauses.

It is important to note that Archibald's opinion notes (paragraph 32) that "loss of the amount of an award for breach of a confidentiality obligation is not common in arbitration procedures. However, we have assumed for the purposes of this advice that the COT customers have accepted the principle that at least in some circumstances such a disclosure ought to have that consequence."

This may raise an obligation on us to advise the claimants to seek their own advice. Clearly they will do this anyway.

It also raises the question whether you can say the clause is reasonable.

The Archibald opinion says in the same paragraph that confidentiality was critical to Telecom's decision to participate in the arbitration. If that is so, it certainly is not made clear in the FTSP (see clause 2(1)).

Recommendation: In my view the arbitration should be conducted inhouse, rather than in the media. As such I support the

not strictly liable or has no obligation to pay, due to a statutory immunity covering that period or periods, Telecom Australia should, having regard to all the circumstances relevant to the Claimant's claim, pay an amount in respect of such a period or periods and, if so, what amount.

10.1.2 may set off against any amounts found by the Arbitrator to be otherwise owing by Telecom Australia to the Claimants any amounts paid to, rebates granted to, or services carried out for the Claimant by Telecom Australia to date.

How does it come before Arbitrator

10.2 In relation to the Claimant's loss, the Arbitrator:

10.2.1 will take into account the Claim and Defence Documents, any Reply and supporting documents, written evidence and submissions made by the parties and, if applicable, any sworn or affirmed oral evidence presented to the Arbitrator by the parties to the arbitration together with any information obtained by the Resource Unit or any advice given to him by the Resource Unit.

10.2.2 will make a finding on reasonable grounds as to the causal link between the alleged service difficulties, problems and faults in the provision to the Claimant of telecommunication services and the losses claimed and, as appropriate, may make reasonable inferences based upon such evidence as is presented by the parties together with any information obtained by

Mr Paul Rumble
National Manager-Customer Response Unit
Telecom Australia
Level 8
242 Exhibition Street
Melbourne Victoria 3000

by being delivered by hand or sent by prepaid mail.

Liability of Administrator and Arbitrator

24. Neither the Administrator nor the Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules save that the Arbitrator (but not the Administrator) shall be liable for any conscious or deliberate wrongdoing on the Arbitrator's own part.

25. The liability of Ferrier Hodgson and the partners and employees of Ferrier Hodgson for any act or omission in connection with any arbitration conducted under these rules (other than in relation to a breach of their confidentiality obligations) shall be limited to $250,000 jointly.

26. The liability of DMR Group Australia Pty Ltd and the directors and employees of DMR Group Australia Pty Ltd for any act or omission in connection with any arbitration conducted under these rules (other than in relation to a breach of their confidentiality obligations) shall be limited to $250,000 jointly.

Return of Documents after Arbitration

27. Within 6 weeks of publication of the Arbitrator's award, all documents received under this Procedure by the parties the Administrator, the Resource Unit and/or the Arbitrator and all copies thereof, shall be returned to the party who lodged such documents.

Mr Paul Rumble
National Manager-Customer Response Unit
Telecom Australia
Level 8
242 Exhibition Street
Melbourne Victoria 3000

by being delivered by hand or sent by prepaid mail.

Liability of Administrator and Arbitrator

24. Neither the Administrator, the Arbitrator, the Special Counsel, a partner or employee of the legal firm of which the Special Counsel is a partner, a member of the Resources Unit, Ferrier Hodgson or a partner or employee of Ferrier Hodgson, DMR Group Australia Pty. Ltd. or a Director or employee of DMR Group Australia Pty. Ltd. shall be liable to any party for an act or omission in connection with any arbitration conducted under these Rules or involved in the preparation of these Rules save that the Arbitrator (but not the Administrator) shall be liable for any conscious or deliberate wrongdoing on the Arbitrator's own part.

Return of Documents after Arbitration

25. Within 6 weeks of publication of the Arbitrator's award, all documents received under this Procedure by the parties the Administrator, the Resource Unit and/or the Arbitrator and all copies thereof, shall be returned to the party who lodged such documents.

Conflict of Rules

26. In the event of any inconsistency between these rules and the provisions of the Act, these rules shall prevail to the extent of that inconsistency.

d/fjs405601

not strictly liable or has no obligation to pay, due to a statutory immunity covering that period or periods, Telecom Australia should, having regard to all the circumstances relevant to the Claimant's claim, pay an amount in respect of such a period or periods and, if so, what amount.

10.1.2 set off against any amounts found by the Arbitrator to be otherwise owing by Telecom Australia to the Claimants any amounts paid to, rebates granted to, or services carried out for the Claimant by Telecom Australia to date.

10.2 In relation to the Claimant's loss, the Arbitrator:

10.2.1 will take into account the Claim and Defence Documents, any Reply and supporting documents, written evidence and submissions made by the parties and, if applicable, any sworn or affirmed oral evidence presented to the Arbitrator by the parties to the arbitration together with any information obtained by the Resource Unit or any advice given to him by the Resource Unit.

10.2.2 will make a finding on reasonable grounds as to the causal link between the alleged service difficulties, problems and faults in the provision to the Claimant of telecommunication services and the losses claimed and, as appropriate, may make reasonable inferences based upon such evidence as is presented by the parties together with any information obtained by

intention sought by Telecom. We need to be satisfied however, that Telecom has now come up with the correct set of words. For discussion.

Clause 22

Telecom has deleted "subject to clause 21".

Recommendation: agree.

Clause 23

Notices

Recommendation: agree.

Telecom has deleted the part of clause 23 related to deemed service.

Recommendation: for discussion.

Clause 24 of the Minter Ellison procedure and Clauses 24, 25 and 26 of the Telecom draft

Liability

Recommendation: for discussion.

Clause 25 of Minter Ellison procedure and Clause 27 of the Telecom draft

Return of documents

Recommendation: agree.

Clause 28 of the Telecom draft

Conflict of rules.

Recommendation: agree.

SCHEDULE A

Clauses 3 and 4

Recommendation: agree.

For Graeme Schorer

Clauses 1 and 2

Recommendation: agree. The amendments are consistent with clause 2(d) of the PTSP.

8B

95/0[illegible]-[illegible]

URGENT 2nd attempt at sending!

270.

123

Telecommunications Industry Ombudsman ACN 057 634 787
Ground Floor, 321 Exhibition Street, Melbourne, Victoria, 3000
Telephone: 61 3 277 8777 Facsimile: 61 3 277 8797

Telecommunications Industry Ombudsman

URGENT **Facsimile Cover Sheet**

PRIVATE & CONFIDENTIAL

TO: Norm O'Doherty

Company: AUSTEL

Fax: 820 3021

FROM: Pia Di Mattina

Company: TIO

Fax:

Date: 22.6.94

Pages: 12 (including cover sheet)

Comments:

Norm,

Copy of fax received from Telecom, as discussed, and for your information (and comment, ASAP!)

Regards,

Pia

8C

[illegible] 2628 277 8 19

-95/0600-02

Telecom AUSTRALIA

124

Commercial & Consumer
3rd Floor
242 Exhibition Street
Melbourne Vic 3000
Australia

Telephone (03) 632 7770
Facsimile (03) 632 3241

22 June 1994

Mr Peter Bartlett
Minter Ellison Morris Fletcher
By Facsimile: 617 4666

Dear Peter

Special Rules for Arbitration of 12 Claims Referred to Telecom by Austel

I refer to our meeting at the TIO's office last Friday, 17 June 1994.

1. **Rule 9.3**

Telecom has reviewed rule 9.3 and agrees to delete this provision from the rules, provided that rules 4.8, 5.2, 5.4 and 9.2 are amended as marked up in the enclosed set of rules.

It is Telecom's view that these amendments simply expressly state what the arbitrator's powers to make directions pursuant to rules 4.8 and 5.4, already cover. Since these provisions only apply after a claimant is given an opportunity to remedy its default under the procedure, they would not affect bona fide claimants who lodge genuine claims. Telecom considers that expressing the amended rules in this way will act as a useful deterrent and safeguard against claimants lodging and pursuing claims which are not genuine.

2. **Letter to the claimants which is to accompany the rules of arbitration**

A draft letter to be sent to the relevant claimants with the rules of arbitration, is enclosed for your consideration and comment.

3. **Timetable**

A timetable for the commencement of the arbitrations is also enclosed. The proposed operation of the timetable is as explained in the draft letter to the claimants.

4. **Pool of Arbitrators**

I note that the pool of arbitrators to be used to conduct the arbitrations, is still to be finalised.

8c

Please contact me once you have had an opportunity to consider the above, in order to discuss finalisation of the rules.

Yours sincerely

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

cc: Warwick Smith, TIO

8c

DRAFT - 95/0600-02

126

[Letter to Relevant Claimants re Special Rules of Arbitration]

Dear X,

Special Arbitration Procedure

The TIO and Austel have established with Telecom a special arbitration procedure to assist the resolution of a small number of Telecom customer disputes. Your dispute is one of these.

The procedure has been designed to meet the following objectives:

- to operate in accordance with the principles of natural justice;
- to allow the arbitrator to relax certain rules of law if necessary;
- to resolve the disputes as quickly as justice to all the parties reasonably permits; and
- to operate cost-effectively.

A copy of the relevant rules of arbitration are enclosed. You should read these rules very carefully. Briefly, from the date of commencement of your arbitration, you will have six weeks in which to submit a complete claim. Telecom will then have six weeks in which to submit a defence to your claim. You will then have up to three weeks in which to submit a reply if you wish. The arbitrator will then make a determination on the dispute. The arbitrator has certain discretions to vary the procedure in the interests of fairness, where appropriate. The arbitrator's award will be binding on you.

Arbitration is not compulsory or automatic. You have up to XX days in which to consider whether you wish to submit your dispute with Telecom to arbitration under this procedure. To submit your dispute to arbitration, you must send a completed application (see Schedule A of the Rules) to the TIO.

In order to ensure that the procedure operates effectively, the TIO and Austel have reached the following agreements with Telecom.

1. **Timetable for arbitration**

   The commencement of arbitrations under this procedure will be determined according to a fixed timetable. Your dispute is currently scheduled for commencement starting XX.

   You must send a completed application to the TIO by XX if you wish to preserve your priority in the timetable. If your application for arbitration is not received by then, your place in the schedule may be made available to another claimant and you may lose it. You will still be able to apply for arbitration under this procedure after XX, provided you apply before XX. In that case, you will be advised of the scheduled commencement date of your arbitration after your completed application is received.

8C

2. **Documents Telecom will provide you without charge**

In order to assist you in preparing your case for arbitration, Telecom has agreed to provide you without charge, within XX days of the commencement of your arbitration, all of the following records Telecom has on your telephone services which are the subject of your dispute with Telecom:

(a) Fault histories available from Telecom's Leopard and Service Plus databases;
(b) Call data records (to the extent that they exist);
(c) Files of the Customer Services Manager handling your dispute; and
(d) Individual reports prepared by Telecom's Network Operations, National Network Investigations and Commercial & Consumer sections, on your telephone services.

These records will be provided based on the telephone service numbers you set out in the application for arbitration as being the subject of the dispute. It is therefore important for you to specify each telephone service number which relates to the dispute, in your application for arbitration.

Telecom may, if it chooses, apply the exemptions set out in the Freedom of Information Act ("FOI Act") to the records it releases, as if they were documents being released under the FOI Act. Telecom has agreed that for each document from which information is deleted, it will provide to you details of the nature of the information deleted, the sections of the FOI Act relied upon, and Telecom's reasons for applying those exemptions. You will also be given a list of the documents exempted in total, which will contain the same details in respect of each of those documents.

Neither the TIO, Austel nor Telecom represent that these are all the documents which you will require for the preparation and conduct of your case. Whatever documents you choose to rely upon to prepare and conduct your case is a matter for you alone to decide.

Under the arbitration procedure, you will be able to ask the arbitrator to direct Telecom to provide you with any further relevant documents you require. The arbitrator would normally consider such a request after you have filed your claim, so that the arbitrator can determine the relevance of your request to your claim. You may also choose to apply to Telecom for any documents under the Freedom of Information Act, independently of the arbitration process.

If, after you have read and considered the enclosed rules, you wish to submit your dispute to arbitration under this procedure then you should send a completed application to the TIO as soon as possible, but in any case before XX.

Yours sincerely

10. Notices

10.1 All documents letters and notices sent to a party, the Administrator or the Arbitrator in relation to these Rules shall be delivered by hand or sent by certified mail, courier or facsimile.

10.2 All documents letters or notices sent to Telecom in relation to these Rules shall be addressed to:

National Manager - Customer Response Unit
Telecom Australia
Level 8
242 Exhibition Street
Melbourne Victoria 3000.
Facsimile: (03) 634 8441

11. Liability of Administrator, Arbitrator and any Independent Expert Resource Unit

11.1 Neither the Administrator nor the Arbitrator shall be liable to either party for any act or omission in connection with the Arbitration save that the Arbitrator and the Administrator shall be liable for his or her own fraud or deliberate wrongdoing.

11.2 The liability of any independent expert resource unit used by the Arbitrator, for any act or omission on their part in connection with the Arbitration, shall be limited to $250,000.00.

12. Return of documents

12.1 If either party has sent documents in support of its case to the Administrator or Arbitrator, that party may within six weeks of publication of the Award request the return of those documents, provided that nothing in this rule shall prevent the Administrator retaining a copy of documents for the purposes of maintaining a precedent library for future arbitrators, in accordance with rule 8.3.2. Subject to that, all documents relating to the Arbitration held by the Arbitrator will be delivered to the Administrator, and the Administrator may retain any documents relating to the Arbitration and may in due course dispose those documents in accordance with the Administrator's policies from time to time.

8C

Seal Cove Guest House
1703 Bridgewater Road
Portland 3305
Phone 03 55 267 170

29th December 2008

Mr Peter Bartlett ✓
Minter Ellison
Rialto Tower, Collins St
Melbourne 3000

Dr Gordon Hughes
Blake Waldron Dawson
Level 39, 101 Collins Street
Melbourne 3000

Re Graham Schorer and Alan Smith, COT

Dear Mr Bartlett and Dr Hughes,

On 17th September 2008, Mr Chris Chapman, Chairman of ACMA, was provided with proof that our FTAP Arbitration agreement was altered after it had been distributed as the final version, to the three remaining foundation COT claimants, between 13th and 19th April 1994. We were not advised of the intended or the actual changes before we signed the agreement on 21st April 1994. The changes made included the removal of clauses 25 and 26 and alterations to clause 24, which exonerated Minter Ellison (Special Counsel), Ferrier Hodgson Corporate Advisory and DMR Inc, from legal suit.

On the day that we actually signed our agreement we were told that Steve Black would not be signing on behalf Telstra at the same time because he was unable to be at Minter Ellison for 'business reasons' and that you, Mr Bartlett, would courier the document to Telstra for later signature. It has since been shown that it took a further six days for the document to be delivered to us with Mr Black's signature added and we are both prepared to sign a sworn statement to this effect. Evidence only received earlier this year suggests that the signature on (page 12) of the agreement could well have been altered during the six days after we had signed it.

We would now like clarification of exactly when the agreement was altered and whether that was before or after we signed the agreement.

A copy of the letter dated 17th September 2008, to Mr Chapman (see paragraph 1, above), and 29th December 2008, to Mr Chris Chapman, ACMA Chairman and Ms Deirdre O'Donnell, Telecommunication Industry Ombudsman, is attached. It is considered these letters will assist you both in understanding the legal ramifications to what has transpired.

Thank you

Graham Schorer

Alan Smith

Copies to
Ms Deirdre O'Donnell, TIO, P.O Box 276 Collins Street West, Melbourne 8007
Mr Chris Chapman, Chairman of ACMA, P.O .Box Q-500 Queen Victoria Building NSW 1230

8D

Seal Cove Guest House
1703 Bridgewater Road
Portland 3305
Phone/Fax: 03 55 267 170

29th December 2008

Ms Deirdre O'Donnell
Telecommunications Industry Ombudsman
P O Box 276
Collins Street West
Melbourne 3000

Re Graham Schorer & Alan Smith, COT

Dear Ms O'Donnell,

Previously we both had a claim administered by the TIO in relation to the Fast Track Arbitration Procedure involving Telstra. We are again raising that matter with the TIO to ensure that you are aware of the information detailed in the following letters:

1. Letter dated 17th September 2008, to Mr Chris Chapman, Chairman of ACMA;
2. Letter dated 29th December 2008, to Mr Chris Chapman, Chairman of ACMA;
3. Letter dated 29th December 2008, to Dr Gordon Hughes and Peter Bartlett.

The documents attached to the letter dated 17th to Mr Chapman demonstrates how both Telstra's Steve Black and the then-TIO, Warwick Smith, were both totally opposed to the removal from the arbitration agreement, of the legal liability clauses 24, 25 and 26, that were later altered and/or removed without our prior knowledge consultation and/or agreement. In relation to these legal liability clauses, we are therefore now asking you to confirm:

a) Was the TIO ever informed prior to 21st April 1994, that clause 24 would be altered and the original clauses 25 and 26 were to be removed, so that the TIO's Special Counsel and the arbitrator's Resource Unit would be exonerated from legal suit?

b) Was the TIO ever warned that the FTAP agreement (page 12) could have been altered, without our knowledge or consent, during the six-day period after we had signed the agreement, but before we received it back with a Telstra representative's signature?

As the claimants in this process, we are entitled to establish the truth regarding these matters.

Thank you

Graham Schorer

Alan Smith

Copies
Mr Peter Bartlett and Dr Gordon Hughes (Melbourne)
Mr Chris Chapman, Chairman of ACMA, P.O .Box Q-500 Queen Victoria Building NSW 1230

8D

Seal Cove Guest House
1703 Bridgewater Road
Portland 3305
Phone/Fax: 03 55 267 170

29th December 2008

Mr Chris Chapman
Chairman
Australian Communications & Media Authority
P O Box Q-500
Queen Victoria Building
NSW 1230

Re Graham Schorer and Alan Smith, COT

Dear Mr Chapman,

The attached letter dated 29th December 2008, to Dr Gordon Hughes and Mr Peter Bartlett, is forwarded further to the letters to you on 17th and 30th September 2008. These letters all relate to the undisclosed alterations that were made to the Casualties of Telstra (COT) Fast Track Arbitration Agreement, to the detriment of Smith and Schoer claimants without notification and their knowledge or consent. When we signed that Arbitration Agreement on 21st April 1994, we were of the understanding that we were signing the document we had previously read and taken legal advice on, and was the same mirrored agreement that Maureen Gillian (the fourth original COT claimant) had already signed. We now know (and have already proved to you) that we were wrong.

We are now in possession of copies of Telstra documents which confirm that Telstra's Steve Black was interstate on the 21st April 1994, which explains his absence as to why he was not available to present himself to Minter Ellison's premises for the joint signing and witnessing of all signatories on the agreement. Steve Black's signature is recorded as having been added to the agreement on that day without being witnessed. As claimants in this matter we have the right to formally request both Mr Bartlett and Dr Hughes to explain how these undisclosed and unauthorised alterations came into existence.

Our arbitration was facilitated by AUSTEL on behalf of the Federal Government, although this is the third time we have passed this information on to you, we have not yet received any response to our questions. Please now explain what steps if any, you have taken in regards to these illegal alterations to a legal document.

Thank you,

Graham Schorer

Alan Smith

Copies to
Ms Deirdre O'Donnell, TIO, P.O Box 276 Collins Street West, Melbourne 8007
Mr Peter Bartlett and Dr Gordon Hughes (Melbourne)

8D

Hunt & Hunt
LAWYERS

Partners
Edward S Boyce
James G.P. Harrowell
Christine A. Galley
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Bwin
Wayne B. Cahill
Neville G.H. Debney
Lindsay L. Morgan
Grant D. Sefton
Charles Veevers
Andrew Logie-Smith

Consultants
Kenneth M. Martin
Richard J. Kallaway

Associates
Peter A. Cornish
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Calichio
Roy Salt

31 March 1994

Our Ref: GLH
Matter No:
Your Ref:

BY FACSIMILE: 287 7001

Mr Graham Schorer
Golden Messenger
493 Queensberry Road
North Melbourne Vic 3000

Dear Graham

COT MATTERS

I am enclosing the latest draft of the Fast Track Arbitration Procedure which has been forwarded to me today by Messrs Minter Ellison Morris Fletcher.

I have not yet had an opportunity to closely peruse the document. I shall do so over the Easter break with a view to forming an opinion as to whether I consider it to be in a form that I would recommend the parties sign.

I understand all claimants will be in Melbourne on Friday, 8th April 1994. I propose that the parties meet at the offices of Messrs Minter Ellison Morris Fletcher on that day with a view to finalising negotiations.

Please let me know if you will be available to attend the meeting on 8th April at a time to be advised.

Yours sincerely

GORDON HUGHES

melbourne
sydney
sydney west
brisbane
canberra
newcastle
represented by
adelaide
darwin

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 8711.
Facsimile: (61-3) 614 8730. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.

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not strictly liable or has no obligation to pay, due to a statutory immunity covering that period or periods, Telecom Australia should, having regard to all the circumstances relevant to the Claimant's claim, pay an amount in respect of such a period or periods and, if so, what amount.

10.1.2 set off against any amounts found by the Arbitrator to be otherwise owing by Telecom Australia to the Claimants any amounts paid to, rebates granted to, or services carried out for the Claimant by Telecom Australia to date.

10.2 In relation to the Claimant's loss, the Arbitrator:

10.2.1 will take into account the Claim and Defence Documents, any Reply and supporting documents, written evidence and submissions made by the parties and, if applicable, any sworn or affirmed oral evidence presented to the Arbitrator by the parties to the arbitration together with any information obtained by the Resource Unit or any advice given to him by the Resource Unit.

10.2.2 will make a finding on reasonable grounds as to the causal link between the alleged service difficulties, problems and faults in the provision to the Claimant of telecommunication services and the losses claimed and, as appropriate, may make reasonable inferences based upon such evidence as is presented by the parties together with any information obtained by

Mr Paul Rumble
National Manager-Customer Response Unit
Telecom Australia
Level 8
242 Exhibition Street
Melbourne Victoria 3000

by being delivered by hand or sent by prepaid mail.

Liability of Administrator and Arbitrator

24. Neither the Administrator nor the Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules save that the Arbitrator (but not the Administrator) shall be liable for any conscious or deliberate wrongdoing on the Arbitrator's own part.

25. The liability of Ferrier Hodgson and the partners and employees of Ferrier Hodgson for any act or omission in connection with any arbitration conducted under these rules (other than in relation to a breach of their confidentiality obligations) shall be limited to $250,000 jointly.

26. The liability of DMR Group Australia Pty Ltd and the directors and employees of DMR Group Australia Pty Ltd for any act or omission in connection with any arbitration conducted under these rules (other than in relation to a breach of their confidentiality obligations) shall be limited to $250,000 jointly.

Return of Documents after Arbitration

27. Within 6 weeks of publication of the Arbitrator's award, all documents received under this Procedure by the parties the Administrator, the Resource Unit and/or the Arbitrator and all copies thereof, shall be returned to the party who lodged such documents.

Internal Memo

Telecom

To MR DAVID KRASNOSTEIN
GENERAL COUNSEL

From STEVE BLACK
GROUP GENERAL MANAGER

COMMERCIAL AND CONSUMER
CUSTOMER SERVICES
[illegible] EXHIBITION STREET
MELBOURNE
VICTORIA 3000
Australia
Telephone (03) [illegible]
Facsimile (03) [illegible]

Subject

Date 7 April 1994

File

Attention

Steve/Paul
Agreed.
David

David

Peter Bartlett tells me that Graeme Schorer is putting pressure on Gordon Hughes to read the Austel Report and see if it contains anything which would necessitate a change in the Arbitration Rules. I told Mr Bartlett to tell Dr Hughes that Telecom would seriously object to such a course of action.

Dr Hughes is now convinced that his proposal to have a joint meeting to finalise the rules tomorrow is useless. I have told Mr Bartlett that the only basis on which Telecom would attend a meeting is to formally sign the rules - no further discussion or negotiation to be entered into.

Dr Hughes seems to have dug a bit of a hole for himself.

Mr Bartlett is urging Dr Hughes to notify COTS that he has decided that the rules are now finalised and fair and reasonable and must be signed by COTS and Telecom tomorrow. Warwick Smith supports him in this. Dr Hughes has agreed to talk to Mr Schorer in an attempt to convince him to sign the rules tomorrow. I understand that Amanda Davis is ready to sign.

Paul Rumble
NATIONAL MANAGER
CUSTOMER RESPONSE UNIT

Maybe a letter to Robin Davey, T10 + Hughes would be appropriate ? ie. Rules now agreed to by Telecom, we understand they satisfy [illegible] Hughes, T10 + AUSTEL

R11909

10A

© R.A.P.

TELECOMMUNICATIONS INDUSTRY OMBUDSMAN

STANDARD ARBITRATION RULES

OVERVIEW OF ARBITRATION

Rule 1

How Does Arbitration work?

These rules provide an informal and inexpensive Arbitration procedure as a method of resolving disputes between a Customer and a Carrier.

The object of the Arbitration is for the Arbitrator to make an Award.

While the Arbitration will primarily be by an exchange of documents and written submissions (See Rule 15), the Arbitrator can order that an oral hearing be held (See Rule 24), to allow the parties to also put their arguments in person.

The Arbitration is designed to:

a) operate in accordance with the principles of natural justice;
b) allow the Arbitrator to relax certain rules of evidence as needed;
c) resolve the dispute as quickly as justice to all the parties reasonably allows; and
d) operate with minimal cost to the Customer - the only cost to the Customer is the Customer's own costs of preparing his or her submissions for the Arbitrator (see Rules 6, 7, 10, 13, 14, 17 and 29).

Rule 2

Who controls the Arbitration?

The Telecommunications Industry Ombudsman (TIO) is responsible for the development of procedures, such as these rules, for the fair, just, economical, informal and speedy handling of complaints regarding telecommunications services.

The TIO is independent of governments, carriers, and other interested bodies. Representatives from consumer groups, small business, and all general and mobile telecommunications carriers are members of the TIO Council.

These rules are administered by the Telecommunications Industry Ombudsman (or a person he or she appoints) who is called the "Ombudsman" in these rules.

Rule 31

Liability of the Ombudsman, the Arbitrator and any independent expert assistant or advisor to the Arbitrator.

The Ombudsman or the Arbitrator is not liable to either party for any act or omission in connection with the Arbitration. However, the Arbitrator or the Ombudsman is liable for his or her own fraud or deliberate wrong doing in connection with the Arbitration.

The liability of any independent experts used by the Arbitrator is limited to $250,000 for any act or omission on their part in connection with the Arbitration.

Rule 32

Return of documents

If either party has sent original documents to the Ombudsman or the Arbitrator, that party may request the return of those documents within six (6) weeks of being notified of the Arbitrator's Award.

Otherwise, the Arbitrator must deliver all documents relating to the Arbitration to the Ombudsman. The Ombudsman may keep any documents relating to the Arbitration as long as they remain confidential as set out in Rule 28, and may dispose of those documents, in accordance with the Ombudsman's policies, after one (1) year of the Arbitrator having given his or her Award.

The parties may retain those documents provided to them during the course of the Arbitration, but must be mindful of their obligations of confidentiality (see Rule 28), which continue to bind them even after the conclusion of the Arbitration.

10B

Hunt & Hunt
LAWYERS

12 April 1994

Our Ref: GLH
Matter No:
Your Ref:

BY FACSIMILE: 617 4666

Mr Peter Bartlett
Messrs Minter Ellison Morris Fletcher
Solicitors
40 Market Street
Melbourne VIC 3000

Dear Peter

COT MATTERS

On 11 April I met with John Selak and John Rundell of Ferrier Hodgson to discuss the impact of the latest draft of the "Fast-Track" Arbitration Procedure on the Resource Unit.

They made the following points:

(a) in relation to clause 8.1, services will in fact be provided by Ferrier Hodgson Corporate Advisory (Vic) Pty Ltd, not Ferrier Hodgson Chartered Accountants. Either the name should be substituted or the words "(incorporating Ferrier Hodgson Corporate Advisory (Vic) Pty Ltd)" should be inserted in the third line after the words "Chartered Accountants";

(b) also in relation to clause 8.1, technical input will be provided by DMR Inc, not DMR Group Australia Pty Ltd. DMR wishes this substitution to be made;

(c) the above changes should be reiterated in clauses 25 and 26 as presently drafted;

(d) further in relation to clauses 25 and 26, both Ferrier Hodgson Corporate Advisory and DMR Inc are concerned about their potential liability. As the clauses presently read, they would be liable to a maximum of $250,000.00 per claim. This is likely to significantly exceed their professional fees in relation to each claim. Ferrier Hodgson's preference (and also the preference of DMR)

melbourne
sydney
sydney west
brisbane
canberra
newcastle
adelaide
darwin

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would be for a total exclusion of liability but, failing that, they would accept a lower cap more commensurate with their anticipated fees;

(a) in relation to the Confidentiality Agreement appended as Schedule E, Mr Selak and Mr Rundell believe reference should be made to the Administrator in clause 2. They would also prefer a single undertaking to be executed by Ferrier Hodgson Corporate Advisory (and another by DMR Inc) rather than by the various individuals within the organisation. They would remain vicariously liable for breaches by their employees.

I appreciate that one claimant has already executed the agreement in its current form. The others will no doubt be pressed to do likewise over the next few days. I further appreciate you will be reluctant to introduce additional changes to the draft procedure at this delicate stage of negotiations but it is of course also fundamental that account be taken of the concerns raised by members of the Resource Unit. Perhaps the agreement should be executed in the current form and then agreement sought from the parties to vary the terms to take into account any proposals by Ferrier Hodgson or DMR which you agree are reasonable.

Could I suggest that you liaise direct with Mr Selak or Mr Rundell about these concerns? Perhaps they could also speak direct to Warwick Smith.

Yours sincerely

[redacted]

cc W Smith
J Selak, J Rundell

11289649_GLH/ES

A59257

MINTER ELLISON MORRIS FLETCHER

BARRISTERS AND SOLICITORS

40 MARKET STREET
MELBOURNE VICTORIA
TELEPHONE (03) 617 4617
FACSIMILE (03) 617 4666
DX 204 MELBOURNE
Postal address
GPO BOX 769Q
MELBOURNE VIC 3001
AUSTRALIA

FACSIMILE TRANSMISSION

DATE 13 April 1994

TO Ann Garms
Facsimile number (07) 892 3739

FROM Peter Bartlett
MINTER ELLISON MORRIS FLETCHER MELBOURNE
Our reference PLB 928549

SUBJECT Cot Claims

NOTE
If you do not receive page(s) including this one, please telephone MINTER ELLISON MORRIS FLETCHER (03) 617 4623 as soon as possible.

IMPORTANT
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w/plb410307

12

Mr Paul Rumble
National Manager-Customer Response Unit
Telecom Australia
Level 8
242 Exhibition Street
Melbourne Victoria 3000

by being delivered by hand or sent by prepaid mail.

Liability of Administrator and Arbitrator

24. Neither the Administrator nor the Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules save that the Arbitrator (but not the Administrator) shall be liable for any conscious or deliberate wrongdoing on the Arbitrator's own part.

25. The liability of Ferrier Hodgson and the partners and employees of Ferrier Hodgson for any act or omission in connection with any arbitration conducted under these rules (other than in relation to a breach of their confidentiality obligations) shall be limited to $250,000 jointly.

26. The liability of DMR Group Australia Pty Ltd and the directors and employees of DMR Group Australia Pty Ltd for any act or omission in connection with any arbitration conducted under these rules (other than in relation to a breach of their confidentiality obligations) shall be limited to $250,000 jointly.

Return of Documents after Arbitration

27. Within 6 weeks of publication of the Arbitrator's award, all documents received under this Procedure by the parties the Administrator, the Resource Unit and/or the Arbitrator and all copies thereof, shall be returned to the party who lodged such documents.

d/fja406601

Hunt & Hunt
LAWYERS

Partners
Edward S Boyce
James C.F. Harrowell
Christine A. Gailey
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Irwin
Wayne B. Cahill
Neville G.H. Debney
Grant D. Sefton
Charles Veevers
Andrew Logie-Smith

Consultants
Kenneth M. Martin
Richard J. Kellaway

Associates
Peter A. Comish
Shane C. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Callichio
Roy Seit
Randal P. Williams

FACSIMILE TRANSMISSION

Our Ref: GLH
Matter No: 5122795

Date: 19 April 1994

To: MR. WILLIAM HUNT

Fax No: 670 6598

From: CAROLINE FRIEND

Subject: TIO ARBITRATION PROCEEDURE

Further to my telephone discussion with Mr. Graham Schorer of todays date, at his request, I attachfor your attention a copy of the "Fast Track" Arbitration Procedure of 31st March 1994.

File
Solicitor
COT Cases

Yours faithfully,
Hunt & Hunt
HUNT & HUNT

Att.

melbourne
sydney
sydney west
brisbane
canberra
newcastle
represented in
adelaide
darwin

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Facsimile: (61-3) 614 8730. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.

Hunt & Hunt
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James G.P. Harrowell
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Ian S. Craig
Peter J. Ewin
Wayne B. Cahill
Neville G.H. Debney
Grant D. Sefton
Charles Veevers
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Consultants
Kenneth M. Martin
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Associates
Peter A. Cornish
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Gallichio
Roy Sait
Randal P. Williams

FACSIMILE TRANSMISSION

Our Ref: GLH
Matter No:

Date: 19 April 1994

To: MR GOLDBERG

Fax No: 670 8389

From: CAROLINE FRIEND

Subject: TIO ARBITRATION

Further to my telephone discussion with Mr. Graham Schorer of todays date, please find attached "Fast Track" Arbitration Procedure as of 31st March 1994 for your attention.

Yours faithfully
Hunt & Hunt
HUNT & HUNT

Att.

We are transmitting 20 (twenty) pages (including this cover sheet). If you have problems with this transmission call

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13

not strictly liable or has no obligation to pay, due to a statutory immunity covering that period or periods, Telecom Australia should, having regard to all the circumstances relevant to the Claimant's claim, pay an amount in respect of such a period or periods and, if so, what amount.

10.1.2 set off against any amounts found by the Arbitrator to be otherwise owing by Telecom Australia to the Claimants any amounts paid to, rebates granted to, or services carried out for the Claimant by Telecom Australia to date.

10.2 In relation to the Claimant's loss, the Arbitrator:

10.2.1 will take into account the Claim and Defence Documents, any Reply and supporting documents, written evidence and submissions made by the parties and, if applicable, any sworn or affirmed oral evidence presented to the Arbitrator by the parties to the arbitration together with any information obtained by the Resource Unit or any advice given to him by the Resource Unit.

10.2.2 will make a finding on reasonable grounds as to the causal link between the alleged service difficulties, problems and faults in the provision to the Claimant of telecommunication services and the losses claimed and, as appropriate, may make reasonable inferences based upon such evidence as is presented by the parties together with any information obtained by

14

Mr Paul Rumble
National Manager-Customer Response Unit
Telecom Australia
Level 8
242 Exhibition Street
Melbourne Victoria 3000

by being delivered by hand or sent by prepaid mail.

Liability of Administrator and Arbitrator

24. Neither the Administrator, the Arbitrator, the Special Counsel, a partner or employee of the legal firm of which the Special Counsel is a partner, a member of the Resources Unit, Ferrier Hodgson or a partner or employee of Ferrier Hodgson, DMR Group Australia Pty. Ltd. or a Director or employee of DMR Group Australia Pty. Ltd. shall be liable to any party for an act or omission in connection with any arbitration conducted under these Rules or involved in the preparation of these Rules save that the Arbitrator (but not the Administrator) shall be liable for any conscious or deliberate wrongdoing on the Arbitrator's own part.

Return of Documents after Arbitration

25. Within 6 weeks of publication of the Arbitrator's award, all documents received under this Procedure by the parties the Administrator, the Resource Unit and/or the Arbitrator and all copies thereof, shall be returned to the party who lodged such documents.

Conflict of Rules

26. In the event of any inconsistency between these rules and the provisions of the Act, these rules shall prevail to the extent of that inconsistency.

COPY

GOLDEN
Transport Agency

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 046

IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT. It is in your interests to read them to avoid any later confusion.

To:	Dr. Gordon Hughes	Date:	25 May 1994
Company:	The Arbitrator for Telecom / COT Cases "FAST-TRACK" arbitration procedure incorporating the FAST-TRACK SETTLEMENT PROPOSAL.	Fax No:	03 614.8730
From:	Graham Schorer	Total Pages (incl. Header)	2.

MAILED: YES (X) NO ( )

Dear Dr. Hughes,

Due to circumstances and events experienced beyond the direct and/or indirect control of Graham Schorer plus other related claimants, companies etc., I am formally applying for an extension of time on behalf of Graham Schorer plus other related claimants, companies etc., pursuant to Clause 7.1 in the "Fast-Track" arbitration procedure to enable Graham Schorer plus other related claimants, companies etc. to finalise their interim claim for losses due to telephone service difficulties, problems and faults experienced.

In this letter henceforth, please accept that all that is stated relates to and includes both Graham Schorer and the other related claimants and companies connected with him.

It is respectfully requested that an extension of time to submit the interim Statement of Claim be granted to at least 15 June next.

The reason for the request are as follows:-

1. A substantial burglary in Golden's premises on the 4 March, 1994 and the theft of vital equipment and records.

2. The inability of suppliers to replace the equipment until 17 April 1994.

3. The consequent difficulties in conducting any business accentuated by external auditors commencing part of their annual audit from 9 May last.

4. The requirement commencing from 2 May, 1994 to devote the entire staff as fully as possible to maintain a substantial part of its business with Westpac Bank and add A.N.Z.'s business. Competitive quotations had been called for by the A.N.Z. Bank.

   Should Golden's quote be considered to be of great merit, placing Golden on the A.N.Z short list of selection.

   Golden will be required to become immediately immersed in an extensive exercise requiring long hours to finalise a massive transport logistic exercise, which will involve Golden's current customer Westpac and the A.N.Z. to determine what additional savings can be enjoyed by A.N.Z. *(and Westpac)* as a result of Golden being able to provide to both A.N.Z. and Westpac shared services where appropriate without loss of service standards.

   Since the initial indicators of savings to be identified in engaging in such a potential time and resource consuming logistic exercise to confirm the belief of a minimum of 15% up 20 - 25% savings to both parties, where a future need may arise to substantiate savings to be gained of this magnitude on a

15

Voice: (03) 287 7099 Fax: (03) 287 7001

493-495 Queensberry Street, NORTH MELBOURNE VIC. 3051

potential contract exceeding $1,000,000.00 just may be the deciding factor on who will be finally selected.

Should such a major opportunity present itself to Golden in the near future where the time and resources of Golden have to be dedicated to meet this commitment, interferes or prevents Graham Schorer and other related claimants, companies etc., from being able to complete their interim claims for losses due to telephone service difficulties, problems and faults,

Graham Schorer will immediately notify the Arbitrator in writing to seek a further extension.

Being engaged in this extensive exercise to date, required long hours to finalise such a massive transport quotation to the A.N.Z. Bank have seriously compromised my ability to produce the interim Statement of Claim up to this point.

5. The inability to commence using outside resources to assist in preparation of the interim Statement of Claim etc. until such time as they are in receipt of new confidentiality clauses.

The equipment stolen on 4 March comprised:-

(a) One of two word processors with its laser printer and back up disks containing Golden's sales quotas, customer agreements, facsimiles and all of the correspondence facsimiles and most of the documentation relating to telephone service difficulties, problems and faults in relating to our present claim.

(Another processor with its back up disks which contained no information relating to the telephone service difficulties was not interfered with.)

(b) The facsimile machine, micro film and reading equipment, computer modems.

To retain insurance cover, and make good the damage caused by the burglary, the entrance door had to be replaced, and steel surrounds provided to repair structural damage to the buildings. As well as other repairs a new automatic alarm system also had to be procured and installed on 20 May, 1994.

The burglary, the loss of equipment, the time taken to replace it and the time taken to re-create files, reports, correspondence etc. *(with significant amounts of information nevertheless being permanently lost)* have had incalculable adverse effect on efficiency and the proper conduct of business generally.

The requirements to, maintain contact with customers, to maintain and gain new additional professional principle carriers.

If any further information or explanation is required to support this application, would you please kindly contact me as soon as possible.

Yours sincerely,

Graham Schorer

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AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

10 June 1994

Mr S Black
Group General Manager
Customer Affairs
TELECOM.

Facsimile No: (03) 632 3241

Dear Mr Black

COT CASES

AUSTEL is continuing to receive complaints as to the quality of service from a number of the COT Cases

- Mr [redacted] at Cape Bridgewater continues to express concern about his ability to receive and send facsimiles
- Mr Schorer at North Melbourne continues to claim that customers are reporting an inability to make a successful phone call to his business
- Mr [redacted] is likewise claiming that he is not receiving calls on his business number and that he is at times still being subjected to drop out; he also claims problems in receiving calls via the mobile service as well as false busy. Additionally, he is still receiving calls meant for other customers.

In these circumstances, and given your apparent advice to Mr Schorer that his service is operating satisfactorily, AUSTEL considers there is a need for objective data as soon as possible and accordingly, if it has not commenced, you are asked to apply the service verification tests to these services immediately. AUSTEL's Chief Operating Officer has confirmed that the detail negotiated with Mr [redacted] is accepted.

Please comment on the service claims made above.

Your comment on the further points raised by Mr [redacted] is also requested

- is a pre-fab replacement or substitute exchange being installed at Devlin's Bridge?
- if so please provide detail and rationale and date of

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16A

5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 828 7100 FACSIMILE: (03) [illegible]

commissioning

- have complaints been received from customers at Glenburn that their last account is 2 or 3 times the normal level and if so what is the cause?

Finally, in the course of the COT Inquiry Telecom undertook to standardise a form of words to be used in advising customers about liability. The attached letter dated 31 May 1994 from Sheridan Bailey does not use the wording advised to AUSTEL and remains a misleading and incomplete statement. Your comment is sought as well as an assurance as to how staff are being made aware of Telecom's obligation to cease this practice.

Yours sincerely

John MacMahon
General Manager
Consumer Affairs

Encl:

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Recommendation 25: *Telecom commit itself to rectify the majority of difficult network faults which reduce the level of service below a level determined by AUSTEL within three to six months and all within a period of twelve months.*

168

Telecom Update - July 1994 Quarter
Telecom's fault rectification standards are outlined in Section 3.6 of the Public Switched Telephone Service (PSTS) Tariff. These standards state that "Telecom will repair telephone services by the date agreed with the customer. Telecom aims to repair services in accordance with the following standard: (i) In urban areas within one (1) working day of being notified of a fault. (ii) In rural areas within two (2) working days of being notified of a fault. (iii) In remote areas within three (3) working days of being notified of a fault." These rectification requirements are meant for all customers, including DNF customers. Telecom has also scheduled the DNF customers for Service Verification Tests to objectively confirm that their services meet an appropriate performance standard. Telecom's comment on an appropriate standard of service for an individual telephone service are included under Recommendation 26.

AUSTEL Comment
The major issue in relation to the PSTS tariff and Difficult Network Faults (DNF) is the means of determining whether the fault rectification objectives have been realised for DNF customers. (This issue shares many similarities with Recommendation 2). In the near future AUSTEL will be discussing with Telecom the practicality of instituting a reporting regime which reports against the achievement of these PSTS standards specifically for DNF customers. AUSTEL notes that DNF customers have characteristically reported recurring faults over extended periods of time. Clarification will be required of the definition of "service repairs" when a fault recurs after initially having been determined as "repaired". This issue will need to addressed in the context of this recommendation. Issues to do with the Service Verification test are discussed under Recommendation 41.

Recommendation 26: *Telecom devise plans with time-frames for resolving difficult network faults which reduce the level of service below a level determined by AUSTEL and inform its customers accordingly (cf: Coopers & Lybrand Recommendation 24, Bell Canada International's Rotary Hunting Group Study Recommendation 8.2).*

16C

Telecom Update - July 1994 Quarter	AUSTEL Comment
A priority list for verification tests has been prepared based on a number of criteria. It was not Telecom's understanding that the 6/12 rectification period for existing DNF customers commenced on 30 May 1995. Arrangements are currently in place for the existing DNF customer's services to be subjected to Service Verification Testing before 30 May 1995 in accordance with the requirements of Recommendation 25. In addition, arbitration procedures have been put in place and the DNF customers referred to Telecom by Austel have been offered the opportunity to lodge a claim under these procedures. I note that the Austel correspondence received on 18 May 1994 refers to a "minimum standard envisaged for an individual service is 95% successful completion of calls for STD services and 97% for all local calls." This proposed standard raises a number of issues for Telecom which need to be resolved with Austel. The question of individual service standards has been a subject of a comprehensive review of a working party involving Austel and the industry, and is currently being dealt with in that forum. Moreover, the issue of individual service standards raises complex issues, including the issue of different performance standards for different equipment types which reflect original design parameters for that equipment. As indicated in the Austel briefing of 5 July 1994, Telecom proposes to meet further with Austel with the aim of co-coordinating the various Austel initiatives on individual service measures and standards, establishing the relationship between the Austel requirements for definition of individual service performance measures and finalising measures which are acceptable to all parties. Each of the telephone services of the DNF customers will also be scheduled for Service Verification Testing to objectively establish their current level of service.	Several issues pertaining to this recommendation require further discussion and agreement. AUSTEL will require Telecom to provide detail on the "priority list" for Service Verification Tests once these issues have been finalised. An issue relating to Telecom's requirement to rectify all Difficult Network Faults (DNF) within 12 months and the role of the Service Verification Tests (SVT) in the determination of the adequacy of a DNF service is that the SVT clearly have to be conducted well before 30 May 1995 to meet the requirement of recommendation 25. For example, if the SVT indicate an unacceptable level of service then a considerable amount of time may be required to rectify the service in question, particularly if major replacement of exchange equipment is required to bring the service to the accepted standard.

[redacted]

FYI Gary, Phil

Telecom AUSTRALIA

COMMERCIAL AND CONSUMI
CUSTOMER AFFAIRS
37/242 EXHIBITION STREET
MELBOURNE
VICTORIA 3000
Australia
Telephone (03) 632 77
Facsimile (03) 632 32

11 July 1994

FAXED
..1./.7.../..94

Mr Warwick Smith
Telecommunications Industry Ombudsman

Facsimile No. 277 8797

Dear Mr Smith

The purpose of this letter is to confirm our discussion of 7 July 1994 at which Telecom outlined a proposal to provide confidential information to the arbitrator subject to the confidentiality provisions of the Rules of Arbitration governing the claims of the four COT claimants.

As discussed, it is proposed that Telecom will provide to the arbitrator a series of confidential reports which the arbitrator may then make available to the four COT claimants subject to the confidentiality provisions of the Rules of Arbitration. It is understood that, if the arbitrator makes this information available to the COT claimants, they will be required to keep the information confidential and return all copies of such documents and material to Telecom at the end of the arbitration.

Telecom will also make available to the arbitrator a summarised list of information which is available, some of which may be relevant to the arbitration. This information will be available for the resource unit to peruse. If the resource unit forms the view that this information should be provided to the arbitrator, then Telecom would accede to this request. It is recognised that this information may then be made available to the four COT claimants, subject to the confidentiality provisions of the Rules of Arbitration.

Yours faithfully

M3427t

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

17A

PART II—APPOINTMENT OF ARBITRATORS AND UMPIRES

6. *Presumption of single arbitrator*

s. 6 substituted by No. 15/1993 s. 7.

An arbitration agreement shall be taken to provide for the appointment of a single arbitrator unless—

(*a*) the agreement otherwise provides; or

(*b*) the parties otherwise agree in writing.

7. *Presumption as to joint appointment of arbitrator*

Unless otherwise agreed in writing by the parties to the arbitration agreement, an arbitrator who is to be appointed for the purposes of an arbitration to be conducted under an arbitration agreement shall be jointly appointed by the parties to the agreement.

8. *Default in the exercise of power to appoint an arbitrator*

(1) Where a person who has a power to appoint an arbitrator defaults in the exercise of that power, a party to the relevant arbitration agreement may, by notice in writing—

(*a*) require the person in default to exercise the power within such period (not being a period of less than seven days after service of the notice) as may be specified in the notice; and

(*b*) propose that in default of that person so doing—

(i) a person named in the notice ("a default nominee") should be appointed to the office in respect of which the power is exercisable; or

(ii) specified arbitrators (being the arbitrators who have prior to the date of the notice been appointed in relation to the arbitration) should be the sole arbitrators in relation to the arbitration.

(2) A notice under sub-section (1) (or, where appropriate, a copy of the notice) must be served upon—

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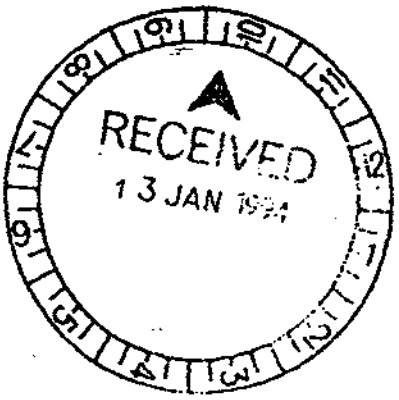

Telecom
AUSTRALIA

Commercial & Consumer 128
Customer Affairs

Locked Bag 4960
Melbourne Vic 8100

Telephone (03) 632 7700
Facsimile (03) 632 3241

11 January, 1994

Mr Warwick Smith
Telecommunications Industry Ombudsman
Ground Floor
321 Exhibition Street
MELBOURNE VIC 3000

Dear Warwick,

I have attached for your information a copy of a letter sent to AUSTEL providing the results of two additional studies undertaken by Telecom to test the Rotary Hunting Groups and to provide supplementary inter-exchange network tests and the details of the tests. The additional testing was undertaken to provide further information on the reliability of the telecommunications services provided to those customers complaining of difficult network faults.

As you will see from the attached letter, the documents are rated "Commercial in Confidence" and are provided for the information of the TIO and not for release or disclosure to third parties without the permission of Telecom Australia. I would ask that this rating of the documents be respected.

It is anticipated that the release of these documents to the four customers currently proposed for the fast track arbitration process will be agreed at an appropriate time in consultation with yourself. The timing of the release can be finalised once the assessor has been appointed and the procedures for the arbitration have been agreed.

I also wish to confirm to you my previous advice regarding arrangements made with AUSTEL for the release of documents obtained from Telecom to the four customers currently proposed for the Fast Track arbitration process.

It was agreed at a meeting between Mr. Graeme Ward and Mr. Steve Black of Telecom and Dr Bob Horton and Mr Neil Tuckwell of AUSTEL on 7 January 1994 that:

- Information obtained from Telecom, in the course of AUSTEL's regulatory functions, and relevant to any parties involved in a formal arbitration process with Telecom under the control of the Telecommunications Industry Ombudsman (TIO) will only be released after consultation with the TIO and Telecom.
- The AUSTEL draft report will be expedited to ensure that it is available at an early stage of the arbitration process.
- The AUSTEL draft report will be released to the parties involved in the fast track arbitration process for comment in accordance with a process agreed with the TIO, and only after each party has signed a formal document committing to keeping the contents of the report confidential and giving an undertaking not to comment either privately or publicly on the report until after it has been released publicly by AUSTEL.

Yours sincerely,

17c

Steve Black
GROUP GENERAL MANAGER - CUSTOMER AFFAIRS

Telecom AUSTRALIA

ATTACH 4

Paul J Rizzo
Group Managing Director
Policies and Administration
242 Exhibition Street
Melbourne Vic 3000 Australia
Telephone 03) 204 9901
Sydney 02) 284 9901
Facsimile 03) 204 9919

11 January, 1994

Dr R Horton
Acting Chairman
AUSTEL
PO Box 7443 St Kilda Road
Melbourne Vic 3004

Dear Dr Horton

VOICE MONITORING

As you would be aware, there has been substantial media comment on Telecom's action in recording the telephone calls on the services of Mrs Gillan and Mrs Garms in the context of a detailed fault investigation. Information was received at about 4.30 pm on 5 January 1994 from the Australian Financial Review that the AFR was in possession of documents from AUSTEL which advised that this monitoring had taken place and these documents formed the basis of the AFR's question and subsequent public comment on the matter.

I have now received a letter from Mr MacMahon (copy attached) confirming that he advised both Mrs Garms and Mrs Gillan that Telecom had undertaken recording on their services. These letters were based on information provided by Telecom on the 24th December 1993.

Telecom's primary concern is that the information was released to a party that is currently involved with a dispute with Telecom, and who has entered into a formal arbitration process to resolve that dispute. The action taken has inflamed the dispute, aggravated the parties, led the parties to actively seek to raise the dispute to public comment and has put at risk the arbitration process.

The release of the information in these circumstances raises issues of principle which need to be resolved. Under the circumstances it was inappropriate for this information to be released in this way. Once a quasi judicial process such as the agreed arbitration

[redacted]

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process has been entered into, information which may be material to that process should only be released through that process [redacted]. As AUSTEL participated with Telecom in the establishment of that process it is clear that AUSTEL was fully aware of the existence of the process and the formal agreement between the parties.

[redacted] is Telecom's view that arrangements should be put in place to ensure that information gained from Telecom in the course of AUSTEL's regulatory functions is only released in an appropriate way. To this end I wish to confirm the agreement reached between [redacted] and [redacted] in a meeting with you and Mr Neil Tuckwell today that:

- Information obtained from Telecom, in the course of AUSTEL's regulatory functions, and relevant to any parties involved in a formal arbitration process with Telecom under the control of the Telecommunications Industry Ombudsman (TIO) will only be released after consultation with the TIO and Telecom.

- The AUSTEL draft report will be expedited to ensure that it is available at an early stage of the arbitration process.

- The AUSTEL draft report will be released to the parties involved in the fast track arbitration process for comment in accordance with a process agreed with the TIO, and only after each party has signed a formal document committing to keeping the contents of the report confidential and giving an undertaking not to comment either privately or publicly on the report until after it has been released publicly by AUSTEL.

Yours sincerely

[redacted]

GROUP MANAGING DIRECTOR
FINANCE & ADMINISTRATION

A10256

17C

Telecommunications
Industry
Ombudsman

Warwick I. Smith LLB
Ombudsman

[redacted]

Ms Fiona Hills
Manager, Serious Disputes
Commercial and Consumer Customer Affairs
Telecom
Locked Bag 4960
MELBOURNE VIC 8100

Dear Fiona

I am enclosing a complaint received from Mr A Smith, proprietor of the Cape Bridgewater Holiday Camp. Mr Smith believes there is some fault(s) with his service which has resulted in callers reporting to him they have had difficulty in contacting him on his service number. He has also cited an example where facsimile transmissions have been sent but not apparently received by the recipient even though his facsimile machine report shows a successful transmission.

I would be grateful if you would investigate his complaint under the agreed complaint handling procedures and provide me with a prompt response on your findings.

Yours sincerely

Grant Campbell
Manager, Enquiries and Complaints

gc0046:cc

17D

M34363

Faxed details to Vic/Tas Regan

Telecommunications
Industry
Ombudsman

Warwick L Smith LLB
Ombudsman

February 9, 1994

Ms. Fiona Hills
Manager, Serious Disputes
Commercial and Consumer Customer Affairs
Telecom
Locked Bag 4960
MELBOURNE VIC. 8100

Dear Fiona,

Re: Alan Smith
Cape Bridgewater Holiday Camp
Loss of Fax Capacity

I spoke with Alan Smith on the 9th instant following our discussion on the 8th instant.

He has agreed that this is a new matter and whilst it may be indicating some ongoing problems, it is not a matter that relates directly to the preparation of his material to be presented to the Assessor.

I understand that the facts of this matter relate directly to loss of faxing capacity. Grant Campbell holds the file in this office.

Yours sincerely,

Warwick L. Smith
Ombudsman

Per:

M34361

17E

"... providing independent, just, informal, speedy resolution of complaints."

TIO LTD ACN 057 634 787
National Headquarters
321 Exhibition Street
Melbourne Victoria

Box 18098
Collins Street East
Melbourne 3000

Telephone (03) 277 8777
Facsimile (03) 277 8797
Mobile 018 591 208

10/1/95

Doc "R"

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

July 10, 1995

Our Ref: D/95/17

Mr. Grant Campbell
Case Officer
Customer Response Unit
Office of Customer Affairs
Telecom Australia
Level 2/242 Exhibition Street
MELBOURNE VIC. 3000

Dear Grant,

Re: Ken Ivory Industries - Dispute

Thank you for your attendance on Thursday 6 July with Stephen Meade at the TIO. I write to confirm the requirement of the Ombudsman that the questions posed in my letter of 30 June, 1995 be replied to in writing prior to a briefing by your 1800 expert.

I am sorry if this involves you with additional work that may perhaps otherwise not have been necessary, but I am sure that you will appreciate the need for us to be as fully briefed as possible.

Yours sincerely,

Wally Rothwell
Deputy Ombudsman

17F

TIO LTD ACN 057 634 787
National Headquarters
321 Exhibition Street
Melbourne Victoria

Box 18098
Collins Street East
Melbourne 3000

Telephone (03) 9277 8777
Facsimile (03) 9277 8797

Telecom AUSTRALIA

Customer Response Unit
Commercial and Consumer
8/242 Exhibition Street
Melbourne 3000, Victoria

Tel: 03 634 8736
Fax: 03 634 8441

12 July, 1994

Mr Graham Schorer
Golden

By Facsimile: 287 7001

Dear Mr Schorer

I refer to our telephone discussion of last night wherein I indicated that I regarded the onus being on you at this point to advise Telecom which of the documents you required from the schedules that we provided to you at the meeting that you attended last Thursday, 7 July 1994.

I confirm my understanding that you wished to make an informed decision as to which documents were required and that you might take a few days in order to make an informed decision. I would appreciate your response at your earliest convenience so that the recent progress that we have achieved towards resolving your outstanding concerns can be maintained.

With respect to my advice to you that no analysis has been undertaken by Telecom on your System 10 data, a sample of which was provided for your assessment at the meeting on Thursday, 7 July, I wish to advise that I have taken steps today to have developed an Interpretative Manual which will hopefully assist you to undertake your own analysis of this data. At this stage, I cannot commit to a definite timetable within which the Manual will be available, but I will advise you in due course.

I await your further advice as to which documentation you require and I have organised for the material to be processed so that it can be made available to you at the earliest opportunity once I receive your advice.

Yours faithfully,

Paul Rumble
General Manager, Customer Response Unit

sch12794

18

FAXED 9/8/94

GOLDEN
Transport Agency

13-56

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 046

IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT. It is in your interests to read them to avoid any later confusion.

To:	Dr Gordon Hughes Arbitrator for the Fast Track Arbitration Procedure	Date: Our Ref:	9 August 1994 1123
Company:	Hunt & Hunt	Fax No:	
From:	Mr Graham Schorer	Total Pages (incl. Header)	2

MAILED: YES ( ) NO ( )

Dear Dr Hughes

RE: FAST TRACK ARBITRATION PROCEDURE

I am writing to you to confirm what progress has been made to date regarding documents being received under the three different F.O.I. applications.

On 14 April 1994 two boxes of documents, not processed in accordance with the procedures of the F.O.I. act, were delivered to my premises, outside the F.O.I. Act. Many of the documents were illegible and have not been resupplied in accordance with our official request and is part of the many complaints lodged with the Commonwealth Ombudsman's Office. These two boxes contained approximately 2200 documents, over 55% of which were raw data (ie over one box).

On 15 July 1994 five boxes of documents were delivered to my premises, outside the F.O.I. Act. These five boxes consisted of one box of documents and four of raw data.

On 29 July 1994 eight boxes of documents were delivered to my premises, under the F.O.I. Act. These eight boxes consisted of two boxes of Schorer's documents, two boxes of raw data, four boxes contained documents in relation to other C.o.T. Case Australia members F.O.I. applications.

A meeting between Telecom and myself on Wednesday 3 August 1994 was convened and agreed to on the basis that Telecom were prepared to discuss all of the unresolved issues regarding the three F.O.I. Applications.

Telecom agreed to such a meeting under false pretences, as they refused to discuss the agreed to unsupplied documents and other unresolved issues in relation to the three F.O.I. Applications at the meeting. These three F.O.I. Applications being:

- Graham Schorer, other related entities, companies, etc F.O.I. Application lodged with Telecom on 23 November 1993.
- C.o.T. Cases Australia F.O.I. Application lodged with Telecom on 22 February 1994.
- Graham Schorer (the person) F.O.I. Application lodged with Telecom on 21 April 1994.

19

493-495 Queensberry Street, NORTH MELBOURNE VIC 3051

FAXED 9/8/94 13:56

GOLDEN
Transport Agency

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 008 905 046

IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT. It is in your interests to read them to avoid any later confusion.

To:	Dr Gordon Hughes Arbitrator for the Fast Track Arbitration Procedure	Date: Our Ref:	9 August 1994 1124
Company:	Hunt & Hunt	Fax No:	
From:	Mr Graham Schorer	Total Pages (incl. Header)	10

MAILED: YES ( ) NO ( )

Dear Dr Hughes

RE: FAST TRACK ARBITRATION PROCEDURE

I have enclosed a facsimile from Telecom received at my premises on 26 July 1994 at 11.41 pm.

This facsimile states that Telecom has forwarded all of the documents that fall within my F.O.I. Applications to the T.I.O. for onforwarding to the Arbitrator.

Would the Arbitrator please advise in writing as to what date the documents were delivered to the Arbitrator's premises. Also please advise myself as to what arrangements that I need to comply with for the viewing of the same documents.

It should be noted that in Point 5, Paragraph 3, Page 2 of the above facsimile from Telecom, where Telecom unconditionally informed myself that, "The FOI exemptions which have been applied to the documents will not apply to any of the documents provided under the rules of the arbitration." which was accepted by myself in correspondence dated 29 July 1994 (Our Ref: 1104 - page 4, referring to point 5, Paragraph 3). (A copy of this correspondence referred to is enclosed with this facsimile.)

Yours respectfully

Graham Schorer

20

493-495 Queensberry Street, NORTH MELBOURNE VIC. 3051

Of the thirty two thousand (32,000) documents received (excluding the raw data and other C.o.T. Case Australia Members applications - which is the majority) documents relating to the Graham Schorer and Golden Application consist of many duplicate copies and does not represent all of the documents applied for under the two F.O.I. Applications, being 24 November 1993 and 21 April 1994.

I will advise the Arbitrator in writing what action I intend to take to ensure that I am correctly supplied with the required documents that I have requested under the F.O.I. Applications, as the documents supplied do not contain all of the fault reports, investigations, and early monitoring data referred to in some of the existing documents, therefore preventing me and my advisors from commencing compiling my submission and claim substantiated with supporting documentation.

Yours respectfully

Graham Schorer

20

493-495 Queensberry Street, NORTH MELBOURNE VIC. 3051

See Response 15/8/94 ✓ RF.

Hunt & Hunt
LAWYERS

COPY

Partners
Edward S Bovce
James C F Harrower
Christine A. Gailey
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter I. Ewin
Wayne B. Cahill
Neville G.H. Debney
Grant D. Setton
Charles Veevers
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William P. O'Shea

Consultants
Kenneth M. Martin
Richard J. Kellaway

Associates
Shane C. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Gallichio
Roy Seit

11 August 1994

Our Ref: GLH
Matter No:
Your Ref:

BY FAX: 287 7001

Mr Graham Schorer
Golden Messenger
493-495 Queensberry Street
North Melbourne VIC 3051

Dear Sir

ARBITRATION - TELECOM

I acknowledge receipt of your facsimile dated 9 August 1994.

No documents of the nature which you describe have been delivered to me.

As to the progress of this arbitration in the immediate future, you will recall I originally elected to put the matter in abeyance until 27 July 1994. Since that date I have been aware the parties have continued discussions regarding your FOI applications.

You indicated to me in our telephone discussion of 5 August 1994, and you foreshadow in your second facsimile dated 9 August 1994, that in your opinion these discussions are not progressing satisfactorily and you are considering your options as to an appropriate course of action.

I do not wish this claim to remain in abeyance indefinitely. Whilst it is important that you have the opportunity to access all relevant material, it is incumbent upon you, in accordance with the spirit of the arbitration process, to promptly analyse collate and process all such material as it becomes available.

I do not wish to become directly (or even indirectly) involved in your FOI application. At the same time I cannot ignore the fact that your FOI application is relevant, or may be relevant, to the proper submission of your claim. There may nevertheless come a point in time when you will need to convince me as to the relevance of any outstanding FOI request if I am to continue to extend the deadline for the submission of your Claim Documentation.

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sydney west
brisbane
canberra
newcastle
represented in
adelaide
darwin

Level 21, 459 Collins Street, Melbourne 3000, Australia. **Telephone:** (61-3) 614 8711.
Facsimile: (61-3) 614 8730. **G.P.O. Box 1533N**, Melbourne 3001. **DX 252**, Melbourne.

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21

I intend reviewing this matter further on 1 September next and I would appreciate a report from both you and Telecom at that time concerning the progress of your FOI applications and any other matters which the parties need to resolve between themselves as a precursor to the submission of your claim under the arbitration process.

Yours sincerely

GORDON HUGHES

CC P Rumble, W Smith, P Bartlett, J Rundell

Is Section 70 of the Crimes Act 1914 being exploited by public officials to the determent of Australia's constitution?

Did AUSTEL breach their statutory obligation under Section 335 or 342 of the Telecommunication Act 1991 No 98 of 1991?

Mr Graeme Samuel, AO
Chairman
Australian Competition & Consumer Commission



Exhibits 21 to 28

See Response 15/8/94 ✓ LF.

Hunt & Hunt
LAWYERS

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Edward S Bovce
James G F. Harrower
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11 August 1994

Our Ref: GLH
Matter No:
Your Ref:

BY FAX: 287 7001

Mr Graham Schorer
Golden Messenger
493-495 Queensberry Street
North Melbourne VIC 3051

Dear Sir

ARBITRATION - TELECOM

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You indicated to me in our telephone discussion of 5 August 1994, and you foreshadow in your second facsimile dated 9 August 1994, that in your opinion these discussions are not progressing satisfactorily and you are considering your options as to an appropriate course of action.

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I do not wish to become directly (or even indirectly) involved in your FOI application. At the same time I cannot ignore the fact that your FOI application is relevant, or may be relevant, to the proper submission of your claim. There may nevertheless come a point in time when you will need to convince me as to the relevance of any outstanding FOI request if I am to continue to extend the deadline for the submission of your Claim Documentation.

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21

I intend reviewing this matter further on 1 September next and I would appreciate a report from both you and Telecom at that time concerning the progress of your FOI applications and any other matters which the parties need to resolve between themselves as a precursor to the submission of your claim under the arbitration process.

Yours sincerely

GORDON HUGHES

CC P Rumble, W Smith, P Bartlett, J Rundell

COPY

Hunt & Hunt
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Associates
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Gallichio
Roy Sett

7 September 1994

Our Ref: GLH

Matter No:

Mr Graham Schorer
Golden Messenger
493-495 Queensberry Street
North Melbourne VIC 3051

Dear Mr Schorer

TELECOM - ARBITRATION

I refer to our telephone discussion today in which you indicated you did not believe your FOI application could progress until the Commonwealth Ombudsman delivers a report regarding the matter.

It was never my intention that the submission of your claim be deferred indefinitely pending completion of your FOI claim. I have sought to avoid the costs and inefficiencies involved in a substantial amendment to your claim in the event that a significant amount of material becomes available after the claim is formally submitted. It has been my preference, therefore, to provide you with a reasonable opportunity to complete your FOI claim so that all relevant material can be submitted at the one time.

As it is becoming clear that your FOI claim is unlikely to be resolved to your satisfaction in the short term, I am now inclined to the view that the integrity of the arbitration procedure would be best preserved if I require you to formally submit your claim on the basis of material presently available to you. Further material may subsequently become available to you, whether through discovery or by some other means, which might justify an amendment. Although this would necessitate delays at that point, I believe it would be preferable to the present impasse which is serving the interests of neither party.

I propose reviewing this matter on 1 October 1994. Unless I can be convinced on that date that the full and final resolution of your FOI claim is imminent, I will require you to complete the submission of your claim on the basis of material presently at hand within a time frame to be stipulated.

Yours sincerely

GORDON HUGHES

cc P Rumble, W Smith, P Bartlett, J Rundell

melbourne
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FAX FROM: ALAN SMITH
C. O. T.

DATE: 18.9.94

FAX NO: 055 267 230

PHONE NO: 008 816 522

NUMBER OF PAGES (including this page)

FAX TO: MR JOHN WYNACK
INVESTIGATING OFFICER
COMMONWEALTH OMBUDSMAN'S OFFICE
CANBERRA

Dear Mr Wynack,

Telecom have again turned around a statement to benefit their charter, this time it is the statement regarding supply of the Bell Canada Testing Raw Data associated with testing at Cape Bridgewater to the Arbitrator, Dr. Gordon Hughes.

I originally requested this information under my F.O.I. application, 9 months ago. It is appalling for a company the size of Telecom to muster such thuggery against a small business person such as myself.

I have faxed to you a copy of a letter from Paul Rumble, Telecom Customer Response Unit. You will note that this raw data is discussed in the last two paragraphs of this letter. Mr. Rumble has quoted that Telecom has not yet been directed to supply any Bell Canada Raw Data. This shows that any information Telecom holds on this testing will only be supplied under the Arbitration Procedure.

Mr. Wynack, I am requesting the Commonwealth Ombudsman's Office to intervene on my behalf and direct Telecom to forward this information to Dr. Hughes under my F.O.I. request. Telecom know of the time structure I was working within from the beginning. I had no alternative but to finish my Arbitration Submission after 9 months, even though Telecom still have deliberately withheld not only the F.O.I. documents in question, but also vital Telecom documents which I applied for under our Australian democratic rights.

By not supplying the documents I needed Telecom management have hindered me in my preparation of this Fast Track Procedure, after all, the Assessor can only view what is before him. These delaying tactics are an Australian disgrace and will be a black mark against Telecom and those who chose to conjure and conspire to pervert the course of natural justice. I have evidence at hand that shows where Telecom have gone out of their way to hinder my claim. What we have here with C.O.T., are four ordinary small business people against the might of a huge corporation, but still Telecom are afraid to supply documentation under the F.O.I. act. What will this show the General Public in time to come?

Mr. Wynack, I stress the urgent need for you to intervene on my behalf and enforce my F.O.I. application, to demand that Telecom supply this Bell Canada Raw Data to Dr. Gordon Hughes under my F.O.I. request and not through the Arbitration Procedure.

Sincerely,

Alan Smith.

cc.

Dr. Gordon Hughes, Fast Track Arbitrator,
Hunt & Hunt, Lawyers, Melbourne

Mr. Paul Rumble, Customer Resource Unit, Telecom.

Mr. Warrick L. Smith, Telecommunication Industry Ombudsman.

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STOPDATE = (1994-09-30) ?
EXCEPTIONS-ONLY = (NO) ?
DATACHANNEL = (2) ?

UNSORTED DATA FROM MASS STORAGE

DIRECTORY	CALL CLASS	TIME	NUMBER DIALLED /RING/OPERATOR	WAIT	CONVERS. TIME	METERING
	DE LETE	940929 00:52:00	OPER: AUTODUMP			
	LOG					
	LOG OUT	940929 00:52:00	OPER: AUTODUMP			
	WAR NING	940929 00:52:17	DATACHANNEL DISC ONNECTED, ERROR ID.: 97, PARAMET ERS: 2,0			
267230	OAQ	940929 07:48:22	032851770	00:32	00:00:29	
267230	OAQ	940929 08:24:06	038761853	00:28	00:00:43	
267230	OAQ	940929 08:26:09	038761853	00:31	00:00:37	
267230	OAQ	940929 08:27:27	038761254	00:27	00:00:41	
267267	IA	940929 08:47:29	RINGINGS: 6	00:08	00:24:49	
267230	OAQ	940929 09:12:31	038761254	00:27	00:00:01	
267230	OAQ	940929 09:21:52	038761254	00:32	00:00:30	
267211	OUQ	940929 09:27:51	267298	00:18		
267230	OAQ	940929 09:27:47	0175	00:23	00:00:23	
267230	OUQ	940929 09:28:34	036704672	00:16		
267230	OUQ	940929 09:28:52	036704672	00:15		
267230	IU	940929 09:32:43	RINGINGS: 2	00:05		
267230	IU	940929 09:33:04	RINGINGS: 2	00:04		
267267	IA	940929 09:30:57	RINGINGS: 4	00:05	00:06:13	
267230	OAQ	940929 09:40:54	036704672	00:27	00:09:57	
267211	IA	940929 10:06:10	RINGINGS: 4	00:05	00:00:49	
267260	OAQ	940929 10:06:00	267211	00:29	00:00:45	
267260	OAQ	940929 10:10:58	1818	00:27	00:01:19	
267211	IA	940929 10:12:01	RINGINGS: 2	00:03	00:01:00	
267211	OUQ	940929 10:14:19	267260	00:04		
267260	OUQ	940929 10:13:44	18183113440331 13	00:50		
267260	OUQ	940929 10:16:21	081231	00:25		
267260	OAQ	940929 10:17:24	1818	00:24	00:01:12	
267211	IA	940929 10:18:18	RINGINGS: 2	00:03	00:00:44	
267267	IA	940929 10:47:23	RINGINGS: 6	00:09	00:00:52	
267211	OAQ	940929 10:56:16	038423040	00:25	00:01:38	
267260	OAQ	940929 10:49:14	1	04:10	00:07:04	
267211	IA	940929 10:59:58	RINGINGS: 8	00:12	00:01:23	
267211	IA	940929 11:01:43	RINGINGS: 2	00:02	00:01:15	
267260	OAQ	940929 11:00:55	18183113440389 24	00:54	00:01:12	
267230	OAQ	940929 11:07:04	232111	00:26	00:00:44	
267230	OAQ	940929 11:12:57	18183113440389 24	00:58	00:00:37	
267211	IA	940929 11:13:47	RINGINGS: 4	00:05	00:00:43	
267267	IU	940929 11:32:24	RINGINGS: 12	00:20		
267267	IA	940929 11:33:08	RINGINGS: 8	00:10	00:00:47	
267267	IA	940929 11:35:29	RINGINGS: 4	00:06	00:01:12	
267267	OAQ	940929 11:40:22	18183113440389 24	00:55	00:00:24	
267211	IA	940929 11:41:10	RINGINGS: 6	00:09	00:00:26	
267230	IA	940929 11:50:39	RINGINGS: 30	00:44	00:02:04	
267267	IA	940929 12:03:43	RINGINGS: 8	00:11	00:00:50	
267230	OAQ	940929 12:08:25	18183113440389 24	01:05	00:00:41	

23A

267211	IA	940929	12:10:55	RINGINGS: 2		00:03	00:00:53	
267230	OAQ	940929	12:10:12	18183113440389	24	00:54	00:00:47	
267267	IA	940929	12:14:03	RINGINGS: 4		00:05	00:00:36	
267211	OAQ	940929	12:14:01	267267		00:22	00:00:25	
267211	OUQ	940929	12:17:57	267267		00:17		
267267	IU	940929	12:18:00	RINGINGS: 10		00:16		
267267	IA	940929	12:19:03	RINGINGS: 4		00:06	00:00:03	
267211	OAQ	940929	12:19:00	267267		00:23	00:00:02	
267211	OUQ	940929	12:23:45	267267		00:23		
267267	IU	940929	12:23:49	RINGINGS: 14		00:22		
267267	IA	940929	12:25:03	RINGINGS: 2		00:03	00:00:59	
267211	OAQ	940929	12:24:59	267267		00:24	00:00:41	
267267	OAQ	940929	12:26:43	231722		00:28	00:01:22	
267267	OAQ	940929	12:28:33	234780		00:25	00:01:25	
267267	OAQ	940929	12:30:25	231722		00:27	00:03:05	
267267	OAQ	940929	12:48:43	231722		00:32	00:00:51	
267267	IA	940929	12:56:05	RINGINGS: 4		00:04	00:00:26	
267267	IA	940929	13:05:33	RINGINGS: 10		00:14	00:02:46	
267267	IA	940929	13:08:47	RINGINGS: 9		00:13	00:05:56	
267230	OUQ	940929	13:36:54	267267		00:07		
267267	IU	940929	13:36:59	RINGINGS: 2		00:04		
267230	OUQ	940929	13:40:47	18183113440389	24	00:53		
267230	OUQ	940929	13:41:43	18183113440389	24	00:38		
267230	OAQ	940929	13:42:23	18183113440389	24	00:54	00:01:06	
267230	IA	940929	13:44:44	RINGINGS: 4		00:04	00:01:54	
267230	IA	940929	13:47:18	RINGINGS: 10		00:14	00:03:38	
267230	OAQ	940929	14:05:25	036903322		00:34	00:00:09	
267260	OAQ	940929	14:06:37	18183113440389	24	00:54	00:01:46	
267260	OAQ	940929	14:09:36	18183113440389	24	00:47	00:00:09	
267230	OAQ	940929	14:08:54	036148711		00:31	00:01:11	
267230	OUQ	940929	14:11:01	074434022		00:17		
267230	OAQ	940929	14:12:07	032877099		00:25	00:00:02	
267260	IA	940929	14:10:51	RINGINGS: 10		00:14	00:05:17	
267267	IA	940929	14:16:01	RINGINGS: 8		00:10	00:00:20	
267260	IA	940929	14:16:41	RINGINGS: 10		00:13	00:02:28	
267230	OAQ	940929	14:15:38	078925040		00:26	00:15:01	
267267	IA	940929	14:39:09	RINGINGS: 6		00:08	00:00:09	
267230	OAQ	940929	14:39:50	036903322		00:29	00:00:04	
267260	IU	940929	14:40:18	RINGINGS: 11		00:19		
267230	IA	940929	14:40:50	RINGINGS: 4		00:05	00:00:41	
267267	IA	940929	14:41:21	RINGINGS: 4		00:05	00:00:12	
267230	OAQ	940929	15:07:49	074434022		00:31	00:00:20	
267230	OAQ	940929	15:13:23	032877099		00:22	00:01:26	
267230	OUQ	940929	15:15:11	062497444		00:29		
267230	OAQ	940929	15:15:41	062567777		00:28	00:07:00	
267267	IA	940929	15:31:10	RINGINGS: 4		00:06	00:00:07	
267230	OAQ	940929	15:23:21	008335526		00:31	00:11:27	
267267	OAQ	940929	15:35:24	036903322		00:33	00:02:24	
267230	OUQ	940929	16:01:20	032778777		00:22		
267267	IA	940929	16:06:08	RINGINGS: 6		00:07	00:05:21	
267267	IA	940929	16:14:09	RINGINGS: 6		00:08	00:00:16	
267230	OAQ	940929	16:24:10	032877099		00:24	00:00:39	
267267	IA	940929	16:39:15	RINGINGS: 6		00:09	00:46:18	
267230	OAQ	940929	18:02:07	057841375		00:27	00:02:00	
267230	OAQ	940929	18:05:20	053428357		00:27	00:00:29	
267230	OAQ	940929	18:06:35	053428591		00:29	00:04:54	
267267	IA	940929	20:33:41	RINGINGS: 7		00:10	00:04:15	
LOGIN		940930	00:50:15	OPER: AUTODUMP				
SET TIME		940930	00:50:12	OPER: AUTODUMP				

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5.5. Call Charge Analysis (CCAS)

Incoming & outgoing call traffic is recorded at the node (eg. Warrnambool) to allow billing of successful calls to take place.

Extensive examination of the available reports (Call Charge Analysis reports) was undertaken. These reports are produced for all incoming and outgoing calls and forms the basis of the Telstra billing system data for each customer

Areas of interest were the "Service Verification Tests" (SVT) reported to have taken place from the following services:

055 267 267
055 267 60
055 267 230

Twenty calls from each service number listed above were reported to have taken place.

Austel (Austel doc 94/0268 of 11 October 1994, 16 November 1994 and 9 November 1994) had specified the test calls (all 20/service) had to be "held" for a minimum of 120 seconds to ensure adequate testing time elapsed, and hence transmission quality is confirmed or measured.

Examination of the CCAS printout for the day specified (29 Sept 1994):

20 calls from each service number DID NOT take place;
The calls attempted WERE NOT held for the prescribed 120 seconds;
NO incoming test calls were made to the services in question. The CCAS printout for the period DO NOT indicate any calls to or from the service numbers in question. As this data is used for billing purposes ALL such call activity must be recorded

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It is my opinion that the reports submitted to Austel on this testing program was flawed, erroneous, fictitious, fraudulent & fabricated, as it is clear that not such testing has taken place as Telstra's own call charge system DOES NOT record any such activities. Therefore the results are flawed or did not occur.

From these conclusions the statutory declarations by Gamble & others must be considered to be questionable and may be considered to be incorrect to say the least.

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6. CONCLUSION

The regime of test calls established to verify the quality of the services at Cape Bridgewater must be considered to flawed and erroneous.

The fact that overlap of test calls from numerous locations & types of tests to specific test numbers indicates a serious flaw in the testing process, or simply that the tests were not carried completed successfully as stated.

As the Cape Bridgewater RSM is not a telephone exchange, no replicable tests were carried out to verify the conditions being experienced by the subscribers.

The so called tests reported to have taken place at Cape Bridgewater RSM cannot be verified by examination of the normal exchange based call data, neither incoming or outgoing. In addition, the failure to carry out the number & duration of the prescribed tests (eg. 20 calls per service, each held for 120 seconds), indicate the erroneous & fraudulent nature of the report to Austel.

The failure of Telstra to carry out standard performance tests (eg. bit error rate etc), at the multiplexer (RSM) at Cape Bridgewater is alarming & of concern. CCAS data over recent times (eg. 2004-2006), indicate a continuing & worsening level of "Outgoing Released During Setup" calls (ORDS). These reports on the CCAS data indicate that the calls are not successful in the call set up stage of the connection or is lost in the network

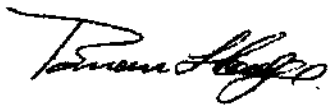
Such reports would indicate that the service was operating in a very unsatisfactory manner. The common factor being the multiplexer system & digital link, Portland exchange or subscriber usage.

However, the continuing report of phantom calls, lost faxes & missed calls ALL point to the network including the RSM at Cape Bridgewater being the source of the problem. As a significantly bit error rate in the data network can present it self to the end user in many different ways. Unfortunately all being a degradation of services

Telstra's failure to carry out detailed technical testing of the system, or to fabricated TRT calls to services not located at the source of the problem (eg, RSM) is negligent.

As the test cannot be reproduced or verified by an independent body, Telstra has failed to meet basic Professional Standards. As such, the results are flawed, erroneous & fraudulent.

Yours faithfully



BRIAN HODGE, B. Tech, MBA
(B.C. Telecommunication)

23A

FAX FROM:	ALAN SMITH C. Q. T.	DATE:	2.10.94
FAX NO:	056 267 230		
PHONE NO: 006 816 522		NUMBER OF PAGES (including this page)	1

FAX TO: Mr Ted Benjamins
General Manager
Customer Response Unit
Telecom

Dear Mr Benjamine,

Thursday 29th September, 1994, Telecom were present at the Cape Bridgewater Holiday Camp. Mr. Peter Gamble was the leading technical adviser and they were here at Cape Bridgewater to do a verification test on my lines. Before any discussions took place I was asked how many phones I had connected to my three lines. I stated that there were two on the 267 267 line (one being an extension phone in the kiosk, the other one in the office); there was a fax machine incorporated with a phone on 267 230 and also a single-line Gold Phone.

Two of the technicians then went over to the main hall, where both the Gold Phone and the Kiosk phone are connected and arrived back in the office about 10 minutes later. It was then that I was asked, in front of a house guest, what else I have connected on my lines - do I have another extension phone? The answer was then, and is now, NO. After a discussion the two technicians left the office.

Five or ten minutes later Peter Gamble informed me that a technician had left the kiosk phone connected, across the line.

My own tests show that the kiosk phone, being a wall-phone, and 360mm from the bench below, has nowhere to hang or sit when disconnected. When this phone is disconnected the in-coming cord from the phone is 160mm. There is no way anyone can mistakenly leave this extension phone across the line. There could have been NO mistake. The phone could not have been left across the line and this is FACT.

I am now asking Austel to enquire as to what was connected to my line to make these technicians question me in the beginning. They seemed somewhat lost, and they had a red mobile phone with them. If there is a simple explanation, then please provide me with that explanation.

Because of the way Telecom have performed their misleading and deceptive conduct in the past, one's mind and thoughts are led to continue to distrust them.

Sincerely,

Alan Smith

cc Warrick L Smith, Telecommunication Industry Ombudsman
Cliff Matherson, Austel Melbourne
Dr. Gordon Hughes, Hunt & Hunt, Lawyers, Fast Track (Arbitrator)

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FAX FROM:	ALAN SMITH C. O. T.	DATE:	10.10.94
FAX NO:	055 267 230		
PHONE NO:	008 816 522	NUMBER OF PAGES (including this page)	1

FAX TO: Mr Ted Benjamine
General Manager
Customer Response Unit
Telecom

Dear Mr Benjamine,

It is not you I disbelieve, it is the men who were performing verification tests on the three lines at Cape Bridgewater.

A copy of a Statutory Declaration follows this fax. When I get to a stationery shop I will sign one myself regarding the facts as stated by Ms Ezzard.

I have almost acquired proof of another lie, made by one of the men present. When I am able to substantiate this proof I will table this information.

Mr. Benjamine, one of the four men who were at this camp on the day in question had been here before, some three months ago. On 26/5/94 this same Telecom employee had been in the same kiosk where he now says the phone was left connected by mistake. For your ears - Mr Peter Gamble asked me in my office if I had anything other than the fax machine (with phone attachment) and the incoming phone line in the office (this makes two phones lines actually coming into this office). He asked me in easy hearing distance of Ms Ezzard, who was in the house lounge "Have you got any other extensions attached to your phone lines?" I said "NO". I then had a look at the electronic equipment he was using and a needle was still registering from side to side.

I asked emphatically "Have you disconnected both phones over in the hall, the Gold Phone and the Kiosk Phone?" The chap who had been here before said "Yes." We stood in limbo for seconds, minutes. Then the chap who had been here before walked out of the office with the other Telecom person.

A few minutes later I asked Peter Gamble what was wrong. It was then that he said that the Kiosk Phone had been left connected by mistake. This is emphatically incorrect.

I now ask you to ask Peter Gamble what they were saying on the red mobile phone just a few minutes before. Whatever you say, I believe that they were talking to another Telecom chap in the RCM at Cape Bridgewater.

Mr Peter Gamble has told me on two occasions that he has experienced phone problems while contacting 267 267. One was an RVA, the other was when he had been talking to me on the 267 267 number and my fax was playing up again. After the fifth or sixth short ring he asked me to

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pick up the phone the next time the fax rang. I did and an engaged signal was heard; not only be me but also by a house guest. Mr. Gamble stated then and on one other day, that he would write a letter of acknowledgement of this fact but to this day he has not.

We are supposed to work with Telecom during this Arbitration Procedure. The long-time Telecom Management Team are doing Telecom a great harm for the future but they just don't see it. This is what is sad. BHP, Esso, Western Mining, I have worked for them all. No management has ever behaved in the same manner as the Telecom Corporate Team now in office.

Considering that you have already responded to my questions on why and what happened during this Verification Testing, I wonder how you will reply now?

Sincerely,

Alan Smith

cc Dr. Gordon Hughes, Hunt & Hunt, Lawyers, Fast Track (Arbitrator)
Warrick Smith, Telecommunication Industry Office.

23c

Telecom AUSTRALIA

Commercial & Consumer
Customer Response Unit
Level 8
242 Exhibition Street
Melbourne Vic 3000

Telephone (03) 634 5756
Facsimile (03) 634 9930

17 October 1994

Mr Alan Smith
Cape Bridgewater Holiday Camp
RMB 4008
Cape Bridgewater Vic 3305

By Facsimile: (055) 267 230

Dear Mr Smith

I refer to your facsimile of 10 October 1994, regarding the visit to your premises by Mr Peter Gamble and his team on 29 September 1994.

Mr Gamble has confirmed that the events which took place during that meeting were as outlined in my letter to you of 7 October 1994. Mr Gamble agrees that there was some initial confusion over the disconnection of the extension phone in your kiosk, but once that was sorted out the tests were completed successfully.

The reason for the confusion was explained to you in my letter of 7 October 1994. Initially, only the phone in your office was disconnected from your incoming line, as it was assumed that the extension phone in your kiosk was connected in series further down that line. Had this been the case, disconnecting the phone in your office would have in turn disconnected the phone in your kiosk. However, testing indicated that some equipment was still connected on that line, prompting the question to you about another extension. The extension line to the kiosk was then checked and found to be connected in parallel from an earlier point along your line, rather than in series from your office. This meant that the extension phone in the kiosk needed to be physically disconnected. This was done and the tests were completed successfully. I understand that you also spoke to Mr Gamble on 13 October 1994 and that you now have a clearer understanding of this matter.

In paragraph 7 of your letter you have made reference to a "red mobile phone" carried by the technicians. This phone was a "Buttinski" telephone handset, and is used by Telecom technical staff for testing telephone lines and to make and receive calls. It is not a mobile phone and must be connected to a telephone line for it to work. This telephone was used to enable the technicians at your premises to co-ordinate the measurement activities undertaken on your lines with the technicians at the other end of the line at the Cape Bridgewater RCM.

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Telstra Corporation Limited
ACN 051 775 556

[redacted] report on your service is currently being finalised and will be provided to you shortly.

Finally, when talking to Mr Gamble you asked whether Telecom had any ELMI equipment on the line. This question will be addressed in Telecom's response to your facsimile of 8 October 1994, which will also be provided to you shortly.

Yours sincerely

Ted Benjamin
National Manager
Customer Response Unit

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95/0719 - 1

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94/0269

AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

11 October 1994

Mr Peter Gamble
Manager, Engineering and Technical Consultancy
Customer Response Unit
TELECOM

Facsimile: (03) 634 9930

Dear Peter

ISSUES CONCERNING SERVICE VERIFICATION TESTS

Following on from your telephone conversation today with Mr Cliff Mathieson, I confirm that AUSTEL requires a written statement from Telecom detailing the deficiency of the current testing process for the "Call Continuity / Dropouts to Neighbouring LIC" test contained in the Service Verification Tests (SVT). This statement should also detail the action Telecom intends to take to address this deficiency.

AUSTEL notes that the SVT results so far provided by Telecom are inconclusive because they do not comply with the required outcome of Section 6.3.2 of the SVT. Confirmation that calls were held for 40 seconds does not confirm these calls would have been held for the required 120 seconds.

On another matter, I understand Mr Bruce Matthews wrote to you on 29 September 1994 following up AUSTEL's earlier request for a copy of test data produced by Telecom in conducting the SVT. I also understand that the nature of the data required by AUSTEL was further confirmed in subsequent conversations with Mr Matthews and Mr Mathieson. As noted in these conversations, the required data is that produced in performing section 6.3 of the SVT, and should identify the date and time of day test calls were made from each origin, and the technology type of the originating exchange. As AUSTEL's review of the SVT will take place in November 1994 this data is required as soon as possible.

Yours sincerely

Norm O'Doherty
General Manager
Consumer Affairs

cc Mr Steve Black

23E

AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

94/0269

16 November 1994

Mr S Black
Group General Manager
Customer Affairs
TELECOM

Facsimile No: (03) 632 3241

Dear Steve

SERVICE VERIFICATION TEST ISSUES

The recent SVT results for Mr Alan Smith raise some issues on which AUSTEL requests clarification, as follows.

- The letter provided to Mr Smith informing him of his SVT results notes that the Public Network Call Delivery Tests relevant to his 008 service used a 1-800 number that simulated the routing of his 008 services. AUSTEL is seeking confirmation from Telecom that the network equipment utilised on calls to the 1-800 number is the same as that which would have been used by calls to Mr Smith's 008 service (with the exception of the termination number).

- The Call Distribution Tables on pages 12 and 14 record that the total calls made to each number are in excess of 600. AUSTEL requests that Telecom detail the process which determines the "1st 500" calls under test 6.3, given that a combined total of over 600 calls have been made from multiple origins.

I would also like to take this opportunity to formally confirm three issues raised at our recent meeting of 9 November 1994.

(1) Telecom will provide AUSTEL with the detailed individual call data (ie. time of day & origin of call) which has been the subject of previous correspondence from AUSTEL. This data was originally requested by AUSTEL on 25 August 1994. As discussed at our meeting, the data is

5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 828 7300 FACSIMILE: (03) 820 3021

23F

required by AUSTEL as part of our review of the SVT, and will be required by the consultant assisting AUSTEL in this review. (Please note that call data for all the test calls is required, not just the data for the first 500 calls). AUSTEL requires this data by 23 November 1994. The provision of this data by this date is essential to the effectiveness of AUSTEL's review of the SVT.

(2) In the near future Telecom will conduct the "Demonstration Tests" on the services of customers for whom the SVT have been completed. AUSTEL notes that the SVT were conducted a considerable time ago on some of these customer's services. Although these tests are not part of the SVT, this data will be used by AUSTEL in our review of issues related to the SVT. The results from the "Demonstration Tests" will also be provided to our consultant, and AUSTEL requires some of these test results by 23 November 1994.

(3) That Telecom will shortly provide, as requested in AUSTEL's letter of 11 October 1994, a statement on:

the deficiency of the current testing process for the "Call Continuity / Dropouts to Neighbouring LIC" test contained in the Service Verification Tests (SVT). This statement should also detail the action Telecom intends to take to address this deficiency.

This statement will be provided to AUSTEL's consultant as part of the review of the SVT, and is required by 23 November 1994.

The three matters detailed above have been all been outstanding for some time. I would be grateful if you could address your personal attention to ensuring the required information is provided to AUSTEL by the date requested.

Yours sincerely

Norm O'Doherty
General Manager
Consumer Affairs

23F

IN THE MATTER OF an arbitration pursuant to the Fast Track Arbitration Procedure dated 21 April 1994

Between

ALAN SMITH

Claimant

and

TELSTRA CORPORATION LTD trading as TELECOM AUSTRALIA

Telecom

STATUTORY DECLARATION OF PETER GAMBLE

I, **PETER HENRY GAMBLE** of 8/242 Exhibition Street, Melbourne in the State of Victoria solemnly and sincerely declare and affirm as follows:-

1. I am employed by Telstra Corporation Limited ("Telecom") in the position of Engineering Manager, Customer Response Unit, Commercial and Consumer Business Unit and am authorised to make this Declaration on behalf of Telecom. I make this Declaration having made all due enquires of employees, agents, consultants and contractors of Telecom.

2. I have been employed in my present position at Telecom since 1993. I am responsible for the research and analysis of the network background of customers in dispute with Telecom and the review of any testing programs carried out in relation to such customers.

3. The attached report numbered B004A dated 12 December (the "Report") has been prepared for the purposes of Telecom's defence to a claim made by the Claimant which is to be resolved by means of the Fast Track Arbitration Procedure.

4. The Report was prepared jointly by Telecom engineering and technical staff and Telecom engineering and technical contractors (the "authors").

5. The Report has been prepared using contemporaneous documentary records produced in the usual course of Telecom's business and statements made by present and former Telecom staff which are recorded in statutory declarations.

6. I do not have personal knowledge of the facts set out in the Report or the facts upon which any statement contained in the Report is based. However, I have read the Report and I am informed by each of the authors that the Report accurately states the facts stated in the Report.

AND I MAKE this solemn declaration conscientiously believing the same to be true and correct.

DECLARED at Melbourne)
in the State of Victoria)
this 12th day of December 1994.)

Peter H Gamble
.....

Before me:
.....

CHRISTOPHER MARK McLEOD
Freehill Hollingdale & Page
101 Collins Street, Melbourne
A Solicitor holding a current Practising Certificate pursuant to the Legal Profession Practice Act 1958.

23G

IN THE MATTER OF an arbitration pursuant to the Fast Track Arbitration Procedure dated 21 April 1994

Between

Att 7.

ALAN SMITH

Claimant

and

TELSTRA CORPORATION LTD
trading as
TELECOM AUSTRALIA

Telecom

WITNESS STATEMENT OF PETER HENRY GAMBLE

I, **PETER HENRY GAMBLE** of 8/242 Exhibition Street, Melbourne in the State of Victoria, solemnly and sincerely declare and affirm as follows:

EMPLOYMENT DETAILS

Introduction

1. My name is Peter Henry Gamble, of 8/242 Exhibition Street, Melbourne. I obtained a Bachelor of Science (Technology) degree, specialising in electronics engineering, from the University of New South Wales in 1968.

2. In December 1965 I joined the then PMG's Department as an assistant technician and was promoted to an engineering position on graduation. Since then I have held a number of engineering positions, before being promoted to executive level in 1985. I am currently the Manager, Engineering and Technical Consultancy, Customer Affairs Group. My current work includes the management of a small team of engineering and technical staff who are investigating and analysing complaints received by Telecom from customers who are in dispute with Telecom, providing assistance to regional staff on these issues and supervision of the Service Verification Test process. Attached hereto and marked "PHG - 1" is a copy of my resume.

3. During my career with Telecom, I have undertaken a number of engineering, business, marketing and management training courses. I have been using computers to assist with my work since completing a one year course at post graduate level in computing in 1967. This has included the development of a number of sophisticated data processing, forecasting, modelling and data base systems.

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Contact with Mr Alan Smith

4. I first became involved in October 1993 with a group of customers who were referred to Telecom by AUSTEL. My initial tasks were firstly, to collate and supply to independent consultants engaged by Telecom some basic data about these customers' exchanges and Customer Access Network (CAN) connections and secondly to conduct an analysis of the relevant CAN. This second task initially involved a theoretical study of certain aspects of the CAN and subsequently involved the taking of detailed measurements on a selection of these customers. A customer whose service was analysed and measured was Mr Alan Smith of the Cape Bridgewater Holiday Camp, Cape Bridgewater.

5. Subsequent to these activities, I also participated in a working party tasked with the development of the Service Verification Tests. This work has subsequently involved detailed negotiations with AUSTEL on these tests and the development and supervision of a program to carry out the measurements. Service Verification Tests have been conducted on Mr Smith's telephone service.

6. I have also set up and am currently managing a small group of engineering and technical staff who provide consultancy on network issues to the Customer Affairs Unit and to the various regional fault and complaint handling groups. In this capacity, and in connection with the Service Verification Tests, I have visited Mr Smith on a number of occasions and have had many telephone conversations with him. Some of these conversations were about specific incidents that he had reported, while others were general conversations about the nature of the telephone network.

7. There have been many occasions when I have contacted Mr Smith by telephone, either to return a call from him, to provide him with information or to arrange for tests to be carried out. These calls have generally been made from the Melbourne area, with some calls made via the mobile network. On all occasions except for one, I have had no difficulty in contacting Mr Smith. The one occasion when I did experience difficulty was around 5.30pm on 25 May 1994 when I received the recorded voice announcement "This service is not connected". I subsequently found that at this time there was a data fault in the Portland AXE104 which caused this incident. I was able to contact Mr Smith the following day without incident.

Towards the end of April 1994, Mr Smith rang me and advised that he had found that he could hang up his T200 phone, count to ten and then pick the phone up and continue the conversation, with the party at the other end being able to hear him counting while the phone was hung up. This situation was demonstrated a number of times. Following the conversation, I reported the incident to the Fault Management and Diagnostic Group at Waverley. After the T200 was recovered from Mr Smith's premises, I arranged for it to be examined by the Telecom Research Laboratories. Their detailed report indicated that something

(possibly beer) had found its way into the phone and was interfering with the operation of the switch hook, resulting in the phone not immediately clearing the call when the handset was replaced.

9. I received a further call from Mr Smith a few days later, in which he accused Telecom of intercepting his fax messages. It appeared that he had sent a fax message to AUSTEL who had received only blank pages and that he thought Telecom had in some way intercepted the contents. I explained to him that this was highly unlikely. I subsequently contacted Mr Cliff Mathieson, an officer with AUSTEL, and confirmed the arrival of three blank pages. During this discussion, we agreed that the most likely explanation was that Mr Smith had put the pages into his fax machine the wrong way round. After further discussion with Mr Smith, he was prepared to accept that this was the most likely explanation.

CAN Analysis and Tests

10. As part of the network analysis for the customers referred to Telecom by AUSTEL, a theoretical study of certain aspects of the Customer Access Network was carried out. The key aim of the study was to investigate the CAN and the exchange ring generators to determine if sufficient ring voltage would be available at the customer's premises to meet the relevant standard. Data on relevant CAN and ring generator parameters for Cape Bridgewater was collected and a simplified circuit diagram was developed and used to conduct the analysis. Measurements were carried out on a selected range of parameters for Mr Smith's service and the results compared with the theoretical analysis.

11. Telecom has a range of design documents and technical specifications. Information extracted from one of these indicated that for the diameter of cable used for Mr Alan Smith's installation, 0.64 mm, the maximum route distance is 7.0 km and the maximum loop resistance is 749 ohms. Also, the maximum loss for the CAN connection between the customers premises and the exchange is 7 dB 820 Hz. Information from an AUSTEL Technical Specification indicates that Customer Equipment should respond to a ring voltage of 50 volts rms and that the maximum load that can be presented to a telephone line is a Ringer Equivalence Number (REN) of 3. This represents the load imposed by three single telephones as an average telephone has a REN of 1.

12. The theoretical analysis started with the cable plans for Mr Smith's service, which showed a route distance of 5.60 Km. The loop resistance of the cable was calculated as 599 ohms. A spreadsheet model was developed to calculate the ring voltage present at the customers premises with a range of REN's with the following results:

Ringer Equivalence Number	1	2	3	5
Ring Voltage (Volts rms)	81.2	75.0	69.0	58.2

This shows that even with excessive RENs connected to the line, there is still sufficient ring voltage available to meet the requirement of the AUSTEL Technical Specification. The model was subsequently run with the highest measured value of loop resistance instead of the calculated value. This resulted in less that a 1% drop in the calculated ring voltage at a load of 3 REN.

13. Following the completion of the theoretical analysis, a series of measurements on a range of parameters in respect of Mr Smith's CAN were arranged. These were carried out by Mr Mick Pannell, Principal Telecommunications Technical Officer Grade 1 from the Power Co-ordination Group, who is experienced at carrying out these types of measurements. Measurements were carried out on all three of Mr Smith's lines, 055 267 267, 055 267 230 (fax) and 055 267 260 (Goldphone).

14. Measurements were carried out on each of Mr Smith's lines on 26th November 1993 and showed loop resistances of 633 ohms, 645 ohms and 632 ohms respectively. Transmission loss measurements at 820 Hz were 4.6 dB, 4.7 dB and 4.6 dB respectively.

15. The measurements of Insulation Resistance were inconclusive as considerable variation was found between the various measurements taken on the three cable pairs. Some consistency in the measurements could be expected on pairs within the one cable. Insulation resistance is one measure of the quality of a cable pair as it indicates how well the cable pair is insulated from other cable pairs and from earth. Low insulation resistance can be caused by moisture entering the cable and could result in noise or crosstalk on both incoming and outgoing calls. On the first cable pair, a small amount of extraneous voltage was present, which indicated a possible breakdown in the insulation resistance but precluded its accurate measurement. The second cable pair showed acceptable results while the third cable pair showed a lower than expected insulation resistance, probably due to the presence of test equipment on the line. Further measurements of insulation resistance were taken by the same officer on 26th May 1994 which showed consistency across the three cable pairs with all values being 20 Megohm or higher.

16. Attached and marked "PHG - 2" is a document setting out a complete tabulation of the results of the CAN measurements.

17. The measurements showed that the CAN was within specifications for loop resistance and transmission loss. The insulation resistance measurements showed that the condition of the cable was satisfactory.

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Performance Analysis

18. A review was conducted in March 1994 of performance data relating to the Cape Bridgewater Remote Customer Multiplexer (RCM) and Portland AXE104 rural digital exchange. The data was also compared with information from all Victorian RCMs and AXE104s. The review was subsequently extended to include additional data for Cape Bridgewater and Portland up to June 1994.

19. Cape Bridgewater is an RCM site which provides service for approximately eighty customers in the Cape Bridgewater area. The RCM is connected to the Portland AXE104 exchange, which also provides service to nearly nine hundred local customers and a further twenty customers in the Mt Richmond area by a second RCM. There is also a five thousand line ARF exchange and a recently installed one thousand line AXE RSS which provide service to Portland customers. Prior to the installation of the RCM in August 1991, the Cape Bridgewater customers were connected to a small rural exchange, known as an RAX.

20. The results obtained from the sampling of actual calls for Cape Bridgewater RCM and Portland AXE104 are as follows:

	Cape Bridgewater RCM	Portland AXE104
Period	July '91 to June '94	July '91 to June '94
Effective calls	70.6%	65.5%
Customer Loss		
Busy	11.8%	13.5%
Didn't answer	9.4%	13.0%
Abandoned	4.7%	7.4%
Network Loss	3.5%	0.5%
Sample size	85	843

21. Customer Loss refers to calls which are not effective for customer related reasons. The table above shows three such categories: the wanted party being busy, the wanted party not answering, and the calling party abandoning the call either by not completing dialling or by hanging up before the called party answers. Network Loss refers to calls which are not effective because of congestion or switching loss.

22. The Victorian call sample data for all RCMs and AXE104s is as follows:

23G

Average Monthly	RCM		AXE104	
Reports/100 services	TA	TR	TA	TR
Cape Bridgewater	0.42	0.42	---	---
Portland	---	---	0.27	0.53
Victoria	0.83	0.84	0.69	0.85

Examination of the figures shows that the Cape Bridgewater RCM and the Portland AXE104 have lower rates for faults cleared to, or suspected of being in the exchange or network than the Victorian state average.

26. The information extracted from call samples from the network and from fault reports lodged by customers and tabulated above does not disclose any irregularities or poor performance in the Cape Bridgewater RCM or the Portland AXE104 as seen by the customers connected to this equipment during the periods analysed.

Customer Dialling Behaviour

27. While processing call data sampled from the network it became clear that a number of calls were being mis-dialled. These calls were being directed to number ranges which had no customers connected and would have resulted in the caller receiving a recorded voice announcement (RVA) indicating that "This number was not connected." There had also been a persistent level of reports from customers describing incoming calls which were unsuccessful for a variety of reasons. Accordingly, a project which would analyse customer dialling behaviour was commenced. The project was primarily aimed at collecting data from various existing studies and analysing it for consistent patterns.

28. From various existing measurement processes, it was already known that an average of 15% of calls receive busy tone because the called party is already using the phone and that a further 14% of calls are unanswered. It had also been observed by Telecom's Manual Service Assessment Service (which ceased in 1991) that abandoned calls averaged 4.4% of call attempts and that in a further 0.33% of call attempts the wrong number had been dialled.

29. The results of a number of studies were examined which showed that a significant percentage of calls were mis-dialled. The typical problems included reversed digits, digits which were one off the correct number and partial or complete lack of the correct STD code. Further investigations of the partial lack of STD code revealed two principle causes. The first was that some callers were not waiting for dial tone before commencing dialling and the second was callers using a PABX forgetting to dial the network access code (usually 0). A further study, which had measured the delay in availability of dial tone, showed that

while the typical delay was 400 to 800 milliseconds (depending on the type of switching equipment), this could increase to over 1 second in busy periods. The study also showed that dialling information was received by the exchange in less than 1 second on a significant number of calls.

30. Many of the studies examined were carried out during the 1980's when the proportion of push-button phones was considerably lower. It is considered that some of the effects noted in these studies, particularly dialling before dial tone had been sent by the exchange, would have increased. This is particularly the case when the phone is equipped with memory and/or re-dial buttons and these are used to set up the call. Further, recent instances of repeated dialling of the wrong number have been observed, indicating that the caller has probably used the re-dial button.

31. The implications of these results for Mr Alan Smith's service are as follows. First, callers attempting to contact Mr Smith may have dialled the wrong number, resulting in the caller possibly obtaining a different called party, but also busy tone when Mr Smith was not using his phone, and ring tone when Mr Smith's phone never rang. Further, the outcome could have been an RVA which indicated that "This number was not connected." Secondly, if the caller did not wait for dial tone but dialled the number correctly, the exchange would not receive at least the leading zero of the STD prefix, then the same type of possibilities described earlier exist. An analysis of the use of the numbering spectrum showed that if the caller was located in Melbourne and the exchange received 55 267 267, the caller would receive the RVA mentioned above as the Melbourne number 552 6726 is not connected. This same situation occurs in the 053 (Ballarat), 059 (Mornington) and 087 (Mt Gambier) numbering areas, all areas where Mr Smith has reported that callers are having problems contacting him.

32. Mr Smith has recently lodged a complaint about a call to his 008 service with AUSTEL. This complaint, which included a Statutory Declaration from the caller, has been investigated. The results of the investigation showed that the caller dialled 008 819 522. This happened to be a Telecom number and was answered accordingly. The caller then immediately dialled, 008 816 522 and was connected to Mr Smith's service. Further investigation showed that a subsequent call to Mr Smith's 008 number was made a short time later and that the caller and Mr Smith were in regular contact both by fax and phone.

33. The results of the review of the studies on customer dialling behaviour referred to in paragraph 29 above do provide possible explanations for some of the difficulties being experienced by Mr Smith. The recently investigated complaint confirms one occasion of a mis-dialled number to Mr Smith's service.

Service Verification Tests

34. The Service Verification Tests (SVT), described in document G 001 (Issue: Interim, 27 September 1994) prepared by the Customer

Response Unit, have been developed by Telecom in conjunction with AUSTEL and have been approved by AUSTEL as the basis upon which a telephone service at the Service Delivery Point may be considered to be operating satisfactorily at the time the tests were conducted. The Service Verification Tests measure:

- selected electrical parameters of the customer access network
- the ability of the exchange to deliver calls to the Service Delivery Point
- the capability of the network to successfully connect calls from various network origins to a Line Interface Circuit adjacent to the customer's service, simulating the customer's line and line interface connection.

35. The service under test is compared with a required set of outcomes as detailed in G 001. When the required outcomes are met, the service to that customer will be considered to be operating satisfactorily at the Service Delivery Point by both Telecom and AUSTEL.

36. Prior to initiating the test, I discussed the typical incoming call profile of Mr Smith's service with him, noting in particular several areas where callers had had difficulty in contacting him. I also confirmed with him that his three telephone lines would be measured as part of the Customer Specific Line Tests (Section 6.1) and that the Public Network Call Delivery Tests (Section 6.3) would include a 1 800 number (1 800 numbers replace 008 numbers), the routing of which would mimic his 008 number. The Customer Line Hunt Group Tests were not relevant as Mr Smith does not have a line hunt group.

37. The Customer Specific Line Tests were conducted on 29th September 1994. I was present on the Camp Bridgewater Holiday Camp site while these tests were being carried out and observed a number of the tests being conducted by the National Network Investigations Staff. Also present were two of my staff, Mr Bruno Tonizzo, a Principal Telecommunications Technical Officer Grade 2, who has been involved as an observer at all of the SVTs conducted to date, and Mr Colin Roberts also a Principal Telecommunications Technical Officer Grade 2, who participated in the discussions that I had with Mr Smith on that occasion. We also visited the Portland Exchange and the Cape Bridgewater RCM site. The Public Network Call Delivery Tests were conducted from 17th September 1994 to 24th September 1994. The report from National Network Investigations, dated 21st October 1994 and containing the detailed results of all of the tests, was forwarded to Mr Smith on 8th November 1994. (Ref 4.35 4.40)

38. The service passed all of the Customer Specific Line Tests and the two Public Network Call Delivery Tests that were carried out. One Call Delivery Test was carried out to a number (055 267 266) close to his service number and achieved a success rate of 100%. The second was carried out to a 1-800 number, which simulated the routing to his 008

number, achieving a success rate of 99.8%. Both of these results are above the level established for call connection at the individual customer level. The service is therefore considered to be operating satisfactorily.

Overall Conclusion

39. In addition to the routine maintenance and investigations carried out by the Network Operations and service delivery Technical staff, I have conducted a series of detailed tests and analysis of data pertaining to Mr Smith's service, the Cape Bridgewater RCM and the Portland AXE104 exchange.

40. The detailed CAN analysis and measurements conducted in November 1993 showed that the CAN was within the design specifications examined and was generally satisfactory with the exception of insulation resistance, where the results were inconclusive. It is noted that there were no consistent complaints by Mr Smith during the November 1993 to May 1994 period relating to noise or crosstalk which would have been evident with low insulation resistance. Further measurements in May 1994 confirmed that the insulation resistance was satisfactory. In my opinion the insulation resistance did not have an impact on the service Mr Smith was receiving.

41. The analysis of the call data, sampled from actual traffic, and the fault reporting data showed that the performance of the Cape Bridgewater RCM and the Portland AXE104 was satisfactory during the period over which the data was collected.

42. The customer dialling study which documents customer dialling errors shows some possible explanations for the incidents that Mr Smith has experienced. It should be noted that the types of customer dialling errors documented are exhibited by all customers and affect all customers.

43. The SVT, carried out in September 1994, showed that the service passed the Customer Specific Line Tests and the Public Network Call Delivery Tests. Accordingly, the service was deemed to be operating satisfactorily at that time.

44. My overall conclusion based on the analysis of the selected performance parameters outlined above is that for the periods covered by these investigations (which commenced in July 1991 and concluded in September 1994), Mr Smith's service met appropriate performance levels and therefore appeared, in my opinion, to be operating satisfactorily.

AND I MAKE this solemn declaration conscientiously believing the same to be true and correct.

DECLARED at Melbourne)
in the State of Victoria)
this 12th day of December 1994.)

Peter H Gordon

.....

Before me:

.....

CHRISTOPHER MARK McLEOD
Freehill Hollingdale & Page
101 Collins Street, Melbourne
A Solicitor holding a current
Practising Certificate pursuant
to the Legal Profession
Practice Act 1958.

23G

IN THE MATTER OF an arbitration pursu
to the Fast Track Arbitration Procedure date
April 1994

5

Between

ALAN SMITH

Claimant

and

TELSTRA CORPORATION LTD trading as TELECOM AUSTRALIA

Telecom

STATUTORY DECLARATION OF STEPHEN FOSTER BLACK

I Stephen Foster Black of 242 Exhibition Street, Melbourne solemnly and sincerely declare and affirm as follows:-

1. I am employed by Telstra Corporation Limited ("Telecom") in the position of Group General Manager, Customer Affairs and am authorised to make this Declaration on behalf of Telecom. I make this Declaration having made all due enquiries of employees, agents, consultants and contractors of Telecom.

2. I have been employed in my present position at Telecom since 1993. I am responsible for customer service policy.

3. The attached report dated 12 December 1994 (the "Report") has been prepared for the purposes of Telecom's defence to a claim made by the Claimant which is to be resolved by means of the Fast Track Arbitration Procedure.

4. The Report was prepared jointly by Telecom engineering and technical staff, Telecom's legal and accounting consultants and Telecom engineering and technical contractors (the "authors").

5. The Report has been prepared using contemporaneous documentary records produced in the usual course of Telecom's business and statements made by present and former Telecom staff which are recorded in statutory declarations.

6. I do not have personal knowledge of the facts set out in the Report or the facts upon which any statement contained in the Report is based. However, I have reviewed the Report and I am informed by each of the authors that the Report accurately states the facts stated in the Report.

AND I MAKE this solemn declaration conscientiously believing the same to be true and correct.

DECLARED at Melbourne)
in the State of Victoria)
this 12th day of December 1994.)

Steve Black
.....

Before me: P. M. Ryan
.....
Solicitor,
Melbourne.

23H

properly mastered the technology that he or his callers are using and that this is the cause of many of Smith's complaints which he attributes to being caused by Telecom's network. A summary of the potential impact of CPE misuse or misinterpretation is contained in Document REF 1 under the heading "Customer Dialling Behaviour".

Attached to this report are the following:

- Appendix 1, is a summary of CBHC's incoming answered calls using the call data collected by ELMI SMART 10 during the period 27 May 1993 to 30 September 1994. It shows that Smith's incoming calling pattern is relatively uniform between approximately 8am and 9pm on most days.

- Appendix 2 defines words, acronyms and abbreviations used on this document. Other more general abbreviations are defined in the Glossary REF 3 and are described in the reference documents REF 1 and REF 2.

- Appendix 3 summarises events associated with the Goldphone service operated by CBHC for the use of its guests which is not integral to the operation of the CBHC business.

- Appendix 4 is a detailed summary of complaints relating to the CBHC service and responses by Telecom during Part B.

- Appendix 5 is an interpretation of the LEOPARD complaint history codes for CBHC.

During the period from 17 September 1994 to 29 September 1994, Telecom undertook a Service Verification Test on the services provided to CBHC. These tests are recognised by AUSTEL as an appropriate measure of service performance. Tests undertaken on the CBHC service were successful on all lines (reference document 4.40).

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Senator ALSTON—So Bell Canada made a contribution to that, presumably, but you are able to go further, are you?

Mr Davey—Yes.

Senator ALSTON—Is that proposition something that you have taken directly into account? I presume you have seen the minute, have you?

Mr Davey—Quite frankly, I cannot recall seeing that precise minute.

Senator ALSTON—Perhaps you might come back to me on any action that has been taken in response to this, if you have indeed previously seen it. If not, you might indicate what action you think should be taken as a result of seeing it. Can you do that?

Mr Davey—Certainly.

Senator ALSTON—You said that you hoped to be able to complete and presumably release your report in March.

Mr Davey—Mid-March, we are aiming for at this point.

Senator ALSTON—At that time, could you also include the total cost to Austel of the investigation; in other words, the amount of resources, human and financial, that has been absorbed by this exercise?

Mr Davey—I see no reason not to. I do not know whether we can give an accurate estimate—we have not until more recently kept it. It has been absorbed in our usual functions. We have not set aside specific resources until more recently.

Senator ALSTON—But it has been a major project.

Mr Davey—Yes. There is no doubt about it.

Senator ALSTON—It ought to be desirable to try to quantify the cost?

Mr Davey—Yes.

Senator ALSTON—Are you developing indicative performance standards to ensure that carriers provide an adequate phone service?

Mr Davey—Yes, indeed. In the context of the COT cases we are working specifically to get an agreement on a standard upon which we can sign off that the complainants, if they settle with Telecom, are receiving an adequate standard of telephone service at the time.

Senator ALSTON—Will that be backed up by direction?

Mr Davey—If necessary, yes.

Senator ALSTON—What about in relation to others, apart from the top eight?

Mr Davey—It would apply in relation to all of them. What we are aiming to do is to get an across-the-board standard that people can sign off and know these sorts of things.

Senator ALSTON—Meaning both carriers or the three carriers?

Mr Davey—It will apply principally to Telecom as the provider of the local loop.

Senator ALSTON—Very well. Have you issued any directives to Telecom in relation to COT matters?

Mr Davey—Yes. They are published in the 1992-93 annual report, I think.

Senator ALSTON—In relation to COT?

Mr Davey—I think it is. Do not hold me to it but we do publish our directions in the annual report.

Senator ALSTON—Have any directions been issued since that time?

Mr Davey—It has not been necessary to issue further directions.

Senator ALSTON—Of the 257 consumer complaints that Austel received in 1992-93, approximately 91, according to the report, were referred to other agencies. Does that sound right?

Mr Davey—It sounds right.

Senator ALSTON—Why did not Austel immediately refer COT's allegations of voice recording to the federal police instead of waiting for the minister to refer the matter to the Attorney-General and then on to the federal police?

Mr Davey—That is a question that I think I need some further detail on.

CHAIRMAN—Minister, we might confirm that you have accepted the questions from Senator Alston and Senator Tierney.

Senator McMullan—Yes, I accept.

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AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

93/0867

20 January 1994

Mr A Humrich
General Manager, Central Region
Network Operations
Telecom Australia

Facsimile 657 3528

Dear Mr Humrich,

VERIFICATION TESTS FOR DIFFICULT NETWORK FAULT CASES

As discussed late last year with Mr J Gitsham, the following comments are offered on your draft set of verification tests for public switched telephone services with recurring service difficulties.

General Comment

The tests would be applicable to a very small percentage of customers, and the emphasis should be on going to great lengths to ensure the absence of any type of fault condition rather than on minimising the amount of effort involved for the carrier.

The purpose of such tests would be to ensure that a particular service has every possible likihood of working correctly. Prior to a service complaint being escalated to this level, Telecom's normal testing and maintenance activities would have failed to remedy the situation from the customer viewpoint. With this in mind, the verification testing should eliminate all potential sources of service difficulties. Therefore, the draft set of tests proposed are not seen to be sufficiently rigorous or extensive enough for application to these types of services.

In keeping with this approach, the use of the term "Desirable Outcome" for test results is inappropriate and should be changed to "Essential Outcome"

Specific Matters for Consideration

- The customer specific line tests nominate outcomes for insulation resistance and foreign battery which are considered to be at the margins of acceptable performance for any customer, much less a customer with a demonstrated history of service difficulties. The essential outcome of these tests must be to eliminate poor insulation resistance or foreign battery as potential sources of service difficulties. Performance less than that expected of new plant should be thoroughly investigated and the causes removed.

23K

QUEENS ROAD MELBOURNE VICTORIA
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- Tests of outgoing call functions should also be performed, as well as checks of transmission quality. Tests involving the customer's equipment should be conducted to ensure that there is no fault in that equipment.

- The customer specific exchange tests should also examine aspects of the local exchange which have the potential to affect the customer. For example,

  - processor performance and loading in computer controlled exchanges should be checked, and marker, register and other common equipment operation in crossbar exchanges should be checked

  - alarm and exchange performance records should be examined for any possible service affecting conditions

  - customer originating and terminating classifications should be checked

  - customer specific transmission systems, such as those involving RCMs, should be checked thoroughly.

- The public network call delivery tests are seen to be adequate in scope, but the number of call attempts from each location would need to be considerably greater to produce results with any statistical significance (hundreds rather than tens). Calling periods must include significant periods of time when the customer would expect high traffic volumes. The essential outcomes must be much tighter than the 90% levels suggested in the draft. Sample results would need to be equal to or better than Telecom's target performance for the traffic type involved.

- Where test results do not meet the essential outcome, remedial action should be taken and the relevant tests repeated to confirm correct network operation.

I trust the above comments provide you with AUSTEL's view of what would represent a firm basis for further development of the verification test program.

Yours sincerely

Cliff Mathieson
Specialist Advisor
Networks

Michael Elsegood
Manager
International Standards Section

23K

A10232

include the regulator, I believe it is in the interests that these matters are exposed and correctly addressed in the public interest. And my involvement in the current assignment has been assisted by obtaining legal assistance by parties who can identify what is or is not a criminal offence. The documents and reports that Alan is preparing I then give to other parties to vet, and those reports are then refined to make sure that we are only dealing with what we call substance. As part of this exercise, it has been necessary to turn around and have a look at the actual content of the document. So when we talk about what Alan is doing, Alan actually, to my surprise and also to the other person that is helping us, could be best described as an analyst. And while he got very excited here today, he is very good and very patient in looking at a document and analysing it to the point where we can get two documents – allegedly one a copy of the other – and identify the fact that one copy has been interfered with. Now that can mean removing certain words, removing a paragraph or if there has been certain deletions to it, we can identify the fact that the document has really been tampered with because even the type font has been changed. When we talk about interfering with a legal process, because my involvement started with the interference in a legal process in the Federal Court. My original complaint was not only did I have the fault, the problem, it was the denial of the problem and the falsely claiming of legal professional privilege and the falsely claiming of commercial in-confidence. None of it which was factual. Now when we talk about the root of, or the foundation of, our legal system being interfered with and being perpetrated by, not one organisation, but a group of people and that – to have dismissed that as not being in the public interest I find that a government regulator who has had their privilege in the past of having in depth discussions with myself because I was approached by the regulator, Robyn Davey, who was the gentleman who was the major architect of draftsperson of the Trades Practices Act and I was referred to him by Mr Alan Fells. I was told by Mr Alan Fells that Robyn Davey wrote most of the Trade Practices Act and to go to him because the matters that we raised with him in '92 and '93, he said, can be addressed by the regulator because Robyn Davey and Austel has the, not only the Telecommunication Act they also have the Trade Practices Act attached to their charter to be able to address these issues. So when I got the phone call from Robyn Davey on 4 August 1973 and he demanded I come down and see him immediately and the subsequent many meetings that took place with him and then I was very fortunate I met a gentleman who I consider a very sincere, genuine, gentleman by the name of Ian Campbell of Telstra, a lot of meaningful discussions took place. But as has been demonstrated here today everybody seems to feel as though, because these matters are a long time ago, that there is no public interest. What I am saying is that the public interest, and I believe that I have become a very good advocate of what is in the public interest as the spokesperson, is that these crimes that have been committed under the veils of secrecy and confidentialities are of public interest and no secret veil of confidentiality covers a criminal offence. So not only are we looking at the technical aspects we are looking at all the parties involved and what role they played to deceive the individual claimants and the public at large. Now my situation of 2007 is dealing with one of those other very interesting issues of how do you prove a point? How do you prove you have got a phone problem when the phone company says you don't have it? How do you prove when they say to you, but we rang you, you didn't

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Don, spent last Friday morning attempting to measure line resistances at Rockbank - but it was abortive because no-one was at the premises, and can't do measurements without someone at the premises. Aim to do the Fish Farm on Wednesday, all being well. Some measurements have been done on the Voice-link cables and they show a slightly higher resistance than theory. After travelling the cable run, I can understand why ! The measurements on Friday morning did, however, show that there are significant cable problems between Rockbank exchange and Dawson's premises. Ideal solution is to plow in new cable by shorter route - I will be talking to John McCoy (CAN) about this.

The measurements are being done by the Power Co-ordination people and they do have other work to do and are short staffed.

I am not aware how Alan H's ringer measurements are progressing, but I suspect they should have been finished by now.

The theoretical analysis is currently being refined to take into account the quirks in ringer installations that keep turning up - refer to earlier message about non-standard ringer at Jindabyne South! Parameters for Cape Bridegwater RCM have been obtained, but I don't believe them - I am attempting to check them. Some of the people supplying this information live in "old Telecom" !

Peter.

From: Pinel, Don
To: Gamble, Peter
Cc: Blake, Ed
Subject: RE: CAN Testing
Date: Monday, 15 November 1993 5:19PM

Peter

I need this more and more every day. When can I get it and which custoemrs will it cover. We need to extend this to all customers covered by teh Austel direction and get it completed by the end of this week.

Don

From: Gamble, Peter
To: Pinel, Don
Cc: Blake, Ed
Subject: RE: CAN Testing
Date: Wednesday, November 10, 1993 10:08AM

Don, I will put some words around it today and summarize the results in a table and then forward it to you. By then I should have resolved the Fish Farm cable details!
Peter.

From: Pinel, Don
To: Gamble, Peter
Cc: Blake, Ed
Subject: RE: CAN Testing

A09392

23M

Facsimile

Telecom AUSTRALIA

To	Graham Schorer	From	Peter Gamble Manager, Engineering and Technical Consultancy	Commercial & Consumer Customer Response Unit	8242 Exhibition Street Melbourne Vic 3000 Australia
Facsimile	(03) 287 7001	File			
Company	Golden Messenger	Date	22 November, 1994	Telephone (03) 634 8436	
Location	493-495 Queensberry Street, Carlton	Total Pages	4	Facsimile (03) 634 8090	

PSTN and ISDN Testing

Dear Mr Schorer

An opportunity has become available for Telecom to carry out some specialised testing using a new piece of equipment which has only just become available.

The equipment is the Telephone Quality Measurement System (TQMS) Version 3, manufactured by Sotas Inc. The TQMS will enable the measurement of a number of call set up and transmission parameters. Attached is a copy of some material which describes the system. The equipment has been specifically set up to recognise the tones used within the Australian telephone network.

I am proposing that we use this equipment to carry out some tests on both your PSTN and ISDN services. The PSTN tests will require the use of a line from one of your PSTN rotary groups to receive calls from a second unit, with an additional control line also being required. The ISDN tests will require the allocation of an initial number to the test unit. Given the number of PSTN and ISDN lines you have available, this should have minimal impact on your use of the telephone network. The second unit will be moved between a number of locations which have been selected by taking note of your previous comments on locations where callers have reported difficulties in contacting your business.

The precise duration of the tests, and hence the numbers of tests calls, have not yet been finalised, but it is expected that they will last for about two and a half days. The units are capable of generating calls at an approximate rate of 20 calls per hour. Spread over a full 24 hour period, which will ensure that both high and low traffic periods are encountered, it is expected that approximately 1,000 calls will be generated during the test period.

The cost of any outgoing calls made by this test equipment during this period will be credited to your telephone account.

The tests will be conducted by Mr Wayne Parker and Mr Jeff Thompson of Bell Canada International, who will also tabulate the results. The BCI staff will be assisted by two of my staff members, Mr Bruno Tonizzo and Mr Colin Roberts.

A copy of the results will be forwarded to you after the tests have been completed.

I would like these tests to start as soon as practicable and I will call you tomorrow morning to discuss the details further.

Peter Gamble

Peter Gamble

24A

CRU Engineering Tasks and Staffing

1) Current staff are:

Manager: Peter Gamble

Engineering: **Michael Pham** (Smith Case),
Vacant position (was Maurie Lean on loan for two months from Network Ops, goes back Friday 23 Sept to carry out work which will be of long term benefit. Network Ops reluctant to release him for further time and are currently looking for possible replacement.),
Geoff Keenan (currently providing backup material and writing briefing papers).

Technical: **Bruno Tonizzo** (needed to manage Service Verification Test process and provide backup to all cases on CAN and transmission aspects),
Colin Roberts (started one week ago, needed to provide backup to all cases on switching aspects).

2) Complete the preparation of the Engineering Reports for the first four DNF Cases in a reasonable time, ie 3-4 weeks, and in parallel. Following the preparation period, the reports will need to be reviewed as the defence case is prepared. This task will require 1 engineer plus 1 technical officer for each case, ie 4 engineers and 4 technical officers. **Note that this has to be in addition to current staff.** Current staff level was predicated on serial preparation of engineering reports and at an overview level only.

Case	Engineer	Technical Officer
Garms	–	Bruno Tonizzo (part time - currently also managing SVT)
Gillan	– (Was Maurie Lean, who is retuning to Network Ops)	–
Schorer	–	–
Smith	Michael Pham	Mark Owen (on loan from Network Ops, Ballarat for two weeks, probably can be extended)

Therefore, an additional three engineers and three technical officers (around PTTO1 / Level 5) for 6-8 weeks are needed urgently to carry out the case preparation work satisfactorily. If these staff are not available, then only minimal technical effort can be put into the cases. This requirement could be reduced to two engineers and two technical officers if one of the cases, say Schorer, was p' on hold, but this is risky strategy. Back-up to these teams is to be provided by Geoff Keenan, Bruno Tonizzo and Colin Roberts.

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3) Completion of background and technical papers on the network and related matters. Should be finalised in the next two - three weeks. This task is to be carried out by Peter Gamble, Geoff Keenan and Colin Roberts with assistance from other authors and a consultant as required.

4) A review of the General DNF Files is to be made to locate material relevant to individual cases. Also, material is to be prepared relating to the Coopers and Lybrand, Bell Canada and Austel CoT Reports. Although a large part of this activity will be mainly administrative and legal, it will need a dedicated engineering resource. Accordingly, a further P3 Engineer is required for this activity, which is estimated to take 2 months. It can not be accomplished within existing resources.

5) Prepare the engineering reports for next 12. If required in the medium term, the best approach is to keep staff recruited for first four and allocate them a further two or three cases each. This would keep some continuity and the case staff would then be needed for four to five months.

6) Service Verification Tests need:

- management of individual tests ie scheduling the tests, co-ordination of customer, Network Ops, and C&C, establishment of call profile, finalisation of report and forwarding it to the customer and AUSTEL, etc etc
- further development work ie ISDN tests, CPE tests, originating call tests,
- negotiation and liaison with AUSTEL.

Management of the test process is being carried out by Bruno Tonizzo. Work on developing the tests would be carried out by engineer recruited into the vacant position. Negotiation and liaison with AUSTEL is carried out by Peter Gamble.

7) A Call Delivery Test (100 calls from a number of origins to customers premises) was developed by Maurie Lean and carried out on Turner's service. These tests are needed to demonstrate in a formal way the current performance of the network to the DNF customers. Accordingly, they need to be carried out on a number of services, eg [redacted], Smith etc. In order to carry these tests out, people are required to make the calls, network Ops need to be on standby in case of problems, a person is needed at the customer's premises to receive the calls, and, accordingly, the whole process needs managing. Management would be done within the existing resources, providing previous recruitment has taken place.

8) Resolve technical issues relating to the first 4 plus the next 12 that crop up from time to time (eg [redacted] ISDN service, [redacted] wiring, [redacted] lines etc etc). This task can be done within the existing staff of engineers and technical officers if Maurie Lean is replaced and the full complement of case staff are recruited.

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9) Discussion with David Fickling / Geoff Irvine / Fiona Hills on Fault Escalation process. There are a number of unresolved issues, particularly relating to the role of the CRU Engineering Group.

A59730

10) Resolve technical issues relating to following 50 (?) and provide advice to Fiona Hills group. Once the SVT and support process are running smoothly, and initial work load is mostly complete, will be able to be handled within the existing group.

11) There are many other minor tasks which need action from time to time. These will be fitted in as time is available.

Conclusion

The following staff are needed **urgently**:

- One engineer at P3 level to fill the vacant position on a permanent basis. If permanent occupant can not be found, then a further rotation of an engineer from Network Operations is acceptable, with a three month minimum period.
- Three engineers at the P3 level (preferred, P2 acceptable if P3 not available) and three technical officers at the PTTO1 / Level 5 level for four to five months.
- One engineer at the P3 level for three months.

If these staff are not available, then the preparation of the general arbitration material and specific case material can not be completed in the required time frames.

The use of external staff on a consultant basis could be possible, providing there was a good working knowledge of Telecommunications. A possible pool of such staff could include engineers recently retrenched from Telecom, however, the selection process would have to ensure that the levels of knowledge and expertise were suitable.

Peter Gamble
16th September 1994

24B

A59731

Alleged unreasonable conduct

8.79 Telecom's conduct has been less than that which might be expected of a model corporate citizen -

- in insisting on strict proof of a causal link between faults and their effect on a business when its own records are deficient in recording faults
- in insisting on some complainants dealing with its lawyers rather than direct with it
- in concluding settlement negotiations expeditiously
- in insisting that payments in settlement of claims are goodwill payments/gestures rather than compensation.

RECOMMENDATIONS

8.80 AUSTEL recommends that -

- Telecom's advice to its customers experiencing difficult network faults on the outcome of its monitoring/testing should state the limitations of its monitoring/testing regime
- Telecom caution its staff engaged in resolution of difficult network faults against -
  - making statements to the effect that a customer's problem is unique before the causes of the faults have been identified
  - recommending customer equipment upgrades before other possible causes of the faults have been eliminated
  - making inaccurate representations of its liability for such faults
  - providing incomplete briefings to third parties who may take an interest in the resolution of the faults
- Telecom adopt a more flexible approach in its response to requests under the *Freedom of Information Act 1982* and ensure that it has the resources necessary to provide timely response to such requests

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Telecom AUSTRALIA

28 November 1994

Commercial & Consumer
Customer Affairs

Engineering and Technical
Consultancy
8/242 Exhibition St
Melbourne, Vic
Australia

Telephone (03) 634 8436
Facsimile (03) 634 9930

Norm O'Doherty
General Manager, Customer Affairs
AUSTEL
5 Queens Road
Melbourne, Vic

Service Verification Tests - Individual Call Data

Norm,

As agreed at one of our recent meetings and as confirmed in your letter of 16th November 1994, attached please find the detailed Call Delivery Test information for the following customers:

- Bova - Ralphies Pizza, Mordialloc, Vic
- Love - Lovey's Restaurant, Dixons Creek, Vic
- Main - Glen Waters Fish Farm, Glenburn, Vic
- Smith - Cape Bridgewater Holiday Camp, Cape Bridgewater, Vic (PSTN and 1 800)
- Turner - Gourmet Revolution, Moorabbin, Vic
- Trzcionka - Trzcionka's Hairdressing, Glenelg, SA

This information is supplied to Austel on a strictly Telecom-in-Confidence basis for use in their Service Verification Test Review only and not for any other purpose. The information is not to be disclosed to any third party without the prior written consent of Telecom.

The detailed results of the Call Delivery Tests should be read in conjunction with the individual Service Verification Test Reports, which will provide further information on the origins and destinations, together with details of the time period to be used for the call analysis. It should be noted that in all cases more than 500 calls are included in the sample. As indicated in Section 6.3.1 of "Service Verification Tests for Telecom's PSTN", the first 500 calls of the sample which fall within the specified time period, but not including the errors and failures mentioned in this section are used.

As you are already aware, the equipment which carries out the SVT Call Delivery Tests is able to hold the call for the required 120 seconds (as is shown on the results sheets), but is unable to confirm that the call has been held past 40 seconds. A more detailed response to your questions on this issue is under preparation.

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The detailed Call Delivery Test report for Dawson's Pest and Weed Control, Maidstone, is still being extracted from the data base and will be forwarded as soon as it is available. The report on Mr Bova's SVT is currently being finalised and will be forwarded as soon as it is available. As you are aware, Telecom is not completing the Service Verification Test for Mr Turner's service at his request. However, a report on that part of the test which has been completed is being prepared.

Also attached is a copy of the latest issue of a Result Summary document that has been prepared to show the key results from each SVT.

Two manual Call Delivery Tests have been carried out to Mr Main's service and to Mr Turner's service. Reports on the results of these tests are currently under preparation and will be forwarded to the customer, with a copy to AUSTEL, as soon as they are available.

Should you have any further queries, please do not hesitate to contact me.

Peter Gamble

25A

Meeting held at AUSTEL 15/12/94. AM.

(8)

94/0269-07

Telecom 173
AUSTRALIA

13 December 1994

Commercial & Consumer
Customer Response Unit

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VIC 3000
Australia

Telephone (03) 634 8436
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Norm O'Doherty
AUSTEL
8 Queens Road
MELBOURNE

In response to issues raised in your letter of the 16 November, the following comments are made:

1) As you will be aware, in April 1993 Austel formally approved The Australian Telephone Number Plan. The new numbering plan is designed to allow expansion of "local" telephone numbers and to allow for a greater number of new services in the multi-carrier Australian environment. The 10 digit number code range 1800xxxxxx has been allocated by Austel for all "Freephone" services. Currently the 008 service is used as a "Freephone" service. However, with the introduction of 10 digit numbering, the 9 digit number range 008xxxxxx will eventually be phased out.

   The introduction of 1-800 does not modify or change the current 008 service in any way. The 1-800 and 008 codes are currently parallel trunked in the network, allowing for the future migration of services to the new 1-800 product and subsequent withdrawal of the 008 service. It must be noted that any existing 008 service will have an equivalent 1-800 code allocated.

   Thus for both Mr. Alan Smith and Mr. Gary Dawson, the network equipment utilised for calls to the test 1-800 numbers were the same as that which would have been used for their 008 services.

2) In G001, "Service Verification Tests for Telecom's PSTN", section 6.3.1, it states that the first 500 calls will be analysed to determine the Call Success Rate. The test call program being used in the NEAT system may result in a number of calls being generated outside the specified incoming call profile of volume, time and origin for the customer. This is particularly the case where two call delivery tests are being carried out at the same time, one for a business operating 9 am to 5 pm, and the second operating in the afternoon and evening, for example a takeaway food outlet. Further, as the analysis takes place after the test has concluded, it is necessary to generate more than 500 calls to ensure that at least 500 calls will meet the call delivery profile specified and are not excluded for NEAT system failure reasons outlined in Section 6.3. However, the ring voltage of all successful incoming calls is measured in accordance with Section 6.3.3. Thus a larger sample of calls is used in deriving this test result.

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Telecom believes that it is generally inappropriate to quote the Call Success Rate on this larger sample of calls, as some of them may be outside the time profile and some may have been excluded for NEAT system failures.

3) Telecom has previously supplied individual call data for seven Service Verification Tests as requested. Following Austel's original request for this data, I discussed the supply of this data with Cliff Mathieson, who indicated his belief that Austel had no need of the data at that time. Consequently the data was not supplied then. When a further request was received for the data for use by the consultant assisting Austel, immediate arrangements were made to obtain the data from Network Operations' database.

4) The original concept of the Demonstration Tests was to confirm the operation of the service after the customer specific line tests had been concluded and the service restored. It was originally set at ten calls, but was expanded to twenty calls to demonstrate end-to-end service capability. It is not practical to base a test on this methodology because the demonstration process incorporates elements of CPE performance, is manual and relatively inefficient. In the preamble to the tests (Section 7.1) it is suggested that: "The calls should come from several origins, and be oriented towards the incoming call profile of the customer(taking into account the nature of his business) whilst having regard to average traffic patterns."

In response to requests from customers for a more rigorous "end-to-end" testing procedure, a more detailed test specification was developed which aimed to generate 100 test calls to a customer's service from five or six locations. The test was designed to be carried out during, say, a morning. A copy of the document that describes this test, "Incoming Network Service Performance Measurement for Individual Customers Summary", S001, is attached for your information.

Two tests have been carried out using this procedure, one on Mr. Colin Turner's service, and one on Mr. John Main's service. However, there have been three key problem areas identified which apply both to the original demonstration tests and the revised procedure. The first has involved obtaining sufficient staff to carry out the test. Two alternative sources have been tried, but neither can be guaranteed on an ongoing basis, which is why the Test Program has not continued further. The second problem is the intrusiveness of the test. Where a service consists of one or two lines, the additional traffic from a substantial number of test calls is quite significant and can be disruptive to the business. Finally, the tests may produce inconclusive results when the test calls strike a busy condition from genuine business calls. This situation is exacerbated if any of the test calls is to be held for any length of time, such as two minutes. The intrusive nature of these tests is not so great if the customer under test has a larger number of lines.

The alternative is to maintain the Demonstration Tests as originally specified, with calls generated from one or two locations. However this also needs a Telecom person to attend the customer's premises and, if the calls are to be held for two minutes, can still represent a significant intrusion.

This issue is still being considered by Telecom and it was Telecom's intention to raise these issues as part of the current SVT review process. Austel's views on the matters raised above would be appreciated.

5) When the Service Verification Test was originally developed it was understood that the NEAT units could hold a call for 120 seconds. However when detailed test schedules were being prepared it was discovered that while the NEAT system could hold a call for 2 minutes, it could not confirm a call hold time beyond the 45 seconds taken to perform the transmission test.

A proposed software modification to NEAT has been discussed with the supplier who initially offered a modification to be available by November 1994. This feature has now, apparently, been delayed indefinitely. To meet the SVT requirement a variety of test call generating systems were investigated, but none was able to hold and confirm a test call for the required 2 minutes. Various modifications were considered and some tests carried out but they were unable to provide reliable results.

Telecom is currently concluding negotiations for the supply of a new generation of call generating equipment, for which the ability to hold and confirm a call for 120 seconds is mandatory. Further information will be provided as it comes to hand.

Peter Gamble

Peter Gamble
Manager, Engineering and Technical Consultancy
Customer Response Unit

FAXED 16/12/94 9.40

GOLDEN
Transport Agency

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 048

IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT. It is in your interests to read them to avoid any later confusion.

To:	Mr Steve Black Group General Manager, Customer Affairs	Date:	15 December 1994
		Our Ref:	1431
Company:	Telecom	Fax No:	632 3235
From:	Mr Graham Schorer	Total Pages (incl. Header)	

MAILED: YES ( ) NO ( )

Dear Mr Black,

RE: PROPOSED TELECOM VERIFICATION TESTING

I refer you to our telephone conversation last week regarding this matter and as you recall, my drawing your attention to the Peter Gamble correspondence referring to the statement that there will be further testings conducted by Bell Canada using new American equipment especially designed for such types of testing.

I pointed out to you that I was aware that this equipment had run into problems when trying to run tests on Ralph Bova service, which you responded that you were not aware of.

I offered a suggestion that should have been mutually acceptable to both parties, that this type of testing be conducted by D.M.R., the technical communication resource unit attached to the Fast Track Arbitration Procedure, which you stated would not be appropriate.

I then offered a suggestion that this type of testing should be conducted in the presence of Cliff Matheson of Austel, and you undertook to investigate this possibility with Austel further.

During a more recent telephone conversation regarding many other matters, you informed me that Cliff Matheson would not be available while the Bell Canada people would be still in Australia. I asked the question of you, why would Bell Canada's presence in Australia be relevant if Cliff Matheson, on behalf of Austel, was to conduct the tests.

I have finally managed to make telephone contact with Cliff Matheson yesterday to discuss this matter with him in person and the outcome was as listed below:-

(a) He personally had no difficulty being involved in such testing program;

(b) His current commitment would prevent him from being available until approximately mid January;

(c) Austel management would have to approve of his involvement in such testing;

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493-495 Queensberry Street, NORTH MELBOURNE VIC 3051

(d) He is of the opinion that his involvement would have to be at the expense of Telecom;

(e) Telecom would have to formally request of Austel for Cliff Matheson's involvement in such testing.

During a telephone conversation between you and I earlier this week, I informed you:-

(a) I had not been able to make contact with Cliff Matheson;

(b) I was aware that Telecom/Bell Canada International had abandoned tests on Gary Dawson's telephone service last Friday, 9 December 1994, and the official reason given was that this new equipment does not like Australian conditions;

(c) I required in writing from Telecom the results and reasons for such tests were abandoned.

Mr Black, I am awaiting your written response.

Yours respectively,

Graham Schorer

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493-495 Queensberry Street, NORTH MELBOURNE, VIC. 3051

Michael Rumsewicz, Ph.D.
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723 Swanston St
Carlton, Victoria, 3047
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facsimile: +61 3 282-2444

December 15, 1994

Norm O'Doherty
General Manager
Consumer Affairs Branch, AUSTEL
Jetset Centre
5 Queens Road, Melbourne, 3004

Report on Telecom Australia's Service Verification Tests (G.801)

Dear Norm

Please find attached my report on Telecom Australia's Service Verification Tests in accordance with consultancy agreement specified under contract number 2060.

Should you require any further information or assistance please do not hesitate to call me at the above number.

Yours sincerely

Michael Rumsewicz

93/0660

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Report on Telecom Australia's Service Verification Tests (G.001)

Michael P. Rumsewicz

Executive Summary

This report is provided in response to AUSTEL's request for external assistance in reviewing the engineering, methodological and statistical issues arising from Telecom Australia's Service Verification Tests (as documented in General Information Paper G.001, Service Verification Tests for Telecom's PSTN, Reference [1]).

Quoting from G.001, the service verification tests have been developed:

> *"... as the basis upon which a telephone service at the Service Delivery Point may be considered to be operating satisfactorily at the time the tests were conducted."*

The report focuses upon four areas as specified in the consultant's brief (Attachment 1):

- Reasonableness of national targets for call connection and call continuity / call dropout and how these are impacted by network modernisation.
- Reasonableness of performance targets for individual customers and how these are impacted by variations in network equipment type / generation and time of day traffic variations.
- Statistical validity of individual verification tests based upon test call sampling
- The acceptability of Telecom Australia's General Information Paper G.001 describing the tests.

The main findings of this analysis are:

- Telecom Australia's national targets for call connection are more stringent than internationally accepted guidelines (E.721).
- Telecom Australia does not appear to have a documented national call continuity / call dropout target (no specific reference is provided in G.001). It is recommended that such targets be developed in order to more comprehensively monitor customer grade of service.

- The individual customer performance targets employed by Telecom Australia appear to be reasonable given the current stage of network evolution. Tightening of these targets may be appropriate as network modernisation nears completion.

- Customer calling profiles (which provide the basis of the Service Verification Test test calling pattern) would be more accurately determined through the use, for instance, of Telcelec / CCS 7 equipment or, in the case of 008 / 1800 subscribers, customer billing records. The actual technique employed (including customer consultation as presently performed), however, should be determined on a case by case basis dependent upon technology, timeliness and resource constraints, with the additional proviso that customer confidence in the test be assured.

- The service verification tests performed by Telecom provide sufficient information to quantify, to a reasonable degree of accuracy, the call connection performance of the network. However, the statistical test being applied to the data is inconsistent with the goals of the testing as stated in Telecom's Customer Fault Management Process (000 841, Section 5.4.6) and AUSTEL's report, The COT Cases (April, 1994).

  An alternative statistical test, using the same data, is proposed in this report. We note that the alternative statistical test would also have been passed when applied to the data obtained in service verification tests performed to date.

- The General Information Paper G.001 overall provides an adequate and easy to understand description of service verification tests.

Beyond the scope of the consultancy brief, we also make the following observations:

- Service Verification Tests may at some stage need to be designed for other services (for instance, ISDN and mobile).

- In a multi-service deliverer environment it may be necessary to have an independent set of generic tests (endorsed by AUSTEL) to address difficult network faults in an equitable fashion across all service deliverers.

- In a multi-service deliverer environment, calls will be originated in a number of different networks to difficult network fault customers. In compiling testing profiles to mimic customer calling patterns, it may be necessary to send test calls through a variety of service deliverer's networks. Safeguards would need to be in place to protect the interests of the various parties with respect to information collected in such a fashion.

1. INTRODUCTION

This report is provided in response to AUSTEL's request for external assistance in reviewing the engineering, methodological and statistical issues arising from Telecom Australia's Service Verification Tests (as documented in General Information Paper G.001, Service Verification Tests for Telecom's PSTN).

Quoting from G.001, the service verification tests have been developed:

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The report focuses upon four areas as specified in the consultant's brief (Attachment 1):

- Reasonableness of national targets for call connection and call continuity / call drop-out and how these are impacted by network modernisation.
- Reasonableness of performance targets for individual customers and how these are impacted by variations in network equipment type / generation and time of day traffic variations.
- Statistical validity of individual verification tests based upon test call sampling.
- The acceptability of Telecom Australia's General Information Paper G.001 describing the tests.

The analysis provided herein is based upon documentation provided by AUSTEL and Telecom Australia, interviews with Telecom Australia personnel and public information resources.

This report is structured as follows:

- Section 2: Examination of issues directly related to the consultancy brief.
- Section 3: Other comments arising from the analysis but beyond the scope of the consultancy brief.
- There are also a number of Appendices and Attachments, including a copy of the consultancy brief and the author's *curriculum vitae*.

2. Analysis and discussion arising from the consultancy brief

2.1 National Performance Targets

"The reasonableness of national targets for call completion and call continuity / call drop-out and how these are impacted by network modernisation"

The Public Switched Telephone Services (PSTS) Tariff (Amended July 1994) states that the Telecom Australia prescribed national average levels of call failures due to network loss are:

- 1.5% for local calls (daily average), and
- 2.6% for STD day rate.

The primary international benchmarks for comparison with these targets are to be found in International Telecommunication Union - Telecommunication Sector (ITU-T, formerly known as CCITT) recommendations. Recommendation E.721 (Network Grade of Service Parameters and Target Values in the Evolving ISDN, 1991, Reference [3]) provides the following target values:

- 2% for local calls
- 3% for toll (long distance) calls.

Telecom Australia's targets are within these standards.

We note that these benchmarks apply to fully digital networks employing Signalling System Number 7, a stage that has not yet been reached in Telecom Australia's network.

We believe that Telecom Australia's present national call delivery targets are reasonable for the current stage of network evolution.

As Telecom Australia's network modernisation program continues (as prescribed under the Future Mode of Operations and subsequently accelerated) it can be expected that the actual call delivery performance levels achieved will naturally improve. Such improvements stem from improvements in switching technology (most digital exchanges are now either non-blocking or almost non-blocking with respect to internal switching connections), fewer exchanges in the end-to-end call path and lower costs for transmission bandwidth for circuit switched services. It is likely that congestion on circuit groups, in a fully digital network, will be almost the sole cause of non-delivery of a call (outside of equipment failure). As a result, customer expectations for call delivery may also increase as improved service levels become the norm. Tightening of target grade of service levels may be appropriate in the

future.

Providing a detailed analysis and recommendations for long term target grade of service levels is beyond the scope of the consultancy brief, although we note that market forces in a competitive environment may automatically shape future targets (for example, service quality is often used in advertising in the USA to differentiate the service provided by various long distance carriers).

In the above mentioned Tariff filing, no comment is made concerning call continuity / call dropout objectives.

ITU-T Recommendations E.428 (Call Retention, 1992, Reference [2]) and Q.543 Section 2.5.1.1 (Digital Exchange Performance Design Objectives, Reference [4]) provide guidance as to accepted international norms on call continuity / call dropout. E.428 states that in the intermediate term, the cut-off call ratio for subscriber to subscriber calls, measured over a 24 hour period, should be less than 0.5% for five minute calls. In any time consistent hour, the call cut-off rate may not exceed 3% (we assume this applies to five minute calls also).

Moreover, Recommendation Q.543 states that for 64 kb/s switched connections, the probability of premature release of an established connection, in any one minute interval, should be less than 0.002%. For two and five minute calls, this would translate to (approximately), call dropout probabilities of 0.004% and 0.01% respectively. We recognize that this applies to ISDN exchanges (rather than networks as a whole), but it clearly indicates the quality of service expected in mature digital networks and hence should be considered as potential longer term targets.

On a network level, such stringent dropout criteria would give rise to targets of approximately 0.008% for local calls (assuming less than five exchanges are used in a local call) and 0.016% for long distance calls (assuming a maximum of eight exchanges in such calls).

It is important to note that these dropout rates refer only to switch related causes and do not take into account the possibility of transmission facility failure (for example, due to high error rates or cable cuts). Such factors would also need to be considered in the final specification of call continuity grade of service targets.

On the national level, Telecom Australia appears to have no precise criteria for call continuity / call dropout and hence it is recommended that such criteria be developed or that international standards be adopted.

2.2 Individual Performance Targets

"The reasonableness of performance targets for individual customers for call connection and call continuity / call dropout and how these may be impacted by variations in network equipment type / generation and time of day traffic variations."

The ITU-T objectives described in the previous section refer to entire network averages, that is, an "all exchanges to all exchanges" (or multipoint to multipoint) description of objectives for service quality. No breakdowns into point to point, point to multipoint, or multipoint to point objectives are provided.

Also, AUSTEL has recently released a Draft Technical Standard for Comment on "End-to-End Network Performance" (Reference [6]). That document addresses overall network average performance, measured over monthly periods. As the measurement period consists of the full 24 hour day, including mass call-ins and special tariff discounts, service standards established there are not relevant to the service verification tests, which specifically exclude such situations and are aimed at multipoint to point service issues. As such, we will not be referring to the AUSTEL End-to-End Network Performance draft again in the following.

Certain national jurisdictions and service deliverers have, however, identified local levels at which action or notification of regulatory of bodies should occur.

For example, the Swedish Telecommunications Administration (STA) sets network wide call accessibility targets of 98% and 97% for whole day and busy time (defined as the ten most traffic intensive hours of the day) respectively (Reference [5]). In addition to this, they also set corresponding targets for individual traffic cases (exchange rather than network based) of 96% and 94% respectively, regardless of equipment type. We note here that call accessibility implies that calls are connected and speech is possible.

Also, these are 1991 targets and relate to the Swedish network as it existed then. Some of the targets used at that time were under review for tightening as a result of network modernization.

Similarly, the Florida Public Service Commission provided a benchmark (in 1991) of 90% call completion for calls originating at any exchange. While somewhat less than that set by the STA, the question of guaranteeing certain levels of service all subscribers is specifically addressed.

As implied in the STA reference cited above, specific attention must be given to time of day considerations in the formulation of grade of service objectives. Clearly, call blocking on circuit groups is most likely to occur during the daily busy periods, which may vary from

locale to locale. For instance, exchanges in the central business district are likely to experience peaks during the morning and afternoon while regional exchanges may see peaks in the evenings.

As part of the Service Verification Test procedure, information is compiled from the customer to determine a profile of incoming call attempts, by time of day and originating exchange. Note, however, that periods of mass calling and special discount tariff are precluded from the test regime. Thus, a "fair" reflection of the customer's incoming grade of service would appear to be provided by the Service Verification tests.

As different customers will have different busy periods, determining a single benchmark across all possible load profiles is difficult. However, the STA benchmarks of 96% and 94% for all day and busy time set an appropriate "best practice" standard. The use of a 95% objective, independent of equipment type, by Telecom Australia is directly in line with this practice.

As discussed in Section 2.1, network modernisation will almost naturally result in improved call delivery performance as a result of the internally non-blocking design of digital exchanges. Combined with the simpler process of adding circuit capacity in such exchanges, customers are likely to see improved service quality as the FMO proceeds and it may be necessary, in order to maintain such standards, to further tighten the call delivery targets specified as part of the Service Verification Tests. Determining specific targets for fully digital networks is beyond the scope of this consultancy.

We believe that the individual performance target for call delivery established by Telecom Australia for the Service Verification tests is a reasonable target for the current stage of network evolution. In the future, when Telecom's Australia's network becomes fully digital, it may be appropriate to further tighten these targets.

The STA call delivery standard cited above requires that calls not only be delivered, but also have acceptable sound quality and are not dropped. Thus, the 96% / 94% individual targets cited apply overall to blocking, speech quality and call retention, but no specific breakdown is provided.

With regard to call continuity / call dropout, Telecom's stated objective of 98% call continuity is a significantly less stringent criterion than Recommendation E.428 (0.5% for five minute calls), especially as it applies only to two minute calls, although we note that E.428 applies to digital networks rather than analogue.

Given the present stage of network evolution, in itself Telecom Australia's call continuity target of 98% appears to be reasonable. However, when combined with the 95%

call delivery target, this could lead to unnecessarily looser standards. A combined standard, along the Swedish lines, allowing for a minimum 95% call delivery with acceptable speech quality and call retention, and a minimum 98% call retention may be more appropriate. In addition, as network digitization nears completion, a more stringent call retention criterion, along the lines of E.428, may be appropriate.

2.3 Statistical Validity of Testing Procedure

"The statistical validity of individual verification tests based upon call sampling and the adequacy and format of the test data collection."

This section of the brief pertains primarily to those tests described in Section 6.3, Public Network Call Delivery Tests of G.001. There are a number of issues to be covered in assessing the statistical validity of the testing described in Section 6.3.1 of G.001. In the following we shall raise the issues and discuss them in a narrative fashion. Similar discussion applies to testing described in Section 6.3.2 of G.001, so only differences will be noted at the end of the section to avoid needless repetition.

Are the test calls representative of calls being sent to the customer?

As part of the test procedure, Telecom consults with the customer in order to determine typical call profiles, busy and minimal traffic periods and incoming call distributions. Test calls are then generated according to this profile in order to mimic calls destined for the customer.

An alternative, and more accurate, technique to determine incoming call patterns that could be employed (with the cost of extra time in data collection) would be through the use of Signaling System 7 monitoring equipment (such as the Tekelec / CCS 7 monitoring tool or similar). Incoming call setup messaging to the host exchange destined for the customer could be trapped to allow for traffic distribution analysis. Collection of this data may take some time (many days to weeks) depending on the call volumes destined for the customer.

In the case of customers subscribing to 008 / 1800 service, detailed billing records are available which could be analyzed to determine, with a similar degree of precision, the incoming call distribution.

Note that these two alternative techniques would also allow accurate profiling on a day of week basis, allowing the test call pattern to be set up similarly. This would eliminate any potential concerns on traffic day of week variations affecting the "representativeness" of the test call pattern.

We believe that more accurate incoming customer call profiles could be created through use of Tekelec / CCS7 equipment or, in the case of 008 / 1800 customers, use of billing records. The actual technique employed (including customer consultation as presently performed), however, should be determined on a case by case basis dependent upon technology, timeliness and resource constraints, with the additional proviso that customer confidence in the test be assured.

Are sufficient calls being generated to collect a statistically valid sample?

Document G.001 recommends that at least 500 test calls be made. Samples of this size are sufficient to determine, with a reasonable degree of precision, the call delivery performance to the customer.

The document G.001 states that tests 6.3.1 (success rate of incoming calls), 6.3.2 (call continuity) and 6.3.3 (ring test) may be combined, that is, the test calls made can be used for the analysis of all three tests simultaneously. However, the procedure described in 6.3.1 requires that only the first 500 test calls be used. Test 6.3.2 requires 500 successful calls be made and thus more calls than test 6.3.1 are required. By restricting the data analysis in 6.3.1 to only the first 500 calls, incongruous situations may arise, as noted in discussions with Cliff Mathieson.

We believe that sufficient data is being collected to provide a statistically valid sample. In addition, the entire dataset should be analyzed for verifying that service standards are being met, rather than artificial limits of 500 calls.

Is sufficiently detailed data being collected to analyze the test results?

Telecom Australia has provided all call delivery data collected in the Service Verification Tests performed to date. The data includes, for every test call - time and date - originating number and exchange - terminating number and exchange - call disposition (for example, connected and blocked in network). Data in such detail allows the comprehensive analysis of ineffective call attempts, in particular, the ability to determine whether there are correlations in the ineffective calls, such as:

- time of day
- originating exchange
- type of call failure.

We believe that the data being collected is sufficiently detailed to allow a comprehensive analysis of ineffective attempts.

Are the statistical tests being performed appropriate to the question being asked?

The nature of the statistical test that should be applied to the data depends greatly on the information desired from the data. Telecom Australia, in its Customer Fault Management Procedure - Overview (draft dated 15 July, 1994) states in Section 5.4.6 (Verification Tests):

> "The purpose of verification tests is to demonstrate that the service provided to a specific SDP [Service Delivery Point] is satisfactory and meets published standards."

In addition, quoting directly from the AUSTEL COT Cases report,

> "Telecom, in consultation with AUSTEL, develop by May 1, 1994 -
>
> - a standard of service against which Telecom's performance may effectively be measured
>
> - a relevant service quality verification test."

These statements clearly indicate that the Verification Tests need to determine the actual call delivery performance to the customer.

Telecom Australia, as part of document G.001, applies a standard technique based on hypothesis testing. Hypothesis testing is used to determine whether there is sufficient evidence to reject one hypothesis (known as the null hypothesis) in favour of another (known as the alternative hypothesis). If insufficient evidence exists to reject the null hypothesis, the null hypothesis is accepted. It is critical to note that this is not the same as saying that the null hypothesis has been verified.

> *In the context of the Service Verification Tests, this means that the test applied checks to see whether it can be "proved" beyond reasonable level of doubt that less than 95% of calls to the customer are delivered, as opposed to showing that at least 95% are delivered.*

The standard being applied by Telecom in its proposed analysis of the data is that if the overall (population) call delivery performance is greater than 95% (the individual customer target), then there is only a 2.5% chance (the reasonable level of doubt mentioned in the previous paragraph) that the sampled data will fall below their stated benchmark (465 calls out of 500). In statistical parlance, this would be called a Type I error and reflects the chance that you will incorrectly reject the null hypothesis.

To verify that the performance meets published standards, the actual call delivery performance needs to be determined. A more appropriate analysis of the data would be to determine the overall probability that the call delivery performance is better than 95% (the individual customer benchmark), and provide (as a benchmark) a lower limit on this probability.

Such a test would be conducted as follows:

1. From the data, determine the number of successful call attempts (denote this by k in the following) out of the total number of call attempts (call this n).
2. Compute p = k/n.

   The variable p is the estimate of the call delivery performance obtained from the data.
3. Compute z = (p - 0.95) / sqrt (p * (1 - p) / n)
4. The probability that the overall call delivery performance is at least 95% is given by inverting a normal distribution on (0,1). This is simpler than it sounds because, for instance, Microsoft Excel provides the function NORMSDIST(z) which does exactly this.
5. If NORMSDIST(z) > 0.9, then say that the call delivery performance standards have been met. This would mean that there is a 90% chance that more than 95% calls are delivered to the customer, based on the test data.

Depending on the degree of confidence required to pass the test, 0.9 can be replaced by a more suitable benchmark. Examples of the use of this test are provided in Appendix A.

We note here that performing the above statistical test is identical to switching the null hypothesis prescribed by Telecom Australia to one which assumes that the call delivery performance is less than 95%, and then seeking sufficient evidence to show that the performance is actually higher than 95% (the new alternative hypothesis).

In other words, Telecom Australia should be provide convincing evidence that their call delivery performance meets their specified target, rather than seeking convincing evidence that their call delivery performance fails to meet their target.

There are a number of important points worth noting here:

- Application of such a test places the onus on the service deliverer to demonstrate that their targets are being met rather than on the customer to show that the performance targets are not being met.
- Using the test Telecom proposes is likely to lead to the dissatisfaction of customers if they are shown test statistics in the 93% to 95% range (which would pass Telecom Australia's criteria). For public relations reasons the test we propose may be more suitable.
- For comparison, if 500 test calls are made, the Telecom Australia pass criteria is that 465 calls be successfully delivered, whereas our proposed test would require

that 481 calls be successfully delivered.

- The higher benchmark needed to pass the test proposed here does not change the stated call delivery target of 95%. It merely provides a different pass / fail criterion for the test of whether 95% call delivery is being achieved.
- Application of our proposed method on actual customer data provided by Telecom Australia to AUSTEL on Service Verification Tests performed to date would still have resulted in all tests passing satisfactorily.

With regard to testing described in Section 6.3.2 of G.001 (Call Continuity / Drop-outs to Neighbouring LIC), an essentially identical discussion applies except for modification of the pass criteria due to the higher standard expected in call continuity (less than 2% of calls dropping out). In this case, references to 95% or 0.95 in the above are replaced by 98% or 0.98 as appropriate.

We believe that, given the stated purpose of the Service Verification Tests supplied in the Telecom Australia Customer Fault Management Procedures document (000 841) and that of the AUSTEL COT cases report, the statistical test being applied to the collected data is inappropriate. We believe the alternative test described above is more suitable and, in addition, promotes customer confidence in the test procedure and analysis.

Can anything else be learned from the test data, especially if the test fails?

As described in document G.001, the only statistical test applied to the data collected in Tests 6.3.1 and 6.3.2 is a "macro" test, that is, only the total number of failed calls and attempted calls is examined. No further analysis of the data, for example by originating exchange, is performed to determine whether there are any patterns to the way in which calls fail during the test. As mentioned earlier, the data collected is quite comprehensive and easily allows for such analysis. Furthermore, the use of Microsoft Excel easily facilitates such analysis.

In Appendix B we provide portions of such an analysis we have performed on the collected data.

Moreover, in instances in which the test fails to meet the pass criteria, such investigations may provide sufficient information to track down specific network or test equipment related problems which, upon rectification, may not require the entire test to be re-run, merely, that connected with affected portions of the network / test setup. This could result in significant time and cost savings.

We believe that the analysis of collected data should be expanded to include an examination of call failures broken down by originating exchange, time of day and type of failure. In the event that correlations in the failures are found, fur-

ther investigations, as appropriate, should be undertaken.

2.4 Acceptability of Telecom Australia Document G.001

"The acceptability of Telecom's explanatory document "Service Verification Tests for Telecom's PSTN" as a user friendly and accurate description of the test purpose and regime".

We believe that the document is, overall, well-written and provides an adequate and simple description of the test procedure and data analysis. However, the discussion of demonstration tests (including pass / fail criteria) appears out of place in this document and should be removed altogether.

Some further minor changes, as noted below, would help to clarify the document.

Section 1: (a) The purpose of the testing is to determine whether satisfactory service is being delivered to a customer at the time the tests are performed. These tests serve as an integral part of Telecom Australia's Customer Fault Management Procedures, an on-going process. References to Coopers and Lybrand's "Review of Telecom Australia's Difficult Network Fault Policies and Procedures" and AUSTEL's "The COT Cases" report confuse the issue as to the purpose of the tests. For example, the reader may wonder whether the tests are to applied only as part of COT case resolution. This paragraph could be removed without loss of information to the reader.

(b) Presumably Paragraphs 4 and 5 will be removed when the document becomes stable.

Section 2:

This section states that the demonstrations described in Section 7 are not part of the verification test procedure. As such, Section 7, together with this reference should be removed from the document as its presence can be confusing to readers not familiar with the overall details of testing and data analysis.

Sections 3, 4 and 5: No comment.

Section 6: (a) If the target audience for this document includes customers whose service needs to be tested, the test details provided in Section 6.1 are overly in-depth for the average reader. We suggest a simple description of what the test is attempting to verify would be more appropriate in this case. For example, 6.1.2 could be replaced by something in the spirit of:

"A test will be performed to ensure that there is sufficient voltage applied to an incoming line to ring three phones when an incoming call arrives".

Details of the tests would be documented in the Service Verification Test Work Instructions or similar.

(b) Section 6.3 is reasonably clearly written although, as noted earlier, the test cases are not truly independent. Obviously the text will need to be modified if changes are made to the analysis of the data in accordance with recommendations made earlier.

(c) For the Ring Test (Section 6.3.3) some indication of what is considered a significant sample of test calls should be given.

Section 7: As mentioned earlier, we believe this section should be removed from the document. If it is not, the subsections marked "Desired Outcome" should be removed as the intent of the demonstration cannot be to verify the call delivery performance to the customer given the sample size. Such "Desired Outcomes" are confusing and, potentially, misleading to the customer (in terms of either too many calls failing or reading too much into cases in which all calls succeed).

3. COMMENTS OUTSIDE SCOPE OF CONSULTANCY BRIEF

This section provides discussion / findings arising from investigations associated with the consultancy, but outside the normal scope of the brief.

3.1 Service Verification Tests for Other Services

As specifically stated in document G.001, the service verification tests are to employed only as a test of "... operation of a fixed terrestrial analogue voice ring-in / loop out connection within Telecom's own Public Switched Telephone Network and connected to a standard exchange either directly or via a Pair Gain System." It is conceivable that the equivalent of difficult network faults may arise in the context of other services, for example, ISDN, high speed packet or mobile services. Service Verification Tests do not exist for such services at this time. In addition, the current set of tests focus on incoming calls to the customer line; tests for outgoing problems may also be necessary.

In terms of Customer Fault Management Procedures, it may be worth investigating the proactive creation and standardization of tests covering difficult network faults for services such as ISDN or mobile.

The experience gained through the creation of tests associated with G.001 could be exploited to put in place a comprehensive plan in advance of any potential difficult network faults for other services.

3.2 Service Verification Tests for Other Network / Service Deliverers

Telecom Australia is clearly the author and owner of the tests / testing procedures associated with the Service Verification Tests. Just as other services may require similar procedures to be put in place, other network / service deliverers may also require procedures such as these for dealing with difficult network faults. It would appear inappropriate if Telecom Australia's intellectual property in this area were simply made public domain. The independent creation of such a set of tests may necessary to provide an equitable solution.

In terms of dispute resolution, it may be worth investigating whether AUSTEL needs to play a role as author of a set of generic tests for service verification which can be applied to all network / service deliverers. Such tests may need to be created for a variety of services (such as ISDN or mobile).

The creation of such tests would allow for uniform standards to be applied across the industry rather than in a piecemeal fashion to individual deliverers. It would also be a proactive step in handling potential future disputes.

3.3 Multiple Service Deliverer Environments

The service verification tests described in G.001 focus on incoming calls to the affected Telecom Australia customers. Such calls can, of course, be originated from people or businesses subscribing to other service deliverers, in particular Optus at the current time.

In the near future it may occur that 20% of long distance service between Sydney and Melbourne will be carried by Optus, with the rest carried, in the main, by Telecom Australia. The compilation of customer calling profiles is then complicated by the fact that the called party (the complaining customer) is probably unaware of the service deliverers used by their callers. To mimic the level of service perceived by the customer, it would then be necessary to send calls through both the Telecom Australia *and* Optus networks. As more service deliverers enter the arena, such considerations become even more complex.

It is important to note that this would then create situations in which testing regimes effectively provide a measure of delivered service of each network through which test calls are sent. Such information would may be proprietary and hence safeguards would need to be in

place to protect the interests of the various participants. This could include, for instance, the employment of independent testing and data analysis facilities.

It may be worth investigating whether service verification test calls should be originated in each service deliverers network, terminating on (or near) the difficult network fault customers line. Such investigations should include, but not be limited to, provisions that may have to be made for allowing test calls to be sent through another service deliverer's network.

We note that there is some synergy here with the suggestion that AUSTEL investigate the need for an independently created, generic set of verification tests that can be applied across all service deliverers.

REFERENCES

[1] Telecom Australia, G.001, *Service Verification Tests for Telecom's PSTN*, Issue Interim 27th September, 1994.

[2] CCITT Recommendation E.428, *Connection Retention*, 10/92

[3] CCITT Recommendation E.721, *Network Grade of Service Parameters and Target Values for Circuit-Switched Services in the Evolving ISDN*, 1991

[4] ITU-T Recommendation Q.543, *Digital Exchange Performance Objectives*, 3/93.

[5] Swedish Telecommunications Administration, *Accessibility and quality on the national network, 1st quarter of 1991.*

[6] AUSTEL, *End-to-End Network Performance*, Draft Technical Standard for Comment, December 5, 1994.

APPENDIX A: Example application of proposed alternative statistical test

Suppose 500 test calls are made. As stated in Telecom Australia's General Information Paper, the pass criteria for their statistical test is that at least 465 (93%) of call attempts be successfully delivered.

Suppose 470 calls are successfully delivered. Thus, the test passes the Telecom Australia's test criteria.

For the alternative test proposed,

Step 1: k = 470, n = 500.

Step 2: p = k / n = 470 / 500 = 0.94

Step 3: z = (p - 0.95) / sqrt (p * (1 - p) / n) = (0.94 - 0.95) / sqrt (0.94 * (1-0.94) / 500)

= -0.01 / sqrt (0.0001128) = -0.01 / 0.01062 = -0.9416

Step 4: NORMSDIST(-0.9416) = 0.1736. Thus, the probability that the call delivery performance exceeds 95% is about 17%.

Step 5: If we wish to be 90% sure that the call delivery performance is better than 95%, the test fails (because 0.1736 is less than 0.9).

Suppose, instead, that 485 calls are successfully delivered. Then

Step 1: k = 485, n = 500.

Step 2: p = k / n = 485 / 500 = 0.97

Step 3: z = (p - 0.95) / sqrt (p * (1 - p) / n) = (0.97 - 0.95) / sqrt (0.97 * (1-0.97) / 500)

= 0.02 / sqrt (0.0000582) = 0.02 / 0.007629 = 2.622

Step 4: NORMSDIST(2.622) = 0.9956. Thus, the probability that the call delivery performance exceeds 95% is about 99.56%.

Step 5: If we wish to be 90% sure that the call delivery performance is better than 95%, the test passes (because 0.9956 is greater than 0.9).

APPENDIX B: Detailed Analysis of Telecom Australia Service Verification Test Data

At AUSTEL's request, Telstra has provided the raw data on call delivery performance from the Service Verification Tests performed to date. Table 1 provides a breakdown of the failed calls according to cause code for each customer. Calls failing due to problems with test equipment have been removed from the data set. The code NWL represents network congestion, and WNO represents that an undefined tone was detected and is registered as a failed call attempt. Data in cases in which the customer had two lines tested are shown by # / #.

Table 1: Call failures broken down by cause code (Line 1 / Line 2)

Customer	NWL	WNO	Total calls
Bova	1		1161
Dawson	1 / 0	0 / 1	626 / 502
Love	2		522
Main	1	3	508
Smith	0 / 1		608 / 617
Trzcionka	3		1046
Turner	0 / 3 (A)	0 / 1	531 / 532

Breaking down the data in this fashion allows us to see whether there are common causes for the call failures. In addition, we examined the data to determine the originating nodes for the failed calls.

The marked entry is of interest when analyzed in this fashion as all three NWL calls originated at the BATMAN 2 exchange from a total of 92 generated there. While such a result might be expected from any one exchange (that is, one case of approximately 3% congestion), had, for instance, 10 more calls failed at BATMAN 2 the overall statistical pass /fail criteria would still have been passed and no further investigation taken place. This would be the case even though, in this hypothetical example, 14% of calls from BATMAN 2 had failed.

While some unusual results might be expected given the statistical nature of the testing, more detailed analysis should be performed to determine whether or not such situations occur. In the event that they do occur, further testing should be performed to determine

whether the observations are truly random in nature or are caused by some underlying fault in either the originating exchange, connecting network or test equipment during that phase of testing.

APPENDIX B: Consultant's *curriculum vitae*

MICHAEL PETER RUMSEWICZ, Ph.D.

Employer: CITRI, 723 Swanston St, Carlton, Victoria, 3053

Position: Senior Research Fellow

Telephone: +61 3 282-2473

Email: mpr@citri.edu.au

Educational Background: Ph.D. in Applied Mathematics from the University of Adelaide (1989)

EMPLOYMENT EXPERIENCE

July 1994 - Present — **CITRI, Carlton, Victoria**

Senior Research Fellow

RESEARCH AREAS

Overload control and performance of Advanced Intelligent Networks and *Signalling* System Number 7.

Performance analysis of the proposed Telecommunications Information Networking Architecture.

July 1988 - June 1994 — **Bell Communications Research, Red Bank, NJ.**

Member of Network Services Performance and Control group

SIGNALING SYSTEM NUMBER 7 (SS7)

Member of the team formed to analyze the cause of the SS7 Common Channel Signaling Network (CCSN) outages in California and Washington, D.C. in June/July, 1991. Specifically, performed design analysis of equipment involved and determined root cause of failures and mechanism by which the failure spread to other points in the network. Design change recommendations were made and subsequently implemented and demonstrated to significantly improve system and network robustness.

Member of the team formed after the outages that studied the contributions of SS7 protocol and network element standards to the problems that arose.

Introduced the concept of examining service completion rather than message throughput in the analysis of SS7 CCSNs, in the presence of application recovery procedures and realistic customer behavior. This analysis demonstrated that message throughput can be an extremely misleading measure of service (from the subscriber point of view) and illustrated the need for feedback flow control mechanisms during periods of Signalling Transfer Point (STP) processor (as opposed to link) overload.

Performed technical analysis of STP products, including both theoretical studies and testing. This involved analysis of software design algorithms for message processing, processing of network management traffic, overload controls, performance and capacity.

TELSTRA SERVICE DATABASE PLATFORM

Member of the team hired by Telstra (April - June 1994) to analyze the design of the Service DataBase (SDB) One3 platform. Specific responsibilities in the areas of system robustness and performance, including making recommendations on network controls that would improve the reliability of the service during periods of congestion.

ADVANCED INTELLIGENT NETWORK (AIN)

Identified performance issues in providing AIN, including switch and signaling network capacity impacts, delay constraints, overload control (from both the switch and signaling network viewpoints) and grade of service objectives.

Analyzed the switch capacity impact of providing a variety of AIN services.

Identified performance issues in which multiple services compete for the same network resources. These concerns highlight the need for well defined congestion control objectives so that essential services may be protected while maintaining good service levels for lower priority traffic.

PERSONAL COMMUNICATIONS SERVICES (PCS)

Identified performance issues in providing PCS, including switch and signaling network capacity impacts, delay constraints, overload control (from both the switch and signaling network viewpoints) and grade of service objectives.

Analyzed the switch capacity impact of providing PCS service for a specific switching system, demonstrating the extremely high processing cost of a PCS call relative to non-PCS calls. This work led directly to the inclusion of alternative architectures in Bellcore's Network and Operations Plan that limit the switch capacity impact of providing PCS.

CIRCUIT SWITCHING SYSTEMS

Analyzed the performance of various circuit switching systems. This included capacity estimation, delay performance modeling and overload control effectiveness. The work required a variety of approaches, from field testing, to mathematical modeling to simulation.

Developed models to study the effects of new service offerings on circuit switch capacity, taking into account customer characteristics.

MISCELLANEOUS

Analyzed the performance, capacity and overload characteristics of voice messaging systems. Identified problem areas in design and recommended appropriate changes which were subsequently incorporated into the systems.

Developed algorithms for determining operator team sizes when directory assistance and toll services are combined under various operating regimes. Involved in the implementation of these algorithms for use by field personnel.

Is Section 70 of the Crimes Act 1914 being exploited by public officials to the determent of Australia's constitution?

Did AUSTEL breach their statutory obligation under Section 335 or 342 of the Telecommunication Act 1991 No 98 of 1991?

Mr Graeme Samuel, AO
Chairman
Australian Competition & Consumer Commission



Exhibits 29-a to 46-e

Telecom AUSTRALIA

Customer Response Unit
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic. 3000

Telephone (03) 634 2977
Facsimile (03) 637 3726

23 December 1994

Mr Graham Schorer
Golden Transport Agency and
Associated Entities
493-495 Queensbury Street
NORTH MELBOURNE VIC 3051

Dear Sir

Proposed Telecom Verification Testing - Your reference 1431

I refer to your letter of 15 December (ref 1431) addressed to Mr Black. I note your comments.

I advise that Telecom is unable to make comments specifically relating to Gary Dawson's telephone service. However, in a general sense I can advise that the Bell Canada equipment utilised in the testing was a prototype. Some tests were carried out but, because Bell Canada and Telecom were not satisfied with the performance of the equipment in all respects it was decided not to continue with the tests. There are ongoing discussions with Bell Canada in relation to future possible testing.

As indicated previously, Telecom wishes to carry out Service Verification Testing on your PSTN and ISDN services. Your co-operation is sought. To properly explain the testing to you I suggest a meeting at Telecom offices in the week beginning 10 January 1995 to discuss the arrangements. The staff involved will include Mr Peter Gamble, together with an ISDN expert from Mr Roger Bamber's staff. We believe that Mr Peter Gamble would be the most appropriate person to accompany the ISDN specialist at the meeting. We have looked at options as to who is available for the meeting and believe that for technical and historical reasons Mr Gamble is the most suitable. He has expertise in Service Verification Testing, and is a highly respected engineer who understands your telephone service. Consequently he will be able to provide proper background for the ISDN specialist.

We look forward to hearing from you.

Yours faithfully

Ted Benjamin
National Manager
Customer Response Unit

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29A

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TO: MR BENJAMIN FROM: MR TURNER. DATE: 27-10-94 PAGES: 2

WITHOUT PREJUDICE

Deed of Release and Indemnity. I will not tolerate your bullying standover tactics any longer. Your letter commenting on Mr Graham Schorer is a **threat** by Telecom and requires an **immediate** apology. I have never discussed the terms of settlement with any other COT or DNF customer. They are all aware that Telecom reached A settlement and that I was unhappy about being stood over and intimidated by Telecom. Any conclusions drawn are not my concern. No details have been discussed with anyone outside the people in the room on the day of settlement, my Bank Manager, my Accountant, and Legal Advisers.
I DEMAND AN APOLOGY BY RETURN FAX.

Service Verification Testing: You keep referring to the "Deed". You should have thought of that and tabled the G001 documents to the Arbitrator instead of keeping them secret. Don't give me any rubbish about agreement with Austel as they would have agreed to Telecom's recommendations. I was NOT consulted over the issue and any "in club" agreements would be designed to enhance Telecom's position. I complained about faulty cables for years. I complained about faults for years. I complained about service for years. Telecom then used abhorrent standover tactics which frightened me beyond belief to settle. As soon as that settlement took place Telecom came and replaced old water damaged cables in my street, and then you have the gall to want do tests AFTER you have probably fixed some of the faults.

Redialling Mobile Numbers: If I did not know better, I would suggest that your answers are on a parallel with those of a stupid uneducated child. Telecom have a great deal more expertise than I to determine Mobile dropouts and it is printed on your own accounts. As I suggested, you work it out, as you are more knowledgeable than I in this field.

In relation to fault reports, please try and get it into your head that I do not have the time to do your work for you. Cheryl Prins insisted I report direct to her. Now it's your turn.

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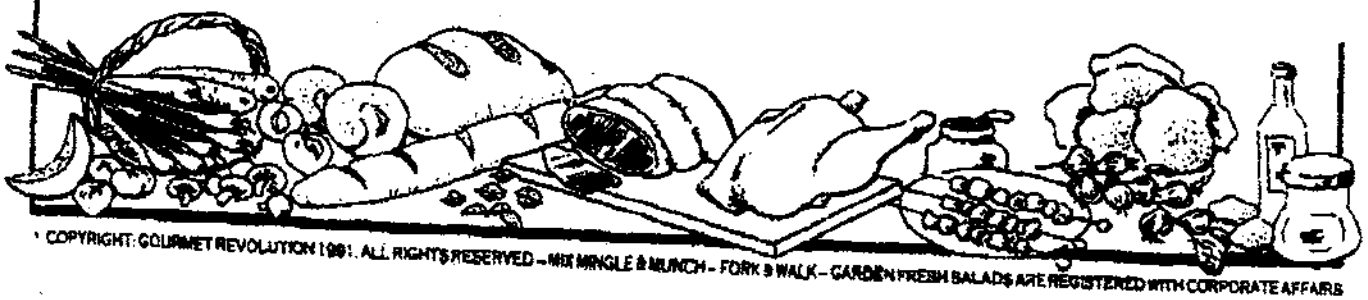

* COPYRIGHT: GOURMET REVOLUTION 1991. ALL RIGHTS RESERVED – MIX MINGLE & MUNCH – FORK & WALK – GARDEN FRESH SALADS ARE REGISTERED WITH CORPORATE AFFAIRS

In regard to the unsupplied documents, you are telling a pack of LIES. Your twisting of the facts is to be expected. Your stupid statement regarding what Rod Pollock was supposed to have said is absolute rubbish. Get your fingers out and start counting Mr Benjamin. Mr Black's letter promised the documents within FOUR weeks. That's the 29th July Mr Benjamin. You see the 29th is FOUR weeks after the 1st. Don't just believe me, check your own calendar.

The dispute was resolved on your terms SIX DAYS after 29th July. It is stupidly to suggest your points in par. 3 are factual. When will anyone at Telecom be honest enough to admit they are totally **WRONG.** You included.

Your narrow minded, one track approach to this affair leaves me cold.

I am now convinced that all of you at Telecom have a major mental problem which needs to be addressed very quickly. But that's just my opinion.

DON'T FORGET THE APOLOGY RE MR SCHORER. Your letter clearly implies that I have disclosed confidential information which offends me greatly. If you do not apologise by return fax, you will be force me to take action against you personally for Defamation of Character by innuendo, which I might add will give me a great deal of satisfaction. And just for the record, I want a proper apology which admits you are totally in the wrong, and not a half baked squirming Telecom standard answer which is full of the usual misleading statements that have been made in the past.

Colin Turner.

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GOLDEN
Transport Agency

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 006 905 946

IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT. It is in your interests to read them to avoid any later confusion.

To:	Mr Steve Black Group General Manager - Customer Affairs	Date: Our Ref:	10 January 1995 1494
Company:	Telecom	Fax No:	632 3241
From:	Mr Graham Schorer	Total Pages (incl. Header)	8
	MAILED: YES ( ) NO ( )		

Dear Mr Black,

In response to Telecom's correspondence dated 23 December 1994, received at 12.49 pm:

RE: PROPOSED TELECOM VERIFICATION TESTING - IN RESPONSE TO GOLDEN'S CORRESPONDENCE DATED 15 DECEMBER 1994 REF 1431

I wish to draw your attention to the following correspondence between Golden and Telecom and meetings that took place and correspondence arising out of those meetings.

RE: TELECOM'S CORRESPONDENCE DATED 13 OCTOBER 1994

RE: MR RUMBLE'S CORRESPONDENCE DATED 17 AUGUST 1994

30A

RE: GOLDEN'S CORRESPONDENCE DATED 20 AUGUST 1994 REF 1144 REGARDING MEETING HELD THURSDAY 11 AUGUST 1994 BETWEEN MR PETER GAMBLE, MR ROD POLLOCK FROM TELECOM AND MR HARRY THORPE, GRAHAM SCHORER FROM GOLDEN TO DISCUSS AND RESOLVE GOLDEN'S CURRENT ISDN SERVICE DIFFICULTIES, PROBLEMS AND FAULTS INCLUDING THE MANNER IN WHICH TELECOM INVESTIGATE AND REPORT UPON INTERNALLY WITHIN TELECOM GOLDEN'S ISDN FAULT REPORTS WHICH CONTRADICT TELECOM'S FINDINGS DELIVERED BACK TO GOLDEN

RE: MEETING WITH TELECOM ON 26 OCTOBER 1994

RE: GOLDEN'S CORRESPONDENCE TO THE CHAIRMAN OF TELSTRA DATED 29 AUGUST 1994 REF 1156

RE: GOLDEN'S CORRESPONDENCE TO THE CHAIRMAN OF TELSTRA DATED 7 SEPTEMBER 1994 REF 1163

RE: GOLDEN'S CORRESPONDENCE DATED 19 SEPTEMBER 1994 REF 1212

RE: GOLDEN'S CORRESPONDENCE DATED 19 SEPTEMBER 1994 REF 1211

RE: GOLDEN'S CORRESPONDENCE DATED 10 OCTOBER 1994 REF 1261, IN PARTICULAR PAGE 4, POINT 10

30A

GOLDEN
Transport Agency

RE: TELECOM'S CORRESPONDENCE DATED 22 NOVEMBER 1994 RE PSTN AND ISDN TESTING

RE: GOLDEN'S CORRESPONDENCE DATED 29 NOVEMBER 1994 REF 1362, IN PARTICULAR PAGES 6 AND 7 REGARDING PETER GAMBLE'S INVOLVEMENT

RE: GOLDEN'S CORRESPONDENCE DATED 6 DECEMBER 1994 REF 1406

RE: GOLDEN'S CORRESPONDENCE DATED 6 DECEMBER 1994 REF 1405

RE: GOLDEN'S CORRESPONDENCE DATED 15 DECEMBER 1994 REF 1431

Plus the numerous telephone conversations I have had with you regarding the inappropriate manner of Telecom investigating my telephone service difficulties, problems and faults reported to Telecom and the conduct and continued involvement of Mr Peter Gamble regarding the above plus Mr Gamble's involvement of FOI matters still not correctly addressed (after Telecom have completed their voluntary internal review).

30A

GOLDEN
Transport Agency

I stated to you I was in a position to have an opinion on Mr Gamble's conduct towards my business telephone service difficulties, problems and faults and the supply of Telecom evidence and documents of same.

I drew to your attention that (now that I have received further documents under FOI), I now have in my possession documentary evidence of Mr Gamble's long term involvement in my telephone service difficulties, problems and faults at a very high level within Telecom's management, which included Mr Gamble's personal involvement in having Telecom concealing vital evidence of Telecom's knowledge of and the documentary evidence of fact that there were major performance problems within the North Melbourne exchange from me during a Federal Court action.

Mr Gamble's participation with other like minded people within Telecom were successful in achieving this secret agenda of Telecom wrongfully withholding documentation under a Federal Court proceeding as part of a Federal Court action.

I am of the opinion, based upon the information I have read contained in the internal Telecom documents, as a result of partial success of my FOI applications, that there was a group of Telecom people who were wrongly conspiring to unlawfully withhold evidence which I was entitled to receive had Telecom correctly conformed with the Federal Court proceedings.

There is documentary evidence that Telecom had received two independent legal opinions regarding the withholding of this type of documentary evidence, which stated that Telecom had no legal right to withhold this type of evidence Telecom were attempting to withhold.

30A

I also draw your attention to the contents of our telephone conversations late last week, Friday, 6 January 1995 and Monday, 9 January 1995, in particular, to Mr Gamble's incorrect disertions which is resulting in Telecom still incorrectly withholding information after the completion of the Telecom voluntary internal review.

I now wish to refer to our telephone conversation of Tuesday, 10 January 1995, regarding Telecom's 23 December 1994 correspondence re a proposed meeting on 10 January 1995.

Mr Black, again this morning, I confirmed I am not interested in any verification testing by Telecom until such time as Telecom correctly address the manner in which they investigate my telephone service difficulties, problems and faults reported to Telecom.

Again, I reiterated, I am not interested in having Mr Gamble involved in any of my telephone service difficulties, problems and faults.

I acknowledge that you stated that Mr Gamble was a very competent engineer.

I stated to you I was not challenging one way or the other Mr Gamble's engineering expertise as I was not in a position to have an opinion on Mr Gamble's expertise.

30A

GOLDEN
Transport Agency

There is even documentary evidence of one Telecom management person communicated to Telecom that the information/evidence that Telecom were attempting and ultimately did conceal and/or withhold, was information that would have to be made available under FOI Act.

As Mr Gamble was one of those people who created reasons, including "Telecom logic", plus advocated to Telecom Corporate Legal Department, the withholding of evidentiary material to do with my telephone service difficulties, problems and faults, I believe it is inappropriate for Telecom to even suggest that Mr Gamble should remain at any level involved in my telephone service difficulties, problems and faults or the Arbitration procedure Telecom and I are responding to.

I believe there is a distinct possibility that Mr Gamble's conduct, in concert with other Telecom persons, have wrongly intervened in the due process of the law and may even be by their involvement and conduct along with Telecom be in contempt of the Federal Court Act of Conduct.

On my now becoming aware of the conduct and actions of Mr Gamble's involvement to conceal vital information and evidence of Telecom's irregularities within the North Melbourne exchange and sections of the Telecom network during my Federal Court proceedings, the very presence of Mr Gamble's involvement with all but two meetings between Telecom and myself regarding my FOI applications to sought out Telecom's wrongful withholding of information and documentation, is just unbelievable and intolerable.

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I am of the opinion, based upon the evidence I have in my possession, Telecom are required, in accordance with Telecom's publicly stated objectives that Telecom at all times will conduct themselves as a model Australian corporate citizen, to withdraw Mr Gamble from any matters associated with my telephone service difficulties, problems and faults, including being involved or associated on any level, technical or otherwise, with the Arbitration process.

I believe the evidence I hold is serious enough to justify an inquiry, whether it be a Telecom impartial internal inquiry or by outside intervention, to determine whether there has been a group of people within Telecom who have wrongly conspired to convert the course of justice and the law of the land regarding my telephone service difficulties, problems and faults.

Mr Black, as I have brought this matter to your attention many times, and still there is no rightful, prompt decision from Telecom to immediately withdraw Mr Gamble of all matters associated with Graham Schorer, Other Associated Entities, Companies, etc.

I believe, out of self interest, I am placed in the position of having to draw to the Telstra Board Members' attention, the conduct of a certain group of senior Telecom personnel wrongfully concealing and/or withholding correctly sought and applied for evidentiary material, therefore I am sending a copy of this correspondence to Mr David Hoare, Chairman of the Telstra Board, to give Telstra Board the opportunity to correctly respond on behalf of Telecom Australia to such a serious matter that threatens the due process of natural justice that Telecom have publicly stated that I, with other C.o.T. members, will receive as the overall objective of the Fast Track Arbitration Procedure

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Mr Black, you may choose to directly respond to this letter, however, I am requiring Mr Hoare to personally address this matter as a matter of urgency.

Yours respectfully,

Graham Schorer

3.0A

AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

92/596 (6)

7 September 1993

Mr Jim Holmes
Corporate Secretary
Telstra Corporation Ltd

Fax 632 3215

Dear Mr Holmes

COT CASES
MONITORING ARRANGEMENTS

Your *"two bob each way"* letter of 31 August 1993 outlining how Telecom is to monitor the COT Cases' services in response to AUSTEL's direction of 12 August does little to inspire confidence in Telecom's approach to the issue.

The offer to provide in two weeks hence a *"... critique of the technical aspects of ... [the] ...direction, including the test call program specified"* might be interpreted as nothing more than an attempt to lay a foundation for disowning the tests if they appear to support the COT Cases. Why when we first asked for the tests over two months ago (MacMahon's letter to Hambleton of 30 June 1993), does it take another two weeks to come up with a critique of the monitoring proposals? This is the very lack of the pro-active co-operative attitude which prompted the direction of 12 August 1993.

I have similar concerns about you seeking AUSTEL's approval of the monitoring equipment so long after we first asked tests to be done. There are concerns by some of the customers Telecom is to monitor about the effectiveness of the monitoring equipment. These concerns have been inspired, at least in part, by comments made by Telecom employees to those customers and, of course, the problem experienced by Mr Smith when testing/monitoring equipment caused additional problems for him. The advantage of having independent endorsement of the equipment prior to its installation and the production of test data seems obvious to me. Instead, we are still liaising to obtain details of the specification and capability of the equipment to be deployed after its installation in four of the cases and within days of the proposed installation in the other cases.

It is clearly in the interests of all concerned to ensure that the monitoring pursuant to AUSTEL'S direction is conducted in the most timely and efficient manner. Please liaise with Mr Cliff Mathieson, AUSTEL's Specialist Advisor - Networks, (03 828 7389) re approval of the monitoring equipment.

R10515

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5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 828 7300 FACSIMILE: (03) 820 3021

Draft conditions for installation of equipment

The draft list of conditions for installation of monitoring equipment in the customers' premises only serve to reinforce my view that your letter is an attempt to have *"two bob each way"* - if the testing does not favour Telecom, you have laid a foundation for claiming that it is due to customer interferance. I have already conveyed to you my concern that Telecom is unable to come up with tamper proof monitoring equipment for installation on the customers' premises.

Subject to you removing the endorsement *"Telecom in confidence"* on the top of the draft conditions, I am prepared to have them conveyed to the customers. I should, however, point out that they reflect little credit on Telecom if its intention were to produce a document that endeavours to provide the customers with any explanation or reasoning for the conditions.

Technical complexities

We look forward to receiving the technical and operational submission foreshadowed in you letter. The timing of about three weeks would seem appropriate. A decision whether, as suggested in your letter, it is desirable to engage an independent technical expert will be taken after receipt of your submission. If that is necessary, AUSTEL would be looking to Telecom to meet the costs involved.

Access to file and documents

While I understand that the arrangements for file examination are proving adequate, there was an agreement to list all files by 19 August and I understand that only some 60 files have been identified to AUSTEL to date. Please provide a comprehensive listing by the end of this week (10 September 1993).

Is it possible to provide parking for AUSTEL's officers who are attending Telecom's premises to inspect the files? This would result in a significant cost - saving to AUSTEL's personnel who currently have to make use of commercial parking.

Yours sincerely

Robin C Davey
Chairman

Recommendation 18: *Telecom acquire equipment suitable for monitoring the service actually received at a customer's premises (cf: Coopers & Lybrand Recommendation 10 and Bell Canada International's Rotary Hunting Group Study Recommendation 8.3).*

Telecom Update - July 1994 Quarter	AUSTEL Comment
Telecom have nominated their members of the working party and they are awaiting Austel nominations. A draft terms of reference for the project have been provided to Austel for agreement. Report of the joint working party is expected before 30 September 1994 and contracts for trial test equipment specified by the joint working party would seek supply by 30 March 1995.	Telecom was advised on 6 July 1994 of AUSTEL's nomination for the working party. AUSTEL has advised Telecom that the draft terms of agreement are acceptable. The timetable provided is accepted.

Recommendation 19: *Telecom satisfy AUSTEL that the monitoring systems and procedures Telecom uses to test individual services are effective.*

Telecom Update - July 1994 Quarter	AUSTEL Comment
Austel has been briefed on the proposals to progress the requirements of Recommendation 18 of the Austel Report. In addition, actions taken in response to the recommendations of the Coopers & Lybrand Report and the Bell Canada International Report and reported to Austel on 8 July 1994 are also relevant. Telecom has also scheduled a presentation to AUSTEL on 18 July 1994 of the revised fault management procedures and the monitoring systems and procedures it has in place at present to test individual services. However, it should be noted that system and procedure development is an evolving process, which means the current systems and procedures will be added to and enhanced over time.	AUSTEL has received a general briefing on these procedures. The detail of these procedures has yet to be examined, particularly in regard to the suitability of specific procedures at the various stages of the fault escalation process.

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Bell Canada International Inc.

Telecom Australia

Rotary Hunting Group

Study

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BELL CANADA INTERNATIONAL INC

8.2 Customer Access Network Tests

In conducting the rotary hunting group tests, Telecom has acquired over the last two months, an independent review of portions of the inter-exchange network and rotary hunting groups for selected difficult fault customers. While the two tests are conclusive, the Customer Access Network (CAN) associated with the difficult fault customers should be the next set of tests performed. It is understood that significant analysis and tests have been conducted by Telecom on the CAN for the individual difficult fault customers.

It is recommended that Telecom perform independent tests of the CAN to complete the testing program for the selected difficult fault customers.

8.3 Test Equipment

On two occasions during the testing process, test equipment failures were experienced (AMERITEC AMIXT and ELMI Smart-10) which required a re-start of testing activities.

In addition, there was an insufficient supply of test equipment experienced during the start of testing. To resolve the situation, test equipment was obtained from other maintenance centres within the region.

It is recommended that additional test equipment be procured to adequately handle the normal workload and in addition, maintenance spares should also be available because in one case during the study the equipment had to be repaired before testing could be re-established.

Another recommendation is to conduct routine maintenance procedures on all test equipment and maintain a complete set of maintenance records to track the quality and performance of the devices.

A further recommendation, is to increase the supply of the more sophisticated trouble shooting test equipment such as the Tekelec CCS 7 equipment and as digitalisation (switching modernisation) increases the testing/trouble shooting capabilities should be made integral to the switching intelligence (software).

15.00 ADDITIONAL TESTS

Additional tests have been programmed for Devlin Bridge and Cape Bridgewater. The results were not available in time for the first draft and have been added in this addendum.

15.10 Glen Waters Fish Farm
John Mayne

Numbers - 057 978 384
057 978 376 (Fax
057 978 425 (Fax)

15.20 Cape Bridgewater Holiday Camp
Alan Smith

Numbers - 055 276 276
- 055 267 230 (Fax)
- 055 267 260 (Gold Phone)
008 816 522 translates to 055 267 267

Test Base

The test base was extended to country exchanges with the addition of these two COT cases. Test calls were originated both from country and metropolitan exchanges using Traffic Route Testers (TRT) and terminating calls to Test Call Answer Relay Sets (TCARS) or Portable Tone Answer Relay Sets (PTARS).

These units enable call completion to the same hundreds group of numbers in the exchanges where COT customers reside.

Scope and Procedures

The test base was extended to include two specific COT customers with services homing on country exchanges. These customers offered extra challenges since the services offered by both clients encouraged calling from urban and rural exchanges in peak and non peak periods.

Telecom Planners assisted in drafting a test case that would ensure a representative sample of exchanges to originate calls and test the Public Switched Telephone Network (PSTN) completing calls to the Devlin Bridge ARK-D rural X-bar office parented off Seymour AXE digital exchange and to the remote multiplexing equipment serving Cape Bridgewater from the Portland AXE digital exchange.

As shown in 15.13 and 15.23, the TEKELEC CCS7 monitoring system was used to monitor all CCS7 links terminating to the homing exchanges of the two COT clients. As tests were performed, network specialists in Brisbane tracked all calls and provided immediate response and analysis of all traffic failing to terminate.

Executive Summary

The two additional COT cases, both homing off country exchanges, gave the test team the opportunity to assess the quality of service offered by Telecom to customers outside the metropolitan areas.

There were no major network or system failures found during our test procedures that could create the variety and number of troubles reported by these COT customers.

Test calls terminated to TCARS or PTARS test boxes within a hundreds group of numbers in the same exchanges serving these customers. Also it is important to note that all test calls were tracked and the progress of all lost calls immediately identified by network specialists in Brisbane using state of the art CCS7 monitoring systems. In this way any troubles found were identified to the appropriate groups for immediate action.

As stated earlier in this report and confirmed with these tests, as Telecom escalates its modernisation program and moves towards total digitilisation of the exchanges, with the capability of automatic test features, network diagnostics built into the intelligent exchanges and the capability to monitor all CCS7 signalling links, service quality and network survivability will only move closer to perfection.

The overall test results are within world standards and in our opinion exceed the standards set by Telco's in a similar mode of modernisation.

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IN THE MATTER OF an arbitration pursuant to the Fast Track Arbitration Procedure dated 21 April 1994

Between

ALAN SMITH

Claimant

and

TELSTRA CORPORATION LTD trading as TELECOM AUSTRALIA

Telecom

WITNESS STATEMENT OF DAVID JOHN STOCKDALE

I, **DAVID JOHN STOCKDALE**, Principal Technical Officer Grade 2, of 7th Floor, 35 Collins Street, Melbourne, in the State of Victoria, solemnly and sincerely declare and affirm as follows:

BACKGROUND

1. I am a member of Telecom's Networks and Interconnect Branch ("NIB"), in the Service Quality Improvement section. I previously worked for National Network Investigations (NNI) between October 1986 and May 1994.

2. NNI is the final point of referral in Telecom for the investigation of complex or unresolved faults with a customer's service. The requirement for involvement of NNI in a technical investigation is such that all normal fault handling procedures should be applied to the customers problem (e.g. the appropriate "first-in" maintenance group should conduct testing and consult with the customer) prior to NNI being involved. NNI is a general network investigations group, as opposed to a technology specific support group (which can only provide technical support for a specific range of equipment). By referring a problem to NNI, a standard investigative procedure can be undertaken to determine that all aspects of the total customer service are operating satisfactorily.

3. I have been employed with Telecom continuously since February 1980.

4. My industrial experience can be broadly considered in two phases, Exchange Operations and Network Investigations. As a result of several years in Exchange and Inter-Exchange Maintenance, I was involved with the maintenance and operation of a wide variety of switching and transmission systems and this has given me the opportunity to develop a good working knowledge of the day-to-day requirements of Exchanges and of Network operations as a whole. Over the six and a half year period that I worked in operations, I was involved in ARE, ARF and Step by Step exchange maintenance, as well as the maintenance and operation of a wide variety of transmission and support systems.

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5. My experience in Network Investigations brought me into detailed contact with a broad cross section of the Network whilst working as part of a team of specialists. I have had to develop a detailed working knowledge of the switching, signalling, metering and transmission systems that make up the network as a whole and I have been involved in detailed, complex technical investigations into a variety of problems in the network and customer equipment areas. This has given me valuable insight into problem solving of complex network problems, as well as a good knowledge of the activities and requirements of many areas of Telecom. My work has led me to seek further knowledge in the Engineering field and as a result I have undertaken the Bachelor of Engineering part -time for the last six years.

6. More recently I have taken up a position as signalling systems specialist with the Service Quality Improvement section of Networks and Interconnect Branch. In this position I am required to provide technical assistance into the analysis of signalling data for the analogue and digital exchange system, with a specific emphasis on Common Channel Signalling System number 7 (CCS7).

MR SMITH

The first investigation of Mr Smith's service.

7. I was involved, as one of the principal investigating officers, with NNI's original investigation of Mr Smith's telephone service, between July 1992 & January 1993.

8. At the time that the NNI investigation commenced, Mr Smith had complained that customers who called him received a recorded voice announcement that his telephone was not connected ("RVA"). This information was conveyed to NNI by Mr. Smith, and also in background information passed to NNI from the Network Management Centre (the area that requested NNI involvement). The majority of these RVA complaints reportedly arose for calls from Melbourne.

9. There was substance in Mr Smith's original RVA complaint for a period of less that three weeks in March 1992. The problem in question related to a specific main trunking exchange situated in Melbourne known in Telecom as the MELU exchange. In March 1992, calls that passed through Melbourne to Cape Bridgewater progressed through one of three main exchanges - known as MELQ, MELU and MELX. At the MELU exchange in Windsor, a change was incorrectly made to programming within the network which resulted in calls to telephone numbers beginning with 055 267 not getting through. The problem was remedied on 19 March 1992 and Mr Smith was made aware of this problem both verbally and at a later point by Rosanne Pittard.

10. My colleague Hew MacIntosh, through searches at the MELU exchange, discovered the RVA problem existed between 4 and 19 March 1994. This period was determined by checking the exchange data log for MELU to determine the date the change had been implemented and the date the resulting problem was rectified.

11. During NNI's original investigation of Mr Smith's alleged problems, the only event discovered that was of substance was the MELU problem. The commercial resolution of this problem was dealt with by Rosanne Pittard.

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12. NNI's first investigation was very lengthy and involved numerous test calls and the collection of line data. As an indication, an interim analysis of the work undertaken included a table detailing the testing completed and it showed a total of over 34,000 test calls had been made from a variety of origins. In the course of making these test calls, we did inadvertently cause a problem within the network. When conducting a test call run of over 8,000 calls from the Richmond area to Cape Bridgewater, we experienced an abnormally high congestion level. On further investigation it was found that a route between Hamilton and Portland had blocked itself from use due to an excessive number of short duration calls made over that route. It is almost certain that our test calls resulted in that problem.

13. Even after the MELU problem was remedied, we continued with our investigation and did not assume that everything was satisfactory with Mr Smith's telephone service until our investigation was completed. This was done in response to continued reports of difficulty by Mr. Smith and to ensure that there were not other factors influencing the performance of Mr Smiths service.

14. At the time of our first investigation, Mr. Smith received incoming calls and could make calls out on his 267 267 line. Many of the complaints received by those attempting to call Mr Smith up to that point were that Mr Smith's telephone was busy when Mr Smith said it was not. I believe that Mr Smith often miscalculated when he was on the telephone or for how long. On many occasions SMART 10 line event monitoring records established that when a person attempted to call Mr Smith, Mr Smith was talking to someone else on his 267 267 line.

The second investigation of Mr Smith's service.

15. I was also involved with NNI's second investigation of Mr Smith's telephone service, from May 1993 until December 1993, as a principal investigating officer (the investigation has, as yet, not been officially closed due to an ongoing requirement for NNI involvement). On 3 June 1993, as part of the second investigation of Mr Smith's telephone service, both myself and Hew MacIntosh met with Mr Smith at his Cape Bridgewater premises to discuss his reported problems and to ascertain more detailed information about the configuration and usage of his service. At the conclusion of our discussions with Mr Smith, we returned by car to Melbourne only to realise later that we had left Hew's briefcase at Mr Smith's premises. Gordon Stokes from Telecom in Portland went to pick up the briefcase from Mr. Smith's premises. Mr Smith gave Gordon the briefcase and while Gordon was going through the documents contained in that briefcase to make sure everything was there, Mr Smith came out to Gordon's car and handed him another file which had originally been in the briefcase. The documents in the briefcase were also in a different order when recovered from Mr Smith than they had been originally. It is therefore clear that Mr Smith looked through the contents of the briefcase. The contents of the briefcase included the complete file from NNI's first investigation of Mr Smith's alleged faults. During the evening of the day the briefcase was left at Mr Smith's premises, SMART 10 line event monitoring records show that Mr Smith's 055 267 230 service was used to make calls to a number of people, some of whom he had not previously called who were related to data held in files from the briefcase. This suggests that Mr Smith had gone through not only the files relating to his service, but also other business and personal material kept in the briefcase.

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16. One letter contained in the briefcase was a summary report prepared by myself which concluded that the MELU fault had existed for approximately six weeks. When I had prepared this summary report, I referred to the initial investigations NNI conducted into the MELU problem. However, as mentioned above, Hew MacIntosh had made further investigations at the MELU exchange which revealed that the problem had only existed for a maximum of three weeks. Although a note concerning Hew's investigation was on Mr Smith's file at the time I wrote my summary report, I had overlooked it when preparing the summary report and therefore used the incorrect estimate of six weeks. This oversight on my part was corrected in the final report of early 1993.

17. During NNI's second investigation of Mr Smith's service, we inadvertently caused a fault ourselves as part of implemented testing procedures. This fault arose from the use of the "malicious call trace" facility ("MCT"), that was placed on Mr. Smith's service at the Portland Exchange in an attempt to ensure more detailed data relating to Mr Smiths incoming calls. The additional information (specifically Calling Party number information) was required so that we could more accurately match possible problem calls against his fault reports. Mr Smith knew this form of testing was being undertaken, as we had discussed it with him. During the period that malicious call tracing was in place, when Mr Smith received calls from exchanges that can only provide limited detail regarding the A party number and hung up his telephone, there was a 90 second period after he hung up that the Exchange controlling the call believed that his call was not over. (Limited call details can occur for exchange technologies such as step by step. This is known as Partial Calling Line Identification, Partial CLI.). As a result, if parties attempted to call Mr Smith within this 90 second period, they would not be able to do so. Likewise, if Mr Smith attempted to make calls during this 90 second period, his phone would appear to be "dead" with no dial tone.

18. This fault is likely to have had only a marginal effect on Mr Smith's telephone service and was possible only between late May 1993 and early August 1993. The customer whose complaint alerted us to the problem was calling from Horsham.

19. The party calling from Horsham who alerted us to the MCT problem reported that they had a telephone discussion with Mr Smith which lasted for about fifteen minutes. However, the SMART 10 line event monitoring records suggest that the call in question lasted for two hours. Mr Smith believes this is evidence that the network has serious problems. My belief is that Mr Smith did not hang up his phone after the call was completed and therefore the SMART 10 equipment did not record his call as ending until the phone was later hung up. I base this belief on the testing conducted as a result of the discovery of the side effect of using MCT, as well as analysis of CCS7 data for the period that the MCT facility was in use.

20. At the beginning of our second investigation of Mr Smith's telephone service, we placed CCS7 testing equipment at the Warrnambool exchange because the Portland Exchange, despite being an AXE digital exchange, does not utilise CCS7 signalling and could not facilitate CCS7 testing. Placing CCS7 testing equipment at the Warrnambool exchange was a way of arriving at data relating to calls to and from Mr Smith's services for calls that went through the

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Warrnambool exchange. The majority of Mr Smith's incoming and outgoing STD calls went through the Warrnambool exchange.

21. CCS7 testing showed that during the period that the MCT was on the Portland exchange, no other calls were received by Mr Smith from exchanges that would cause a problem other than the Horsham call in question.

22. We also used End of Selection "call trapping" at the Portland exchange which provided us with even further information. This is a method whereby the exchange operations staff were requested to modify data relating to the handling of Mr Smith's incoming calls so that call path details for each call (both local and STD/IDD) were stored in a personal computer attached to the exchange. This method was employed at the discretion of local operations staff over a period of some months. However, this form testing has now ceased because call trapping is not designed for extended use in this way and can limit the normal operation and maintenance of the exchange.

23. During our second investigation SMART 10/CCAS line event monitoring equipment was also installed at the Portland Exchange to record call data relating to Mr Smith.

24. Whenever Mr Smith raised a query, we checked all the call data from all the various data gathering units. This gave a number of different data sources with which to compare and thereby increased our ability to respond to reported difficulties. At no point did we discover a serious ongoing fault that would explain or support Mr Smith's perceived problems.

25. During NNI's investigations of Mr Smith's telephone service we were not locked into rigid rules concerning the way our testing was to be conducted. We were inventive in trying to think up novel ways of testing for faults with Mr Smith's service. An example of this was the use of CCS7 and also End of Selection tracing, both techniques uncommon at that time for general investigations. Nevertheless, despite running thousands of test calls and employing a range of investigative methods, it was not possible to isolate a recurrent fault with Mr Smith's service that would result in problems of the magnitude that he was alleging.

26. At the meeting with Mr Smith that involved the briefcase incident, it was also agreed after discussions with Mr. Smith, that we should limit his 055 267 267 line from being able to make outgoing calls (with the exception of making calls to emergency services and to Telecom's service difficulties and faults). Mr Smith indicated that he did not use the 267 267 service for outgoing calls however call data and billing information showed that this was not the case. As a result of our discussions with Mr Smith, he agreed that limiting outgoing calls from 267 267 would be to his advantage and after NNI arranged with local operations staff to implement the appropriate changes, the line number 055 267 230 became Mr Smith's sole outgoing line for normal telephone calls. It was hoped that this would overcome the problem where callers into Mr Smith's camp reported the phone being busy because Mr Smith was inadvertently using the 267 267 service to make a call himself. However, it would not overcome the problem where Mr Smith left the phone off the hook.

27. In 1993 NNI were also called to investigated Mr Schorer's telephone service in North Melbourne. Mr Schorer had regular occasion to call Mr Smith. During this

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investigation we noticed that some complaints logged by Mr Schorer on the Leopard fault reporting system were due to mis-dialling. If Mr Schorer made outgoing calls from his premises, he could choose from either PABX lines (which require him to dial 0 before his intended number) or direct exchange lines (which do not require the additional 0 to be dialled). The line event monitoring records show that on some occasions Mr Schorer dialled 0 when it was unnecessary, and on other occasions did not dial 0 when it was necessary. For example, if Mr Schorer attempted to telephone Mr Smith on 055 267 267 through his PABX and did not dial the extra 0, he would dial 55 267 267 (which is an unallocated number) and would receive a recorded voice announcement. Alternatively, if Mr Schorer dialled the extra 0 when he should not have, he would dial 0055 267 267 (which is an unallocated 0055 number) and again he would receive a recorded voice announcement.

Conclusion

28. I believe that Telecom has provided Mr Smith with a very high level of personal attention (in terms of the amount of resources that have been committed to solving his problems). Examples of this include the assistance rendered to Mr Smith in relation to equipment not directly Telecom's responsibility (e.g. his facsimile machines), repeated attempts to try and identify a possible cause of Mr Smith's perceived difficulties and extensive time spent allaying Mr Smith's concerns.

AND I MAKE this solemn declaration conscientiously believing the same to be true and correct.

DECLARED at Melbourne)
in the State of Victoria)
this 8th day of December 1994.)

David Stockdale
.....

Before me:

Wayne London.
.....

WAYNE MAURICE CONDON
Freehill Hollingdale & Page
101 Collins Street, Melbourne
A Solicitor holding a current
Practising Certificate pursuant
to the Legal Profession
Practice Act 1958.

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IN THE MATTER OF an arbitration pursuant to the Fast Track Arbitration Procedure dated 21 April 1994

Between

ALAN SMITH

Claimant

and

TELSTRA CORPORATION LTD trading as TELECOM AUSTRALIA

Telecom

WITNESS STATEMENT OF CHRISTOPHER JAMES DOODY

I, **CHRISTOPHER JAMES DOODY**, Regional Field Manager , Telecom Network Operations - Eastern, Country Victoria, of 111 Doveton Street South, Ballarat, in the State of Victoria, solemnly and sincerely declare and affirm as follows:

BACKGROUND

1. I have been employed with Telecom Australia for 17 years and have been in my current position since June 1994.

2. In March 1991 I took up a position as a Network Performance Consultant as part of Telecom's Network Operations Group. My role was to look at the performance of the switching transmission and service delivery areas of Network Operations Country Victoria. This role principally involved making recommendations to the Network Operations Manager Country Victoria on ways to improve the performance of those areas. These recommendations included such things as the introduction of performance monitoring systems and measure, maintenance process improvements and trend analysis on a regional basis.

MR SMITH

1992 Involvement

3. In late March 1992 I made arrangements for a testing program to be undertaken throughout every AXE node and major trunking node in Victoria to confirm that calls from those nodes could successfully be made to 055 267 XXX telephone numbers. I therefore established that there was excellent telephone access from all AXE nodes and major trunking nodes throughout Victoria to 055 267 XXX telephone numbers including those of Mr Smith.

1993/94 Involvement

4. From December 1993 until April 1994 I held a position as a Network Operations Case Manager for Mr Smith and another Telecom customer who believed they were having ongoing problems with their telephone service. Complaints were referred to me by Bruce Pendlebury and Alan Miles of the Glen Waverley Fault Management & Diagnostic Group.

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ach complaint made by Mr Smith was investigated.

f Mr Smith made a complaint about a customer's call from a particular location, I often directed the local exchange technicians to undertake a program of test calls through to the test line number which was 055 267 211. There were no faults ever detected by this testing program in relation to any of Mr Smith's complaints.

In addition to this testing system, I made arrangements to utilise CCS7 call data which was derived from equipment set up at the Warrnambool AXE exchange. There were no problems identified by this standard test method.

AND I MAKE this solemn declaration conscientiously believing the same to be true and correct.

DECLARED at Melbourne)
In the State of Victoria)
this 9th day of December 1994.)

Before me:

CHRISTOPHER MARK McLEOD
Freehill Hollingdale & Page
101 Collins Street, Melbourne
A Solicitor holding a current
Practising Certificate pursuant
to the Legal Profession
Practice Act 1958.

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CAPE BRIDGEWATER

HOLIDAY CAMP

REVIEW OF DOCUMENTATION

27th July 2007

Brian Hodge, B Tech; MBA
(B.C. Telecommunication)

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5.2. Common Channel Signalling (CCS7)

Common Channel Signalling No.7 DOES NOT appear or function at Cape Bridgewater RSM. As no switching, analysis, or billing take place CCS7 is not required.

However a similar signalling system operates on the PCM multiplexing transmission system between Portland & Cape Bridgewater BUT is NOT connected to or forms any part of the CCS network.

The purpose of this signalling link to maintain a functional transmission & multiplexing system.

Document K04555 paragraph 4 indicate that CCS 7 was only used to monitor calls to Portland via the Warrnambool node (agin 1993/94).

During the CCS7 network monitoring process, no calls within the Portland area were observed (refer Telstra document K04555 – CCS7 at time 1994, was only utilised on calls from Warrnambool AXE to Portland Axe, NOT during locals within the Portland area) . Indicating that the CCS7 network monitoring undertaken DID NOT take place in Portland, nor Cape Bridgewater systems or equipment.

As the CCS network transists the call through the network no CCS7 link existed from Warrnambool to Portland at this time (eg. 1993/4).

During the early 1990's (eg. 1993), the rollout of AXE & the CCS network was still expanding. NOT all links to within Portland utilised the CCS network for signalling purposes. MFC signalling was utilised in Portland (as CCS7 was not utilised in Portland at this time as mentioned previously, MFC was the signalling system still operational having bee n utilised as part of the ARF system that was the major component of the network at that time).

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Therefore collection of CCS7 data & the associated reporting of the network performance when related to services connected to Cape Bridgewater RSM. was inconclusive & flawed, as it only enable parts of the network hierarchy to be monitored at this time. Where network upgrading had not been completed or implemented the old signalling system were still operational and required for network operation. The monitoring techniques utilised for CCS7 were not applicable or relevant to the existing and obsolete systems and technologies.

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world standards and are in fact superior to those used in other similar networks of equivalent digital penetration.

- *Telecom Australia has all the tools, skills and procedures needed to detect and locate troubles reported by the CoT customers.*

- *The troubles found revealed some switching faults and potential for network congestion. The contribution made by these in degrading network performance was rated as insignificant.*

(d) Telecom generally accepts the findings and recommendation of the report."

AUSTEL'S COMMENTS ON TELECOM'S RESPONSE

11.8 Prior to receiving Telecom's response to the Bell Canada International report as outlined in paragraph 11.6 above, AUSTEL had written to Telecom informing it that the claim in the Bell Canada International report to the effect that Telecom's customers received a grade of service that meets global standards goes too far because the study was an inter-exchange study only and did not extend to the customer access network - AUSTEL had agreed to the study being so limited on the basis that other monitoring it had requested Telecom to undertake on AUSTEL's behalf should provide AUSTEL with the data on the efficacy of the customer access network.

11.9 AUSTEL also noted that from the *COT Cases'* perspective there were limitations in Bell Canada International's first report, namely -

"- *test call patterns used by Bell Canada International may not be typical of the COT Cases - but that of itself does not necessarily invalidate the outcome*

- *it did not extend to testing of PBX (rotary) search facilities that are of significance to some COT Cases but, again, this does not invalidate the results of the tests as far as they went*

- *it did not include test calling via 008 numbers which is of relevance to some COT Cases but, yet again, this does not invalidate the results of the tests as far as they went."*

(Letter dated 16 December 1993, AUSTEL to Telecom's Managing Director, Commercial Business)

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Business Law;
Wills & Estate Planning;
Local Government;
Planning & Environment.
Jennie Riley
Family Law;
Commercial Litigation.

Reply to: Warrnambool
Our Ref: Mr. Riley:7:18
Your Ref:

June 29, 1995..

Mr. Neil Tuckwell,
Chairman,
Austel,
P.O. Box 7443,
ST. KILDA ROAD,
MELBOURNE. 3004
FAX 03/9820 3021

29/6/95

Dear Sir,

Alan Smith - Cape Bridgewater Holiday Camp

We act for Mr. Alan Smith of Cape Bridgewater Holiday Camp, Portland.

Mr. Smith instructs:

1. He has had recent correspondence with your office and also discussions with Mr. Matherson regarding the testing by Bell Canada International Inc. and Neat during November 1993.

2. From 28.10.93 to 8.11.93 the Neat Testing was being evaluated. To perform the test an Ericsson Neat Network Test Unit was connected to the test number at the Cape Bridgewater RCM 055 267 211 in the same line group as Mr. Smith's number (055 267 267). Mr. Smith has the results of those tests.

3. Over the same period, during the Neat testing, Bell Canada International Inc. performed their tests to the same RCM number at Cape Bridgewater PTARS 055 267 211, from 12.45 p.m. on 5.11.93 until 4.30 p.m. 5.11.93 (from South Yarra 03 867 1234). Also, on the same day, from Richmond (03 428 8974), between 12.45 p.m. and 4.18 p.m. further tests were done to the same PTARS 055 267 211.

4. On 6.11.93 from 054 434 234 to the PTARS 055 267 211 more tests were done to that same number, finishing at 10 a.m. on 8.11.93.

5. Mr. Smith has already refuted the amount of test calls that took place over these days.

Please within 14 days advise our client as to whether or not the NEAT Testing was performed over the same period and time-frame as mentioned (November 5th, 6th and 8th), while Bell Canada International were also performing their own tests.

Yours faithfully,

TAITS SOLICITOR

JON

AUSTEL
AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

5 Queens Road
Melbourne
Victoria 3004
Tel: (03) 9828 7300
Fax: (03) 9820 3021
Free Call: 1800 335 526
TTY: (03) 9829 7490

94/0269 -10

12 July 1995

Taits Solicitors
PO Box 311
WARRNAMBOOL 3280

Facsimile (055) 61 4567

Attn Mr Ezzy

Dear Sir

Re: ALAN SMITH - CAPE BRIDGEWATER HOLIDAY CAMP

This letter responds to your correspondence dated 29 June 1995 (your reference Mr Ezzy:7:18) in relation to your client Mr Alan Smith. Mr N Tuckwell, Chairman, AUSTEL, has requested that I reply on his behalf.

The tests to which you refer were neither arranged nor carried out by AUSTEL. Questions relating to the conduct of the tests should be referred to those who carried them out or claim to have carried them out.

Yours faithfully

Cliff Mathieson
General Manager
Carrier Monitoring Unit

cc Mr A Smith
Facsimile (055) 267 230

30 i

I, John Sherard Main
OF Break-O'-Day Road Glenburn 3717 in the State of Victoria
do solemnly and sincerely declare
THAT

I spoke to Ms Pia Di Mattina from the Telecommunciations Ombudsman's Office at approximately midday today.

She advised me that the Bell Canada International Inc Report to Telecom Australia dated 1 November 1993 and the addendum dated 10 November 1993 were flawed documents.

JOHN SHERARD MAIN

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

DECLARED AT LILYDALE in the
State of Victoria this SIXTH (6th)
day of November One thousand
nine hundred and ninety five

Before me

J. SAUNGE
CONSTABLE 29345

30 J

+++END+++

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12 May 1995

Our Ref: GLH
Matter No:
Your Ref:

BY FAX: 277 8797

Mr Warwick Smith
Telecommunications Industry Ombudsman
321 Exhibition Street
Melbourne VIC 3000

Dear Warwick

FAST-TRACK ARBITRATION PROCEDURE

[redacted]

You have asked me for my comments on the arbitration process, now that I have delivered my first ruling.

Upon my return from leave in 2 weeks, I would be happy to discuss this matter with you in detail.

In simple terms, my observations are as follows:

- as far as I could observe, both Telecom and Smith co-operated in the Smith arbitration;
- the time frames set in the original Arbitration Agreement were, with the benefit of hindsight, optimistic;
- in particular, we did not allow sufficient time in the Arbitration Agreement for inevitable delays associated with the production of documents, obtaining further particulars and the preparation of technical reports;
- there have been allegations by Smith and other claimants that Telecom deliberately slowed the process by delaying the production of documents under FOI - certainly the FOI claims have caused delays but I am unable to comment as to whether there has been a deliberate delaying tactic;
- request for further particulars are, I think, unavoidable - although the emphasis in the arbitration process is upon a quick resolution of the dispute, a party (in this case Telecom) faced with a significant claim

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31A

against it is entitled to be presented with particularised complaints, not generalised and unsubstantiated allegations;

- the preparation of technical reports by the claimants is always going to be a problem - in simple terms, Telecom has all the information and the claimant has to pay a technical expert to examine and interpret it.

In summary, it is my view that if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than presently contained in the Arbitration Agreement.

There are some other procedural difficulties which revealed themselves during the Smith arbitration and which I would like to discuss with you when I return. These centre principally upon the fact that claimants, who are often seeking large sums, are generally unable to specify the legal basis for their claim (eg negligence, breach of contract, Trade Practices Act), yet it is necessary for me to base my rulings upon a breach of legal duty. This means that I have to in part rely upon Telecom to identify the legal basis of the claim made against it (which is somewhat perverse and which was in any event handled by Telecom is a less than satisfactory manner), and/or I have to search myself for a legal basis without assistance from the parties (which inevitably contributes to the time and expense associated with the proceedings).

I wonder whether some pro forma document could be developed which could point claimants in the right direction.

I apologise for the brevity of these comments. I am happy to provide you with a more detailed written report when I return from leave in 2 weeks. Ultimately, I think we should have a conference involving you, me and Peter Bartlett to consider these and related issues.

Yours sincerely

GORDON HUGHES

31A

resolution by mediation or negotiation. In several cases settlements had already occurred in the past with some of the CoT claimants, but had not achieved finality. The second benefit was the confidentiality of the process as opposed to, for instance, litigation in open court. The experience has shown that not all of these benefits have emerged or materialised.

In my view, there was one potential difficulty that should have been obvious from the outset. I do not make any apology for coming along to this committee and saying that outright, because it should have been obvious, in my view, to the parties and everyone involved from the beginning. This deficiency revolves around the vexed question of how the claimants were to obtain, and the best method of obtaining, documents from Telstra which were to assist them in the process. In the process leading up to the development of the arbitration procedures—and I was not a party to that, but I know enough about it to be able to say this—the claimants were told clearly that documents were to be made available to them under the FOI Act. The Commonwealth Ombudsman has already reported on the problems encountered by the claimants in that process, and I do not propose to reiterate her findings.

Senator SCHACHT—Do you disagree with her findings?

Mr Pinnock—No. For present purposes, though, it is enough to say that the process was always going to be problematic, chiefly for three reasons. Firstly, and perhaps most significantly, the arbitrator had no control over that process, because it was a process conducted entirely outside the ambit of the arbitration procedures. Secondly, in providing documents Telstra was entitled to rely on whatever exemptions it might be entitled to under the FOI Act, and this often resulted in claimants receiving documents, the flow of which made them very difficult to understand. In some cases, there were obviously excisions of information. In contrast to this, the claimants could have sought access to documents on a regular basis under the arbitration procedures. Provided that those documents were relevant, the arbitrator could have directed Telstra to produce those documents without any deletions. If there was any argument as to the relevance of documents, the arbitrator would have had the power to require their production and inspection by him to make that determination in the first place. Thirdly, we know that the FOI process as administered was extremely slow, and this contributed to much, but certainly not all, of the delay which the claimants encountered in prosecuting their claims through the arbitration procedures.

With the benefit of hindsight, I will turn now to the lessons that are learnt from experience of the process. Firstly, arbitration is inherently a legalistic or quasi-legalistic procedure. It does not really matter how you might finetune any particular arbitration. It has the normal attributes of a quasi-legal procedure, where you have parties opposing each other with someone in the middle having to make a determination. Even having said that, I am on record as saying that Telstra's approach to the arbitrations was clearly one which was excessively legalistic. For instance, in many instances it made voluminous requests for

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23 January 1996

Our Ref: GLH
Matter No:

Mr J Pinnock
Telecommunications Industry Ombudsman
321 Exhibition Street
MELBOURNE Vic 3000

Dear Mr Pinnock

INSTITUTE OF ARBITRATORS - COMPLAINT BY ALAN SMITH

I enclose copy letters dated 18 and 19 January 1996 from the Institute of Arbitrators Australia. I would like to discuss a number of matters which arise from these letters, including:

(a) the cost of responding to the allegations;

(b) the implications to the arbitration procedure if I make a full and frank disclosure of the facts to Mr James.

Yours sincerely

GORDON HUGHES

Encl.
cc P Bartlett

31c

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 9617 9200.
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[illegible]
Alan D.F. Morris

3 August 1995

Our Ref: GLH
Matter No: 5126900
Your Ref:

Mr E Benjamin
National Manager
Customer Response Unit
Telecom Australia
Level 37, 242 Exhibition Street
MELBOURNE Vic 3000

RECEIVED
- 7 AUG 1995

Dear Mr Benjamin

ARBITRATION - SCHORER

I telephoned the claimant on 3 August 1995 in order to determine whether he was now in a position to proceed.

Mr Schorer advised me that due to a combination of factors, including the current state of his health, the commercial pressures imposed by his business and an impending FOI claim, he is unable to submit a claim at present.

Mr Schorer has advised me, however, that he remains anxious to pursue a claim as soon as he is able to devote adequate time to its preparation.

Yours sincerely

GORDON HUGHES

cc [redacted] J Pinnock, P Bartlett, J Rundell

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4 September 1995

Our Ref: GLH
Matter No:
Your Ref:

Mr G Schorer
Golden Messenger
493-495 Queensberry Street
NORTH MELBOURNE Vic 3051

ENTERED 5-9-95

TB ✓
SB ✓

Dear Mr Schorer

ARBITRATION - TELSTRA

I refer to our telephone discussion on 3 August last and would be pleased to know if you are yet in a position to indicate whether, and if so when, you intend proceeding with the submission of your claim documentation.

Yours sincerely

GORDON HUGHES

CC E Benjamin, J Pinnock, P Bartlett, J Rundell

Black ✓
Benjamin ✓
Geary
Evert
Armstrong
Phillips
~~Davids~~

Haar
Chisholm
Gamble
Levy
Deloittes
~~Sutton~~
~~Kearney~~ Sal

Freehills
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6 November 1995

Our Ref: GLH
Matter No:
Your Ref:

Mr G Schorer
Golden Messenger
493-495 Queensberry Street
NORTH MELBOURNE Vic 3051

RECEIVED 9.11.95

Dear Mr Schorer

ARBITRATION - TELSTRA

Please advise me within 7 days when you expect to complete the submission of your claim.

If you anticipate a delay of considerable or indeterminate length, I will give consideration to the question of whether this arbitration should be abandoned.

Yours sincerely

GORDON HUGHES

CC E Benjamin, J Pinnock, P Bartlett, J Rundell

✓Black	Haar	Freehills
~~Benjamin~~	Chisholm	~~Mallesons~~
Geary	Gamble	~~Holding Redlich~~
Evert	Levy	~~Blumers~~
Armstrong	Deloittes	
~~Phillips~~	~~Sutton~~	
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Recommendation 24: **Telecom introduce a national system whereby a fault which reduces the level of service below a level determined by AUSTEL and which cannot be identified or resolved within a specified time frame at one level is escalated to the next level of management for resolution (cf: Coopers & Lybrand Recommendation 3).**

TELSTRA Status Comment - 30 June 1995

The time escalation parameter is one of the central planks of the new fault management process which has now been implemented nationally.

As noted in AUSTEL's third quarterly report of 2 February 1995 "Telstra has substantially fulfilled the requirements of this recommendation, which is the introduction of a national system for escalation of faults in specified circumstances".

Action to implement this recommendation is now completed.

AUSTEL Comment

Telstra has provided AUSTEL with information which provides a numerical summary of escalated faults under the new fault management process during the December 1994, March 1995 and June 1995 quarters. AUSTEL is examining this data and will be arranging a meeting with Telstra to discuss the effectiveness of its new escalation procedures.

As noted above, AUSTEL is examining issues recently brought to its attention by Telstra customers concerning Telstra's current fault recording and escalation procedures.

Recommendation 25: **Telecom commit itself to rectify the majority of difficult network faults which reduce the level of service below a level determined by AUSTEL within three to six months and all within a period of twelve months.**

TELSTRA Status Comment - 30 June 1995

Telstra has now completed its program of Service Verification Tests on the sixteen DNF Customers referred to Telstra by AUSTEL with the exception of three customers who have refused to allow the tests to take place. As indicated previously, the program of SVT did not include those services where the service either no longer existed in the same form as previously, or was a mobile service, or where the difficulties related to

CPE and not the network. All services on which the SVT was carried out have met or exceeded the SVT requirements.

Should any of the customers who have refused permission for the Service Verification Tests to be carried out withdraw that refusal, then Telstra will carry out the tests.

Telstra considers that this recommendation is finalised.

AUSTEL Comment

Telstra has provided AUSTEL with a summary of the Service Verification Test (SVT) results for the services of customers identified in AUSTEL's *COT Cases* report and has advised that the services for which testing was completed passed the SVT. The summary notes that following initial approval to conduct the SVT, three of these customers subsequently withdrew that permission. The SVT for these services were therefore limited to the Call Delivery Tests. Telstra has advised AUSTEL that each of these services passed the Call Delivery Tests.

AUSTEL notes Telstra's comment that - "should any of the customers who have refused permission for the Service Verification Tests to be carried out withdraw that refusal, then Telstra will carry out the tests"; and agrees that this recommendation is finalised. Further comment is provided on the SVT under recommendation 41.

Recommendation 26: **Telecom devise plans with time-frames for resolving difficult network faults which reduce the level of service below a level determined by AUSTEL and inform its customers accordingly (cf: Coopers & Lybrand Recommendation 24, Bell Canada International's Rotary Hunting Group Study Recommendation 8.2).**

TELSTRA Status Comment - 30 June 1995

The new Complaint and Fault Management Processes provide time frames for resolving faults. (See also Rec 25)

Telstra considers that this recommendation is finalised.

AUSTEL Comment

AUSTEL agrees that this recommendation is finalised.

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93/94 WRH:MYC

24th November, 1995

Dr Gordon Hughes
c/- Messrs Hunt & Hunt
Lawyers
Level 21
459 Collins Street
MELBOURNE VIC 3000

Dear Dr. Hughes,

RE: Arbitration - Golden Messengers and Telstra

We refer to your letter of 6th November last to our client and subsequent correspondence.

Our client advises that it is not in any position to advise with certainty whether or not it anticipates "a delay of considerable or indeterminate length".

The arbitration proceedings were entered into on a clearly accepted basis that Telstra would supply required documentation under FOI provisions. Our client cannot proceed without the relevant information being made available.

Without being critical of Telstra at this stage, the fact is that the material is being provided extremely slowly. The last delivery of documentation was received only this month. We are instructed that material which is well known to have existed (and presumably has not since been lost or destroyed) is still awaited.

Our client is aware of the diastrous state of affairs as to the supply of FOI documents in the recent Smith arbitration wherein documentation was supplied shortly before and after you made your decision; it does not want to be similarly disadvantaged in its own proceedings.

Your advice that you will give consideration to the question of whether the arbitration should be abandoned is noted. Our client, as we are at present advised, would not be agreeable to any such proposal.

However, if you personally find the present situation tedious and simply wish to resign as arbitrator for that or for any other reason, our client would not object, nor would it consider it would be entitled to offer objections.

Yours truly,

36

HUNTS'

Telstra

Office of Customer Affairs
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic. 3000

Telephone (03) 9634 2977
Facsimile (03) 9632 3235

19 January 1996

Dr Gordon Hughes
Hunt and Hunt
Lawyers
Level 21/459 Collins Street
MELBOURNE VIC 3000

By facsimile: (03) 9614 8730

Dear Dr. Hughes

Schorer

I refer to my letter of 16 January, 1996 and your direction made on 18 December 1995 which requires Telstra to make available to Golden Messenger:

> *"such documentation in its possession or control which has not previously been made available to the claimant pursuant to an application under the Freedom of Information Act* ["FOI Act"] *and which might reasonably be considered relevant to the claim as set out in the claim documentation submitted by the claimant on an interim basis on 23 December 1994".*

I note that in your direction you have set out the parameters under which Telstra has agreed to disclose certain telephone number information. I assume that all information being made available for inspection by Golden Messenger must be used solely for the purposes connected with its claim and must be kept confidential by the claimant and his advisers and must be returned to Telstra in accordance with the *Fast Track Arbitration Procedure*. Please confirm that this is the case.

Following your direction, Telstra has conducted searches for documentation which may fall within the scope of your direction. These searches are continuing. These searches are in addition to the searches already carried out in response to various FOI Act requests by Golden Messenger.

As a result of these searches, further documentation has been located. Once this documentation has been analysed by Telstra, such of the documentation as is relevant to Golden Messenger's claim will be made available for inspection.

I should note, however, that in the circumstances Telstra faces great difficulty in attempting to place practical limits on the scope of its searches. This is due both to the vague nature of Golden Messenger's claim and the wide scope of your direction, which is broadly analogous

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to a direction for Telstra to give discovery of documents, a situation which was not envisaged when the parties entered into the *Fast Track Arbitration Procedure*.

In this regard, I would like to make the following points:

1. A vast amount of information has already been provided to Golden Messenger under the FOI Act; approximately 66,000 pages and 15 computer disks. In processing Golden Messenger's various FOI Act requests, Telstra approached, among others, the following areas within Telstra:

Commercial Waverley
Commercial Area Sales Rootscfay
Commercial Queensland
NNI
Corporate Marketing
Commercial Waverley FM&D
Network Products
Commercial Waverley Test Centre
Commercial CED Heidelberg
Commercial Western
TRNS
Commercial Waverley Service Delivery
Commercial Central CED
Commercial
C&G
Commercial & Consumer Business, Noise Investigation
Service Delivery Vic/Tas Region
Metro West Operations
Heidelberg CED
CAN Construction & Design Melbourne Metro Region
Service Assurance Commercial Vic/Tas
C&C. Difficult Network Faults
Melbourne Network Operations - Exchanges
Network Products - Southern Region
Corporate Strategy
Board Support

Telstra is conducting a review of documents previously exempted in full under the FOI Act to determine which of these, if any, may fall within the scope of your direction. Documents exempted on the grounds of Legal Professional Privilege will not be reviewed. Telstra does not propose to review documents which have previously been released with deletions (that is, "B" documents), as those documents have clearly already been made available to Mr. Schorer. In manyt cases these deletions amounted to no more than the removal of 3rd party names.

37A

2. The further searches carried out by Telstra following your direction have been restricted to:

(1) the North Melbourne exchange building (incorporating the North Melbourne Telephone Exchange, the old North Melbourne tandem exchange and the North Melbourne ISDN node);

(2) the Footscray Exchange (the Footscray exchange is of particular relevance to Golden Messenger's claim because it provides the last choice routes for traffic into and out of the North Melbourne Telephone Exchange);

(3) the Footscray District Telstra office (at one time the administrative centre for the North Melbourne Telephone Exchange;

(4) the St Albans' Exchange Maintenance Group ("EMG") (the EMG responsible for the North Melbourne Telephone Exchange);

(5) Telstra's National Network Investigations group ("NNI"); and

(6) searches of various of Telstra's computer databases for information relating to the performance of the North Melbourne Telephone Exchange and the last choice routes into the North Melbourne Telephone Exchange.

3. The performance of the Inter-Exchange Network surrounding the North Melbourne exchange may, in a broad sense, be relevant to Golden Messenger's claim. The same could be said of Telstra's entire telephone network. Indeed, this appears to be Golden Messenger's intention judging by the content of its letter to you dated 22 December 1995. However, were Telstra to broaden the scope of its searches to, for example, ***only*** those exchanges with direct links to the North Melbourne exchange or tandem, it would need to search for documents relating to the performance of approximately 50 telephone exchanges, representing over one third of the telephone exchanges in the Melbourne metropolitan area. This would require a very large diversion of resources and would inevitably result in further long delays in the progress of this arbitration (in Telstra's estimate, thousands of hours of effort). Further, in Telstra's view, such searches would be highly unlikely to uncover any information which would, in a practical sense, materially alter the picture created by the documents which either have or will be made available to Golden Messenger.

Relevant classes of documents

Those classes of documents which, in Telstra's view, are likely to be of significance in this arbitration are set out here:

1. LEOPARD, which is a database tracking complaints to 1100 or 132999 operators concerning Mr Schorer's service. Those reports classified by operators as *Trouble Reports* (that is, which are considered to relate to faults which are likely to affect individual customers) are archived to MAPS; those classified as *Technical Assistance*

Reports (that is, which are considered to relate to faults which are likely to affect many customers) are archived to GAPS or, more recently, NSQSS.

2. Service Plus (a database performing a similar function, set up for use by business customers. Reports entered into Service Plus *via* 132999).

3. RASS (a similar database, intended to track complaints relating to special services - in Mr Schorer's case, ISDN services).

4. Documents created by Paul Killeen and other employees within the National Network Investigations group, including personal diaries, file notes, internal memoranda, letters and an extensive technical report on the performance of the North Melbourne Exchange, produced following lengthy investigations over a six month period in 1989.

5. Documents, including file notes, letters and internal memoranda created by customer service staff and managers.

6. Exchange trunking diagrams showing the configuration of the North Melbourne Telephone Exchange and surrounding Inter-Exchange Network at various points in time.

7. Exchange diaries indicating work performed on the North Melbourne Telephone Exchange equipment.

8. Details concerning complaints by all customers connected to the North Melbourne Exchange, extracted from the computer databases MAPS, GAPS and NSQSS;

9. Fault dockets, showing investigations by exchange technicians (whether referred to the exchange following a LEOPARD or Service Plus report or comprising a special investigation) and exchange clearances ;

10. Traffic information relating to routes into the North Melbourne Exchange and Tandem, sourced from various computer databases (RUBAS, TROB and ROMANS).

11. Exchange Maintenance Group ("EMG") reports, being management reports containing information relating to the performance of exchanges within the relevant EMG.

12. North Melbourne Telephone Exchange logbooks of Traffic Route Testing ("TRT") runs into the North Melbourne Exchange.

Some documents falling within these classes have already been provided under the FOI Act. Further documents will shortly be made available pursuant to your direction. Telstra is making all reasonable efforts to locate such documentation as may exist which falls within any of these categories. However, it is clear from searches carried out and documentation located to date that Telstra retains very few manual records relevant to Golden Messenger's claim for the period *pre* 1985, and virtually no relevant computer records for the period *pre* 1991.

* * *

In the circumstances, Telstra submits that the provision by it of such documentation as may exist which falls within any of the categories numbered 1 to 12 under the heading "Relevant classes of documents" above satisfies your direction made on 18 December, 1995. If you do not agree with this approach then I suggest that the best way forward would be to discuss Telstra's approach to the provision of documentation at the directions hearing on 5 February 1996. It may be beneficial if the technical resource unit were also able to attend to assist in the discussion of these matters.

Yours faithfully

Ted Benjamin
Group Manager
Customer Affairs

cc: Mr John Pinnock, TIO
By facsimile: (03) 9277 8797

Mr Graham Schorer
By facsimile: (03) 9287 7099

TELECOM CORPORATE SOLICITORS OFFICE

LEGAL SUPPORT SERVICES

7TH FLOOR 470 COLLINS STREET
MELBOURNE 3000 AUSTRALIA

FAX NO: (03) 614 7186 TELEPHONE: (03) 606 8007

FAX OPERATOR: (03) 606 5431

Page 1 of 2 Pages (Total)

C04550

DATE: 2 November, 1990

RECIPIENT: TELECOM BUSINESS TERMINALS.

ATTENTION: MR PETER GAMBLE.

FAX NO: (03) 642 0091

FROM: TREVOR HILL

RE: TELECOM V GOLDEN MESSENGER LEGAL PROCEEDINGS

If you do not receive all pages please telephone (03) 606 5431

COMMENTS:

PETER,

AS DISCUSSED, THE FOLLOWING COMMENTS ARE OFFERED TO ASSIST YOUR BRIEFING OF FRANK JONES:

(1) AT THIS MORNING'S DIRECTIONS HEARING IN THE FEDERAL COURT THE MATTER WAS STOOD OVER UNTIL THE 7TH DECEMBER 1990.THIS WAS AGREED TO BY BOTH PARTIES.

(2) BETWEEN NOW AND THE 7TH DEC. TELECOM WILL BE REQUIRED TO FINALISE THE DISCOVERY OF DOCUMENTS RELEVENT TO THE PROCEEDINGS.

(3) TELECOM WILL ALSO NEED TO INSPECT ANY DOCUMENTS LODGED BY GOLDEN MESSENGER AS PART OF ITS (GM'S) DISCOVERY OBLIGATIONS

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C04551

(4) TELECOM NEEDS TO EXAMINE THOSE DOCUMENTS PERTAINING TO THE TESTS CARRIED OUT ON NORTH MELB. EXCHANGE TO DETERMINE IF ANY OF THOSE DOCUMENTS HAVE BEEN GENERATED AS A RESULT OF AN "INTERCEPTION". IF SO, THEN TELECOM WILL BE PRECLUDED FROM DISCLOSING THEM UNDER THE DISCOVERY PROCESS. I INTEND TO ASK MR PAUL KILLEEN OF NETWORK INVESTIGATIONS TO UNDERTAKE THIS TASK.

(5) THE AUSTRALIAN GOVERNMENT SOLICITOR, ON BEHALF OF TELECOM, HAS WRITTEN TO THE SOLICITORS ACTING FOR GOLDEN MESSENGER SEEKING THEIR UNDERTAKING NOT TO DISCLOSE TO THEIR CLIENT OR OTHERS THE CONTENTS OF THE REPORT ON THE NORTH MELB. EXCHANGE. TO DATE, THERE HAS BEEN NO RESPONSE.

(6) AT THIS STAGE IT IS UNLIKELY THAT THIS CASE WILL BE HEARD BEFORE JUNE 1991.

(7) TELECOM NEEDS TO CONSIDER THE TACTICAL QUESTION AS TO HOW TO BEST PRESENT ITS EVIDENCE AT THE FINAL HEARING. THAT IS, ORALLY OR IN WRITTEN(SWORN AFFIDAVIT) FORM.

WOULD YOU PLEASE KEEP ME INFORMED AS TO ANY DEVELOPMENTS THAT MIGHT OCCUR IN FUTURE DISCUSSIONS BETWEEN TBS AND GOLDEN MESSENGER AS TO SETTLEMENT OF THIS LITIGATION.

SHOULD YOU OR FRANK HAVE ANY QUESTIONS IN RELATION TO THIS MATTER PLEASE DON'T HESITATE TO CONTACT ME ON 606 8007.

REGARDS,

TREVOR HILL
MANAGER - LEGAL SUPPORT SERVICES

CO:TREVOR1:19

37B

Hill, Trevor

From: Darling, Peter
To: Johnstone, Philip R; Hill, Trevor; Quan, Alex
Cc: Clarke, Lawrie; Duc, Nguyen; Darling, Peter; Dugan, Yasmin
Subject: FW: AUSTEL Mandatory Performance Regulation
Date: Monday, 13 December 1993 10:41AM
Priority: High

From: Darling, Peter
To: Campbell, Ian; Marshall, Ross
Cc: Hambleton, Dennis V
Subject: AUSTEL Mandatory Performance Regulation
Date: 13 December 1993 10:38
Priority: High

Ross and Ian,

This E-Mail is to alert you to a possible regulatory interaction with the current work on "COTS Cases" and ongoing work with AUSTEL on network performance.

As you know, a Ministerial Direction gave AUSTEL power to set end-to-end network performance standards. The AUSTEL Standards Advisory Committee established a working group (designation WG 12/1) to set these standards, and Telecom has had a fairly hostile reception in this working group.

Yasmin Dugan from my area has been co-ordinating this work, working closely with Network Products (especially Operations) and the Business Units. The AUSTEL staff member leading the group originally wanted a very wide list of mandatory parameters, but after discussion with Bob Horton and a presentation to the Standards Advisory Committee by Yasmin, AUSTEL have agreed to limit the scope of the initial work to the few parameters our customer surveys had shown as being of most concern. This work is now well advanced.

I believe that the "Service Operation Deemed Satisfactory" Project Team as part of the COTS case work has also been looking at issues relevant to a service specification and testing procedure, and that originally they came out with a large number of parameters to specify and test.

The powers to set mandatory performance standards that AUSTEL has been given could well be used in some sort of regulatory outcome from AUSTEL's current COT case investigation. I believe it is essential that we provide a consistent approach to AUSTEL. I'm hopeful that your team has taken Telstra's corporate position to AUSTEL as the starting point for their work. I strongly request that you give us early advice if for strategic reasons we should change our position with AUSTEL in the SAC and the working group 12/1.

Peter Darling,
Standards & Regulatory Strategy

37c

Telstra

Customer Response Unit
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic. 3000

Telephone (03) 634 2977
Facsimile (03) 632 3235

25 January, 1996

Mr Graham Schorer
GM (Melbourne) Holdings Pty Ltd
493-495 Queensbury Street
NORTH MELBOURNE VIC 3051

By facsimile: (03) 287 7001

Dear Sir

Golden Messenger - Arbitration

I refer to Telstra's letter of 31 January,1995 to the Arbitrator, Dr Gordon Hughes, which enclosed Telstra's proposed Request for Production Documents and proposed Request for Further Particulars.

Telstra wishes to raise with you an issue in relation to documents and believes that an agreement from you on this issue will assist in expediting this arbitration.

At paragraph 16 of the Claimants' Statement of Claim, the Claimants state that they purchased from Honeywell Australia an AT&T Definity Computerised Telephone and Call Centre Management System for the purpose of allowing the Claimants to be connected to the Telstra Australia ISDN Network. I shall refer to this system as the PABX in this letter.

At paragraph 17 the Claimants state that their business was connected to the Telstra Australia ISDN Network in December 1993 by Telstra Australia, but the service difficulties, problems and faults previously experienced still continued.

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Telstra understands that the PABX generates reports at the premises at which it is located and also generates reports which are sent to or generated at the premises of the company responsible for servicing that PABX. Those reports are relevant to this Arbitration to enable Telstra to distinguish between the telephone service difficulties, problems and faults attributable to the CPE, CAN and Network and misoperations by the Claimants. Indeed these documents are requested at paragraph 7 (g) and (h) of Telstra's proposed Request for Production of Documents forwarded to the Arbitrator, Dr Hughes, undercover of Telstra's letter of 31 January 1995. Dr Hughes subsequently forwarded a copy of this proposed Request onto you. It would assist Telstra in the investigations it is presently carrying out if you, Honeywell and AT&T would provide those documents at this time. In the circumstances Telstra asks that you provide copies of those reports in your possession to Telstra and further that you instruct AT&T and Honeywell that it is in order for Telstra to contact each of those companies to request copies of those reports.

I look forward to hearing from you as to the above matters.

Yours faithfully

Ted Benjamin
Group Manager
Customer Affairs

9632.7700
9630 2977

cc: Mr John Pinnock, TIO
By facsimile: (03) 9277 8797

Dr Gordon Hughes, Arbitrator
By facsimile: (03) 9614 8730

16th February, 1996

RE: SCHORER & COT CASES

On 16th February attending Amanda Davis who rang on the suggestion of Schorer. She told me she had complained in effect to Bartlett of the legal support team to Hughes that the administrator (the Telecom Ombudsman's department) had been pressurising Hughes to produce results and get on with the matter generally. She was putting it to Bartlett that any pressure on Hughes should be related to getting Telecom to produce results and not just to wind the matter up.

The impression I go was that Bartlett's view was that the administrator had to keep out of the rights and wrongs of the disputation between the parties to the arbitration. He was concerned with process and not with the matters of contest.

In general terms Amanda Davis said her client Maureen Gillam was in the same boat as Schorer.

After lengthy discussion in terms of generalities mostly the point that it was not a battle between class that this was an unusual case in that all the proof of the claimant's case was within the documentation that ought to be there with Telecom and was not being produced.

She was certain that the parties in Telecom had convinced themselves that they were the subject of unreasonable demands by partis who had lost touch with reality.

One thing she did say is worth following up and that is that Telecom's defence in general terms is related to material that is put together after the event whereas the claimants have (or in Schorer's case ought to have available) documentation and records put together at the time and which ought to be given its proper weights even though item by item it may not be conclusive.

I suggested to Davis that she get her client the subject of a Section 9 in some way or other under the Ombudsman's Act and that in consequence we could then make a common cause to try and get an investigator put there by the Ombudsman to look for what must be there which will either prove that Telecom is right or that we are in each case.

On 15th February Schorer rang me and told me he was at the stage where he would have to put the whole thing on hold because he could not continue on. He had to attend to his business and he would need to concentrate on getting the costs paid as directed by the original Ombudsman.

WRH

8-4-1996

39A

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FERRIER HODGSON CORPORATE ADVISORY

STRICTLY PRIVATE & CONFIDENTIAL

Pia
14/4/95
we to discuss

BY COURIER

18 April 1995

Mr Warwick Smith
Telecommunications Industry Ombudsman
Ground Floor
321 Exhibition Street
MELBOURNE VIC 3000

Dear Sir,

RE : **Fast Track Arbitration Procedure - Resource Unit**
Arbitrations: Smith, Garms, Gillan/Valkobi

I acknowledge receipt of your letter of 23 March 1995. The matters raised in your letter were discussed at a meeting with Sue Hodgkinson and me on Tuesday, 4 April 1995. I now formally reply to your letter and update you on further developments since our meeting.

I note from the tone of your letter that you are somewhat concerned as to the apparent time frames within which you, as Administrator of the Fast Track Arbitrations, can expect finalisation of the above named arbitrations.

You have requested advice as to when, in terms of weeks, the Resource Unit envisages being in a position to provide its integrated financial and technical assessments to the Arbitrator for the above arbitrations. I now respond accordingly in relation to each:

Smith

The Resource Units role is almost complete, but more work is to be done to tidy our reports (both technical and financial) to a form suitable for submission to the parties by the end of April 1995.

The Resource Unit has completed a preliminary review of the financial material contained in the claim, defence and reply. The interim report has been drafted based on the assumption that technical faults did occur.

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TELEPHONE 03 629 8855 FACSIMILE 03 629 8461
LICENSED INVESTMENT ADVISER

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No further questions are anticipated from the Arbitrator. An important meeting took place between the Resource Unit and the Arbitrator on 10 April 1995 over the need to manage the issuance of Resource Unit reports.

Lane Telecommunications have commenced their detailed review in mid March and now have completed their draft interim report (on 6 April 1995). This report is subject to review and amendment by Paul Howell of DMR Inc prior to issuance.

Garms

The Resource Unit has commenced its review of the financial issues. A preliminary report is envisaged to be finalised within three weeks. Lane Telecommunications have commenced their review and, at this stage, they estimate that their preliminary review will be completed within one month (mid to late May) for review by Paul Howell of DMR Inc.

Gillan/Valkobi

The Resource Unit has commenced its review of the financial issues. We envisage that our preliminary report will be finalised within three weeks. Lane Telecommunications have commenced their review and, at this stage, they likewise expect their preliminary review will be completed within one month for review by Paul Howell of DMR Inc.

Resource Unit (including Technical Support)

I note your comment that the Resource Unit reports issued to the Arbitrator must also be provided to the claimant and Telecom for their comment. We agree that this may prolong the process further, but the fact is that this is a requirement of the fast track arbitration. The Smith report will be available imminently and subsequent reports can, with the benefit of experience be expected to proceed more expeditiously.

I also advise that Mr Paul Howell, Director of DMR Inc Canada arrived in Australia on 13 April 1995 and worked over the Easter Holiday period, particularly on the Smith claim. Any technical report prepared in draft by Lanes will be signed off and appear on the letterhead of DMR Inc. Paul Howell anticipates completing the Smith technical report by the end of April.

Further, I advise that additional resources have been applied to the assignments and work on each has been undertaken contemporaneously. We have technical staff and financial support staff working on Garms and Gillan (in parallel) and visits to Brisbane are anticipated by the end of April 1995.

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Arbitration

I understand that Dr Hughes will contact you directly (in your capacity as Administrator of the Fast Track Arbitration Procedures) on any legal procedural issues associated with the progress of the Arbitrations.

Conclusion

In conjunction with Dr Gordon Hughes, we are fast tracking the procedure with the aim of achieving a decision that has regard for due process and investigation.

In closing, I hope that it is possible for you (in your capacity as Administrator for the above referred Fast Track Arbitrations) to continue in that position until we can resolve these claims.

It is unfortunate that there have been forces at work collectively beyond our reasonable control that have delayed us in undertaking our work. It is only now, following the review and acceptance of our Resource Unit (including acceptance of Lane Telecommunications by the COT claimants), that we are in a position to analyse the merits (including technical aspects) of each claim.

Do not hesitate to contact the writer directly on (03) 629 8855.

Yours faithfully,
FERRIER HODGSON CORPORATE ADVISORY

JOHN RUNDELL
Project Manager - Resource Unit
Associate Director

Encl.

c.c. Mr Peter Bartlett, Partner, Minter Ellison Morris Fletcher.
Dr Gordon Hughes, Arbitrator, Managing Partner, Hunt & Hunt.

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FERRIER HODGSON CORPORATE ADVISORY

[redacted]

ATTENTION: Dr Gordon Hughes DATE: 18 March, 1996

COMPANY: Hunt & Hunt FAX: 9617-9299

FROM: Oren Zohar PAGES: 1

Dear Gordon

RE: SCHORER AND TELSTRA / SCHEDULING OF MEETINGS

I refer to your recent correspondence to the parties (dated 8 March 1996) and your request that I make arrangements for the necessary informal meetings and subsequent directions hearing.

Telstra has proposed that the meetings be held on Monday, Wednesday and Friday of the week commencing 25 March 1996. Graham Schorer has yet to confirm whether these dates are acceptable and he has advised that he will contact me once he has spoken with George Close and his solicitor, Bill Hunt.

I kindly request that you ask Caroline to confirm whether your boardroom facilities are able to be used on the propopsed dates as the venue.

Graham Schorer has also requested that I relay to you the following issues which he would like addressed prior to the proposed meetings.

1. That you be present at all meetings, including the proposed informal meetings.
2. That all meetings (including informal meetings) be transcribed.
3. That a copy of a resume/curriculum vitae for Doug Grady of Lane Telecommunications be provided, in the event that Mr Grady attends the proposed meetings with Andrew Crouch.
4. The involvement of staff from Lane Telecommunications other than David Read.

I have suggested to Graham Schorer that he may wish to put his concerns to you in writing or to contact you directly to discuss these matters. If we can be of assistance, please do not hesitate to contact either Susan (who is back on board as of today) or myself.

Regards,

Oren Zohar

MATERIAL IN THIS TRANSMISSION IS CONFIDENTIAL.
NO CONFIDENTIALITY IS WAIVED, LOST, STOLEN OR DESTROYED BY REASON THAT THIS FAX HAS BEEN MISTAKENLY TRANSMITTED.

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD
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TELEPHONE 03 9602 3602 FACSIMILE 03 9642 8561

19th March, 1996

RE COT CASES

On 22nd January 1996 Mr. Schorer points out to me that the letter from Telstra to Hunt & Hunt was dispatched to Gordon Hughes apparently on 19th January probably by fax by that doesn't necessarily follow but he didn't get his copy of the thing dated 19th January until this morning Monday 22nd January. Schorer points out that Telstra has been increasingly not running to the rules, ditto Hughes in the sense of the word that Hughes is apparently leaving it to Telstra to send copies to the other party Schorer whereas it should be Schorer receiving it from Hughes so that Hughes knows everybody's got it. This way he doesn't really know whether they have or they haven't. Also Schorer doesn't know for sure whether he's got everything he ought to have and Hughes would seeing a copy cc notice on a letter would assume for certain that Schorer did have it. Same is unsatisfactory because we don't trust Telecom.

Moreover it's a known fact that in the matter of Smith's case he Smith did not receive copies of what he should have received and in consequence material which should have alerted him to what was going to be dealt with in the arbitration was not known to him he therefore was prejudiced.

First testing of North Melbourne exchange calls to and from Golden under Austel directions known as the Neat Testing programme carried out by Telstra produced a result whereby more calls were received by Golden than were sent out according to the tests from the North Melbourne exchange for one week. This information has been published in a report given to Austel and obtained under FOI by Schorer.

At or about the same time Bell Canada had Telstra doing reports on its service in relation to Golden's receipt of same. At or about the same time similar tests were being done on the Telstra equipment relating to Smith and the results of thoses cover the demonstration that they could not have been done.

The continuation of the Telstra neat testing what was in place being conducted at the time the Bell Canada directives were being allegedly held or done.

As to the second Bell Canada test Schorer has on disk the Telstra abandoned certain tests as to part from certain exchanges. One can only assume that the reports were unsatisfactory to Telstra or supportive of Schorer.

Incidentally a forfeit means 2 lines. One for calls to come

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95/0594-01

AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

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93/507

9 December 1993

Mr Ian Campbell
Managing Director - Commercial Business
Telecom

Fax 634 3876

Dear Mr Campbell

BELL CANADA INTERNATIONAL REPORT

This letter is to convey to you advice to the effect that while AUSTEL was -

- consulted on the terms of reference for the Bell Canada International (BCI) audit of Telecom's testing and fault finding capability, and study of its network, to determine if there is a fundamental network fault

- of the view that the proposed testing would provide a useful *snapshot* of current network functionality and that the terms of reference allowed for sufficient flexibility to produce results relevant to a consideration of issues raised by *COT Cases* (without drawing conclusions on an individual customer's complaint),

on a preliminary analysis the report fails to live up to the expectations raised by the terms of reference.

Findings must be qualified

The BCI study concluded that "*...customers served from the test originating and test terminating exchanges receive a grade of service that meets global network performance standards...*" (sixth paragraph of the Executive Summary). Any findings to that effect must be qualified by the fact that the BCI audit focused on only one part of what is commonly called "*the network*", namely Telecom's exchange-to-exchange operations. BCI's audit did not extend to an equally significant part of "*the network*", namely the customer access network.

To put it another way, the tests conducted by BCI neither were nor purported to be "*end-to-end*" testing, but involved testing of part of the network only - the inter-exchange network. The tests were not applied in a manner designed to check complete end-to-end network performance from a customer's perspective. They were made from exchange equipment to exchange equipment and, except in one case, did not traverse customer lines or use customer premises equipment. The conclusions which may be drawn from the

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study cannot go beyond the inter-exchange network. The findings cannot be presented in the way they were in the Executive Summary to suggest that they embrace the network as a whole, including the customer access network.

Test call patterns not typical of COT Cases

The test calling patterns adopted apparently reflected the main network traffic streams relevant to the exchanges currently providing services to the *COT Cases* and related customers, but did not necessarily reflect typical traffic patterns experienced by those customers. While the results can be considered indicative of the general switched public network performance of the exchanges involved, they cannot be guaranteed to be representative of calling performance from typical client locations to the exchanges serving the *COT Cases* and related customers.

Also for whatever the reasons, such as time constraints, the testing undertaken by BCI appears very narrowly focused. For example, in Melbourne BCI undertook test calling from only seven exchange localities out of the 100 or more in the Melbourne metropolitan area, with only selective test calling from the Western suburbs. This is particularly disappointing in that both of the Melbourne businesses included in the testing claim to have experienced difficulties with respect to calls from Western suburbs based clientele.

Testing of PBX ("rotary") search facility

Particular concern has been expressed by *COT Cases* dependent on older (cross bar) exchange technology, in relation to periodic faults of the rotary search facilities which are designed to allow calls dialled to a single number to be offered to a group of access lines appearing in the customer's premises.

With the benefit of hindsight, exchange-to-exchange network integrity tests for *COT Cases* traffic cannot be considered comprehensive without the inclusion of testing of this facility in the terminating exchanges serving the relevant *COT Cases*.

I understand that BCI is currently undertaking further testing to redress this shortcoming in its report.

008 services

Also with the benefit of hindsight, given the concerns expressed by certain of the *COT Cases* the realistic testing of network performance should have included test calling via any relevant 008 number.

Retrospectivity

The report itself highlights the fact that the tests provide only a *snapshot* which does not necessarily reflect the problems that *COT Cases* have experienced in the past - see paragraph 5.00 of the report which *"... recognises that the tests performed by BCI ... look at the network at a specific point in time. The results therefore, may be completely different from those obtained at some other point in time. Furthermore, as troubles are cleared when found, it is unlikely that the same trouble conditions will show up in subsequent tests".*

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95/0594-01

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In summary

Having regard to the above, I am of the opinion that the BCI report should not be made available to the assessor(s) nominated for the COT Cases without a copy of this letter being attached to it.

Yours sincerely

Cliff Mathieson
Specialist Advisor - Networks

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expert reports and statutory declarations and statements from individuals who have some awareness of the problems he encountered. He claims his personal records, and corroborating documentation, are particularly significant because of Telecom's failure to keep comprehensive fault records. He believes he is "the only individual who has a full and comprehensive knowledge of the extent of the faults" on his system.

3.3 ***Overview of Defence***

(a) Telecom submits that:

- the claimant in fact experienced relatively few faults and that those which occurred were promptly rectified;
- some faults were attributable to incorrect use by the claimant of the installed telephones and associated equipment;
- the claimant has no entitlement to compensation in respect of the period prior to 11 December 1992 because of a settlement reached on that day, pursuant to which the claimant was paid $80,000.00 and provided with a 008 telephone service and a $5,000.00 credit towards 008 charges. The settlement was made with a denial of liability in full and final resolution of all claims to that date;
- a fault free telephone service is not guaranteed and is impossible to provide and, in any event, the level of service as tested was satisfactory during all relevant periods; and
- there are no grounds upon which a finding of legal liability could be based and, even if there were, Telecom would be entitled to take advantage of statutory immunity.

(b) As a consequence, Telecom does not consider it should be required to make any payment, beyond the settlement of 11 December 1992, to the claimant.

3.4 ***Previous Inquiries***

(a) The COT Cases have been the subject of previous investigations and reports. These reports were placed in evidence. The most significant of these reports appear to be:

- *Report to Telecom Australia*, Bell Canada International Inc; 1 November 1993 ("the Bell Canada Report");
- *Review of Telecom Australia's Difficult Network Fault Policy and Procedures*, Coopers & Lybrand, November 1993 ("the Coopers & Lybrand Report"); and

- *The COT Cases: AUSTEL's Findings and Recommendations*, Australian Telecommunications Authority, April 1994 ("the AUSTEL Report").

(b) An overview of these reports is set out below.

3.5 ***Bell Canada Report***

(a) Telecom commissioned Bell Canada International ("BCI") to audit its testing and fault finding capabilities as a result of problems reported by a number of commercial telephone customers, including the COT Cases. Telecom noted at the time that it had been unable to find a widespread network problem or individual problems which could account for the nature and extent of these reported faults.

(b) As part of the audit, BCI conducted test calls in October 1993, originating from digital and analogue exchanges and terminating in the exchanges in Melbourne and Brisbane where four of the COT Case members were located. In summarising its findings, BCI concluded that the tests revealed a grade of service being delivered by Telecom to its customers which met global network performance standards. There was no evidence of any network dysfunction that could create the variety and magnitude of troubles reported by the COT Cases. This was "not unexpected since, in general, customer reported troubles are analysed to the extent which would prevent network faults from remaining undetected". Tests revealed some faults but these would have an insignificant impact on network performance.

(c) BCI recommended that Telecom accelerate its modernisation program to "maintain its leadership as the quality service provider in a competitive environment". This was a reference to Telecom's older analogue equipment which was past its expected service life.

3.6 ***Coopers & Lybrand Report***

(a) Telecom commissioned Coopers & Lybrand to conduct an independent audit of the adequacy, reasonableness and fairness of its approach to "Difficult Network Faults" and to recommend changes which would improve, in particular, the perceived quality of customer service.

(b) "Difficult Network Faults" are faults so described by Telecom and which Telecom is unable to resolve to the satisfaction of a customer through the operation of routine fault clearance procedures.

(c) The report specifically avoided findings or recommendations in respect of specific cases which may be the subject of claims, including the COT Cases.

FAXED

Telecommunications Industry Ombudsman ACN 057 634 787
Ground Floor, 321 Exhibition Street, Melbourne, Victoria, 3000
Telephone: 61 3 277 8777 Facsimile: 61 3 277 8797

Telecommunications Industry Ombudsman

Facsimile Cover Sheet

TO: PLB

Company: Minters

Fax: 967 4621

FROM: PAD

Company: TIO

Fax: 92778797

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Date: 22.6.95

Pages: 1 (including cover sheet)

Comments: Sorry to be so demanding on your first day back :-)

Peter,

could you please have a look at Hughes' letter to Pinnock dated 21 June 95 re Alan Smith. John wants to discuss it on Monday, and what the approach should be re parties seeking to revisit issues post Arbn. His position is not to open the can of worms, but would like to discuss strategy with you.

regards, Pa.

Hunt & Hunt
LAWYERS

Partners
David M. Scarlett
Edward S Boyce
James C.F. Harrowell
Christine A. Cooley
Gordon L. Hughes
Mark T. Knapman
David P. Cooper
Ian S. Craig
Peter I. Ewin
Wayne B. Cahill
Neville G.M. Debney
Grant D. Selvan
Charles Veevers
Andrew Logie-Smith
William P. O'Shea

Consultants
Kenneth M. Martin
Richard I. Kellaway
Andrew Jenkins

Associates
Shane G. Hird
John S. Mohur
Melissa A. Henderson
Francis V. Gallichio
John D.F. Morris

21 June 1995

Our Ref: GLH
Matter No: 5126886
Your Ref:

Mr J Pinnock
Telecommunications Industry Ombudsman
321 Exhibition Street
MELBOURNE Vic 3000

TB
SB

Dear Mr Pinnock

ARBITRATION - ALAN SMITH

I enclose copy letter from Alan Smith dated 20 June 1995.

As you are aware, Mr Smith's arbitration was completed prior to you taking up your appointment as Telecommunications Industry Ombudsman.

I do not believe I have jurisdiction over this matter any longer, nor do I consider it appropriate for me to enter into correspondence with either of the parties regarding the conduct of the proceedings or matters which may or may not have come to light subsequent to the delivery of my award.

I would, of course, be happy to respond to any queries which you put to me, or which are put to me jointly by the parties. I believe that if Mr Smith has any lingering concerns, however, these should be directed, initially at least, to your office.

melbourne
sydney
newcastle
adelaide

Yours sincerely

GORDON HUGHES

Encl.

cc A Smith, E Benjamin, P Bartlett, J Rundell

42B

beginning of the procedure, my expenses would have been minimal.

I leave this matter in your hands, with respect for your position. However, the question must be asked again: Did you request this Bell Canada data through the Chair of the Arbitration Procedure?

Respectfully,

Alan Smith

42B

MINTER ELLISON

LAWYERS

60 MARKET STREET
MELBOURNE VICTORIA

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YOUR REFERENCE

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28 April 1995

STRICTLY CONFIDENTIAL

Mr Warwick L Smith
Telecommunications
Industry Ombudsman
Box 18098
Collins Street East
MELBOURNE 3000

Dear Warwick

Fast Track Arbitration - Smith

Further to our recent discussion, it seems to me that we should put to Gordon Hughes that we expect his Award to be made prior to his departure on 12 May 1995.

Attached is a draft letter to Gordon. It is in reasonably harsh terms.

Could you please consider whether a letter in this form or an amended form, should go to Gordon.

Regards

Peter L Bartlett

enc.

l/p10511804

42C

DRAFT

28 April 1995

Dr Gordon Hughes
Hunt & Hunt
Solicitors
GPO Box 1533N
MELBOURNE VIC 3000

By Facsimile: 614 8730

Dear Gordon

Fast Track Arbitration - Smith

I am becoming increasingly concerned at the delays in the finalisation of this matter.

The Resource Unit tells me that it expects its technical and financial reports to the Arbitrator will be released today to the parties. The parties will then of course have the right to a reasonable period within which to comment on these reports. The extent of this period would of course by in your discretion.

However, I understand you are to present a paper in Greece in mid May.

I would expect the Award would be delivered prior to your departure.

It would be unacceptable to contemplate the delivery of the Award being delayed until after your return.

Could you please contact me to discuss.

Yours sincerely

DRAFT

Warwick L Smith
Ombudsman

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1/p1b511802

RESOURCE UNIT TECHNICAL EVALUATION REPORT

Mr. Alan Smith of Cape Bridgewater Holiday Camp

30 April 1995

Introduction

This document is DMR Group Inc.'s (Montreal, Canada) and Lane Telecommunications Pty Ltd's (Dulwich, South Australia) Technical Report on the Cape Bridgewater Holiday Camp COT case.

It is complete and final as it is. There is, however, an addendum which we may find it necessary to add during the next few weeks on billing, i.e. possible discrepancies in Smith's Telecom bills.

To establish the context for our technical evaluation, we preface it with our positions on three specific details in Telecom's Service History. This is followed by a statement about other documentation which has been provided by both parties. And we provide a characterisation of the level of service such a customer as Mr Smith could reasonably have expected.

Sections 1 and 2 itemise problems with Telecom's service to the Cape Bridgewater Holiday Camp in the period from February 1988 to October 1994. There were several different problems, sometimes more than one at a time, with several different causes. These are summarised in the Timeline at the end of the Introduction. They include:

- congestion
- low capacity
- exchange fault
- transmission equipment (RCM) faults
- calls wrongly directed to RVA (Recorded Voice Announcement)
- sundry reports with "no fault found" at the time
- Telecom testing
- programming error
- uncompleted 008 calls
- others.

Section 3 addresses the issue of problems with CPE (Customer Premises Equipment). It is not always clear to the customer where to draw the line between CPE and proper Telecom responsibilities, and Telecom did not succeed in making it clear to Mr Smith.

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ARBITRATORS COPY

Sections 4 and 5 are an impact assessment and summary. We have ascertained that there were times when the service provided by Telecom to Mr Smith, quite aside from problems with CPE, fell below a reasonable level. These times ranged in duration from years in some cases, to 18 months in one case, to an estimated 70 days in one case, to shorter times in other cases. These durations of poor service were, in our judgement, sufficiently severe to render Mr Smith's service from Telecom unreliable and deficient.

Cape Bridgewater Documentation

The "Fast Track" arbitration proceedings are "on documents and written submissions". More than 4,000 pages of documentation have been presented by both parties and examined by us. We have also visited the site. Not all of the documentation has real bearing on the question of whether or not there were faults with the service provided by Telecom. We reviewed but did not use Mr Smith's diaries (Telecom's examination of Mr Smith's diaries arrived in the week of 17 April 1995). Like Telecom, we separate the problems caused by Mr Smith's CPE from those in Telecom's service and concentrate only on the latter. A comprehensive log of Mr Smith's complaints does not appear to exist.

The Technical Report focuses only on the real faults which can now be determined with a sufficient degree of definiteness. We are not saying anything about other faults which may or may not have occurred but are not adequately documented. And unless pertinent documents have been withheld, it is our view that it will not be feasible for anyone to determine with certainty what other faults there might or might not have been.

One issue in the Cape Bridgewater case remains open, and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about billing problems.

Otherwise, the Technical Report on Cape Bridgewater is complete.

A key document is Telecom's Statutory Declaration of 12 December 1994. Without taking a position in regard to other parts of the document, we question three points raised in Telecom's Service History Statutory Declaration of 12 December 1994 *(Ref B004)*.

"Bogus" Complaints

First, Telecom states that Mr Smith made "bogus" complaints [B004 p74, p78, Appendix 4, p10]. What they mean is his calls in June 1993 from Linton to test Telecom's fault recording. As others have indicated (see Coopers and Lybrand Review of Telecom Australia's Difficult Network Fault Policies and Procedures, November 1993, p6) "Telecom did not have established, national, documented complaint handling procedures [...] up to November 1992," and "documented complaint handling procedures were not fully implemented between November 1992 and October 1993." Furthermore, [p7] "fault handling procedures were deficient." Smith's June 1993 calls from Linton were, as he has stated, to test Telecom's fault reporting procedures, because people who had been unable to reach him told him that Telecom did not appear to be doing anything when they reported problems. We find Smith's tests in this instance to be unlikely to effect any useful results, but the term "bogus" does not apply.

42E

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Mr. Alan Smith of Cape Bridgewater Holiday Camp

30 April 1995

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42F

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There were occasions when Mr Smith mistook problems with his own CPE for Telecom faults, but this is a normal occurrence in the operation of any multi-vendor system, which the end-to-end telephone system increasingly is. Telecom takes pains to separate these CPE problems from the legitimate faults, which they acknowledge.

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11 July 1996

Senator The Hon Richard Alston
Minister for Communications & the Arts
Parliament House
CANBERRA 2600

Dear Senator Alston

REPORT ON PROGRESS OF TELSTRA'S IMPLEMENTATION OF RECOMMENDATIONS OF AUSTEL'S *THE COT CASES* REPORT

I am pleased to provide AUSTEL's sixth status report on Telstra's progress in implementing the recommendations of AUSTEL's April 1994 *The COT Cases* Report.

This report consists of two parts: a summary of significant developments to date; and a more detailed commentary on the implementation of outstanding recommendations.

Telstra has now implemented most of the recommendations of *The COT Cases* Report. However, some significant recommendations remain to be implemented, and Telstra's progress in relation to these is of concern to AUSTEL. Of particular concern is Telstra's failure to introduce its enhanced fault management support system. Telstra continues to utilise the LEOPARD fault management system, which was identified by its consultants Coopers & Lybrand in November 1993 as being urgently in need of replacement.

On a more positive note, Telstra has now fully implemented recommendation 1 of the Bell Canada International *Network Consulting Study*, so that greater information is now available on reasons for call failure, thus allowing improved network fault identification. Telstra has also decided to adopt a universal complaint management system, known as CICERO. AUSTEL understands that Telstra is already deriving considerable benefit from its analysis of the complaint data produced by CICERO, and that this will lead to customer benefits.

Also included in AUSTEL's report is a report by the Telecommunications Industry Ombudsman (TIO) on the *Status and Progress of the Fast Track, Special and Standard Arbitration Procedures*. The TIO is critical of Telstra's behaviour and attitude in relation to these arbitrations.

Yours sincerely

Sue Harlow
Member

Postal Address: P O Box 7443 St Kilda Road Melbourne Victoria 3004

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Standard Arbitration Procedure

There has been only one claim lodged under this procedure. That matter was settled by direct negotiation between the parties with the assistance of the Administrator. One further application for arbitration has been received by the TIO.

The TIO has instituted a review of the Standard Arbitration Procedure and has provided Telstra with some broad concepts for improvement. Telstra has indicated its willingness to canvass issues but is yet to provide any suggestions or reform proposals.

Conduct of the Arbitrations

The TIO believes some comment on the behaviour and attitude of Telstra in the conduct of these Arbitration is warranted.

Recommendation 30 of the AUSTEL COT report recommends that the "proposed arbitration procedure only require a finding on reasonable grounds as to the causal link between a claim for compensation and alleged faults and allow reasonable inferences to be drawn from material". All three arbitration procedures make provision for this lower standard of proof. However, Telstra's conduct in the defence of most (if not all) claims has tended to assert that strict legal proof in relation to causation is required and is characterised by reliance on legal principles not in keeping with the spirit with which these arbitrations were instituted.

The TIO believes that Telstra has, in all claims, responded in an overly legalistic manner. It has shown a tendency to deny liability under every potential clause of action on the basis of perceived statutory and contractual immunities. It has provided large and detailed defences, often out of proportion to the size or complexities of claims. It has lodged lengthy and detailed requests for further and better particulars in most arbitrations. In short, while the arbitration procedure has sought to relax the legal burdens, Telstra's conduct has certainly not.

This, in turn, has led many of the claimants to respond in kind, resulting in the expenditure of large amounts of money on technical, financial and legal advice. There is no provision in the Arbitration procedure for the recovery of these costs.

There have also been considerable delays in the provision of claim and defence materials and further information from both claimants and Telstra. Telstra has taken excessive time in the provision of material requested under FOI. This has been the subject of a report by the Commonwealth Ombudsman in two cases. These delays and

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22 July 1996

Our Ref: GLH
Matter No:

Mr W Hunt
Hunts
Solicitors
Mitchell House
358 Lonsdale Street
MELBOURNE VIC 3000

Dear Mr Hunt

ARBITRATION - TELSTRA AND SCHORER

I have considered the submissions of the parties in relation to the request by the claimant for an adjournment of this arbitration until January 1997.

The essence of the claimant's request is that:

- the claimant has to give priority to his business at present;
- the proceedings are placing a considerable strain upon the claimant and could affect his health;
- the claimant is still waiting for the payment of compensation pursuant to a direction by the Commonwealth Ombudsman in November 1994 in relation to the handling of certain FOI requests;
- Telstra has not been co-operative to date in responding to FOI requests but (as I understand how the argument is put) further information might be usefully produced if Telstra is granted an adequate period of time in which to produce it.

Telstra has responded by asserting that:

- the arbitration agreement provides for the completion of steps within agreed time frames;
- the history of this arbitration demonstrates that Telstra has taken all reasonable steps to provide the claimant with relevant information;
- the outstanding question of compensation payable pursuant to the Commonwealth Ombudsman's direction is not relevant to this issue;

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- in two years the claimant has failed to provide substantial supporting documentation for his claim despite having been given every opportunity;

- there is no guarantee that, even if adjourned until January 1997, the claim will proceed in accordance with any time frame set by the arbitrator.

I appreciate that other relevant factors have been advanced by both parties. A number of assertions have also been made in relation to the background to this arbitration and the subsequent conduct of proceedings but I do not regard these as pivotal to this ruling.

After considering the matters raised by both parties, I have come to the following conclusion:

- the claimant agreeidto the procedure as set out in the Fast Track Arbitration Procedure;

- the procedure contemplated the submission of a Statement of Claim within four weeks;

- in an attempt to expedite matters, I have been prepared to extend the time for submission of a Statement of Claim in the hope that all relevant materials are available to the claimant when the claim is initially articulated;

- it is not, however, essential that all relevant information be available to the claimant at the time the Statement of Claim is submitted;

- although the process may be somewhat cumbersome, there is no reason why the parties cannot respectively submit the Statement of Claim, the Defence and the Reply before further consideration is given to the adequacy of the documentation provided by Telstra to date;

- I am not in a position to form a definitive view on the adequacy of information made available by Telstra to date until the issues in dispute have been more formally and fully addressed by both parties;

- I do not believe the claimant would be prejudiced by submitting a claim based on information presently available to him;

- notwithstanding the lapse of time since these proceedings were commenced, I am prepared to grant in excess of four weeks from this point for the claimant to submit his claim as an acknowledgment of the fact that he may at present be unprepared to make a submission and may be taken by surprise by this direction.

In the circumstances, I direct that the claimant submit the Statement of Claim as required by clause 7.2 of the Fast Track Arbitration Procedure on

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or before 1 October 1996. In default of compliance with this direction, I shall consider an application by Telstra pursuant to clause 7.7 of the Fast Track Arbitration Procedure but I will not treat the arbitration as having been abandoned without inviting a further submission from the claimant on this point at the appropriate time.

Yours sincerely

GORDON HUGHES

cc G Schorer, E Benjamin, J Pinnock, P Bartlett, S Hodgkinson

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File note

Telecom Arbitration

Date: 18 February 1994 **Matter no:** 1673136

On 17 February 1994, between the hours of 9:00 a.m. and 1:00 p.m., I attended the offices of Hunt & Hunt for the purpose of having a discussion in relation to the arbitration rules prepared by Hunt & Hunt (the "Rules").

The meeting started at 9:30 a.m. and in attendance were Gordon Hughes, Peter Bartlett, Ann Garms, Graham Schorer and myself.

Record of Meeting

Ann Garms started by attempting to read from a letter by R Davey (Austel) but was interrupted.

The history of the negotiations leading up to the fast track settlement procedure ("FTSP") was discussed.

Ms Garms stated that all the Cot Claimants wanted was a commercial settlement of the matter, not an arbitration. The FTSP came out of a proposal put by Mr Schorer to John Holmes and I Campbell.

Mr Schorer stated that the Cot Cases had wanted a loss assessor and not an assessment procedure prone to "fine print". The proposal put forward by the Cot Cases was not backed by Telecom and subsequently negotiations got off the rails. Then the Austel investigation began and the media became involved. R Davey acted as a facilitator between Telecom and the Cot Cases. Previously, a draft agreement had been put to the Cot Cases which Telecom had stated would not be changed (which turned out to be incorrect).

The FTSP came out of several meetings and was put forward by R Davey.

Mr Schorer and Ms Garms agreed that the FTSP was the agreed way to resolve the dispute between Telecom and the Cot Cases.

Mr Schorer advocated that instead of having a claim, a break and then a defence being filed, both parties ie. the Cot Case and Telecom should do their presentation at the same time to the assessor. Mr Schorer did not like the arbitration procedure and the procedure he advocated was consistent with his understanding of the FTSP.

It should be noted that the FTSP does not refer to an arbitrator but an "assessor".

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TELSTRA FOI 33449

Mr Hughes expressed his view that the powers of an arbitrator under the Commercial Arbitration Act made an arbitration a more effective way of determining the issues in dispute between the parties.

Mr Hughes stated the problems with an "assessor" were that it was a toothless position and that he was not convinced that it could guarantee the result as either party could withdraw or would not be bound by the result.

Mr Schorer asked if he could pull out of an "assessment" during the process if he did not like the way it was going. Mr Hughes and Mr Bartlett advised that this was not the case as he was contractually bound by whatever the terms of the assessment were.

Mr Hughes stated that an arbitrator had more powers and considering the current facts surrounding the Cot Cases ie. suspicions and the long period of antagonistic negotiations, the adjudicating party would need powers to ensure that all material relevant for the decision was obtained.

Mr Bartlett stated that Telecom and the Cot Cases wanted a method of resolution as a final settlement of the problem - no right of appeal, no resource to the Courts.

Ms Garms agreed with this conclusion.

Mr Schorer stated that he needed documents from Telecom to prepare his case and without this material, he could not go to arbitration. Mr Schorer had raised the issue of documents with Austel and was unsatisfied with Telecom's response.

Mr Schorer stated that there was nothing in the Rules which provided that the Cot Cases were to get the relevant documents. Mr Schorer was disappointed at this stage that since 18 November 1993 2 of the Cot Cases did not have any documents.

Mr Bartlett stated that this was a reason for starting the arbitration as the arbitrator could order the production of documents.

Mr Hughes stated that he was aware of the dispute between the parties but did not have any idea as to the nature and indicated that from this point in time, there were two ways to proceed in relation to the problem of outstanding documents:

(1) the procedure is put on hold until all the documents are exchanged in accordance with the FOI procedure; or

(2) the arbitration procedure commences and then the arbitrator gives appropriate directions for the production of documents.

AM3344 FOLIO

Mr Hughes indicated that one party can ask for documents once the arbitration has commenced. Mr Hughes advocated this course of action as more effective and that as arbitrator, he would not make a determination on incomplete information.

Mr Schorer asked Mr Bartlett why the FOI law was not as broad as the discovery procedure.

Mr Bartlett did not answer this question directly but confirmed that he believed it was wider and that documents would not be partially deleted as was claimed by Mr Schorer.

Ms Garms stated she had three concerns about the Rules as drafted:

(1) causal link;

(2) flow on effects of treatment by Telecom - adequately compensated; and

(3) Telecom's liability amended to give assessor the right to make recommendations.

Causal Link

In relation to this matter, Ms Garms stated that it was agreed that there would not be a strict application of legal burdens of proof, etc., in relation to the proving of the loss suffered by the Cot Claimants. Reference was made to discussions with Ian Campbell and two Senators. Ian Campbell admitted that Telecom had been remiss. Ms Garms stated that Telecom was in a difficult position and queried the current drafting of the Rules in relation to a requirement that the strict causal approach be applied.

Mr Schorer stated that Telecom was in a difficult position because a lot of the relevant documents either did not exist or had been destroyed.

Mr Bartlett referred to clause 2(c), (f), and (g) of the FTSP in relation to the causal connection. Ms Garms had received advice from R Davey that there was a difference between the FTSP and the old rules that had previously been prepared by Telecom, (not the Hunt & Hunt Rules).

Mr Schorer accepted that W Smith had been appointed as administrator. W Smith had invited the Cot Cases to talk to the TIO and had requested input in relation to the rules beforehand. Mr Schorer was disturbed that once Mr W Smith was in place, there was a document prepared by Telecom of proposed rules for the arbitration. Mr Schorer considered Telecom was already moving away from the spirit of the FTSP.

Mr Bartlett and Mr Hughes both stated that they had not received this document and had not read it and that it was irrelevant.

Ms Garms returned to discussion about causation which was her point no. 1.

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- Telecom minute of 30 March 1988 from Regional Business Sales Manager-North to Manager, State Business Sales states -

That advice from Legal and Policy Headquarters indicate that Golden Messenger appeared to have a case against us and that we should negotiate a settlement to prevent legal action proceeding.

This advice was also contained in Telecom minutes of 27 April 1988 and 5 January 1992.

- Network Investigation Section progress report of 17 May 1988 on its investigation into Golden Messenger stated -

The major problem still appears to be the slow response time of the Flexitel. This combined with high call through put resulted in operators misusing the system resulting in adverse service to their customers.

- Telecom Minute of 23 May 1988 from Commercial Engineering Section - Customer Terminals to State Business Sales - HQ advised of the following -

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As you are aware we are having real problems with this system. We appear to have the speed up to what we hope is an acceptable level by the dodgy expedient of removing some of the DSS modules. This may or may not be acceptable to the customer (bless him) in the longer term.

The most pressing problem now is the intermittent failure of the station displays. The displays do not fail completely, remaining able to show "unobtainable" at the correct times as required, but nothing else. No CDR card is fitted. We intend to try and fit one but this may not be possible given the large size of the system.

24 Despite having internal advice that network problems were being experienced at the North Melbourne exchange and that there were problems with the Flexitel system, on 11 October 1988, Telecom advised Golden Messenger as follows -

I refer to the Flexitel System ordered by Golden Messenger and the continuing complaints by Golden Messenger that deficiencies in the public switched telephone network have resulted in Golden Messenger suffering damages due to loss of business.

As you are aware extensive investigations, reports and discussions, I confirm that Telecom cannot accept your

allegations and claims. In Telecom's view, all reasonable efforts to inquire into your complaints have been unable to substantiate the allegations and claims.

25 On 17 November 1989 Network Investigation Section issued the Golden Messenger - FINAL REPORT. Findings within this report related to both Flexitel and network issues. Some of the key findings were -

- *Congestion existed on the IDN exit route from Footscray Node to North Melbourne due to IDN changes and traffic growth*

- *Under dimensioned CL and PD individuals at Footscray Node were causing congestion*

- *Faults were also found with various exchanges in the network which affected the Grade of Service (GOS) received by G.M.*

- *The response time of the Flexitel was excessive causing misoperation by the operators. Whilst the Flexitel was configured in accordance with design rules, it was the 'sluggish' response to station keystrokes that was its worst characteristic.*

- *The inability to meet the customers requirements for call queing was also a weakness and had to be overcome by the appendage to the Flexitel main equipment of call sequencers.*

- *Customers cited by G.M. were investigated and although they experienced similar symptoms of COS and BWF, they were in*

issues. Telecom would welcome the opportunity to present its case in court but there is not accepted mechanism for it to initiate court proceedings on these matters. Hence Telecom must continue to bear the brunt of negative media activity despite its attempts to resolve these cases.

Comments

- Golden Messenger has advised that its decision to accept a settlement and not proceed with legal action was made on the basis that it was not in a position to fund the legal action in the Federal Court. It should be noted that for five years prior to the settlement, that is for the entire duration of the dispute period, Telecom maintained that the Flexitel System was satisfactory whilst internal correspondence from technical and legal staff acknowledged that -

  - the system did not meet Golden Messenger operational requirements (paragraphs 23,24 and 25 refer)

  - Golden Messenger was likely to be successful in establishing that Telecom engaged in misleading and deceptive behaviour (Legal Briefing Paper, dated 1 July 1992, prepared by Principal Legal Officer).

The above findings do not support Telecom's claim of COT receiving fair treatment.

Melbourne area, there is no such requirement for STD codes. **[Ref: J05767 to J05770]**

d. **Exchange Faults**: two complaints for which exchange equipment was determined as the cause. Both of these complaints were caused by incorrect exchange data. (see explanations below)

1.4.1.1. Network and Exchange Faults

1. Details of the two exchange faults identified as a result of the Claimants' complaints are outlined below.

2. The first exchange fault occurred with the cutover of (03) 329 from ARE-11 (NMEL) to System12 (NMEE) on 11 April 1995, where the omission of specific exchange data did not allow the Claimants' to make outgoing STD calls during the actual cutover, accounted for one complaint. This was reported at 12 noon and rectified in the afternoon of the same day of the complaint. The effect to the Claimants' was negligible, as no incoming traffic, or local outgoing calls were affected, only outgoing STD calls were affected. This fault had no effect on the Claimants' ISDN service which was their primary service for incoming calls **[Ref: A46746 & A46729].**

3. The second exchange fault occurred as a result of an error in routing data loaded into and activated in Lonsdale AXE Telephone Exchange (LONU) on 10 October 1995. Under limited conditions and only from certain origins, callers to one hundred group (03) 9287 70xx (of the four one hundred groups) allocated to the Claimants' ISDN service would incorrectly receive an RVA message. The Claimants' ISDN service was connected to North Melbourne ISDN Telephone Exchange (NMEX). The data error was corrected on 23 January 1996. A detailed analysis of the impact of this fault is set out below.

4. From 10 October 1995 customers whose services were directly connected to LONU exchange would incorrectly receive a RVA when calling (03) 9287 70xx (8 digit dialling). Customers connected to North Melbourne System-12 exchange (NMEE) would incorrectly receive the RVA on 50% of call attempts to (03) 9287 70xx as calls from NMEE to NMEX were trunked on a 50/50 basis via LONU and North Melbourne AXE Telephone Exchange (NMEA).

5. Calls from LONU and NMEE made to (03) 297 70xx (7 digit dialling) were not effected until 13 December 1995. **[Ref: J06242 & J06243 & J06164 to J06181]**

6. The implementation of a further data change (associated with AUSTEL Numbering Plan) in LONU on 13 December 1995 compounded the problem, in that callers from LONU and NMEE incorrectly received an RVA 100% and 50% of calls respectively to (03) 297 70xx.

7. Network routing of a small number of exchanges utilised LONU exchange to switch calls to NMEX only under overflow conditions. For the duration the data error only 2 calls destined for NMEX overflowed through LONU.

8. Traffic Observation data available for the codes (03) 286 & 287 xxxx and (03) 9286 & 9287 xxxx shows that the percentage of callers dialling new 8 digit codes was less than 20% in October 1995 and less than 50% in December 1995.

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noticeably, in fact he *"needs the half installed computer system to manage the work"*. **[Ref: J05777 to J05778]**

8. On **31 October 1995** Mr Benjamin wrote to Mr Schorer in relation to the introduction of the AUSTEL Numbering Plan and eight digit numbers. Mr Benjamin advised that the 6 month period of dual numbers was about to end, and progressively from November 1995 callers failing to dial 9 as the first digit of a telephone number will not be able to successfully complete their call. He noted that some of the Claimants' vehicles still did not have the 9 included in the advertised number and this may cause difficulties for some of his customers. **[Ref: J05780]**

9. On **19 January 1996** the Claimants' complained that at 4:30pm they attempted to ring their own (03) 9287 7000 number following a clients complaint of receiving RVA intermittently. The fault was traced to incorrect data at LONU exchange on 10 October 1995. **[Ref: J05771 to J05774]**

   A detailed analysis of this fault is provided in 'Investigations, Analysis and Supportive Data'. The estimation of the impact of this fault to the Claimants' ISDN service is:

   a. for 10 October to 12 December 1995, approximately 0.12% call loss from the Melbourne (03) network attempting to call the Claimants' ISDN services; and

   for 13 December 1995 to 23 January 1996, 0.23% call loss from the Melbourne (03) network attempting to call the Claimants' ISDN services.

   Therefore the data error in Lonsdale had negligible effect on call delivery to the Claimants' ISDN services and no effect to their PSTN services. The Claimants' outgoing calls were not affected.

   See 'Investigations, Analysis and Supportive Data' for full details.

10. On **22 January 1996** the Claimants' complained that while attempting to dial (055) 267 xxx and received (03) 905 5xxx. The Claimants' apparently dialled '9' in front of the 055 prefix. The Claimants' therefore, received (03) 905 5xxx which is an extension off another customers' PABX. A test call performing the same dialling error was answered by the same customer. Data at NMEE exchange was verified as being correct for the code (055). It apparent that this complaint was most likely due to the Claimants' mis-dialling. **[Ref: J05767 to J05770]**

11. On **11 March 1996** the Claimants' complained of receiving 3 different recorded voice announcements (RVA's) when calling mobile numbers 019 925 xxx and 041xxxxx. The Claimants' advised of the exchange code heard at the end of the RVA's. The exchange code given appeared to be a Mobile Network exchange. Clear codes indicate that the fault existed in privately maintained equipment. **[Ref: J05314 to J05315 & J05137 to J05141]**

12. On **11 April 1996,** as requested by the Claimants', Telstra cutover 8 of the Claimants' PSTN lines from NMEE to NMEK and cancelled the remaining 29 PSTN lines (Telstra's records indicate 4 of these lines are not the Claimants' services). A personalised RVA (Messagebank) was placed on the Claimants' cancelled directory lines. The cutover was originally planned for 3 April 1996.

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Service Chronology

On **1 October 1992** an exchange fault docket records that a customer (03) 329-7xxx (not the Claimants) reported a problem of Ring Tone to 'A' party and Ring Over Conversation to the 'B' party when the called number was busy. The technical staff at North Melbourne Telephone Exchange found faulty springset contacts on relay TK1 in SLM1 (Subscribers Line Marker). The fault caused calls to 329-7xxx switched by SLM1 to test a busy straight line subscriber as free. If the called number is a directory number of a rotary group the PBX equipment will replace the dialled number with the first free auxiliary number in the SLM. .
The effect to the Claimants' (03) 329 7xxx rotary group services would be as follows:

i. if any auxiliary is free the problem can not occur;

ii. when all auxiliaries are busy and the directory is free the problem can not occur;

iii. when all auxiliaries are busy and the directory is busy the above problem may occur; and

iv. if the caller dials direct to a busy auxiliary rather than the directory number the problem may occur.

However, when the problem could occur then 50% only of these calls would be effected as there are two SL markers in this thousand group. This problem does not represent lost calls to the Claimants as the incoming calls would not have been able to be successful anyway as the lines were busy. The effect, if any, on the Claimants' services would have been a nuisance only for 329-7xxx services whilst the Claimants' 329-0xxx services were not affected. **[Ref: A93525]**

On **9 October 1992** Mr George Afonczenko of Housley Communications, reported, as requested, to Mr Richard Boughton of the Attorney General's Department, his findings in relation to viewing at the Claimants' premises on 7 October 1992. The report noted the following:

"*During the course of our observation the following problems were encountered:*

a. *Ringing in to the system without receiving ring tone or visual indication appearing on any of the stations when lines are free.*

b. *Receiving busy tone indication when all lines indicated being free.*

c. *No display of exchange line identification on the Liquid Crystal Display (LCD) when an incoming call is received on System A."*

It was Mr Afonczenko's opinion that:

"The Flexitel system is not operating in accordance with the plaintiffs expectation. This is a another point of contention due to the lack of written evidence of Golden Messenger's original requirements stating their expectations of the system. All requirements were expressed verbally"

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In answer to the question: 'if it is and was an unsuitable system for Golden Messenger's business needs back in 1987, what system would have been appropriate in the price limit of $41,000?' It was Mr Afonczenko's opinion that:

> *"No other equivalent equipment manufacturer, back in 1987, could have provided a suitable product within this price limit".*
>
> **[Ref: R25687 to R25693]**

On **10 October 1992** a LEOPARD record shows that (03) 329 0055 was reported as DAF (Does not Answer -Faulty). The fault report was referred NPAC. There is no further documentation located in relation to this fault report. **[Ref: 000401 & C05370]**

On or about **11 October 1992**: (precise date uncertain) a AT&T DEFINITY PABX was installed at the Claimants' premises by Honeywell. For details of new configuration see section "Claimants' CPE and Service Configuration". **[Ref: 000547 to 000549]**

On **14 October 1992** an exchange fault docket records that STU 163 was causing disturbances. The faulty STU was detected as the result of a REA sorter dump, which is taken within the exchange twice a day. While the fault was evident and before the device was blocked, the Claimants' (03) 329 7xxx rotary groups could have experienced a 3.3% outgoing call failure as the faulty STU was 1 of 30 available to the (03) 329-7xxx group. This STU was not used by the Claimants' (03) 329 0xxx group. This fault would not have affected any incoming calls to the Claimants. **[Ref: A93481]**

On **15 October 1992** an exchange fault docket records that disturbances were generated by SLCD-3 of the (03) 329 0xxx Subscriber Line incoming stage. The fault was found to be caused by a sticky R3 relay (which controls the transfer of the B party number from the code receiver) which results in CD time outs. The disturbance alarm would be generated immediately the CD times out. The generated alarm would result in action by a technician, and the faulty equipment would be blocked to traffic as soon as practical. In worst case conditions, while the fault was evident prior to the equipment being blocked, 33% of incoming calls to (03) 329-0xxx would return busy tone. The Claimants did not report any service difficulties this day, the Claimants (03) 329-7xxx groups were not affected. **[Ref: A93515]**

On **20 October 1992** Mr Schorer in a letter to Mr Robert Arnold stated that:

a. the Claimants were still receiving wrong numbers for the 'Melbourne Diagnostic Group';

b. substantial improvement in regard to drop outs on answer (ANV) from the previous levels of 50 per day, on the (03) 329 0055 group since the installation of his new internal telephone system (AT&T PABX installed recently);

c. clients calling the Operations number are now experiencing predominantly more engaged signals than ring tone (BWF), and

d. clients ringing the Administration group, which is still working through the Flexitel system, are predominantly receiving more ring tone than engaged signals without the calls registering on the Flexitel.

Mr Schorer continued, that the only option he can see to fix the problems is to install an ISDN service. **[Ref: 000922 & 000923]**

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that we also have a power to refer matters to the Trade Practices Commission, the Commonwealth Ombudsman or the Telecommunications Industry Ombudsman. In the course of the investigation in what is known as the casualties of Telecom—the COT cases—we have persuaded Telecom and, in consultation with Telecom, moved it to implement a proposed arbitration procedure, which it is developing in consultation with the Telecommunications Industry Ombudsman. This procedure would provide for a binding system of arbitration for that sort of complaint.

Senator ALSTON—But you are continuing to pursue your own separate investigations and, indeed, you are a couple of months late in handing down a report, are you not?

Mr Davey—No, I do not think we are a couple of months late in handing down a report. We are pursuing an investigation and we propose to report by mid March.

Senator ALSTON—Had you not said last year that the report was to be expected before the end of the year?

Mr Davey—I had hoped to have a report earlier, but the investigations and the material available to us have expanded.

Senator ALSTON—So you will be covering matters other than those that are currently before the arbitrator?

Mr Davey—Most certainly.

Senator ALSTON—But you still lack power to enforce any recommendations, orders or assessments of damages?

Mr Davey—That is correct. I will not be assessing damages.

Senator ALSTON—But you have the power to do that?

Mr Davey—So I am advised.

Senator ALSTON—Does that compromise your negotiating power with Telecom? Surely, if you are not actually able to enforce any orders against Telecom, you have to accept whatever proposals it puts forward for self-regulation, do you not?

Mr Davey—No, I think the way it has proceeded is that we have always held the threat of appointing our own assessor—and I use that word carefully—to be in the background and have that power. Problems would then be exposed to public scrutiny and there would be moral suasion on Telecom to meet that assessment.

Senator ALSTON—It is surely not as good as having a legal power?

Mr Davey—As I said, it is not Austel's usual role to pursue the individual complaints, as we have in this case. We came into these matters more as a circuit breaker or because they had gone from one agency to another. We felt we might as well try to break the loop there and see what we could do to assist them and to investigate the underlying causes of complaints. In the usual course of events, these sorts of complaints would be referred to the Commonwealth Ombudsman, TIO or to the Trade Practices Commission, as appropri-

Senator ALSTON—I refer you to a minute from Telecom dated 2 July 1992 in relation to Mr Alan Smith of Cape Bridgewater—no doubt well known to you and to me. This minute says:

> Our local technicians believe that Mr Smith is correct in raising complaints about incoming callers to his number receiving a Recorded Voice Announcement saying that the number is disconnected. They believe that it is a problem that is occurring in increasing numbers as more and more customers are connected to AXE.

The upgrading to AXE exchanges has continued apace since that time, has it not?

Mr Davey—My understanding is that it has, yes.

Senator ALSTON—On the face of it that letter then suggests or implies that you will be having more and more complaints as a result—presumably some sort of overload. Is that something that you are investigating?

Mr Davey—Certainly within the ambit of our inquiry.

Senator ALSTON—Is there any restriction or limitation on your ability to make that sort of judgment?

Mr Davey—No. Indeed, that is the sort of thing where we have no reservations or qualifications about the powers that we possess.

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/66 Conference Call Minutes - Meeting #5

THURSDAY 24th FEBRUARY 2.00pm EDT

Ian Brent, Greg Earl, Harry Burden	NSS CW	F 08 231 2102	P 08 230 5328
Tony Rayner	NASS Melbourne	F 03 650 1285	P 03 657 3482
Alex Kindler, Michael Miltiadou	NASS Melbourne	F 03 654 7252	P 03 657 4908
David Conolly, Maher Mansour, Amy	NASS Sydney	F 02 261 2910	P 02 267 9066
Mal McDonald	NSS	F 03 632 2985	P 03 634 6285
Colin Campbell	NSS - S & DM	F 08 410 1638	P 08 230 5760
[redacted]	Ericsson Australia	F 03 301 4[redacted]	P 03 301 1[redacted]
Les Brooks	Parramatta EMG	F 02 891 5459	P 02 689 3222
Martin Power	City EMG	F 03 602 2020	P 03 602 1199
Bob Paton, Martin Spear, Edwin Khaw	AXE Technology	F 03 634 6606	P 03 634 7039
Trevor Peak	Central EMG	F 08 269 9555	P 08 269 9515
Don Blaby	Peninsula EMG	F 03 770 1156	P 03 784 2290

1. Review of Previous Action Points

ACTION POINT: Edwin Khaw is raising the issue with Ericsson in order to achieve the final solution.

***ACTION POINT*: *AXE-T (Edwin Khaw) to raise Charging Check issue with Ericsson, and advise when the final solution will become available.*

***ACTION POINT*: *AXE-T (Edwin Khaw) to raise Charging Check issue with Ericsson, and advise when the final solution will become available.*

ACTION POINT: *AXE-T to provide a "Release Binder" for /66 Package 1, including SCP's, for NSS CW (Adelaide), NASS Sydney, NASS Melbourne & S & DM. COMPLETED*

***ACTION POINT*: *AXE_T (Edwin Khaw) to follow up with Frank Chai to ensure PBA strapping details are updated and supplied to O & M staff. ONGOING*

***ACTION POINT*: *AXE-T (Edwin Khaw) to ensure that the /66 data structure is documented and disseminated prior to any implementation of package 2. ONGOING*

***ACTION POINT*: *AXE-T (Martin Spear) to advise on results of ELISA testing, and confirm the requirement for /36 standard data prior to conversions. ONGOING*

ACTION POINT: *AXE-T (Bob Paton) to check that testing of RVA routes after the next AX62 conversion is performed. TOMMOROW*

***ACTION POINT*: *AXE-T (Bob Paton) to supply NSS CW with a list of outstanding package 2 faults, in order to reach agreement on those which must be solved prior to first implementation. SUPPLIED but ONGOING*

***ACTION POINT*: *AXE-T (Edwin Khaw) to ensure that /66 electronic B Module help files are made available prior to pkg 2 implementation. ONGOING*

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Is Section 70 of the Crimes Act 1914 being exploited by public officials to the determent of Australia's constitution?

Did AUSTEL breach their statutory obligation under Section 335 or 342 of the Telecommunication Act 1991 No 98 of 1991?

Mr Graeme Samuel, AO
Chairman
Australian Competition & Consumer Commission



Exhibits 46-f to 62

Seal Cove Guest House
1703 Bridgewater Road
Cape Bridgewater
Portland 3305
Phone: 03 55 267 170

3rd November 2008

Mr Chris Chapman
Chairman
Australian Communications & Media Authority
P O Box Q-500
Queen Victoria Building NSW 1230

Dear Mr Chapman,

Although you, and the ACMA Board, are already aware of various matters regarding my claims against Telstra and the unethical way in which the TIO administered my arbitration and the arbitrator arbitrated my claims material, it is important that you are particularly aware of the issues detailed in the following letters:

18th October 2008: I notified Mr Friedman of the numerous documents AUSTEL/ACMA has withheld from me, and other COT claimants, during our respective arbitrations, noting that I therefore: *"... believe I have every right to suspect they will do it again ..."* and asking the AAT *"... to direct ACMA to provide me with ALL the relevant information covered by the period included in my FOI application, including those documents not yet included in ACMA's list."*

28th October 2008: I wrote to Ms Alison Jermey, Senior Lawyer for ACMA (copied to Mr Friedman), advising that I had received some FOI documents but there were still many outstanding. I included a $30.00 cheque to cover another FOI request for the missing documents, noting: *"It is apparent by ACMA limiting this release of the FOI documents that they have in fact 'sanitized' evidence adverse against ACMA, and in doing so they have protected Telstra."*

31st October 2008: During the Administrative Appeals Tribunal telephone conference, Ms Jermey stated that ACMA had already given me all the relevant FOI documents for the period covered in the FOI request currently being reviewed by the AAT. This made it seem that ACMA had abided by the agreement reached during the previous AAT hearing on 3rd October 2008, but this is not so because I can prove the existence of a number of documents that were not included in the information ACMA released as part of the AAT review.

Exhibit 1: This page from the Senate Estimates Committee Hearing of 25th February 1994 includes Senator Richard Alston's questions on notice to AUSTEL's Chairman Robin Davey noting: *"I refer you to a minute from Telecom dated 2 July 1992 in relation to Mr Alan Smith of Cape Bridgewater – no doubt well known to you and to me. This minute says: "... Our local technicians believe that Mr Smith is correct in raising complaints about incoming callers to his number receiving a Recorded Voice Announcement saying the number is disconnected. They believe that it is a problem that is occurring in increasing numbers as more and more customers are connected to AXE"*

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Exhibit 2: Is the Telstra FOI document referred to by Senator Alston in Exhibit 1.

Exhibit 3: This document, *"Senate Estimates Committee Responses By AUSTEL To Questions On Notice"*, relates to the Portland/Alan Smith/AXE exchange problem (see Exhibit 1). It states: *"By letter dated 2 March 1994, AUSTEL sought from Telecom an explanation of the opinion expressed in Telecom's minute of 2 July 1992 as quoted by Senator Alston"*. Although the rest of the page is blank, this document confirms that AUSTEL wrote to Telstra during the time period of 1st February to 1st June 1994, the I nominated in my FOI application. However, this 2nd March 1994, letter is not included in ACMA's FOI schedule and/or the documents produced by ACMA on 27th October last, perhaps because, as I have commented above, the letter is most detrimental to Telstra.

The AXE / RVA / 008-1800 billing / and lockup problems were incredibly important to my claims against Telstra and, between 4th October 1994 and 16th December 1994, many letters were exchanged between AUSTEL's Bruce Matthews, Telstra's Steve Black, Telstra's Ted Benjamin and Dr Hughes in relation to these AXE / RVA / 008-1800 billing / lock-up problems. None of these specific issues raised in these letters the (008 billing problems, the RVA Recorded Messages or the lock-up problems) were never addressed during my arbitration. Although, AUSTEL/ACMA did allow Telstra to address these issues ***secretly*** on 16th October 1995, five months after my arbitration failed to address these issues. Even then, Telstra did not disclose to AUSTEL/ACMA that the Ericsson AXE and 008-1800 software problem was a national problem.

Exhibit 4: This document confirms I provided Ferrier Hodgson, the arbitrators Resource Unit, a claim document titled: *"Smith Reply – Samples of FOI Telecom documents – known AXE Faults and Phone Problems,"* this part of my claim submission confirmed I was still having massive RVA / billing / lock-up problems while connected to the Portland AXE Exchange.

Exhibit 5: This is a list of Telstra's defence material and my claim documents that were provided by Ferrier Hodgson to the TIO-appointed Technical Consultants for assessment. This list does not include the *"Smith Reply – Samples of FOI Telecom documents – known AXE Faults and Phone Problems"* document referred to in Exhibit 4. Clearly Ferrier Hodgson kept this very relevant AXE report from being investigated in a so far successful attempt to protect their knowledge of the problems Telstra was having nationally with the Ericsson AXE exchange equipment, the very same problems I raised with DMR & Lane regarding both the AXE Ericsson equipment and the 008-1800 faults which the arbitrator would not allow DMR & Lane to address in their final report (see pages 84 & 85 in my AAT Statement of Facts and Contentions).

Exhibit 6: This Telstra internal document dated August 1992 title AXE report states on page 1: *"Productivity. The most inhibiting factor affecting our productivity is the crappy standard of software from LME,* - and on page 2, notes: *"These numbers indicate to me the poor standard of Ericsson software. For as long as we have had AXE we have been having software lockups."*

Exhibit 7-a: Two separate Telstra memos, written in November 1993, refer to the AXE / RVA / billing / lock-up problems. One notes: *"I have long held the view that AXE switch provides an inadequate and crude Fault Analysis & Diagnostic tools"* and the other states: *"Apparently Ericsson have known about this condition for some time and in Holland have a temporary patch in their exchanges to stop the LI's."* Put these memos with the other attached exhibits related to

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the AXE problem and you can see clearly just how bad some of the AXE exchange problems really were.

Exhibit 7-b Two Telstra FOI documents folio H36293 and H36178 dated between 1st and 5th November 1993, reveal that Telstra had another national network billing software problem affecting customers who had installed a 008-1800 service to promote their businesses. Document H36293, notes: *"All admin groups are being inundated with complaints from customers who have advertised their numbers as 1800 but their customers are simply unable to get through to them. I have spoken to our fault staff at Waverley who are also being inundated with the same complaints."* Document H36178, notes: *"Bruce is concerned that the matter requires fixing at a national level not just on a fault by fault basis. He also raises the question whether we should be actively promoting 1800 in the current circumstances."*

Please note: Telstra did not advise the public or the Senate Estimates Committee, that there was a national and overseas network software problem with the Ericsson AXE exchanges or advise the same that this problem became a two-fold problem when the 008-1800 call was routed through an already faulty Ericsson AXE exchange.

Exhibit 8: This internal Telstra email dated 24th February 1994, also discusses the many ongoing Ericsson AXE problems noting: *"You are quite correct in your thought that the anecdotal references applies more to AXE than ARE-11. 'Lockups' are generally well-known as a problem in AXE exchanges, not only in Australia but in overseas countries as well. Kevin, I did not use your comments on software (COMPATBL) of this time as they didn't seem relevant to the additional information that AUSTEL have provided. Ericsson are said to have suggested that call loss could be up to 15%."*

Exhibit 9: This internal Telstra email dated 22nd June 1994 is another important document that discusses the Ericsson AXE exchange problems noting: *"You may recall were trying to find a reference in our software problem data bases that matched a query from John McMahon at AUSTEL. Rob Brooker of Ericsson Australia advised that Telecom had a problem for a long time with an incapability problem with computer software in their exchanges and telephone equipment, the call loss resulted in a 50% loss"*

Exhibit 10: These two documents titled Senate Estimates Hearing – 25 February 1994, although out of date sequence to the above exhibits, have been included here to highlight the true extent of Telstra's deception and contempt for the questions Senator Richard Alston, placed on notice during the Senate Estimates Committee hearing see also ***Exhibit 2*** and ***3*** above.

Questions:

a) *Could you explain why more problems are occurring as more and more customers are connected to the upgraded AXE exchange and has this problem since been rectified? if not, why not?*
b) *Could you advise how widespread this problem is with other exchanges which have been upgraded to AXE?*
c) *As Telecom intends on upgrading all exchanges to AXE by 1997 does it expect the same problems to occur as outlined in this minute?*

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Answer:
"...In Summary, there was a single fault incident which affected Portland AXE Exchange for a short period of time. This was not a genetic problem in the network, but reflected the need for improved verification in the data preparation and loading procedures relating to AXE exchanges. Revised procedures were introduced promptly"

Exhibit 11 This Telstra fault report dated **5th March 1993** notes: *"...Rang Cape Bridgewater but Mr Smith was out, his assistant stated she had received several calls where on lift off all she heard was dial tone, this is after we shifted 267267 and 267230 into system3 in the RCM. I believe this is tied up with the AXE network problem which gives 1 burst of ring and the calling party gets busy,"* does not coincide with the answers given by Telstra to Senator Alston in Senate Estimates Committee **as being a single fault problem in and around June/July 1992.**

Exhibit 12: This letter dated 27th May 1997, from John Pinnock, TIO to COT claimant Graham Schorer notes: *"I have recently been advised that Lane Telecommunications' business has been purchased from Pacific Star by Ericsson. I have been advised that Ericsson business such as equipment sales to Telstra and other carriers is conducted by different Business Units."*

Lane was supposed to be the independent, TIO-appointed technical consultants to the COT arbitrations. How could Lane have been sold to Ericsson's, at the same time that Lane were assessing various COT arbitration claims that the Ericsson AXE equipment, including the Ericsson monitoring equipment, had contributed to the telephone problems that brought them to the arbitration process? Did my Ericsson AXE submission (that Ferrier Hodgson failed to provide DMR & Lane for assessment) end up in Ericsson's hands after Lane switched sides? Did Telstra get to Ferrier Hodgson so that my AXE and 008-1800 claim documents would not see the light of day?

Page 84: On the 30th April 1995, the TIO-appointed technical consultants DMR and Lane present their draft Technical Report to the arbitrator advising the report needs further weeks to complete. However, there were many problems with this report, not the least being that DMR and Lanes skipped a six-month period of my claim, from August 1994, to April 1995, including only assessing 23 fault claim examples from over 200 fault complaints (mostly concerning the continuing AXE / RVA / 008-1800 billing / lockup problems) I provided to the TIO-appointed arbitration resource unit Ferrier Hodgson for assessment. DMR & Lane also failed to address 13 bound volumes of evidence which demonstrated Telstra's continuing incorrect charging on my phone lines, including the Ericsson AXE submission that Ferrier Hodgson mischievously hid so that this damming information could not be assessed see ***Exhibits 4 & 5***.

One of the exhibits attached to my AAT Statement of Facts and Contentions see **(AS 26)** is a list from the DMR & Lane Report dated 30th April 1995, which I have marked Arbitrators copy. The other attachment at **(AS 26)** is marked Final copy also a list from the DMR & Lane Report dated 30th April 1995. Both lists include the words *"The information provided in this report has been derived and interoperated from the following documents."* Any person with average intelligence would conclude that both reports dated 30th April cover the same twenty-three assessments and include the same technical information. The arbitrators list of sourced documents, are minus 13 documents to that which appear of the final report list. So who added the 13 sets of claim documents to the final list? And where is the Ericsson AXE problem Report which Ferrier Hodgson's acknowledged they received from me see ***Exhibit 4 & 5***?

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In the DMR & Lane Report provided to Dr Hughes 30th April 1995, where this condensed list came from, there is one difference, although not a technical matter. Included on page 2 of this report are the words: "*...There is, however, an addendum which we may find it necessary to add during the next few weeks on billing, i.e. possible discrepancies in Smith's Telecom bills*' and on page 3: "*...one issue in the Cape Bridgewater case remains open, and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about billing problems. Otherwise, the technical Report on Cape Bridgewater is Complete.* How can the report I received be complete when the arbitrator's version with the same date needed extra weeks to be complete?

According to the Commonwealth Fraud Control Guidelines – May 2002, which applies to all agencies that are subject to the Financial Management and Accountability Act 1997 and the Commonwealth Authorities Act 1997 (CAC), agencies that are at least 50% budget funded for their operating costs have an obligation to expose any evidence they uncover during their regulator duties that confirms a crime has been perpetrated against Australian citizens and/or the Commonwealth, as was in the case when Telstra misleading the Senate Estimates Committee on 25th February 1994.

Documents received seven years after my arbitration, show AUSTEL secretly negotiated with Telstra to address the AXE / RVA / 008-1800 billing software problems in an effort to finally have these problems properly addressed. AUSTEL's behaviour, in this instance, was totally immoral and unethical and, because this all happened outside the legal arena of my arbitration there was no way for me to challenge the corrupt material Telstra used in their 16th October 1995 submission, in their successful attempt to hide the true extent of the problems from AUSTEL.

It is so blatantly obvious that Telstra's submission dated 16th October 1995 does not address either the Ericsson AXE / RVA / software problem, nor the national 008/1800 billing problems that Telstra knew were not only continuing to affect my business throughout my arbitration and beyond, but were seriously affecting many other customers too.

This AXE letter dated 2nd March 1994 see Exhibit 3, is only one of many FOI documents that I have clearly proved exist somewhere, but which ACMA has failed to make available to me. Please ***also*** make sure that the Board investigates why their FOI unit has failed to locate the missing documents which were part of my FOI matters recently under review by the AAT.

Thank you,

Alan Smith
cc Mr Mark Hughes, Case Officer, Administrative Appeals Tribunal, P.O. Box 9955, Melbourne 3001

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The document identified some 70 circuits about 25 of which affected Telecom's Fortitude Valley exchange - an exchange which also services another of the *COT Cases*, Mrs Garms.

7.37 The contemporaneous reports reinforce the anecdotes of businesses attending the Brisbane meetings referred to in Chapter Two and in responses to Mrs Garms' questionnaire referred to in that Chapter about the difficulties they experienced when serviced by Telecom's Fortitude Valley exchange.

7.38 The problem was not confined to Brisbane. Telecom's February 1994 report indicates that the potential fault condition was detected in the vast majority of the suspect systems before it caused *call drop out* on a large scale and that only one circuit in a call path affecting traffic in Mitchelton (servicing Mrs Gillan) and one circuit in a call path affecting traffic to Maidstone (servicing Mr Dawson of Dawson's Pest & Weed Control) deteriorated to the extent that calls were lost. Again, the conflict between contemporaneous evidence of the extent of the fault in the Brisbane area and the more recent report is difficult to reconcile.

AXE network fault

7.39 In the period February to April 1993, Telecom staff responding to complaints lodged by Mr Smith of the Cape Bridgewater Holiday Camp recorded in their notes that there was a fault known to exist in AXE (digital) switching equipment which could give rise to a single burst of ring, followed by a busy tone to the caller and dial tone to the called party. For example -

> *"I spoke to Alan Smith .... He received one burst of ring at 1.15 pm and 5.05 pm yesterday, when he picked up the receiver he heard dial tone. This problem occurs intermittently through-out the Network and although it is recognised as a problem there appears to be no one person or group involved in resolving it."*

(Customer Complaint Form, 4 February 1993)

> *"I rang Cape Bridgewater but Mr Smith was out, his assistant stated she had received several calls where on lift off all she heard was dial tone, this is after we shifted 267 267 and 267 230 into sys 3 in the RCM. I believe this may be tried* [sic] *up with the axe network problem which gives only 1 burst of ring and the calling party gets busy tone."*

(Customer Complaint Form, 9 March 1993)

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"Rang Mr Smith to check on cordless phone he was still not entirely happy with its operation he then mentioned receiving one burst of ring and on lift off getting dial tone. I rang Gordon ... at Portland exchange who said it was a problem caused by the AXE at Warrnambool not having enough software blocks released and this was to be done on 26/03/93. I then rang Mr Smith back and he accepted the explanation that it was not just him suffering the problem."

(Customer Complaint Form, 25 March 1993)

"Visited Mr Smith, 6/04 to do end to end test calls. The first call in prior to me starting testing gave two bursts of ring and when the phone was lifted there was only dial tone. The receptionist said it was the 2nd call that morning with the same result. She also stated several people had commented they receive busy tone when they rang the previous evening when she knew the phone was free."

(Customer Complaint Form, 7 April 1993)

7.40 AUSTEL recently became aware that Telecom had prepared an internal document on the subject of this AXE fault and on 21 March 1994 sought a copy from Telecom.

RAM Relay Armatures

7.41 Telecom's *Victoria Work Specification V-T 3189* refers to -

"RAM relay armatures sticking in the unoperated position have been reported by Telephone Exchange since 1969. Complaints have been of 'sub busy when free' (SLM/S D and U relays), 'wrong numbers' (PBX rack relays), non-operation of vertical in GV Stage (GV-XY relays)."

This problem poses a special risk in services using the rotary hunt facility.

7.42 The fault was apparently first identified in 1969 and was managed by active maintenance. In 1982 a work specification which would address the problem by modification of equipment was issued by Telecom's New South Wales Administration. Corresponding specifications were issued considerably later in other administrations -

- Western Australia February 1983
- Queensland August 1983

46G

AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

95/0569

8 March 1995

Mr S Black
Group General Manager
Customer Affairs
TELECOM

Facsimile No: (03) 632 3241

Dear Mr Black

Freedom of Information Application - Graham Schorer, Associated Entities and Companies etc

I refer to my letter dated 6 March 1995 seeking to transfer part of Mr Schorer's Freedom of Information ("FOI") request to Telecom and to our subsequent telephone conversation on 8 March 1995 relating to this matter.

In considering AUSTEL's actions in response to Mr Schorer's FOI request, I believe that documents containing (a) people's business or professional affairs and (b) the business, commercial or financial affairs of Telecom are encompassed by the request.

While I have not identified all of the documents as yet, I would appreciate it if you could advise me if Telecom or any of its employees (who may be referred to in documents encompassed by the part of the FOI request not proposed for transfer to Telecom) would be likely to make any submissions in support of a s43 exemption under the FOI Act 1982 . If this is likely to be the case, submissions may be made by Telecom or any of its employees in relation to documents encompassed by the part of Mr Schorer's FOI request not proposed for transfer to Telecom.

5 QUEENS ROAD, MELBOURNE, VICTORIA
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The documents which are being transferred are:

(i) documents whose subject-matter is more closely connected with the functions of Telecom than the functions of AUSTEL;

and, (once paragraph (i) is satisfied), the documents are described as follows:

(ii) all Telecom internal documents, that is, documents which have been produced by Telecom for internal consideration whether or not such documents have been subsequently obtained by AUSTEL;

(iii) all documents sent by Telecom to third parties including Mr Schorer; and

(iv) all documents received by Telecom from third parties including Mr Schorer.

(The reference to "third parties" in paragraphs (iii) and (iv) above does not include AUSTEL.)

Submissions will therefore be directed to documents which do not fall under category (i) AND do not fall under categories (ii), (iii), or (iv).

Submissions may be made by Telecom or any of its employees in relation to any correspondence between AUSTEL and Telecom.

Alternatively, it would assist AUSTEL even further if Telecom and any of its employees as defined above were prepared to authorise AUSTEL to disclose any material encompassed by Mr Schorer's FOI request.

I note that as a result of this letter I determine that it is appropriate to extend the period in which the request (including the transfer of the request) may be processed (see s15(6) FOI Act). As stated in my letter dated 6 March 1994 I am not expecting to be able to process Mr Schorer's FOI request for at least 2 months after clarification of the request.

Yours sincerely

Lesley Gordon
General Manager - Corporate Resources
FOI Co-ordinator

47A

CONFIRMATION OF EARLIER FAX

AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

95/0569

8 March 1995

G Ellacott
Freemans Plummer & Pullinger
C/O Golden Messenger Pty Ltd
493-495 Queensberry Street
NORTH MELBOURNE VIC 3051

Dear Mr Ellacott

FOI REQUEST DATED 9 FEBRUARY 1995

I refer to my letter dated 10 February relating to the above matter.

I am writing to inform you of action AUSTEL intends to take in response to your Freedom of Information ("FOI") application dated 9 February 1995 and to seek clarification of issues regarding this application.

Although AUSTEL has previously responded to an FOI application from your client which covered some of the material requested in this application, AUSTEL will process this application without regard to the previous one.

I note that the scope of this FOI application requests access to a considerable body of information. AUSTEL is currently assessing the extent of documentation potentially covered by your request. At this stage it appears that meeting your request could substantially and unreasonably divert the resources of the agency from its other operations. Section 24 of the FOI Act 1982 could therefore be applicable.

AUSTEL wishes, however, to accede to your request, and to this end would appreciate any assistance you may be able to provide in narrowing its scope. At least three matters will affect the size of the processing task:

A. Clarification of the attitude of third parties to material which relates to them;

B. Your clarification of the ambit of the FOI request; and

C. Telecom's agreement to the transfer of part of the request to it under s16 FOI Act.

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In broad terms, AUSTEL considers that the information to which you have sought access falls into two categories:

(1) information which contains references to either your client, his business affairs, and associated telephone services;

(2) information which does not contain a reference to either your client, his business affairs, and associated telephone services, but which raises issues potentially related to the Casualties of Telecom ("COT") group, particularly as specified under section (4) of your FOI application.

A. Attitude of third parties

An important consideration in processing your FOI application is that a considerable body of information contained under category (2), and to a lesser extent some information contained under category (1), potentially affects the personal privacy of other individuals, and upon examination of this material AUSTEL may determine that this information should be exempted under the relevant sections of the FOI Act 1982. I note, however, that much of this information probably concerns other members of the COT group who are known to your client, and I consider that it would assist both yourself and AUSTEL if you were able to obtain the authority of these COT members to the release of material related to their own affairs.

AUSTEL would require a letter from each individual agreeing to the provision of information concerning their own affairs as covered by the scope of your FOI application dated 9 February 1995. I suggest that the majority of the individuals concerned would be those individuals who were the subject of the AUSTEL investigation of complaints by the COT Cases. There may be other individuals, for example, Mr Ralph Bova and Mrs Suzanne Bova, and Mr Dixon of J & A Pine Products, who fall within the scope of your request and may be similarly approached.

B. Clarification of FOI request

As previously noted, an important consideration in AUSTEL's processing of your FOI application is the considerable resource demands placed on our agency in providing access to all the information covered in the scope of your application. The resource implications in responding to your application are an important factor in the course of action to be taken by AUSTEL as detailed below.

Category (1)

In respect of information falling under category (1), as a person authorised under the FOI Act 1982 I have decided to remit all processing charges incurred by AUSTEL in dealing with this information. I note that your FOI application does not specify a preferred form of access to information, and AUSTEL will provide you with information under category (1) in the form of photocopies of the relevant documents. Documents which contain variations in the spelling of your client's name or the title of your client's business will be treated as referring to either Mr Schorer or Golden Messenger respectively. Should information be identified which cannot be photocopied, access to this information will be provided under an alternative form of access, as specified in the FOI Act 1982. AUSTEL will contact you separately to inform you of access arrangements should such material be identified.

Category (2)

In respect of information which falls under category (2), AUSTEL has not yet made a decision on whether your client should be charged for access to this information. I note that in section (6) of your FOI application you have requested that all documentation provided to your client be provided free of charge on the grounds of your client's financial hardship and that the information being sought in the application is "of public interest". Before I can make a decision to provide this information free of charge I will require a detailed statement which supports your request for consideration on these grounds. A preliminary estimate of the amount of time which will be required to process information contained within category (2) of your application is approximately 500 hours. Were you to be charged for this processing, a $20 per hour processing charge would apply. Photocopies of documents will cost 10c per page. Further information regarding charges is set out in the Schedule to the FOI (Fees & Charges) Regulations which is enclosed.

C. Telecom's agreement to the transfer

Part of your FOI request clearly relates to information which is more closely connected to the functions of another agency, that being Telecom. AUSTEL has requested that Telecom accept the transfer of part of your FOI request for all documents the subject-matter of which is more closely connected with the functions of Telecom than with the functions of AUSTEL, as set out in the enclosed letter dated 6 March 1995. I am awaiting Telecom's response to the transfer request.

Other matters

Treating your request as a global one, it is apparent that s27 of the FOI Act is relevant (ie. documents relating to the personal and business affairs of Telecom will be involved). In this regard I have sought information from Telecom (see enclosed letter dated 8 March 1995). It is hoped that these matters may be quickly resolved in the way suggested. In the meantime, I advise that it is appropriate for the period set out in s15(5)(b) to be extended, although despite our best efforts it may still eventuate that AUSTEL will be unable to comply with the statutory time limit for the reasons stated.

In summary, I have indicated the following:

1. Investigation is currently underway to determine the number of documents potentially the subject of your request.

2. The task may "substantially and unreasonably" divert AUSTEL from its other operations. While AUSTEL will strive to clarify and comply with the request, it is anticipated that strict compliance with time limits in the FOI Act may be exceeded. Once the matters in this letter are clarified, I expect that the procedure will take at least two months.

3. It will assist AUSTEL in processing your request if authorisation is obtained from third parties referred to in the documents.

4. The transfer of part of the request to Telecom will expedite the processing of your request.

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5. Clarification of various matters set out in this letter will facilitate the processing of your request.

6. Charges may be applicable as set out in the enclosed schedule.

I view this letter as simply an attempt to expedite your request through preliminary clarification of issues. Although there are various review rights referred to in the FOI Act, I do not believe that they are applicable at this stage.

Please contact me on (03) 828 7381 if you require clarification of any of the matters contained in this letter. Otherwise, I would appreciate your response to the matters I have raised as soon as possible. If matters are not clarified by you, AUSTEL will respond to your request in the terms set out in this letter.

Yours sincerely

Lesley Gordon
General Manager - Corporate Resources
FOI Co-ordinator

Attachments: Schedule of FOI (Fees & Charges) Regulations
Letter dated 6 March 1995 from AUSTEL to Telecom
Letter dated 8 March 1995 from AUSTEL to Telecom

47B

06 249 7829

AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

92/0596(9)

31 March 1994

Mr G Schorer
Golden Messenger

Facsimile No: (03) 287 7001

Dear Mr Schorer

COT CASES - AUSTEL's REPORT

The purpose of this letter is to advise that a copy of AUSTEL's draft report will be available for your perusal at AUSTEL's premises in Melbourne from Wednesday, 6 April.

The Telecommunications Act 1991 requires, in effect, that where as a result of an investigation AUSTEL makes a finding that is adverse to a respondent it must afford the respondent an opportunity to make submissions in relation to the matter. Accordingly, AUSTEL will be making a copy of its draft report available to Telecom for its perusal at its premises on Wednesday, 6 April and Thursday, 7 April 1994. This will give Telecom the opportunity to advise of any factual errors that may be in the report.

As a matter of courtesy I would like to give to you and other directly interested parties the opportunity to view the draft report. To assist you in coming to grips with the report we propose to give a brief presentation on its contents and point you in the direction of those parts of the report that will be of most interest to you. AUSTEL will consider any factual issues that you might like to raise about the report along with those that Telecom might raise and intends to publish the report as soon as possible in the week following your inspection of it. Your comments may be made orally to staff who will be made available to you for that purpose during the time or by writing on the copies of the report itself.

Please let me know as soon as possible if you are able to participate in this arrangement.

Yours sincerely

John MacMahon
General Manager
Consumer Affairs

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2

FILE NOTE

Legal and Professional Privilege Applies - Telecom Confidential

FILE: MR ALAN SMITH

FROM: LYN CHISHOLM

SUBJECT: BILLING DISPUTE 1800 TELEPHONE SERVICE

DATE: 16 JANUARY, 1998

On 14 January, 1998, Lyn Chisholm and Phil Carless of Telstra's Customer Response Unit met with Mr Smith to examine documentation in relation to his complaints lodged with the Minister's Office and the Telecommunications Industry Ombudsman regarding his 1800 telephone service.

Mr Smith in these complaints had made general allegations with regard to overcharging of the 1800 telephone service, however, Telstra had not received any supporting documentation along with his complaints.

In telephone discussions with Mr Smith, I advised him that in order for Telstra to address his claims, documentation supporting his complaints would need to be forwarded to allow Telstra to fully investigate the matter.

Mr Smith raised concerns with regard to the matter and the Arbitration and I advised that I would be investigating any instances he put forward since the conclusion of the Arbitration. Mr Smith stated that he had evidence of instances that spanned through the Arbitration and that the problem was not addressed in the Arbitration and further that the same instances continued after the Arbitration.

I suggested that we meet so that Telstra could view the documents he was referring to and work at resolving the matter from there.

Meeting Notes 14 January, 1998

Present at Meeting

Lyn Chisholm - Telstra
Phil Carless - Telstra
Alan Smith - Cape Bridgewater Holiday Camp
Ray Whitworth - Observer

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Alan Smith explained that he had attempted to have this matter addressed in his Arbitration and via Austel and the Ministers office for quite some time. He believes that this issue was not addressed in his Arbitration although Telstra had given an undertaking to Austel in November, 1994.

I explained to Alan that it was my understanding that at the time Austel wrote to Telstra, the Arbitration was in process and that Telstra had written back to Austel and the Arbitrator that it believed the matter would be addressed in the Arbitration.

I then explained to Alan that Telstra had replied to the letter from Austel dated 4 October, 1994 and to further letters from Austel on this matter dated 1 December, 1994 and 3 October, 1995 and in this provided a response to his complaints of charging discrepancies and short duration calls on the 1800 telephone number.

Mr Smith put forward two copies of the Lanes Resource Unit reports. One that had been forwarded to him as part of the Arbitration and one that had been obtained from Dr Hughes's office by mistake when he collected his Arbitration documents.

In what appeared to be a "Draft" of the Lance report, a paragraph appears relating to Mr Smith's billing complaints, that an addendum report was to be provided at a later date otherwise the report is complete.

Mr Smith stated that the issued report did not include the addendum report nor did it make any reference to his 1800 complaints.

Further Mr Smith produced various printouts of CCAS data in comparison with his Telstra accounts. In many instances the calls add up however, in some cases there appeared to be differences in the duration of the call times.

Mr Smith also provided Telstra accounts that showed an overlap in the time of calls.

Mr Smith stated that there were also discrepancies in details taken by the Commonwealth Ombudsman. He advised that he had asked the Commonwealth Ombudsman to only use the 1800 telephone number when contacting Mr Smith. In the Assessment Documentation for Mr Smith's claim for compensation for FOI matters, Mr Smith states that there is a large discrepancy between the number of calls listed by the CO as being made to Mr Smith and the number of calls he had been charged for on the 1800 account.

I note that the examples given by Mr Smith at the meeting spanned the period of the Arbitration and after the conclusion of the Arbitration.

I advised that Telstra had not seen copies of his examples and had not been able to clearly respond to his complaints without being able to examine the documentation he had put forward at the meeting.

49A

Mr Smith advised that he had provided all details to the TIO office, I responded that we may not have seen all the documentation he had put forward and that the TIO at this point had not raised a formal dispute or complaint regarding the matter.

I advised Mr Smith that I would seek copies of any additional information that they may have with regard to his complaint.

Mr Smith advised that he would provide me copies of all documentation that he had with regard to the 1800 number and copies of the documentation he had produced at the meeting. Mr Smith advised that he would provide this material to me during the week beginning 19 January, 1998.

2

I advised that once Telstra had received the information, further investigation could be carried out in the matter.

Mr Smith again enquired about the matter of the Arbitration. I again advised that I would be examining the documents with regard to complaints after the Arbitration, and that a further response with regard to the Arbitration would be provided.

I, RONDA FIENBERG

of 10 Appleberry Place, North Ringwood, Victoria, Australia

do solemnly and sincerely declare

THAT

Alan Smith of Cape Bridgewater Holiday Camp has been a regular client since 30/7/94 and the majority of his work comes to my office by fax.

Many times over the years I have received unreadable pages where the fax slowed right down and the words on the incoming page have been dragged out into long, dark lines - totally illegible. This has meant I have had to ring Alan (long distance) and ask him to re-send the problem page (or pages).

Also, on many, many occasions, about a 2 cm strip is sliced off the start of incoming pages and then, when the rest of the page comes through, the first few lines are missing. This has never happened with any other client, including incoming faxes from overseas and interstate.

22

DECLARED at CROYDON in the State of Victoria this 24rd day of July one thousand nine hundred + seventy-eight

R Fienberg

Before me

A Gambetta

ANN ELIZABETH GAMBETTA
A NATURAL PERSON WHO IS A CURRENT PRACTITIONER WITHIN THE MEANING OF THE LEGAL PRACTICE ACT 1996.
Suite 7, 16-18 Croydon Road
CROYDON Vic 3136

49B



Chrissy Hawker's
SECRETARIAL SERVICE

24th July 1998

Mr. Alan Smith,
Cape Bridgewater Camp,
PORTLAND. 3305.

Dear Alan,

Just a quick note to describe to you what actually happened with our fax transmission this morning.

I received a fax call at approx 8.23am this morning the 24th July. 3 Pages came through my fax machine as normal but the 4th page was very, very slow as if it was having difficulty coming through.

I checked my machine and all I could see coming through was black lines running across the page and down the whole of the page. This page on its own must have taken a minute or more to come through.

As it was still coming through you contacted me asking if there was a problem with this page. I stated what was happening as you were talking to me and you stated that you would repeat this same page for me.

The 4th page of the document then came through with no problem.

On a number of previous occasions I have experienced other trouble with your transmissions and I have listed them below for you.

- Blank Paper coming through in the middle of transmission.
- A strip of approximately 3cm coming through.
- Distorted figuration that looks like stretching of letters appearing at the end of a page.
- A page with black lines all the way as described above.

As you can appreciate, being the only secretarial service in Portland, my fax machine is a valuable tool in my office and as to date I have never experienced problems with any of my other clients.

Regards,

Chrissy

CHRISSY HAWKER

49B

3 Kennedy Court, P.O. Box 416 Portland 3305. Ph: 03 5523 6294 Fax: 03 5523 7161 Mobile: 014 365 437

Mr Alan Smith
Cape Bridgewater
25/7/98

Dear Alan,

This letter is to confirm that during our electronic communications between Cape Bridgewater and Geelong during the past two years there have been occasions when:

- incomplete faxes of materials were received (part pages, black pages or extended pages)

and

- initial faxes were never received by me, and that a re-faxing was required from you or Cathy.

Regards,

Robert Palmer.

Please contact Robert Palmer on 0352 414045, or write to P.O. Box 981 Geelong, 3220.

49B

Linda Johnson
59 Blair St
Portland Vic 3305
31-12-05

Whom it may concern,

My husband & I worked as caretakers at Cape Bridgewater Holiday camp from 1997-2000 as mentioned in a previous letter my husband & I experienced problems with the telephone lines out there. People were complaining that our phone was always engaged & that they could never get thru to us, but in actual fact we were not on the phone at all.

Whenever we rang out sometimes we experienced a crossed line, we were listening to other peoples private conversations & they ours.

The camp also experienced these problems also, people were trying to ring & book accomodation & school camps, and were unable to get thru because their end was always engaged (the camps end)

This didn't just happened once or twice, it was always an ongoing problem & it really was irritating & annoying

Thanking You.

L Johnson

49c

Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

I, ~~Darren Lewis~~ & DARREW William Lewis
OF 1721 Blowhole rd Cape Bridgewater VIC
Make the following declaration under the Statutory Declarations Act 1959

The following chronology can be supported by documentation which I have on file.

PHONE & FAX PROBLEMS

1. I purchased the Cape Bridgewater Holiday Camp (now Cape Bridgewater Coastal Camp) December 2001.
2. Within a week or so of taking over the business from Alan Smith, friends and new clients were stating they could not get through to us on successfully on the phone.
3. By mid 2002, my wife Jenny and I realised we were having major problems with in-coming calls and our out-going faxes were a major problem.
4. From discussions with the previous owners Jenny and I now fully understood that we had inherited some of the phone and fax faults Mr Smith had been reporting for some time.
5. Letters from us to our local Federal Member of Parliament, the Hon David Hawker, Speaker in the House of Representatives, led to Telstra visiting our business to investigate these continuing problems.
6. In November 2002, after Telstra realised there was in fact a Telstra related problem and not (customer related equipment) they informed us that the new wiring they were installing was worth thousands of dollars but not to worry as Telstra would pick-up the cost.
7. After Telstra rewired the business including disconnecting a Telstra installed faulty phone alarm bell, we were informed Telstra had found other problems and believed who ever had installed the wiring had done an unprofessional job.
8. Internal Telstra documentation provided to me by Allan Smith confirmed Telstra themselves had done the wiring.
9. Jenny and I noticed that although our incoming-call rate had more than doubled once this rewiring had taken place Telstra was still unable to provide a satisfactory reason as to why we were still having problems.
10. Telstra connected fault finding equipment called Customer Access Call Analysis (CCAS) to 55-267267 business line.
11. This CCAS data recorded numerous faults that could not be explained by the (Level Three) Telstra fault managers. Hand written notations on some of these CCAS data sheets, confirm even the Telstra technicians themselves were aware of the ongoing problems.
12. By 2004, with the problems not resolved I again sought help through the Hon David hawker.
13. Correspondence from Mr Hawker in August 2004, confirms Telstra had advised him that the local un-manned exchange was soon to be upgraded.
14. From 2004 until most recently still no upgrades.
15. In August this year we contacted Mr Hawker's office regarding the ongoing problems and advised his staff we have no real alternative but to sell the business.
16. Because we were with AAPT and it appeared they had no control over the faults being experienced we changed back to Telstra.

49d

17. From Tuesday to Thursday evening (August 2006), Telstra technicians were present at the Holiday Camp and surrounding area attempting to locate and fix the problems they had experienced themselves.

18. During this three day period even Telstra's own technicians couldn't understand why their own fault testing equipment was malfunctioning.

19. Telstra informed us we had what is commonly known in technical words as (a line in line lock-up rendering our business phone useless until the fault is fixed.

The technicians then in hook up consultation with outside office guru's did a fault graph reading on our 55 267267 line with the outcome that their office technical staff stated words to the affect the reading was impossible (couldn't be correct). It was then that the local technician became quite annoyed when the technical guru insinuated that the equipment the local tech was using must be faulty. The local tech then informed the technical guru that there was nothing wrong with the equipment at all.

It was then that the local technician informed me that as strange as it might seem he believed that because our business was on optical fibre and was so close to the Beach Kiosk (junction box) this could very well be part of the problem. Apparently either under powering over powering was also an issue He realised that after testing all the other optical fibre outlets with his testing equipment and still reached this impossible reading (according to the technical guru), he would have to move us off the fibre.

It was on this note that the technician informed me that although it was a back ward step he was going to investigate the possibility of moving the business off the optical fibre and back on to the 'old copper wiring'.

After investigating this possibility our business was then moved back onto the 'old copper wiring'. The above is more evidence of the continuation of the phone and fax problems my wife and I inherited when we purchased our business.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration for wilful and corrupt perjury.

DECLARED at [illegible] In the

State of Victoria this

day of Fourth Sept two thousand) D. Lewis

and Six.

Before me [illegible]

Constable of Police No 275.

Portland Police Station

Glenelg Second Portland

49d

Word Processing
Legal Typing
Medical Typing
General Typing
Financial Typing
Essays
Assignments
Newsletters
Spreadsheets
Thesis

Dial A Secretary

72 [illegible] Street,
[illegible], 5330

Ph/Fax: 089 [illegible] 1827

Desktop Publishing
Computerised Transcripts
Audio Transcripts
Letters
Manuscripts
Reports
Manuals

30th January, 2000

TO WHOM IT MAY CONCERN:

On the 28th December, 1999 I was contacted by Alan Smith from Cape Bridgewater Holiday Camp re doing some computer work for him. I run a small business engaged in doing a variety of computer jobs, ie. word processing, etc. Alan rang and we organised for him to fax the work through. One page and a small portion of the next came through and then the line disconnected. Alan tried numerous times to get the fax through, but to no avail and he eventually had to make other arrangements for the work to be done nearer to him.

On the 5th January 2000 Alan again contacted me regarding doing some work for him. He tried so many times over a period of about 3½ hours and finally the work came through. We probably spoke about twice during this time about the failure to get through, the other times were tries to fax. On the 6th of January Alan again tried to fax the remainder of the work through and we managed to connect a lot quicker, although it was still about half a dozen times trying beforehand.

When the work was finished, I managed to fax it back to him, although I had to make three or four tries as several pages would go through and then the connection would cut.

49E

The following day, 7th January, Alan faxed through a few changes, but this time they came through after only a couple of tries.

It has proved to be very hard to contact Alan at Cape Bridgewater Holiday Camp via fax and indeed it has cost me work by not being able to establish a fax connection. I have not experienced this phenomenon before on such a regular basis.

Yours faithfully,

MARGARET VAN RUN.

49E.

28th December 1999
Letter from Margaret Van Rum, from Dial A Secretary service in Warrnambool on the following page confirms she alerted me to the fact that not all my faxes on this particular day did not connect through to her office facsimile machine 0355611027. Why then do my Telstra accounts show that ALL these transmissions were all successful?

5th January 2000
Margaret Van Rum, again writes about the continuing problems when receiving faxes on this particular day where 17 successful calls are charged by Telstra as affective (re Telstra fax account bottom of page). The extract of my fax journal for the 5th January 2000, is copied directly below which confirms that only two transactions were actually transmitted and sent to Ms Van Rum from the18 charged calls shown on my account. This is the same type of situation as described in Telstra's B004 report 23rd May 1994 faxes not being received by the arbitrator where their own evidence sworn under oath confirms they charged my business for FIVE non-transmitted faxes.

19	OK	82	00:02'12	RCV		61 3 96140811	04-01	17:04	[illegible]
	487	11	00:09'35	XMT	T	0355611027	05-01	18:41	[illegible]
	OK	01	00:01'02	XMT	T	55611027	05-01	20:49	[illegible]
22	S-OK	00	00:00'03	XMT	T	55712044	05-01	20:59	[illegible]
23	S-OK	00	00:00'04	XMT	T	55615071	05-01	21:00	[illegible]
24	OK	01	00:00'42	XMT	T	95114335	06-01	06:01	848448AC2888
25	OK	01	00:00'40	XMT	T	96140811	06-01	06:05	848448AC2488
26	OK	01	00:00'42	XMT	T	96140811	06-01	06:17	848448AC248C

STD calls *continued*

	Date	Time	Place	Number	Rate	Min:Sec	$
	Telephone Service 03 5628 7285 continued						
45	05 Jan	05:33 pm	Melbourne	0398761254	Day	2:00	0.65
44	05 Jan	05:37 pm	Warrnambool	0355611027	Day	1:16	0.3
108	05 Jan	06:40 pm	Warrnambool	0355611027	Day	0:45	0.2
109	05 Jan	06:41 pm	Warrnambool	0355611027	Day	9:40	1.72
113	05 Jan	06:52 pm	Warrnambool	0355611027	Day	0:43	0.28
110	05 Jan	06:59 pm	Warrnambool	0355611027	Multi Rate	0:44	0.25
107	05 Jan	07:01 pm	Warrnambool	0355611027	Economy	0:22	0.20
111	05 Jan	07:03 pm	Warrnambool	0355611027	Economy	0:30	0.22
112	05 Jan	07:04 pm	Warrnambool	0355611027	Economy	1:19	0.29
114	05 Jan	07:06 pm	Warrnambool	0355611027	Economy	0:32	0.22
89	05 Jan	06:49 pm	Warrnambool	0355611027	Economy	1:20	0.29
84	05 Jan	06:51 pm	Warrnambool	0355611027	Economy	0:29	0.21
86	05 Jan	06:53 pm	Warrnambool	0355611027	Economy	0:28	0.21
85	05 Jan	06:56 pm	Warrnambool	0355611027	Economy	0:36	0.22
88	05 Jan	06:58 pm	Warrnambool	0355611027	Economy	0:27	0.21
93	05 Jan	06:58 pm	Hamilton	0355712044	Economy	0:05	0.17
87	05 Jan	06:59 pm	Warrnambool	0355611027	Economy	0:14	0.19
92	05 Jan	09:00 pm	Warrnambool	0355615071	Economy	0:05	0.18
90	05 Jan	09:00 pm	Warrnambool	0355611027	Economy	2:42	0.41
91	05 Jan	09:06 pm	Warrnambool	0355611027	Economy	0:44	0.24

49E

AUSTRALIAN SENATE

ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS

REFERENCES COMMITTEE
LEGISLATION COMMITTEE

PARLIAMENT HOUSE
CANBERRA ACT 2600
Telephone: + 61 2 6277 3526
Facsimile: + 61 2 6277 5818
E-mail: ecita.sen@aph.gov.au
Website: www.aph.gov.au/senate_environment

16 August 2001

Mr Alan Smith
Cape Bridgewater Holiday Camp
Blowholes Rd, RMB 4408
PORTLAND VIC 3305

Dear Mr Smith

Casualties of Telstra (COT) Matter

I refer to your letters of 26 July to the Secretary of the ECITA Standing Committee and 6 August 2001 to me, relating to the COT Cases. As Chair of the ECITA Legislation Committee, I am very concerned with your statement in the 6 August letter that you are in the possession of two in camera Official Committee Hansards, relating to this issue, dated 6 and 9 July 1998. Furthermore, that you intend sending these confidential Hansards to Mr Brian Pickard, Ms Sandra Wolfe's solicitor.

I wish to remind you that evidence or documents taken in camera or submitted on a confidential or restricted basis cannot be disclosed to another person, unless by order of the Senate. This does not occur very often, although the Senate, on 30 August 2000, did authorise the release of the Hansards of 6 and 9 July 1998 to the Victoria Police Major Fraud Group to assist in their investigations.

The fact that you have received unauthorised confidential committee documents is a serious matter, but if you disclose these documents to another person, you may be held in contempt of the Senate. I would remind you that section 13 of the *Parliamentary Privileges Act 1987* provides for penalties in relation to these matters. I would also point out that section 16 of the Privileges Act provides that it is not lawful for the material in question to be used in any court or tribunal. A copy of the Act is enclosed. You may wish to consult your legal adviser in relation to this.

49 F

I have to advise you that I am unable to provide you with any further assistance in relation to the matter as the committee has concluded its inquiry and has reported to the Senate.

I would respectfully suggest your remedies lie with the Telecommunications Industry Ombudsman and normal legal processes.

Yours sincerely

Alan Eggleston
Chair

49F

Information

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Corporate Express reaps dividend *28*

IXnet expands
Birth of a financial extranet *29*

Crash and burn
Silicon Valley start-ups backfire *32*

Fraud inquiry into Telstra row with clients

Helen Meredith

The major fraud group of the Victoria Police is investigating allegations of fraud associated with a dispute between a group of small-business operators, members of the group known as COTs (Casualties of Telecom), and Telstra.

A police spokesman has confirmed an investigation was under way into the alleged alteration of documents provided by Telstra in support of its defence in the protracted COTs dispute.

Victoria Police media director Mr Kevin Loomes declined to provide any details of the investigation, noting: "It is still early days." The investigation comes two weeks after a Senate working party delivered a damning report into the COTs dispute. The report focused on the difficulties encountered by COTs members as they sought to obtain relevant documents from Telstra.

The report found Telstra had deliberately withheld important network documents and/or provided them too late and forced members to proceed with arbitration without the necessary information.

Presenting the report, the chairman of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee, Senator Alan Eggleston, accused Telstra of forcing COT members into an over-legalistic, unequal arbitration process based on quick access to documents. "Forcing things to go Telstra's way has been their way ever since," he said.

An independent report by communications experts from the firm Ambidji found most of the COTs' requests for documentation had been reasonable.

But according to the chairman of the working party, Mr John Wynack, of the Commonwealth Ombudsman's Office, "final sweep searches" for documents had exposed how Telstra had misrepresented requests, unilaterally varying them.

Senator Eggleston said: "They [Telstra] have defied the Senate working party. Their conduct is to act as a law unto themselves."

The dispute dates back to 1992 when the small business subscribers first grouped. They claimed that inadequacies in their telephone service over a prolonged period had led to a decline in their businesses. Most members of the group were single operators or husband and wife partnerships operating in service industries.

Some complained that people calling them received a ring tone while they had no indication of an incoming call. Others said callers heard a busy signal or a number disconnected message for no reason.

To prove a reasonable causal link between their perceived service difficulties and loss of incoming calls, COTs members needed access to general exchange and network information documents held by Telstra.

The fight is now in its eighth year. It is estimated to have cost the carrier $24 million in the past five years. Of that, only $1.8 million has been spent on settlements with COTs members. The rest has paid Telstra's administrative and legal costs.

Australian Government

Department of Communications,
Information Technology and the Arts

our reference

Mr Alan Smith
Seal Cove Guest House
1703 Bridgewater Road
Cape Bridgewater
PORTLAND VIC 3305

Dear Mr Smith

Thank you for your letter of 10 March 2006 to Ms Forman concerning the independent assessment process.

There is an implication in your letter that I advised you that the independent assessment process is not the process agreed to by Senator Joyce. I did not advise accordingly.

If the material you have provided to the Department as part of the independent assessment process indicates that Telstra or its employees have committed criminal offences in connection with your arbitration, we will refer the matter to the relevant authority.

Yours sincerely

David Lever

David Lever
Manager, Consumer Section
Telecommunications Division

17 March 2006

49H

GPO Box 2154 Canberra ACT 2601 Australia • telephone 02 6271 1000 • facsimile 02 6271 1901
email dcita.mail@dcita.gov.au • website http://www.dcita.gov.au

RECEIVED
13 OCT 1995
Office of the Minister for Communications and Tourism

OFFICE OF HON MICHAEL LEE MP
Rep by Min ☐ Information ☐
Rep by Pari ☐ Action ☐
Rep by SA ☐ Advice ☐
Rep by Dept. ☐
Copy held for min to see ☐
Final with ...

94/0269-05
22

Parliament House
Canberra ACT 2600

Circumstances and past actions of senior staff within Telecom have made it necessary to bring to your attention some very concerning activity that my colleagues and I feel can no longer be ignored or dismissed.

We hesitate to bring the following instances to your attention but decided it was necessary as this situation is far too serious to be allowed to continue, and attempts we have made within the organisation to bring our concerns to light have fallen unheard.
In bringing this matter to your attention we do not wish to paint the picture that all staff are involved in certain activities, we strenuously would like to make the point here, there are staff within the whole framework of the staff of Mr Steven Black who have and are continuing to work towards the recommendations of the Cooper and Librand and Austel report toward addressing customer issues fairly and ethically.

Concerns and Issues.

Mr Steven Black Group General Manager of Customer Affairs who has the charter to work to address and compensate Telecom's "COT" customers as well as the management of other customer issues related to Telecom is involved in and initiates conduct and work practices that are totally unethical and he has managed to achieve certain results in relation to major cases due to the assistance of his senior executives past colleague and friends with whom key strategic activities have been assigned. These individuals have the skills or expertise required for the job and has jeopardised Telecom's position in attaining positive beneficial results for customers as the following instances will highlight.

1. Implementation of a complaint handling procedure throughout Telecom though outwardly giving the appearance of acceptance and uniformity of work practices, constitutes a deception outward deception to external regulating parties. Mr David Fickling in association with Mr Steven Monro have deceived AUSTEL as to the implementation of core initiatives.
Existing within Telecom nationally is different Regional offices operating in various ways to address customer complaints. This situation is attributable to a lack of:

- comprehensive documentation to staff at time of training
- comprehensive training by competent individuals to all manner of staff
- a incomplete database unable to capture and store required criteria for most purposes specifically reporting
- continued failed deadlines to major initiatives resulting in blatant short cuts being needed.

To meet certain commitments to AUSTEL made by Mr Black and Mr Fickling a incomplete complaints handling process has been forced down staffs throats, resulting in much resentment and confusion whereby key initiatives are not in place.

2. The management of COT customers by Mr Rod Pollock is nothing more than a unprofessional, adversorial approach towards customers. Mr Pollocks approach to these customers has been one of manipulation and deception as in his dealings with the top four COT customers and subsequent eleven customers Mr Pollock has lied and deceived these customers.
Damaging evidence against Telecom has been conveniently removed or altered to suit the case.
Junior staff or temporary agency staff have been requested not to place pertinent information on customer files so as no to weaken Telecom's case further.
COT customers that may prove to be a threat to Telecom have been expertidly manipulated and paid settlements.

Warwick Smith has been critical of Pollock a sore issue.

SOA

3. Unfortunately the Legal advice and expertise that Telecom has sought from its internal legal group has also been sadly lacking in ethical direction. In the management of major customer disputes the legal area has sought to hide and skirt around the truth. [redacted] external statutory authorities with only half of the information, quite fully aware of not providing all information. Their general position has been to sit behind the legal word and its many interpretations in so doing avoiding full disclosure of information. [redacted] senior allegation

Not sure of context of to could be the it talking about 94's COT in wake of 12 month

4. There are three main areas which Steve Black and his senior executives have sought to influence and manipulate:

1. Remove or change clear information on the position of liability.
2. Diminish the level of compensation payable to COT customers.
3. Dismissive of breaches in relation to matters regarding customer Privacy.

In relation to the Robert Bray case Steve Black has sought to cover up the true facts of disclosure of customer information. Particularly he has sought to cover up "broadcasting" of the customers private information.

((Fazmuddin has been dealing/involved with this issue

As you can see from what I have mentioned to you something needs to done. As you can appreciate we are not in a position to go any deeper that what has already been outlined . As to where next that lies in your hands. We have done what is unfortunately our only form of address to the situation.

50A

Warwick

URGENT

Attached is a fax received from Alan Smith regarding access to FOI documents at Telecom.

Smith is alleging that the documents are not in chronological order and blanking done for earlier FOI inspections has made the collection of appropriate documentation uncertain and diminished the opportunity for him to satisfactorily present his case.

Mr Smith has demanded a TIO member be present at today's examination of papers by him at Telecom.

I have attempted to contact Peter Bartlett as the most appropriate person to comment in your absence but he is unavailable.

I have also attempted to contact Gordon Hughes to seek his views but at this point he too is unavailable.

Finally I have contacted John McMahon at Austel to see if he was aware of any undertakings regarding the access to FOI documents and commitments about the presentation of these that might have been given by Austel or any other parties. He said he was not aware of any such commitments.

Sue
16 May 1994

PS Mr Smith subsequently arrived in the office. He asked that someone from the office go to Telecom with him. I said that this was not possible but that he should call this office and advise us of his telephone number when he was allocated an office in the Telecom building. In the interim I undertook to:

- advise you of his concerns as soon as you arrived and said that you would call as appropriate;
- advise Hughes and/or Bartlett of his concerns when they were available;
- seek your advice as to whether the Commonwealth Ombudsman's office should be involved.

I also noted that the absence of proof in the form of documents may be seen as weakening his case but could also be seen as weakening Telecom's defence and he should bear this in mind when examining documents. Mr Smith was also concerned about documents which stated that there were attachments where no attachment was available. He left an example of this with us (also attached).

10/5

Spoke to Smith + Hughes
advising to proceed etc.

50B

I, ALAN SMITH

of CAPE BRIDGEWATER

in the State of Victoria

HOLIDAY CAMP PORTLAND do solemnly and

sincerely declare 3306

THAT

At approximately 4.20 pm yesterday, I spoke to Detective Superintendent Jeff Penrose (Federal Police) regarding my concerns about what had just taken place.

Telecom had just returned to me, two (2) identical copies of an Austel letter addressed to Telecom attached to two (2) different types of header sheets of different dates.

My purpose for being at Telecom House was that when Telecom had originally supplied the F.O.I. documentation, they had somehow failed to supply the adjoining documentation that should have accompanied some of these Fax Header Sheets, (fifty six (56) header sheets in all).

It was now apparent my concerns were justified.

Telecom had no intention of supplying the full documentation either maliciously or by the fact of their own admission made yesterday by Mr Pollock the Telecom F.O.I. Officer, because that much of this documentation is out of the correct chronological order order due to so many viewings that had taken place, either by Austel, Coopers & Lybrand, Commonwealth Ombudsmans Office and others. Mr Pollock also stated in the company of two (2) other Telecom employees, one male, one female, in the office provided for me, that because much of the F.O.I. documentation was so blacked out that it was hard to match the correct correspondence to the Telecom Header Sheets in question.

I asked Rod Pollock, how can I put my claim together if the material, that I have requested under the F.O.I. agreement is in such a mess, that even Telecom themselves, their own office, is unable to be sure that the information they are supplying to me is in fact the correct documents I originally applied for under the F.O.I. agreement.

Even though an office had been allocated for me, with a note on the door to that effect, "reserved from 8am to 6pm", the moment I brought to their attention the irregularities regarding the two Fax's in question, there was an immediate urgency to terminate my presence and I was asked to leave at 4.40 pm. These two Telecom employees made it known there was no bad feelings, however the male Officer also made it very clear, that like Rod Pollock had previously said, because of the way the F.O.I. documentation was laid out and had been viewed by so many different People and Departments etc., they were finding it hard to match the correct F.O.I. Fax Header Sheets to correspond with the original documentation.

With reference to this signed declaration and the admissions of these Telecom employees mentioned, one can can only perhaps wonder for good reason, has the C.O.T. Case Members actually received their appropriate documentation under F.O.I. conditions (Act), which will allow them to have every opportunity to have their known communication faults shown by the correct data presented by Telecom?

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

DECLARED at Camberwell in the

State of Victoria this 14th

day of May One thousand

nine hundred 94

Before me N Creasey

N. D. CREASEY
Senior Constable 21524

Camberwell Police Station
317 Camberwell Road.

50B

Communications and the Arts

95/0600-02

273

163

Our Reference:

Your Reference:

Contact:

FACSIMILE MESSAGE

Regulatory Policy Branch
Telecommunications Policy Division

TO: FAX NUMBER:	Norm O'Doherty 03 828 7450
TELEPHONE:	03 828 7342
FROM:	Nina Martiniello
FAX NUMBER:	06 279 1555
TELEPHONE NUMBER:	06 2791508
DATE:	16 June 1994
NO OF PAGES:	21 (Including this one)

Message

Dear Norm

As discussed with your secretary over the phone, the attached documents form a part of an FOI request on the COT cases. They were sent to AG's for comments and they got back to us today advising that we should consult with AUSTEL about their release. (See Chris Gallagher's written comments on each document.) If you would like to discuss the matter with him he can be contacted on 06 270 2347.

Could we please have AUSTEL's comments by midday tomorrow.

Regards.

Nina

50C

GPO Box 2154 Canberra ACT 2601 Telephone: (06) 279 1000 Facsimile: (06) 279 1515

CONFIDENTIAL

FREEHILL
HOLLINGDALE
& PAGE

CONFIDENTIAL

Melbourne Office

To:	Ian Row Corporate Solicitor	From:	Denise McBurnie
At:	Telecom Australia	Direct line: Switch:	(03) 288 1383 (03) 288 1234
To fax:	634 8832	From fax:	(03) 288 1567
		Date:	10 September 1993
Phone:	634 3300	Matter No:	1660521 Pin No: 274
Page 1 of		Approval:	Denise McBurnie

The information in this facsimile is privileged and confidential, intended only for the use of the individual or entity named above. If you are not the intended recipient, any dissemination, copying or use of the information is strictly prohibited. If you have received this communication in error, please immediately telephone us (we will accept reverse charges) on:

(03) 288 1341 Fax (03) 288 1567 (International phone codes + (61 3)) or Telex AA33004
and return the original facsimile to
Level 43, 101 Collins Street, Melbourne Vic 3000 Australia

Dear Ian

N00743

"COT" Case Strategy

* As requested I now attach the issues paper which we have prepared in relation to Telecom's management of "COT" cases and customer complaints of that kind.

* The paper has been prepared by us, together with input from Duesburys, drawing on our experience with a number of "COT" cases. If there are any aspects of the issues paper which you would like us to expand upon or if there are any other issues you would like us to consider please don't hesitate to contact us.

* Both Freehills and Duesburys would be happy to assist you should any further presentations to Telecom management be required on any of the matters raised in the issues paper or with regard to any other matters concerning management of "COT" cases and customer complaints.

Yours sincerely
FREEHILLS HOLLINGDALE & PAGE
per:

Denise McBurnie

Denise McBurnie

Enc

copy to: Deanne Weir

503

LEGAL PROFESSIONAL PRIVILEGE

CONFIDENTIAL/COMMERCIAL IN CONFIDENCE

The contents of this document are privileged and confidential and no part thereof shall be disseminated, copied or used without the express permission of the Telecom Corporate Solicitor.

A. PROFILE OF A "COT" CASE

Set out below are some of the common characteristics attributed to "COT" cases. The particulars are drawn from FHP's experience with the following "COT" cases:

- Golden Messengers/Graham Scherer
- Tivoli Theatre Restaurant/Ann Garms
- Japanese Spare Parts/Ann Gillan
- Cape Bridgewater Holiday Camp/Alan Smith

It should be recognised, however, that this list is neither definitive nor exhaustive of these characteristics.

Common Characteristics

1. Single operators of small businesses generally operating in service industries. If partnerships are involved it is usually a husband/wife partnership.

2. Questionable business stability or viability regardless of alleged telecommunications problems.

3. Common distrust of Telecom's network performance and distrust of Telecom's claims that network performance accords with "acceptable standards".

4. Claims of dissatisfaction by the claimant as to the handling of the case by Telecom.

5. Distrust of Telecom's testing procedures. N00750

6. Numerous faults alleged and claimed to be supported by documentary evidence collected by the claimant, but which do not match Telecom's fault reporting records.

7. A high level of understanding (acquired by experience) with FOI procedures and the procedures involved in accessing Telecom documentary information. However, this level of understanding is not necessarily matched with the ability to accurately or correctly interpret the information obtained.

8. There is usually a reluctance to pursue a claim through court action. Apparent or claimed reasons being:

   - cost
   - difficulty of proof
   - claim has a component relating back to when Telecom's statutory immunities applied
   - Telecom's size and ability to defend action proves to be oppressive.

50D

(i) The cases of *NCA v S* and *Esso*, referred to above, make it clear that a claim to privilege must expose sufficient facts to justify the claim. A vague or bald assertion of the privilege is seen as no claim at all.

(ii) The definition of privilege indicates that only communications between a lawyer and a client for the dominant purpose of providing or receiving legal advice or for litigation (and communications between a lawyer or client and a third party for the dominant purpose of litigation) will be protected by privilege (see *Baker v Campbell* and *Esso's* case referred to above).

It is difficult to see how a document, or documents, merely described as "Network Data" would fall within the definition of a communication between a lawyer and client for the dominant purpose of advice or for litigation, or communication between a lawyer or client and a third party for the dominant purpose of litigation.

There appear to be 39 claims to legal professional privilege, which are merely listed as LPP in *Attachment 1*, being further detailed in *Attachment 2*. Further, there appear to be 74 claims to legal professional privilege listed in *Attachment 2* (it is not clear why there is such a variation between these two amounts of claims). A perusal of the file descriptions in *Attachment 2* indicates not only incomplete and inadequate claims to privilege but also claims which appear to be erroneously made.

For example, it is difficult to see, without further information being supplied, how a "Chart – Call analysis with handwritten annotations", a "Map – Bova Enterprises Call per exchange", a "Table – Bova 's directory listings" or a "Fax confirmation report" could be covered by legal professional privilege.

(3) made defective or erroneous claims to privilege, and/or

There is also some evidence of (3) i.e. making defective or erroneous claims to privilege.

For example, in the letter from Mr John Armstrong of Telstra to Mr Ross Plowman dated 28 September 1998, Telstra concedes that it has erroneously classified some documents as privileged.

(4) knowingly made false or spurious claims to privilege?

There is also some potential prima facie evidence of (4) i.e. knowingly making false or spurious claims to privilege. For example, there is a potential structure set up for the possible abuse of the doctrine of legal professional privilege in the faxed document entitled "COT" Case Strategy, marked "Confidential" dated 10 September 1993 from Ms Denise McBurnie of Freehill Hollingdale and Page, Melbourne Office to Mr Ian Row, Corporate Solicitor, Telecom Australia.

I refer in particular to section 4 on page 6, which states:

> "Of critical importance in the constitution and function of the DMA (Dedicated Management Area) is the direction of the first referral of the claim by Business Unit Management. The initial point of referral should always be to the Corporate Solicitors Office. This is in order to bring into operation the potential protection of legal professional privilege for documentation and other reporting procedures. It may also be appropriate for the Corporate Solicitors Office to continue as the point of referral and control in order to maintain legal professional privilege (where possible). Over information and documentation created during the handling of the 'COT' case."

SOE

Consumer will undertake an immediate inspection of all elements of the CAN and certify that the service is constructed in a manner that complies with standard practice. Any defects/abnormalities will be noted and corrected. Pairs will be "clean" between the exchange and the customer's premises with any common pairs cut away. Consumer will formally certify that the inspection has been carried out and record the results of their investigation.

Commercial will test the customer's service and record the test results. This test will be repeated at regular intervals (at least weekly) to ensure stability and consistency. Where appropriate, CPE will be tested. On occasions it may be desirable to install recording equipment at the customer's premises.

All technical reports that relate to the customer's service are to be headed "Legal Professional Privilege", addressed to the Corporate Solicitor and forwarded through the dispute manager.

The only contact with the customer will be by the dispute manager or the Regional Manger unless the MD Commercial chooses to become personally involved. All contacts with other individuals will be referred back to the dispute manager.

The Regional General Manager will ensure that all other elements of Telecom are advised of the declaration of a Category A dispute. The managers of these other elements will ensure that all parts of their organisation are aware of the existence of a dispute and that staff are advised that they are not to comment on the customer's service. On all occasions only staff with exceptional "intelligence" and who have been fully briefed on the dispute are to be assigned to any dealings with the customer or related activities.

It is important that operational systems (including DCRIS, LEOPARD, Service*Plus) should be made capable of displaying an appropriate warning mark against the customer's record indicating that a sensitive customer dispute is in progress and identifying the dispute manager. Local instructions should be issued to advise staff to refrain from commenting on service performance issues but to refer these to the dispute manager.

SEP/-

R0,052.4

50F

Pittard. Rosanne

To: Paton. Steve
Cc: Denholm. Paula
Subject: North Melbourne Exchange survey

Steve.

Thanks for your E-mail- sorry for replying late, my mail system was not fully efficient.

North Melbourne is a combination of AXE and ARE.

It would be best to avoid COT case member, Mr Graham Schorer of Golden (Messenger) to avoid embarrassment as you say. His main numbers are 03 329 7355 and 03 329 7255, but he has several rotary groups and about 40 lines in total. I do not have all the details but shall get as much by Monday midday as I can.

Please prepare the results for the Corporate lawyers under legal professional privilege and limit distribution of the results.

Please go ahead as soon as possible.

Rosanne Pittard

K24548

50G

Ms Geary—I can assure you that Telecom is doing everything it can to do that as quickly as possible.

Senator BOSWELL—I turn to the Australian Federal Police report. Senator Bolkus said, 'I am assured by the Australian Federal Police that, as indicated in the Senate on Monday 17 October, the DPP advice had little or no effect on the final outcome of the AFP investigation.' This advice is contrary to that provided to Ann Garms by the investigating office of the Australian Federal Police. The Australian Federal Police is getting advice that Telecom has a shield of the Crown, so it could not be prosecuted. It is quite obvious to me that, if that is your legal advice, then it is wrong.

Mr Krasnostein—I will address that because I have some personal knowledge of it. I am not sure where this allegation emanated from. There was never a period of time when Telecom either received advice or asserted a position that it had a shield of the Crown. I do not know who is asserting that, but it is nonsense to do so.

Senator BOSWELL—I would hope so.

Mr Krasnostein—What the Australian Federal Police have concluded and what the DPP have concluded is something that we are not privy to. We have given full cooperation in the Australian Federal Police investigation, to the extent that we were lawfully able to do so—which was almost total. They interviewed whoever they wanted to interview, they gained access to documents that they requested. There was only one issue of some tapes that they had a problem getting hold of. We are not privy to the result of that investigation. We are not privy to what their recommendation was—or their report, if they did not make a recommendation to the DPP, and we are not privy to what the DPP deliberations are.

Senator BOSWELL—Why did Telecom advise the Commonwealth Ombudsman that Telecom withheld FOI documents from Alan Smith because Alan Smith provided Telecom FOI documents to the Australian Federal Police during their investigation?

Ms Geary—Could you please repeat that?

Senator BOSWELL—Why did Telecom advise the Commonwealth Ombudsman that Telecom withheld FOI documents from Alan Smith because Alan Smith provided Telecom FOI documents to the Australian Federal Police during their investigation?

Ms Geary—I am not aware that that has been said. I can take that on notice.

Senator BOSWELL—Mr Krasnostein would probably be able to—

Mr Krasnostein—No, I am not aware of who at Telecom made that statement. I would be happy to take it on notice unless you have some information that sheds some light on it.

Senator BOSWELL—All right, I will do that. I will ask you another question. Telecom is cooperating fully with the Australian Federal Police inquiry. Why would Telecom withhold vital documents from the AFP? Also, why would Telecom penalise COT members for providing documents to the AFP which substantiate that Telecom had conducted unauthorised interceptions of COT members' communications and subsequently dealt in the intercepted information by providing that information to Telecom's external legal advisers and others?

Mr Krasnostein—Could you ask that question again?

Senator BOSWELL—You may take it on notice. It will be on the record.

Mr Krasnostein—I might add that—and I am sure the Australian Federal Police will confirm this to you—we had total cooperation with the Australian Federal Police. They were able to interview whatever staff they wanted to and they were given free and unrestricted access to a document room containing all the documents they wanted. They photocopied whatever they wanted. Inspector Penrose, who conducted the investigation, said to me that we cooperated fully and freely, and I do not know where an allegation would come from that there has been anything but total cooperation with the Australian Federal Police.

Senator BOSWELL—Thank you very much.

Senator TIERNEY—I refer to a question I put on notice in the Senate on 10 October

SOH

form).

Bruce Pendlebury states not to check Smiths complaint, probably in RCM, Page 17 Cape Bridgewater Submission.

The writer of a Telecom document, who said the ELMI testing was not connected to the CBHC on the 13 October 1992 when it was. I complained to Commercial Melbourne. (Cape Bridgewater Submission Part Two August 1994).

(Cape Bridgewater Submission One Page 32 August 1994).

Rosanne Pittard told lies to Freehill Hollingdale & Page, that I only had 9 faults on my line from January 1993 to August 1993. This can be substantiated by checking Telecom 13999. 1100, 008 033849.

Re-video clip 1100 Telecom operator. Told lies. (Arbitrator and Telecom have a copy).

Steve Richards 03-720 6646 another fault operator, treated C.O.T. and myself with contempt. Had it not been for C.O.T. Coopers & Lybrand confirm the attitude of the operators.

24. In relation to page 48:

The Claimant alleges that his phone has been unlawfully tapped and the confirmation of that fact was received by the Claimant from Detective Superintendent Penrose of the Australian Federal Police.

L69179

(a) State the date and circumstances and substance of the disclosure by Detective Superintendent Penrose that the Claimant's telephone was allegedly unlawfully tapped.

501

Answer Question 24:

(a) This matter is currently under investigation by the Federal Police. In the interest of fair justice I believe that I should not further comment apart from what I have already stated that it is true that I was told this by Detective Superintendent Penrose. If the Australian Federal Police are prepared to disclose the details of their investigation and of their dates of conversations with myself, then Telecom will be able to obtain the same.

COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN
Prudential Building, cnr London Circuit & University Avenue, Canberra City
GPO Box 442, Canberra, A.C.T. 2601, Australia
Tel: (06) 276 0111; fax: (06) 249 7829; int. Fax: + 61 6 249 7829

10 November 1994

C/94/225

Mr Frank Blount
Chief Executive Officer
Telstra Corporation Ltd
38th floor, 242 Exhibition Street
MELBOURNE VIC 3000

Attention Ms Joy Geary

Dear Mr Blount

At the request of Ms Geary, I am notifying you of the details of the complaints made to the Ombudsman by Mr Alan Smith.

20.1.94 Telecom unreasonably has decided to apply charges to his FOI request and has stated that the charges will be considerable.
2.3.94 Telecom has delayed providing access to documents.
2.3.94 Deletions from documents provided and exemptions were not explained.
24.3.94 Telecom claimed that documents given to Telecom by Mr Smith in 1992 had been destroyed or lost.

Telecom unreasonably refused to give any further documents to Mr Smith.

Telecom has lost or destroyed a number of files relating to his contacts with Telecom prior to 1991.

14.4.94 Telecom unreasonably refused to provide documents allegedly relating to discussions Mr Smith had with three Telecom officers concerning a discussion Mr Smith had with Mr Malcolm Fraser.

Telecom unreasonably deleted information from documents released.

Telecom unreasonably denied Mr Smith access to 460 documents.(letters of 14.4.94 and 15.4.94 from Mr Smith to Mr Black refer)

5.5.94 Telecom unreasonably delaying providing access to many documents.

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Telecom denied access to ELMI tapes for 21, 22, and 23 October 1992.

Telecom imposed unreasonable charges for access to documents sought under the FOI Act.

25.5.94 Telecom failed to provide fault reports for the period after 22/6/93, particularly from 9/8/93 to November 1993.

14.9.94 Telecom refused access to documents relating to voice monitoring for fault finding during 1993.

18.9.94 Telecom acting unreasonably in refusing to provide access to 'Bell Canada Raw Data'.

2.10.94 Telecom delayed providing access to documents under the FOI Act while Telecom's solicitors examined the documents.

23.10.94 Telecom unreasonably refused access to 'ELMI Smart 10 tapes' for the period May to July 1993. (Mr smith's letter to Mr Benjamin dtd 23.10.94 refers).

27.10.94 Telecom unreasonably refused access to GCS7 Call Statistics documents dated 4/11/93, 5/11/93, 6/11/93 and 9/11/93. (Mr Smith's letter to Mr Benjamin dated 27.10.94 refers).

26.10.94 Telecom incorrectly informed Mr Smith that Telecom did not have in their possession '..any of the raw data and working papers to do with the Bell Canada testing and report.'

7.11.94 Telecom unreasonably refused to provide the 'Portland/Cape Bridgewater Log Book associated with the RCM at Cape Bridgewater' for the period 2 June 1993 to 6 March 1994.

I think the above is comprehensive; but I have sent a copy of this letter to Mr Smith and invited him to appraise me of any complaints he has made which I may have omitted inadvertantly.

Yours sincerely

John Wynack
Director of Investigations

505

STATEMENT

Of Des DIREEN

NAME:	**Des DIREEN**
ADDRESS:	
OCCUPATION :	
TELEPHONE :	

1. My name is Des DIREEN and my address and contact details are known to Mr Bob Hynninen.

2. In September 1985 I commenced employment with Telecom Australia which later changed its business name to the Telstra Corporation. I was originally employed as an Investigator attached to the Special Services Unit within Telecom Investigations which was later to become Telstra Protective Services. Over the next twelve years I was promoted to the roles of Senior Investigator and then Principal Investigator.

3. My duties over the years included initiating and conducting investigations involving all types of fraudulent activity against Telecom/Telstra as well as the unlawful use of the Telephone network. I was also very heavily involving in assisting Law Enforcement Agencies such as the Victorian, NSW and Queensland Police Task forces set up to investigate SP Bookmaking throughout those states which involved the use of Telephone Landlines as well as the Mobile phone network.

4. In April 1997 Telstra was downsizing its staff and offering redundancy packages. I applied and was granted a package leaving the company after completing just short of twelve years service. .

5. After leaving Telstra, I am not sure of actual dates but it was either late 1997 or early 1998, I received a call from a person who I know as Rod KUERIS. Rod was working as a Detective Sergeant at the Victoria Police Fraud Squad, St. Kilda Road, Melbourne. I can recall that at the time, Rod was investigating criminal behaviour allegations directed against Telstra. The allegations, which related to 'Perverting the Course of Justice', were initiated by a group of complainants who called themselves Casualties of Telstra (COT Cases).

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6. At the time when Rod called me, I had left Telstra. He called me and asked me to meet him at his private address in Coburg, Victoria. He told me at the time that he was reading reports submitted by Telstra that related to his investigation. He had trouble deciphering the acronyms, abbreviations etc. that were in the report. He knew of my background as an investigator with Telstra and that I could assist him.

7. I attended at his house in Coburg. It was either on a Saturday or a Sunday. I can remember that it was on a weekend.

8. When I got there and during general talk, he stated that he believed that his phones were being 'bugged'. He seemed to be quite distressed at the time. He said that his phone was making clicking noises, the same noises that were occurring on the phones at the Fraud Squad.

9. I said to him that we should do a quick drive around to find out where the nearest pillar or telephone line pit was to his home because if what he was telling me, was true, it was possible that his telephone line could be being tapped from that location and his telephone conversations monitored. He told me that he thought there was pillar down on a corner about two hundred (200) metres away. We left together and when we got to the corner, a plain van was present and a male person was replacing the cover to the pillar. The male then got into his van and left.

10. We then drove to the main exchange in Sydney Road, Brunswick. There were two other vehicles at the exchange as well as the same van. These vehicles were in behind the exchange compound and were not marked with the company logo which indicated that they were not technician's vehicles.

11. It was unusual to have any vehicles at exchanges on weekends unless there was repair work being conducted by technical crews, but as I said all these vehicles were marked with the Telstra logo.

12. From what I observed on this day, and applying the knowledge that I gained during my twelve years at Telstra, I have no doubt in my mind that the phones at Rod KUERIS's home address were possibly being interfered with.

13. Rod had also informed me that he believed that the phones at the Fraud Squad were also being monitored. He stated that the clicking noises were constantly being heard while using the phones.

SOK

14. Rod also stated that he believed that all of his actions and meetings were pre-empted by Telstra. He stated that he thought it was possible that someone from Telstra was monitoring his calls.

15. This belief was later reinforced by what happened after this event.

16. A few weeks later on a Saturday morning Rod had to go to Tullamarine Airport to meet one of the complainants in his investigations, Anne GARMES. He called me early on this day and stated that he believed that he was being followed and wanted me to help him verify this.

17. Rod was going to meet Anne GARMES at Tullamarine Airport in the Ansett Departure area on the 1st floor. He was driving his private car to the airport. I arranged to meet Rod at Keilor Park Drive, East Keilor. I sat off his car as he drove past. I then followed him at a reasonable distance to the Ansett Departure Area Cafeteria on the 1st floor.

18. I met him outside the Cafeteria, and he pointed out Anne GARMES and her husband who were already there and then pointed out a male person sitting near them who he said he recognised as being a person who was following him around Melbourne. This guy was reading the paper. When this person realised that we had noticed him, he left. Rod appeared angry and distressed by this.

19. I also know that these occurrences were causing problems with Rod's family life. I believe that Rod left the police force not long after these events.

20. Finally, I would like to say that while I was working at Telstra and it would have been the early nineties I had cause to travel to Portland in western Victoria in relation to a complaint involving suspected illegal interference to telephone lines at the Portland telephone exchange.

21. As part of my investigation, I first attended at the exchange to speak to staff and check the exchange log book which was a record of all visitors to the exchange and a record of work conducted by the technical officers.

22. When I attended at the exchange, I found that the log book was missing and could not be located. I was informed at the time by the local staff that a customer from the Cape Bridgewater area south of Portland was also complaining about his phone service and that the log book could have been removed as part of that investigation. I was not told about this complaint prior to travelling to Portland and when I made inquiries by telephone back to

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Melbourne I was told not to get involved and that it was being handled by another area of Telstra. I later found out that the Cape Brigewater complaintant was a part of the COT cases.

Signature: [signature]

Date: 10/08/06

I hereby acknowledge that this statement is true and correct and I make it in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury.

Signature: [signature]

Date: 10/08/06

Acknowledgment made and signature witnessed by me at MELBOURNE on 10/8/06 at 5.15 am/pm

Signature: [signature]

Name: P.J.SPENCE

Title: SENIOR INVESTIGATOR

SOK

STATEMENT

Of Bob HYNNINEN

NAME:	Robert Thomas HYNNINEN
ADDRESS:	Unit 4, 79 Mimosa Road, Carnegie Victoria 3163.
OCCUPATION :	Public Servant – Australian Taxation Office
TELEPHONE :	(03) 9285 1570

1. My full name is Robert (Bob) Thomas HYNNINEN. I currently reside at Unit 4, 79 Mimosa Road, Carnegie, Victoria.

2. I had been previously involved in an arbitration process with Telstra. I was part of a group known as the Casualties of Telstra (COT Cases).

3. I can recall that during the period 2000/2001 I had arranged to meet Detective Sergeant Rod KUERIS from the Victoria Police Major Fraud Squad at the foyer of Casselden Place, 2 Lonsdale Street, Melbourne. At the time, I was assisting Rod with his investigation into alleged illegal activity of Telstra against the COT Cases.

4. Rod and I would occasionally meet in the city to discuss the progress of his investigation.

5. I met Rod at about mid – morning. I observed him seated on a sofa in the foyer near the right side of the entrance. I approached him and sat down next to him. When I did this, I noticed that he appeared to be distressed and red in the face.

6. Rod then stated that he wanted me to follow him to the left side of the foyer. When we did this he then directed my attention to a male person seated on a sofa opposite our seat. He then told me that this person had been following him around the city all morning. At this stage Rod was becoming visibly upset and I had to calm him down.

7. This male then noticed that we were both looking at him and got up and left the building.

8. Rod kept on saying that he couldn't believe in what was happening to him. I had to again calm him down.

SOL

9. When I spoke to Rod on a number of occasions at the Fraud Squad, he stated that he believed his office phones were being monitored by Telstra. He said that they were continually making clicking noises.

10. He told me that he had complained to senior management about the problem.

11. Over time, I believed that this investigation had caused a number of health problems with Rod. It also had an affect on his marriage.

12. Rod called me during the latter part of 2001 to inform me that he has resigned from the police force.

Signature: R.T. HYNNINEN

Date: 8 / AUG / 2006.

I hereby acknowledge that this statement is true and correct and I make it in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury.

Signature:

Date: 8 / 8 / 2006

Acknowledgment made and signature witnessed by me at MELBOURNE on 8 / 8 / 2006 at 1.40 am/pm

Signature:

Name: R.J. SPENCE

Title: SENIOR INVESTIGATOR EL1

SOL

[redacted]™

28 January 2003

COPY

Telecommunications Industry Ombudsman

John Pinnock
Ombudsman

Total Pages: 19

Dear

LEVEL 3 COMPLAINT
TIO reference: 02/101638-1 - Mc Kenzie

The Telecommunications Industry Ombudsman (TIO) has received a complaint against Telstra Corporation from Mr & Mrs Darren & Jenny Lewis regarding telephone number 0355267267.

The TIO has raised this complaint at level 3 because of the complexity of the complaint and likelihood that extensive testing may be required. Mr & Mrs Lewis have advised the TIO that they have an on-going complaint with Telstra Corporation in relation to their telephone service and have as yet been unable to resolve this matter. The TIO has invested time assessing Mr & Mrs Lewis' correspondence and believes that further investigation is warranted.

Mr & Mrs Lewis claim in their correspondence attached:

- That they purchased the Cape Bridgewater Coastal Camp in December 2001, but since that time have experienced a number of issues in relation to their telephone service, many of which remain unresolved.
- That a Telstra technician "Mr Tony Watson" is currently assigned to his case, but appears unwilling to discuss the issues with Mr Lewis due to his contact with the previous Camp Owner, Mr Alan Smith.
- That on 27 September 2002 "Ian" advised him that an EMG was causing the faults at the local exchange and that a technician would be sent out to fix this.
- That on 28 September 2002 "Renea" advised him that that the local exchange could only handle a certain amount of traffic, that there was nothing that Telstra Corporation could do about the problem and that this problem was not new to Cape Bridgewater.
- That Telstra Corporation advised him on 26 November 2002 that the phone extension wiring was laid too shallow and was not installed correctly, thus it believed that Telstra Corporation had not installed that wiring. Mr Lewis also claims that it was suggested that the line had been tampered with.
- That Mr Alan Smith had provided him with documents confirming that Telstra Corporation did all the cabling and wiring in question.
- That the phone problems have decreased dramatically since Telstra Corporation rewired the business on 9 December 2002 and disconnected the phone alarm bell, however he is still

Telecommunications Industry Ombudsman Ltd ABN 46 057 634 787

Website www.tio.com.au
Email tio@tio.com.au
National Headquarters
Level 15/114 William Street Melbourne Victoria 3000

PO Box 276
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Melbourne
Victoria 8007

Telephone (03) 8600 870
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Tel Freecall 1800 062 058
Fax Freecall 1800 630 614

experiencing intermittent problems with receiving calls, and continued to have problems with his fax line.

- That Telstra Corporation have checked his fax machine and confirmed that it is working correctly.
- That he believes that as the same problem has been experienced when attempting to send or receive faxes from a number of locations, it is unlikely that the fault is with the other party's fax machine.
- That the problems experienced resulted in the frustration of his clients being unable to contact him to make bookings for his camp and are affecting the profitability of his business.

Mr Lewis has outlined a number of these problems on page 3 of his correspondence attached. In particular, Mr Lewis has identified the following concerns:

- That he has been contacted by a number of people advising that the telephone had not been answered when ringing previously, despite Mr Lewis' assertion that someone was there at the time.
- That many faxes sent to his potential clients have not been received at the intended destinations, despite his fax transmission records confirming that the fax had been successfully sent. Furthermore, Mr Lewis claims that he has been charged for each of these calls.
- That he has experienced problems receiving faxes from his clients.
- That when he uses *10# to retrieve missed phone calls, he is sometimes given numbers from days before which had not registered earlier.
- That people had reported that when attempting to call Mr Lewis' business they first hear a message that the telephone has been disconnected, but when trying again are connected through on the same number.
- That when picking up the receiver to make a call, he had intermittently heard another person's conversation quite clearly.
- That on 25 October 2002 a caller reported that when trying to contact Mr Lewis earlier, he heard only clicking noises on the telephone line, but the call did not connect.
- That a caller reported that they had called and heard an engaged signal, despite Mr Lewis having call waiting activated on the service to prevent missed calls.
- That another caller reported that every time he called he received a fax connection tone.
- That on 13 November 2002 he picked up the receiver and heard a deep breathing sound but no dial tone.

The TIO asks Telstra Corporation to present its perspective on the complaint.

If Telstra Corporation decides that the complainant's claims have merit after reviewing the complaint, how does Telstra Corporation propose resolving the complaint?

If Telstra Corporation is of the view that there is no merit to some or all aspects of this complaint, please provide reasons for its view, identifying any facts in dispute. In addition, please supply all documentation relevant to the complaint. In particular, please provide:

- All Customer Care Notes for the account
- All Fault Reports for the account
- Telstra Corporation's assessment of whether Mr Lewis is entitled to compensation under the Customer Service Guarantee in relation to any of the faults reported above. Please include its reasons for the assessment for each fault reported.

50/11

The TIO has forwarded a copy of this letter to the complainant and asked them to pay any undisputed charges. While this complaint is under consideration, the TIO expects that Telstra Corporation will suspend credit management on any disputed charges.

The TIO may also forward Telstra Corporation's response to the complainant. For this reason, please ensure that it is written in plain English.

Please forward your reply to this letter within the next 28 days. The TIO may escalate the complaint to Level 4 status if Telstra Corporation does not respond to the TIO within this time frame or provide information requested.

Please contact me if you would like to discuss any aspect of this complaint.

Yours sincerely

Gillian Mc Kenzie
Investigations Officer

5011

[redacted]™

Telecommunications Industry Ombudsman

26 February 2003

Mr Alan Smith
Seal Cove Guest House
RMB 4409 Cape Bridgewater
PORTLAND 3305

John Pinnock
Ombudsman

Dear Mr Smith

I refer to your letters of 27 January and 3 February 2003.

Each letter raises yet again issues relating to your Arbitration which was concluded almost eight years ago. As I have said on numerous previous occasions, I do not propose to take any further action on a matter that was the subject of a final decision by the Arbitrator.

In your letter of 3 February you state that the TIO has a duty to speak to the new owners of Cape Bridgewater Holiday Camp who, you say, are blaming you for not disclosing to them ongoing problems with the telephone service. That is a matter between you and the new owners. The TIO will consider any complaint made by the current owners of the camp, provided it does not seek to canvass the same matters which you have raised relating to the Arbitration.

Yours sincerely

JOHN PINNOCK
OMBUDSMAN

SON

plainant/1918

5.20 AUSTEL then continued to work with Telecom and the *original COT Cases* to facilitate agreement -

- on the terms upon which assessment of Mrs Garms' and Mrs Gillan's claims might take place
- the person who might be appointed to make the assessment.

5.21 Extensive negotiation took place during which Mrs Gillan reached an initial *'settlement'* with Telecom in May 1993.

5.22 This left only Mrs Garms in a position of not having reached a settlement. Telecom had agreed that it would be bound by the independent assessor's findings of fact but it would insist upon the right to seek court intervention on any matter of law of concern to it. AUSTEL recommended that the draft terms of reference which had been produced at this time be accepted but Mrs Garms, having regard to independent legal advice, was not prepared to agree. Mrs Garms then commenced to negotiate directly with Telecom and an offer was made to her with a two week period for acceptance.

5.23 At this time Telecom found in its possession certain monitoring data which Mrs Garms had long sought to help in estimating the incidence of fault and the consequent financial impact. While the material was made available to her it was at a very late stage in the claim/negotiation period and AUSTEL wrote to Telecom stating that it would be reasonable to give Mrs Garms the opportunity to revise her claim. Before Telecom responded, AUSTEL was informed that a *"settlement"* had been reached between Telecom and Mrs Garms. This was in June 1993.

THE INITIAL *SETTLEMENTS*

5.24 As observed above, four of the *original COT Cases* pursuing compensation for inadequate service engaged in a process of negotiation with Telecom with AUSTEL acting as an *honest broker*.

Mr Smith, Cape Bridgewater Holiday Camp

5.25 Mr Smith was the first of the *original COT Cases* to reach an initial *'settlement'* with Telecom. It is understood that he -

- identified the type of faults which his business had experienced

- indicated the incidence of the faults by way of -
  - statements by individuals who had sought unsuccessfully to contact him
  - demonstrating a reduced effectiveness of advertising he had undertaken.

Telecom had a knowledge of at least some of the faults impacting on Mr Smith's business as well as having access to relevant fault records and monitoring data. It was also aware of the extent of problems and difficulties at its local exchange servicing his business.

5.26 At the end of the process (December 1992) a *settlement* figure was agreed. It was a condition of the settlement that the amount paid by way of settlement was to remain confidential - a condition that applies in the other cases. Although the details of the settlement are confidential, Mr Smith has informed AUSTEL that his major concern and stipulated condition at the time of the *'settlement'* was that his service should operate, and continue to operate, at normal network standards.

Ms Hawkins, the Society Restaurant

5.27 In the case of Ms Hawkins, *'settlement'* was reached in January 1993. One of the conditions is understood to be that the business was to receive its telephone service via a modern digital exchange. The business has since been sold.

Mrs Garms and Mrs Gillan

5.28 The initial *'settlement'* process involving Mrs Gillan and Mrs Garms is outlined above. It is relevant to mention here that as a result of Telecom's stance that settlement would only be made once the service was being supplied at normal network standards, both Mrs Gillan and Mrs Garms informed AUSTEL that they ceased reporting faults in order to hasten the settlement process.

Mr Schorer, Golden Messenger

5.29 The fifth of the *original COT Cases*, Mr Schorer, had particular concerns about Telecom's limited liability and the impact that the limitation was likely to have on any claim he might make for compensation arising from an inadequate telephone service. Instead of seeking compensation in those terms, he pursued a

claim in the courts under the *Trade Practices Act 1974*. In simple terms, Mr Schorer claimed that Telecom had -

- sold him a particular type of customer equipment which was unable to meet his needs (which were known to Telecom)
- made claims for the equipment which the equipment was not able to deliver.

While Telecom defended the action, it did make a *payment into court* with a denial of liability. The effect of the *payment into court* was that Mr Schorer had to decide whether to accept that amount or fight on in the knowledge that even if he was successful in his claim against Telecom, in the event that his claim was assessed at less than the *payment into court* he would have had to bear not only his own costs, but also those incurred by Telecom from the time it made the *payment into court*. On the advice of his solicitors, Mr Schorer concluded that he could not afford to fund continuation of the case and he decided to accept the *payment into court*.

CONTINUING FAULTS

5.30 Understandably the *original COT Cases*, having reached an initial *'settlement'* involving -

- compensation for past losses
- restoration of an adequate telephone service

expected that they might be able to resume their business activities afresh.

5.31 Unfortunately that did not prove to be the case. Soon after his initial *'settlement'* Mr Smith reported continuing problems to AUSTEL. Even prior to her settlement, Mrs Garms reported continuing faults to AUSTEL. The decision by Mrs Garms and Mrs Gillan not to report faults to Telecom in order to hasten a financial settlement is noted above. Mr Schorer continued to report faults to AUSTEL throughout the period.

5.32 The fact that faults continued to impact upon the businesses in the period following the settlement shows a weakness in the procedures employed. That is, a standard of service should have been established and *signed off* by each party. It is a necessary procedure of which all parties are now fully conscious and is dealt with elsewhere in this report. Its omission as far as the initial *'settlement'* of the *original COT Cases* were concerned meant that there was continued dissatisfaction with the service provided without any steps being taken to rectify

it. This inevitably led to a dissatisfaction with the initial *'settlement'* and to further demands for compensation. To avoid this sort of problem in the future, AUSTEL is, in consultation with Telecom, developing -

- a standard of service against which Telecom's performance may be effectively measured
- a relevant service quality verification test.

AUSTEL'S ESCALATION OF ITS INVOLVEMENT

5.33 AUSTEL was concerned not only about the continuing complaints from the *original COT Cases* but also over the emergence of additional cases displaying characteristics similar to those of the *original COT Cases*. In the circumstances AUSTEL took the view that it must establish, by collecting *hard information* precisely how the telephone service supplied to the *original COT Cases* was performing. Accordingly, on 30 June 1993 it requested Telecom to institute monitoring and testing to measure the extent and nature of the faults about which the *original COT Cases* complained. AUSTEL also sought from Telecom a range of fault data, details of exchange standards and performance together with exchange maintenance details.

5.34 Telecom was reluctant to comply with AUSTEL's request and to provide the data and detail sought by AUSTEL. It suggested that the monitoring and testing was resource intensive and that it lacked the necessary testing equipment. Some six weeks after AUSTEL's request Telecom had not instituted any monitoring. Moreover, there was no indication that Telecom had or was about to adopt a more co-operative or constructive attitude on the matter and supply the information sought.

AUSTEL's direction

5.35 Accordingly, on 12 August 1993, AUSTEL issued Telecom with a direction under section 46 of the *Telecommunications Act 1991* relying on its function expressed in section 38 of the Act to protect consumers. The direction required Telecom to institute a range of monitoring and testing procedures in relation to the three *original COT Cases* who were still carrying on business (Mr Schorer, Mr Smith and Mrs Garms) as well as five other businesses whose situation was then being considered by AUSTEL. AUSTEL also exercised its powers under section 400 of the *Telecommunications Act 1991* to require Telecom to supply all relevant documentation relating to the eight businesses and their terminating exchanges as well as details of exchange performance standards, actual performance, maintenance and fault records for 100 numbers adjoining those of each of the businesses.

51

Would you please come

Telecom
AUSTRALIA

Dinner 27/4

Group General Manager
Customer Affairs
37th Floor, 242 Exhibition Street
MELBOURNE VIC 3001
Ph: (03) 632 7700
Fax: (03) 632 3241

April 27, 1994

Rec 27/4/94

Mr. Robin Davey
Chairman
AUSTEL
5 Quarry Road
St Kilda
Melbourne, VIC 3005

BY FACSIMILE: (03) 820 3021

Dear Robin,

Attached for your information, an updated draft of the standard Verification Tests for use in Telecom's Public Switched Telephone Network.

The tests have been prepared in consultation with Mr Cliff Mathieson of AUSTEL and will form the basis for determining whether an individual telephone service is operating satisfactorily. I would appreciate your confirmation that the tests have met all the requirements of AUSTEL for service Verification Tests.

Once agreement has been reached on these Verification Tests, Telecom will be in a position to commence the testing of the services associated with COT customers, and ensure they meet the agreed requirements for a satisfactory service. As you would appreciate the completion of this testing is required under the recommendations of the recent AUSTEL report on COT customers.

Sincerely,

Steve Black

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criteria which guide such scheduling. This issue is also of particular relevance to the determination of the required maintenance standard for analogue exchanges (recommendation 2), and AUSTEL cannot accept any Telecom analogue exchange maintenance proposal until this information has been received and assessed.

Development of New Fault Management and Complaint Management Procedures

Telecom is instituting new fault handling and complaint management procedures, these having been developed in conjunction with Coopers & Lybrand. A major training program has been developed to implement and reinforce these procedures. Telecom provided AUSTEL with a copy of its fault management manuals on July 18 1994 and will be providing copies of the complaint management manuals in the near future. Procedures in the manuals embrace a number of the report's recommendations and will significantly impact on Telecom's handling of faults over the next several years. AUSTEL's Consumer Advisory Committee will be consulted on issues of specific consumer interest or concern. Further reporting on this matter will be provided in our next quarterly report.

Service Verification Tests

An important component of Telecom's 4-stage fault handling process is the Service Verification Tests (SVT). These tests are applied during stage 3 of this process. AUSTEL has indicated an initial acceptance of the SVT in the form in which Telecom has now released the document. These tests are important for Telecom to be able to provide objective data about the end-to-end performance of its network in regard to the service of an individual customer on the date the tests are conducted. It is the nature of such tests that they are more able to demonstrate that the network is not performing to an acceptable standard as opposed to a demonstration of compliance. In its briefing, Telecom indicated (and we will seek confirmation and further detail in writing) that if the SVT indicates an unacceptable level of service then the required replacement of network equipment will be undertaken.

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AUSTEL will be revisiting the issues identified above and a range of other issues as part of our review of the SVT. Unfortunately AUSTEL has been continually frustrated in regard to monitoring this recommendation by Telecom's slow and incomplete responses to requests for data necessary to the evaluation of the tests. AUSTEL will be engaging a consultant in the near future to assess technical and methodological issues concerning the SVT.

Recommendation 18: Telecom acquire equipment suitable for monitoring the service actually received at a customer's premises (cf: Coopers & Lybrand Recommendation 10 and Bell Canada International's Rotary Hunting Group Study Recommendation 8.3).

Telecom Update - October 1994

Both Telecom and AUSTEL have accepted the terms of reference and have nominated members for a joint working party tasked with developing a specification for customer premises line monitoring equipment.

A number of meetings have been held and an Equipment Specification has been prepared.

TIMETABLE

A preliminary report from the joint working party was completed on 30 September 1994. Contracts for the trial test equipment will seek supply by 30 March 1995.

[redacted]

AUSTEL is satisfied with Telecom's response to date on this recommendation.

Recommendation 19: Telecom satisfy AUSTEL that the monitoring systems and procedures Telecom uses to test individual services are effective.

Telecom Update - October 1994

AUSTEL is examining the detail of tests specified in the new Fault Management Procedures and Work Instructions. They have indicated they will focus particularly on the suitability of specific procedures at various stages of the Fault Escalation Process and will provide comment to Telecom as necessary.

TIMETABLE

These procedures are scheduled for introduction as a component of Telecom's new fault handling procedures by 31 December 1994.

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Recommendation 25: *Telecom commit itself to rectify the majority of difficult network faults which reduce the level of service below a level determined by AUSTEL within three to six months and all within a period of twelve months.*

Telecom Update - July 1994 Quarter	AUSTEL Comment
Telecom's fault rectification standards are outlined in Section 3.6 of the Public Switched Telephone Service (PSTS) Tariff. These standards state that "Telecom will repair telephone services by the date agreed with the customer. Telecom aims to repair services in accordance with the following standard: (i) In urban areas within one (1) working day of being notified of a fault. (ii) In rural areas within two (2) working days of being notified of a fault. (iii) In remote areas within three (3) working days of being notified of a fault." These rectification requirements are meant for all customers, including DNF customers. Telecom has also scheduled the DNF customers for Service Verification Tests to objectively confirm that their services meet an appropriate performance standard. Telecom's comment on an appropriate standard of service for an individual telephone service are included under Recommendation 26.	The major issue in relation to the PSTS tariff and Difficult Network Faults (DNF) is the means of determining whether the fault rectification objectives have been realised for DNF customers. (This issue shares many similarities with Recommendation 2). In the near future AUSTEL will be discussing with Telecom the practicality of instituting a reporting regime which reports against the achievement of these PSTS standards specifically for DNF customers. AUSTEL notes that DNF customers have characteristically reported recurring faults over extended periods of time. Clarification will be required of the definition of "service repairs" when a fault recurs after initially having been determined as "repaired". This issue will need to addressed in the context of this recommendation. Issues to do with the Service Verification test are discussed under Recommendation 41.

BARNABY JOYCE

The Nationals Senator for Queensland

15 September 2005

Mr Alan Smith
Seal Cove Guest House,
Cape Bridgewater
Portland RMB 4409 VIC 3305

Dear Mr Smith,

Casualties of Telstra – Independent Assessment

As you are aware, I met with a delegation of CoT representatives in Brisbane in July 2005. At this meeting I made an undertaking to assist the group in seeking Independent Commercial Loss Assessments relating to claims against Telstra.

As a result of my thorough review of the relevant Telstra sale legislation, I proposed a number of amendments which were delivered to Minister Coonan. In addition to my requests, I sought from the Minister closure of any compensatory commitments given by the Minister or Telstra and outstanding legal issues.

In response, I am pleased to inform you that the Minister has agreed there needs to be finality of outstanding CoT cases and related disputes. The Minister has advised she will appoint an independent assessor to review the status of outstanding claims and provided a basis for these to be resolved.

I would like you to understand that I could only have achieved this positive outcome on your behalf if I voted for the Telstra privatisation legislation.

Please be assured that I will continue to represent your concerns in the course of this resolution. I look forward to your continued support.

Kind regards,

Senator Barnaby Joyce
The Nationals Senator for Queensland

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Senator Barnaby Joyce
The Nationals' Senator for Queensland

Sen The Hon. Helen Coonan
Minister for Communication, Information Technology and the Arts
Parliament House
Canberra ACT 2600

16 November 2006

Dear ~~Senator~~ Coonan Helen,

CoTs cases and related disputes

I must remain with my commitment to the people involved with the CoTs cases. The commitment is representing their frustrations and finding a resolution to the issue.

The resolution to the issue, is referenced in your letter of 13th September 2006, where you state "I agree that there should be finality for all outstanding "COT" cases and related disputes. I believe that the most effective way to deal with these is for me to appoint an independent assessor to review the status of all outstanding claims".

This agreement I believe is the only way a satisfactory resolution can be achieved.

I realise that my only influence is that of persuading you and I must endeavour to keep the door open on this issue.

Yours sincerely

Senator Barnaby Joyce
The Nationals Senator for Queensland

90 The Terrace, St George QLD 4487
senator.joyce@aph.gov.au - www.nationals.org.au

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SENATOR THE HON HELEN COONAN

Minister for Communications, Information Technology and the Arts
Deputy Leader of the Government in the Senate

Mr Alan Smith
Seal Cove Guest House
1703 Bridgewater Road
CAPE BRIDGEWATER VIC 3305

17 MAY 2007

Dear Mr Smith

Outcome of representations to Telstra

On 6 September 2006 I met with Senator Barnaby Joyce and a group of current and former Telstra customers (the Casualties of Telstra (COTs)) and former contractors of Telstra regarding ongoing disputes with the company. At that meeting I made a commitment that I would make a final representation to Telstra regarding your unresolved complaints

I have now made both formal and informal representations to Telstra on behalf of the CoTs. However, Telstra's position remains that this is a matter that is most appropriately dealt with through a Court process. Telstra is not prepared to undertake an alternate means of pursuing this matter.

I also appreciate the depth of feeling regarding the matter and suggest you consider whether any court proceedings may be your ultimate option.

Yours sincerely

HELEN COONAN

57B

Seal Cove Guest House
1703 Bridgewater Road
Portland 3305

28th September 2009

Ms Deirdre O'Donnell
Telecommunications Industry Ombudsman
P O Box 276
Collins Street West 8007

Dear Ms O'Donnell,

LETTER 1

I apologise for accidentally omitting to enclose the corrected version of my letter dated 13th September 2009 with my letter dated 21st September 2009. The corrected version is now enclosed here.

As these two last letters show, the arbitration process provided no help to me, as the claimant, because the faults I complained about continued to affect the operation of my business and erode my customer base, long after my arbitration had been deemed to be completed. After reading my letters, I believe the TIO Board and Council will conclude that AUSTEL, then the Government Regulator, was wrong not to give me a copy of their draft findings (Alan Smith – Cape Bridgewater Holiday Camp) when they provided them to Telstra, the defendants in my arbitration. I also believe that the Board and Council will agree that, if Dr Hughes had been aware that the telephone faults I complained about had continued to occur, unabated, and that, to support their contention that the Cape Bridgewater *Customer Access Network (CAN)* was operating correctly, Telstra had unlawfully provided false Service Verification Test results as part of their arbitration defence material, then Dr Hughes would have been duty bound to refuse to hand down a finding in relation to my claims until:

1. Telstra was made accountable for providing defence material they knew was false; and
2. Telstra was able to provide conclusive evidence that my business was no longer experiencing any more telephone or fax problems.

On page 4, at point (d), in my last letter I referred to *"... my Supreme Court claim ..."* and I realise now that this probably needs more explanation. I had contemplated a Supreme Court action because, on 13th December 1995, my solicitors, Law Partners, wrote to me, stating: *"Overall however, we are of the opinion that the FTAP was fundamentally flawed given its objectives. The actions of Telstra and other key figures in the process were to say the least, against the spirit of the FTAP. In short we believe it would be possible to set aside the arbitrator's decision on the basis of failure of natural justice during the course of the FTAP."* Over the next few weeks I wrote a number of letters to Mr Pinnock (then the TIO), each time stressing that my claims were valid. Each time these claims were rejected as 'frivolous'.

On 31st December I wrote to the TIO again, asking him to provide me with all 'relevant pre-arbitration procedural documents' that had been exchanged between Dr Hughes, the Resource Unit and the TIO's office, including all 'inter-arbitration correspondence' that had been exchanged between the TIO and Dr Hughes. This request was made because, at that point, I had remembered that the COT Spokesperson (Graham Schorer) solicitor had assured us that the agreement included clauses that guaranteed the TIO's Special Counsel and the TIO-appointed Resource Unit would be liable for any proven act of negligence that occurred during the COT arbitrations but, when I went back to the agreement so I could show these clauses to my solicitors, Law Partners, I discovered that the clauses had somehow disappeared. When I advised Law Partners that the clauses were missing, they suggested that perhaps the clauses had been attached to the agreement separately (annexed) and recommended that I check all the pre-arbitration material that was available from the TIO. On 10th January 1996 however, the TIO responded to my

58.A

request, noting that he did not "... *propose to provide you with copies of any documents...*" from his office.

What I was trying to emphasize in my last letter was that, if the TIO had given me a copy of the letter Dr Hughes wrote on 12th May 1995, which described the arbitration agreement as 'not credible', or if I had received proof that the TIO had conspired with Dr Hughes and the TIO's Special Counsel to change and/or remove sections of the arbitration agreement without my knowledge or consent, I could have used this material in a Supreme Court action and Dr Hughes' findings would have been set aside because, after all, how could a Supreme Court judge argue against the arbitrator's own findings that he had handed down my award using an agreement he himself had branded as 'not credible'?

In summary, it is very likely that a Supreme Court judge would have found against Dr Hughes if we had also been able to show that:

1. The arbitrator had conspired with the TIO's Special Counsel to secretly alter or remove particular clauses from my arbitration agreement, to the detriment of my claim, and then re-instated those clauses for the remaining twelve COT arbitrations;
2. After the arbitrator had completed my arbitration, and having condemned the agreement as 'not credible', he then proceeded to use the same deficient agreement for the next three claimants;
3. Because of the deficiencies that Dr Hughes had identified in the agreement, he was forced to allow the next three claimants an extra thirteen months to three years in which to prepare their claims.

I would be grateful if you would provide this letter 1, and the attached letter 2, along with those written on 13th and 21st September, to the TIO Board and Council before they come to any decision regarding my request for documents.

Sincerely,

Alan Smith

Copies to

Mr Paul Crowley, CEO, IAMA Ethics and Professional Affairs Committee

58-A

CONFIRMATION OF FAX

10 January 1996

Telecommunications Industry Ombudsman

John Pinnock
Ombudsman

Mr Alan Smith
Cape Bridgewater Holiday Camp
Blowholes Rd
RMB 4408
CAPE BRIDGEWATER VIC 3306

Dear Mr Smith

I refer to your letter of 31 December 1995 in which you seek to access to various correspondence held by the TIO concerning the Fast Track Arbitration Procedure.

The arbitration of your claim was completed when an award was made in your favour more than eighteen months ago and my role as Administrator is over.

I do not propose to provide you with copies of any documents held by this office.

Yours sincerely

JOHN PINNOCK
OMBUDSMAN

58-B

"... providing independent, just, informal, speedy resolution of complaints."

TIO LTD ACN 057 634 787
National Headquarters
315 Exhibition Street
Melbourne Victoria

Box 18098
Collins Street East
Melbourne 3000

Telephone (03) 9277 8777
Facsimile (03) 9277 8797
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Seal Cove Guest House
1703 Bridgewater Road
Cape Bridgewater
Portland 3305

1st September 2010

Mr Graeme Samuel, AO
Chairman
Australian Competition & Consumer Commission
GPO Box 520
Melbourne Vic 3001

Dear Mr Samuel,

The attached letter dated 1st September 2010, to Mr Chris Chapman and Members of the Board of ACMA, is forwarded because it confirms how AUSTEL, the predecessors of the ACMA, breached their statutory obligations when they withheld from the relevant Minister many of the more adverse findings that resulted from their investigations into the COT Case complaints.

As I have noted in the closing statements in my letter to Mr Chapman, it is dangerous to be right when the Government is wrong but I know that AUSTEL, the Government Telecommunications Regulator, should never have allowed Telstra to pressure them into removing their true findings from the final version of their 13th April 1994 COT Report when the draft of the AUSTEL Cape Bridgewater Holiday Camp Report, dated 3rd March 1994 (which I didn't receive until November 2007, thirteen years after my arbitration) states that my business had been connected to an old and outdated RAX exchange that, according to Telstra's own records, had been declared obsolete around 1983/1984 but was still in use at Cape Bridgewater until August 1991.

As a part-time member of the ACMA Board and Chairman of the ACCC you would now be aware (if you and/or your staff have assessed my earlier letters and CD) that my claims against AUSTEL (now the ACMA) are neither vexatious nor frivolous. It was not only unethical for a Government Regulator to alter their true findings in the report they provided to the Minister and the COT arbitrator, but those changes created a 'snowball effect' when Telstra refused to provide the claimants with documents related to the Cape Bridgewater exchange so that my technical advisor, George Close, Data Telecommunications Consultant, was forced to rely on AUSTEL's doctored final COT report as he prepared his report on my behalf, not knowing that that report had been changed so that it did not disclose just how old the Cape Bridgewater exchange really was. This meant that although I spent $25,000.00 on Mr Close's report, more than half of it was based on false information supplied by AUSTEL.

The **Telecommunications Act 1991**, Section **340**, Reference of Matters to Trade Practices Commission: (3) clearly states: *"The Trade Practices Commission may hold an investigation into the matter and, if it decides to do so, it must report to AUSTEL on: (a) the conduct of the investigation; and (b) any findings that it has made as a result of the investigation"*, and Section **342** Reports of Investigations, states: *"After concluding an investigation under section 335 (3) AUSTEL must prepare and give to the Minister a report under this section. (3) A report under this section must cover: (a) the conduct of the investigation concerned; and (b) any findings that AUSTEL has made as a result of the investigation"*.

Since you are a part-time member of the ACMA Board I am aware that you may have a conflict of interest in regard to these matters but I have every faith in your integrity and I don't believe you would let your position with the ACMA cloud your judgement regarding whether or not AUSTEL (as the Government Regulator) breached their statutory obligations to the COT Cases when they chose not to report all the results of their investigations and therefore did not abide by the Act.

Since I am not the only consumers to suffer as a result of the information that AUSTEL withheld from the Minister this is therefore a matter of public interest and I would like to know if this is also a matter that you could address as Chairman of the ACCC (if it does not create a conflict of interest) or whether you believe it would be best to have it addressed by another Government organisation. If this is the case I would appreciate your advice regarding which organisation you believe has the correct jurisdiction in this matter.

I look forward to your early response to these questions,

Sincerely



Alan Smith

Copy to Mr Chris Chapman, Chairman of the ACMA

Seal Cove Guest House
1703 Bridgewater Road
Portland 3305
1st September 2010

Mr Chris Chapman and Members of the Board of ACMA
P.O. Box Q-500
Queen Victoria Building
NSW 1230

Dear Mr Chapman and Members of the Board,

My letter is not a Geoffrey Robertson hypothetical. This is a living, breathing public interest matter.

The following four examples entitled MELU RVA Fault, Heywood/Portland Register RVA Problem, Lightening Strike and ARK Exchange v RAX Exchange shows how the suppression of the AUSTEL draft Cape Bridgewater Holiday Camp report – stopped the arbitrator from correctly assessing the true value of the telephone faults that had affected the viability of my business.

Example1 MELU RVA Fault Points 95 to 118 in AUSTEL's Cape Bridgewater draft report they note: *"In terms of the volume of incoming call traffic affected, was when the Cape Bridgewater number code data was not correctly programmed at the Windsor Digital Trunk Exchange MELU. Telecom's own internal documentation on the duration of both problems demonstrates that there is evidence that faulty relay problems certainly existed longer than stated, and that uncertainty exists on the duration of the MELU RVA problem".*

A letter dated 2nd February 1994 from AUSTEL, to Telstra, numbered as FOI document folio 95/0603-01 – 74, was not provided to me by the ACMA until **13th February 2009**, fifteen years after the end of my arbitration. FOI folio 95/0603-01 – 75 which AUSTEL marked as (Attachment A) discusses the MELU exchange RVA fault with a Telstra hand-written note at the top of the page stating: *"Aug '91 – cutover from RAX to RCM When? – approx 7/8 mths 50% maximum".* It is clear that the hand-written note refers to the MELU fault having lasted between seven to eight months. This letter from AUSTEL to Telstra, confirms that AUSTEL was returning to Telstra evidence that records the MELU fault as having lasting for 7 to 8 months. A further hand written Telstra document FOI folio K02643 (which can be provided on request) states: *"Fault history – Cutover to RCM when? – likely length of MELU problem"*, this statement coincides with FOI folio 95/0693-01 – 75 RVA message which advised callers to my business that I was no longer trading. This problem had been ongoing for at least 7/8 months.

In their defence of my arbitration claims, Telstra stated that the MELU Recorded Voice Announcement (RVA) fault had only lasted for sixteen days when AUSTEL and Telstra both clearly knew it had lasted at least seven and possibly eight months but, like the lightning strike issue (see below) that Dr Hughes (the arbitrator) accepted had only lasted for four days when it had, in fact, lasted for three months, and the Heywood Digital Register problem that Dr Hughes accepted had lasted for only five days when it had lasted for five weeks (see below), in Dr Hughes' award, his comment on the MELU RVA problem was that. : *"... all calls through this exchange to Cape Bridgewater were directed to RVA for at least 16 days"* – obviously nowhere near seven or eight months!

Example 2: Heywood Portland Switching 40 Register RVA Problem: At point (89 to 91) in the AUSTEL Cape Bridgewater draft report they note: *"2 October and 7 October 1992. It is not clear how the duration or extent of the problem were so precisely identified. Other evidence also suggests the problem had existed for a longer period than a 5 day period. From the recent information provided by the Heywood caller via Mr Smith the problem commenced at least 10 days earlier than the period Mr Smith was informed by Telecom".* Telstra FOI document R01444 confirms the problem was in existence from at least 2nd September 1992 to 7th October 1992 five weeks NOT five days as Telstra advised the arbitrator.

In the arbitrator's award he notes: *"there is evidence that one of the 40 registers in the Portland ARF minor switching centre was fault for 5 days between 2 October and 7 October 1992".*

Example 3: Lightning Strike: At point 158 in the Cape Bridgewater Holiday Camp draft report AUSTEL notes that: *"The crucial issue in regard to the Cape Bridgewater RCM is that assuming the lighting strike did cause problems to the RCM in late November 1992 these problems were not resolved till the beginning of March 1993, over 3 months latter"*. Telstra fault file (XLS – 736-737) confirms the fault lasted for at least three months.

On page 33 in the arbitrator's award (on this same subject) he notes: *"damage was caused to Cape Bridgewater RCM equipment by lightning strike on 21 November 1992, resulting in a variety of complaints which affected services for 4 days before restoration action was taken"*.

Example 4: ARK Exchange v RAX Exchange The following information shows how the suppression of this same draft report – stopped both the arbitrator and my technical advisor, George Close, Telecommunications Consultant from being able to correctly investigate the first three and a half year period of my claims.

Exhibit 1, pages 2 and 3 from AUSTEL's covert draft report dated 3rd March 1994 notes, at point 6: *"A Telecom Minute from regional Manager dated 5 October 1992 provides background to the service changes which have occurred at Cape Bridgewater Holiday Camp. Mr Smith has had an ongoing complaint about his level of service for some time... Customer was originally connected to an old RAX exchange, which had limited junctions between Portland and Cape Bridgewater"*.

Exhibit 2, point 7.29 on page 164 of AUSTEL's final report dated April 1994, notes: *"Mr Smith of the Cape Bridgewater Holiday Camp, one of the 'original COT Cases', reported a significant level of faults when serviced by the analogue ARK exchange at Cape Bridgewater. That exchange was replaced in 1991 with a modern AXE digital at Portland together with a Remote Customer Multiplexer (RCM) at Cape Bridgewater."*

Exhibit 3, page 2 of George Closes' report dated August 1994 notes: *"The ARK unmanned exchange was by 1988 an obsolete and outmoded electro-mechanical. It was severely under-trunked for its requirement and being unmanned suffered continued maintenance limitations. In August 1991, Telecom replaced the obsolete ARK exchange at Cape Bridgewater and replaced it with a Remote Customer Multiplexer (RCM)"*.

Exhibit 4, page 3 of Telstra's B004 Arbitration Defence report dated 12th December 1994 notes: *"It is significant that the original exchange configuration is erroneously identified as being an ARK exchange parented by Portland AXE 104 exchange. An ARK exchange operates in an entirely different way compared to an RAX exchange and the Portland AXE 104 exchange was not in place originally, nor did it act as a parent exchange for the RAX exchange at any time. It is therefore impossible to consider, let alone support, any of the points made in the Close Report regarding the traffic handling capacity, operation of or maintenance practices associated with Mr Smith's services."*

MOST IMPORTANT

Government records from before my arbitration show that AUSTEL advised various Government Ministers that the first four COT claimants (of which I was one) were not being provided with FOI documents to enable them to prepare their claims.

Because Telstra would not provide the FOI documents I needed to support my arbitration claim, when George Close, my telecommunications consultant, was preparing his report on my behalf, he was therefore forced to rely on the final AUSTEL COT Report. As we now know however, the final version of AUSTEL's report incorrectly states that the telephone exchange in use between February 1988 and August 1991 (the first part of my claim) was an ARK. Mr Close of course had no way of knowing that the final AUSTEL report had been 'doctored' which benefitted Telstra arbitration defence, and so he based his findings on the information in that final report. After all, if we cannot rely on a report prepared by the Government Regulator, what can we rely on?

It has since been pointed out by various technical people that Telstra couldn't risk AUSTEL's final report showing that my business had been connected to an old and outdated RAX exchange (as shown in AUSTEL'S draft report on pages 2, 6 and 64) because the RAX exchanges were supposed to have been phased out by 1983. If it became general knowledge that Cape Bridgewater had still been connected to an RAX exchange in 1991,

eight years after the RAX exchanges had been declared obsolete, then Telstra would not have been able to defend any of my arbitration claims, nor any other claims that might have been lodged by other Cape Bridgewater businesses and/or residents, who believed they were entitled to compensation from Telstra. When AUSTEL stated, in their draft report, that: *"A Telecom minute of 5 October 1991 indicates the old RAX had limited junctions between Portland and Cape Bridgewater meaning that congestion was a problem for all customers on the Cape Bridgewater exchange,"* they confirmed that there was a serious risk of numerous compensation claims against Telstra if those findings remained in the final, public report.

In August 1991, when Telstra was still using the RAX exchange at Cape Bridgewater, there were seventy-two dwellings comprising of approximately 156 people, all using the same RAX exchange but that RAX exchange had been declared obsolete eight years earlier, because it only had eight final selectors which meant that, if four people in Cape Bridgewater were talking on the prone at the same time, then only four incoming calls could get through to the other 152 residents. And in the summer months the population more than doubled when holiday-makers arrived.

On 8th November 2002 I received a letter from a Barry Sullivan, stating: *"I am writing to you following viewing the Channel 9 Sunday Programme on 3/11/02, After viewing the Sunday programme, I realise the similarities your business and others had with Telstra ten years ago with the similarities our building business had, when we lived at Bridgewater. During a period of time between the late 1980s and early 1990s we had considerable amount of difficulty with our phone. Our phone problem had such a negative effect on our building business over a period of time that our work dried up."* This corresponds with AUSTEL's draft report when it noted: *"Given the range of faults being experienced by Mr Smith and other subscribers in Cape Bridgewater is clear that Telecom should have initiated more comprehensive action than the test call program"*, thereby confirming both Mr Sullivan's experience and statements made by various technical experts who all noted that the AUSTEL report would have had to have been doctored under pressure from the Telstra Board.

The issue of the RAX exchanges is covered in a Telecom Acronyms and Abbreviations Dictionary dated January 1985 which notes, on page 78, that the *"RAX (switching) Remote Automatic Exchange - now obsolete"*. In the revised edition of the Acronyms and Abbreviations Dictionary dated July 1986, there is no mention of the existence of the RAX exchanges. So, in the same way that Telstra pressured AUSTEL to change the information in their draft report (which recorded 120,000 COT-type customer complaints) so that the final AUSTEL report recorded instead 'more than fifty COT-type' customers, it seems that Telstra again pressured AUSTEL into changing more of the true facts in their final report concerning the long-outdated Cape Bridgewater RAX. We don't need to be mathematicians or technical consultants to understand the ramifications of Mr Close not knowing that the Cape Bridgewater exchange was actually thirty years older than was shown in the final AUSTEL report. Mr Close's report cost me $25,000.00 and it is now quite clear that the section of his report that covered the first three and a half years of my claim (which covered six years in all) would have been quite different if only he had been in a position where he could have asked the arbitrator to ask Telstra to explain why old RAX equipment was still in use in Cape Bridgewater in August 1991, when it had been declared obsolete eight years earlier (in 1983).

A comparison of AUSTEL's covert draft report dated 3rd March 1994, on the Cape Bridgewater Holiday Camp, and the final version of the final AUSTEL COT Cases Report proves that many of the adverse findings in the draft Cape Bridgewater report are not broadcast in the final report, as they should have been according to Section 342 of the Telecommunications Act 1991 (3), which states that: *"A report under this section must cover: (b) any findings that AUSTEL has made as a result of the investigations"*.

At point 3.7 and 3.8 in the arbitrator's Award on my matters under the heading ***AUSTEL Report*** he notes: *" (a) The AUSTEL Report recorded the results of AUSTEL's investigations into the substance of the complaints by the COT Cases regarding the service received by Telecom," The report accepted that the COT Cases had experienced like service difficulties and faults but these faults were "intermittent" and their fault causes difficult to trace." The report emphasised, however, that these observations were not necessarily relevant to the determination to be made by me as to whether Telecom had failed to meet acceptable service standards or whether these deficiencies had caused the losses claimed by the COT Case"*.

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The AUSTEL draft report clearly states (in my case) that Telecom did not meet acceptable service standards noting: *"Cape Bridgewater Holiday Camp has a history of service difficulties dating back to 1988. It is apparent that the camp has had ongoing services difficulties for the past six years which has impacted on its business operations causing losses and erosion of customer base. Service faults of a recurrent nature were continually reported by Smith and Telecom was provided with supporting evidence of this in the form of testimonials from other network users who were unable to make telephone contact with the camp. In view of the continuing nature of the fault reports and the level of testing undertaken by Telecom doubts are raised on the capability of testing regime to locate the causes of faults being reported".*

PLEASE NOTE: there is no reference in the draft AUSTEL Cape Bridgewater Holiday Camp report that records my telephone faults as having been intermittent. Just imagine what the arbitrator's award might have shown had he been in receipt of AUSTEL's draft report on my matters.

As the current Chairman of the Board, how can you ignore this clear proof that AUSTEL's final report to the Minister did NOT include all the findings that resulted from their investigations? Neither you nor the Board have a choice here Mr Chapman, because this evidence proves that AUSTEL, your predecessors, clearly breached their statutory obligations to me when they provided doctored information to the relevant Minister and the arbitrator rather than the true facts.

Your office is also in receipt of a letter dated 15th July 1995, from Amanda Davis, AUSTEL's previous General Manager of Consumer Affairs in which she notes: *"...The AUSTEL report looks good to the casual observer, but it has now become clear that much of the information accepted by AUSTEL was at best inaccurate, and at worse fabricated, and that AUSTEL knew or ought to have known this at the time".*

I conclude on these comments. Voltaire warned that it is dangerous to be right when the government is wrong. I believe if freedom matters, oppression and abuse of power simply must be resisted. I believe that one person's stand can make a difference.

Even after sixteen years struggling for justice, I hold firm to the principle of equality before the law for all. It matters. It is a non-negotiable value of this nation. It sustains our freedom and democracy.

At this very hour, our government is sending soldiers to Iraq and Afghanistan on the promise to these two nations that freedom and democracy is worth fighting for. The collusion that existed between AUSTEL and Telstra during my arbitration has made a mockery of the words freedom and democracy.

Please accept this letter as further evidence in support of my request to the ACMA for free access to the documents requested under FOI, in the public interest.

Thank you,



Alan Smith

Copies to:

Mr Graeme Samuel AO, Chairman of Australian Competition & Consumer Commission,
Mr Paul Crowley, CEO Institute of Arbitrators Mediators Australia, and other interested parties.

Seal Cove Guest House
1703 Bridgewater Road
Portland 3305
Phone: 03 55 267 170

9th September 2010

Ms Clare O'Reilly
ACMA
P O Box 13112,
Law Courts
Melbourne 8010

Dear Ms O'Reilly,

Thank you for your letter of 3rd September 2010 which notes, at point 18, that my claim for free access to the documents I am seeking is not in the public interest and, at point 19, that the COT / public interest consideration has been reviewed numerous times by several public bodies over the past fifteen years or so, and that the TIO and ACMA consider the matter now closed.

COLLUSION 1

You may not be aware that the TIO is not a public body – it is owned (and paid for) by Telstra and other Telco companies. During the TIO-administered COT arbitrations the TIO seconded a Telstra employee, Grant Campbell, to run the TIO's fault-handling division. During my settlement process, Mr Campbell even signed letters to Telstra on behalf of the TIO (then Warwick Smith), letters directly related to my Fast Track Settlement Proposal (FTSP). Some of the letters that Mr Campbell signed advised Telstra that certain fault issues were not part of my arbitration even though they had already been included in my interim Statement of Claim. Interestingly, this part of my claim vanished during my arbitration and was never sighted again. Copies of these letters can be provided. This is the same Grant Campbell who is missing from the staff list in the TIO's annual report of 1993/94 and is not included in a photo of TIO employees that year – probably because he was not being paid by the TIO but by Telstra – the defendants of my claims. This is also the same Grant Campbell who dealt with my claims of ongoing lock-up/billing fax and 008/1800 problems during the early part of my arbitration but then jumped ship and joined Telstra's Customer Response Unit, which is the division of Telstra that he had previously written to while wearing his TIO hat, about what he said were not problems associated with my FTSP. Then Mr Campbell began to work on addressing the same 008/1800 faults (the same ones I had raised with him when I believed he was employed by the TIO) on behalf of Telstra in relation to another COT complainant. Furthermore, Telstra's Ted Benjamin, who was manager of the Customer Response Unit was also, at the same time, a sitting member of the TIO Council and, on 26th September 1997, Mr Benjamin admitted to a Senate Estimates Committee, in front of John Pinnock (then the TIO) that, when he was on the TIO Council between June 1993 and September 1997 he never once declared a potential conflict of interest when TIO-administered COT/Telstra arbitration issues were being discussed. When Senator Schacht asked Mr Benjamin, for the second time, *"Did the council make any decisions about CoT cases or express any opinion"?* Mr Benjamin replied: *"I might be assisted by Mr Pinnock."* and Mr Pinnock replied: *"Yes"* however neither Mr Pinnock nor Mr Benjamin ever advised the Senate that, during the COT arbitrations, a covert agreement had meant that all documents submitted to the arbitration were first vetted by the TIO-appointed Resource Unit of Ferrier Hodgson Corporate Advisory who were secretly given authority by Warwick Smith (TIO) in conjunction with Telstra's Steve Black in deciding which documents would be passed on to the arbitrator and which would be withheld.

The ACMA already has information proving that the 008/1800 billing information that AUSTEL sent to the arbitrator concerning my matters never reached him. Also, some of the 008/1800 information that I sent to the TIO while Mr Campbell was there signing letters on behalf of the TIO were not returned to me

after the end of my arbitration, indicating that this information had also been hidden or destroyed so that the arbitrator would not see it.

All this information clearly and thoroughly negates your 'advice' that the TIO has already correctly investigated my matters. Other information in the ACMA's archives will also prove that:

1. Mr Benjamin wrote to Mr Pinnock on 4th February 1998, thirty-three months after my arbitration, in relation to 14th January 1998 Telstra file notes regarding their investigation into my complaints of ongoing lock-up/billing problems, but Mr Pinnock saw fit to withhold this letter from me until after I had sold my business in December 2001;

2. When the new owners of my business began to complain of the same ongoing telephone problems that I had first raised with AUSTEL in 1993, Mr Pinnock allowed Telstra to provide the new owners Darren & Jenny Lewis, with a report that ridiculed them, inferring that they had imagined the problems and almost calling them liars. A copy of this report can be provided.

3. According to a report dated 26th July 2007, prepared by Mr Brian Hodge MBA (B.T. Telecommunications), who had worked for Telstra for 29 years before setting up his own business, Telstra fudged the results of Service Verification Tests supposedly carried out at my business. According to Mr Hodge these tests had not been carried out at all and neither had the so-called BCI, Cape Bridgewater RCM tests that AUSTEL's Cliff Mathieson secretly told me had not been performed as reported. He also noted in this report concerning the ongoing telephone complaints by the Lewis' that: *"The failure of Telstra to carry out standard performance tests (e.g. bit error rate etc), at the multiplexer (RSM) at Cape Bridgewater is alarming & of concern. CCAS data over recent times (e.g. 2004-2006), indicate a continuing & worsening level of "Outgoing Released During Setup' calls (ORDS). These reports on the CCAS data indicate that the calls are not successful in the call set up stage of the connection or is lost in the network."*

At point 212 in the 3rd March 1994 Cape Bridgewater Holiday Camp draft AUSTEL report it is noted: *"...In view of the continuing nature of the fault reports and the level of testing undertaken by Telecom doubts are raised on the capability of the testing regime to locate the causes of faults being reported."*

FREEDOM OF INFORMATION ACT (THE ACT)

When the FOI Act was formulated, no-one would ever have believed that a Government Regulator like AUSTEL would breach its statutory obligation to fellow Australians by deliberately withholding relevant information from a Government Minister and would allow another Government-owned Corporation (Telstra) to submit false statements to an arbitration process that had been endorsed by the government, under oath – which is what Telstra did when they stated that their Cape Bridgwater Holiday Camp SVT testing regime had met all of the Regulator's specification when they had already been warned by that same Regulator that they did not meet the AUSTEL's specifications. If anyone had thought that this might happen in the future then the FOI Act may have included a provision that, if someone could prove that a public servant or a Government Agency was aware of this illegal behaviour but had concealed what they knew, then the documents that might implicate those public servants or Government Agencies could have been considered to be 'of public interest'.

On 20th January 1994 when Telstra was refusing to supply AUSTEL documents to enable them to prepare their COT Cases Report, Ms Philippa Smith, Commonwealth Ombudsman wrote to Jim Holmes, Telstra's Corporate Secretary noting: *"...I received complaints from three 'COT Cases' Mr Graham Schorer, Mr Alan Smith and Mrs Ann Garms, concerning Telecom's handling of their applications under the Freedom of Information Act (FOI Act). In the circumstances, the giving of access to information required by the applicants to present their cases to the assessor appointed under the FTSP is in the general public interests, in the context of s(5) and s30A(1)(b)(iii) of the FOI Act. Accordingly, it is my view that Telecom should waive payment of the application fees in respect of the FOI applications.*

COLLUSION 2

A Telstra document printed on 10th February 2003 and headed Telstra Confidential (FOI folio 100265) says:

(a) *"Min Rep 20021000381: David Hawker MP has written to Senator Alston on 10 October and included a 3 October letter from Darren and Jenny Lewis. This 3 October letter has been cc-d to the TIO but doesn't seem to have made it's way into Telstra yet. Will follow in Cicero and respond accordingly. Hopefully, the TIO will become involved and that will take the Minister and Member out of the equation..."*

this suggests that, with Senator Richard Alston (Minister for Communications and the Arts) and David Hawker MP (Federal Minister of Parliament for Mr & Mrs Lewis) out of the way, and with the assistance of the TIO, Telstra could continue to conceal just how bad the ongoing telephone problems had been, and still were, at the Cape Bridgewater Holiday Camp. If this document doesn't make you wonder if there could possibly be another side to that presented by the TIO, the TIO board and the TIO Council, then I ask that you also consider Telstra FOI document 100271, headed Telstra Confidential, also printed on 10th February 2003, which notes:

(b) *"The TIO have now raised a level 1 complaint on behalf of Mr & Mrs Lewis. The TIO have specifically mentioned in their correspondence that the TIO have previously investigated a number of complaints raised by Alan smith the previous account holder for this service".*

These two documents are particularly important because from 23rd June 1995 (six weeks after the end of my arbitration) until 27th February 2003, I continually wrote to the TIO, John Pinnock, warning him that the arbitration had neither investigated nor fixed the on-going lock-up problems on my three service lines but not once in those eight years did Mr Pinnock ever notify me of the result of any investigations he might have carried out, into the telephone problems at my business that were referred to in Telstra FOI document 100271, which confirmed that the TIO had investigated at least some of my complaints. I have always believed that no-one involved with the TIO's office would transparently investigate my telephone complaints after the end of my arbitration because that would have revealed Telstra's submission of false evidence to the arbitrator (e.g. when Telstra falsely stated, under oath, that they had carried out their Cape Bridgewater Holiday Camp (SVT testing regime) according to all of AUSTEL's specifications).

PERVERSION OF THE COURSE OF JUSTICE

Back when the ACMA was the Australian Communication Authority (ACA) the Chairman was Mr Tony Shaw. Mr Shaw knows that EXICOM TF200 telephones manufactured in April 1993 all had a tendency to lock-up after each call but Telstra claimed that my problems were caused by beer found inside the EXICOM TF200 that they collected from my business. Mr Shaw, the TIO Board and Council, and Telstra's previous Corporate Secretary all have copies of Telstra's original laboratory file notes which prove conclusively that Telstra's twenty-nine-page TF200 report was simply 'manufactured': submission of this fraudulent report certainly perverted the course of justice during my arbitration however neither Telstra nor the TIO-appointed technical unit ever investigated why my fax line (03 55 267 230) kept locking up even after Telstra had installed a new EXICOM TF200 phone.

Documents I received from the TIO seven years after the end of my arbitration proved beyond all doubt that Dr Hughes did not base his technical findings on reports submitted by DMR Canada and Lane Telecommunication, even though the award states that he did, because the draft version of the award refers to Dr Hughes basing his findings on DMR Australia's report (not DMR Canada & Lane Telecommunication) and all the technical information in both the draft and final versions of the award are exactly the same. DMR Australia had to pull out of the arbitration process because of a conflict of interest and DMR Canada and Lanes were not accepted by the claimants until after 9th March 1995 but the draft award states: *"... pursuant to paragraph 8 of the arbitration agreement, I had the power to require a "Resource Unit", comprising Ferrier Hodgson, Chartered Accountants, and DMR Group Australia Pty Ltd, to conduct such inquires or research as I saw fit, on 21 February 1995, by which time I was satisfied*

that the submission of all relevant material by both parties was complete, I instructed Ferrier Hodgson (and through them, DMR) to conduct certain inquires on my behalf." So the question is, who **did** provide the technical findings that the arbitrator used when he prepared his award? Because those findings (as opposed to AUSTEL's findings) were in favour of Telstra in relation to four major defence areas – the same areas that AUSTEL included in the draft version of their Cape Bridgewater Holiday Camp, finding so strongly against Telstra, but which were then entirely omitted from the final version of the AUSTEL report. This means that, if Dr Hughes had been given a copy of AUSTEL's draft version of their Cape Bridgewater Report then Dr Hughes' findings in those four areas would have been in favour of my claims, not in favour of Telstra's defence – which is the way it is in my award

TELECOMMUNICATIONS ACT 1991 – SECTION 342 (3)
The draft version of the AUSTEL Cape Bridgewater Holiday Camp report (dated 3rd March 1994) confirms that AUSTEL was not able to gain access to some of the most relevant documents they needed, in order to complete their investigations into my complaints, but they didn't bother to tell the Minister about this problem, even though they should have, according to Section 342 (3) of the Act, which states: *"A report under this section must cover: (a) the conduct of the investigation concerned,"* when, in my case, at the very least (see points **(48), (49), (71)** and **(140)** as shown in the AUSTEL draft) AUSTEL's final report should have included notification for the Minister that they had to base some of their findings on insufficient information.

At point **(48)** in the draft Cape Bridgewater report AUSTEL notes: *"AUSTEL has been hampered in assessing Telecom's dealings with Mr Smith by Telecom's failure to provided files relating to Mr Smith's complaints.* **(49)** *As a result of Telecom's failure to provide file documentation relating to Mr Smith some of the following conclusions are consequently based on insufficient information;* **(71)** *AUSTEL has not been provided with documents on which the conclusions in this briefing summary were reached. It can only be assumed that they are contained within the documentation not provided to AUSTEL;* and **(140)** *It should be noted that AUSTEL's investigation of matters relating to the RCM problem has been hampered by Telecom's failure to make available to AUSTEL a file specifically relating to the Pair Gains Support investigation of the RCM. This file was requested by AUSTEL on 9 February 1994."*

Since we now know that AUSTEL didn't advise the Minister that Telstra would not cooperate with AUSTEL regarding the supply of relevant information, and neither did AUSTEL warn the Minister that Telstra was therefore not abiding by the Act, then AUSTEL clearly breached their statutory obligation to me, as one of the COT complainants under investigation by AUSTEL. And since it is clear that the telephone problems that continued to affect my business through the Cape Bridgewater RCM from the time of AUSTEL's report of 3rd March through until I sold the business in December 2001, it is clear that this non-supply of documents by Telstra destroyed my life and the life of my partner Cathy.

What the ACMA are currently failing to understand is that some of the FOI documents I am asking the ACMA to provide, free of charge and in the public interest, are some of the same documents that AUSTEL originally sourced from Telstra as they prepared their draft Cape Bridgewater report which produced such adverse findings against Telstra in relation to my claims. The information in those Telstra documents was only referred to in the draft version of the report, and completely omitted from the final, public version that was then provided to the Minister (according to Sections 335 and 342 of the Telecommunications Act 1991) – this should be reason enough to convince the ACMA that I should now be given those Telstra documents free of charge and in the public interest, particularly since the then Labor Government endorsed my arbitration.

What would you do if you discovered proof that the person who prepared an AUSTEL draft report (in my case that was Bruce Matthews) had been writing secretly to Telstra's Steve Black and the arbitrator, Dr Gordon Hughes, during your arbitration, in relation to major billing issues that you had legally and officially raised as part of your claims but that those same billing issues were NOT addressed during your arbitration, rather AUSTEL allowed Telstra's Steve Black to address them five months after the end of

your arbitration and therefore outside of the arbitration process, after first allowing Telstra to ignore them during the arbitration?

What would you do if you discovered proof that, on 19th May 1995, during your arbitration appeal period, the same Steve Black had written to the same Bruce Matthews, noting: *"Please note that the letter may change pending the reconciliation of the Arbitrator's comments on Telstra's legal liability in the Smith decision,"* when the decision being discussed related to your arbitration process which was based on an agreement that the arbitrator had secretly allowed to be altered to your detriment and then, the day after using the secretly altered agreement to finalise your arbitration, the arbitrator wrote to the TIO (then Warwick Smith) declaring that the agreement was not a credible document and should be revised for the next three claimants?

What would you do, Ms O'Reilly, if you were in my shoes, knowing that the arbitrator had determined Telstra's legal liability, as discussed in the letter of 19th May, using an agreement he had allowed to be altered, which he had then used for your arbitration and which he then condemned as NOT credible? How could Dr Hughes have provided his opinion regarding legal liability, when the billing issues that Bruce Matthews first raised with Steve Black on 4th October 1994 were not addressed by Mr Black until 16th October 1995, five months after the end of my arbitration? It is just as important to know that Telstra provided Dr Hughes legal opinion on Telstra's liability to AUSTEL during my arbitration appeal period, but I was not privy to that information – which proves exactly how undemocratic my arbitration was.

As the ACMA's Senior Lawyer you would by now have noted that my matters have never been dealt with in a manner befitting a Government Regulator and my Government-endorsed arbitration was a very long way from being conducted transparently or according to the principals of natural justice. If these facts do not convince you to provide my FOI documents free of charge in the public interest then it might be seen by some that the ACMA is following AUSTEL down the same path of denial.

I believe I have produced a good argument for the release of the documents that AUSTEL must have used to arrive at their findings in relation to my matters, but which are not included in the list of FOI documents that AUSTEL intend to charge me for, because there should have been a special provision included in the FOI Act see above. I believe I have provided good argument to support my claims that the ACMA will never willingly provide the most relevant documents (which should have been provided in 1994) because these documents may implicate their predecessors, AUSTEL, in this giant blunder, which has ruined both my life and the life of my partner, Cathy.

I ask that you to reconsider your position in this matter and provide me the information I am seeking free of charge in the public interest.

I await your response.

Thank you,



Alan Smith

Cc Kate Hebbard, Director Communications Enforcement & Compliance, Communication Group ACCC and other interested parties.

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Seal Cove Guest House
1703 Bridgewater Road
Portland 3305
Phone: 03 55 267 170
15th September 2010

Ms Kate Hebbard,
Director
Communications Enforcement & Compliance Communications Group
Australian Competition & Consumer Commission
GPO Box 520
Melbourne Vic 3001

Dear Ms Hebbard,

Thank you for your letter dated 31st August 2010 (Complaint about AUSTEL and Telstra) in response to my letter to Mr Samuel on 8th and 11th August 2010. In my letters to Mr Samuel I detailed my concerns regarding the unethical way that AUSTEL omitted to include their own extremely adverse findings against Telstra in the final version of their COT Cases Report, which was then used in the COT arbitrations to assist both the COT arbitrator and the claimants regarding the matters being investigated by the arbitrator. I believe that most Australian citizens would find this situation intolerable. I am aware however, that no matter who investigates, or even attempts, to investigate, this matter, they will be misled by those with a vested interest in concealing the truth concerning the alterations to this Government-funded report.

In the third paragraph of your letter you refer to: *"... the AUSTEL COT arbitral process conducted in approximately 1994 under which you obtained a settlement for your complaint about faults with your Telstra telephone service"*, suggesting that you believe I received a reasonable settlement at that time. As I have shown in my recent letters to Mr Samuel and Mr Chapman, Chairman of the ACMA, the settlement I received in 1995 did not take into account some of the more adverse findings against Telstra that, although they were recorded in AUSTEL's draft Cape Bridgewater Holiday Camp report, were deliberately withheld from the Hon Michael Lee MP (the relevant Minister), Dr Gordon Hughes (the arbitrator) and me.

In 2008 I provided Mr Chris Chapman, Chairman of the ACMA, with a copy of Telstra's CCAS Data for the Service Verification Testing (SVT) process carried out at the Cape Bridgewater Holiday Camp on 29th September 1994 (***Exhibit SVT25*** on the CD). This data confirms that the tests were never undertaken. It is an offence for a public officer to allow falsified documents to be provided to a Government Minister and I have been advised that it is possible that, during the COT arbitrations, at least two ex-AUSTEL employees were afraid that, if they had revealed AUSTEL's involvement in concealing the more adverse findings against Telstra, then Section 70 of the Crimes Act 1914 could be applied to them.

It is now well known that on 21st March 1995, AUSTEL's Cliff Mathieson advised me that AUSTEL knew then that the Cape Bridgewater RCM / BCI tests could never have been carried out as stated in the BCI report. The *BCI & SVT – Telstra's Misleading and Deceptive Conduct* reports that have been provided to Mr Samuel on CD confirm that, when I told Mr Mathieson, on 21st March 1995, two months before the arbitrator handed down his award on 11th May 1995, that I had warned the arbitrator, numerous times, that neither the BCI tests carried out at the Cape Bridgewater RCM nor the AUSTEL-facilitated SVT process had been performed in the way that Mr Mathieson and other AUSTEL employees had advised the COT claimants they would be performed (or had already been performed), Mr Mathieson told me he understood my frustration but there was nothing AUSTEL could do because these issues were subject to the arbitration process. The tone of Mr Mathieson's voice at the time could be described as a bit like a scared rabbit, strongly suggesting that he was struggling with having to tell me there was nothing AUSTEL could do about the way Telstra had illegally submitted false information to the arbitrator, under oath.

Section 70 of the Crimes Act 1914 directs that any unauthorised disclosure of information by Commonwealth Officers is a breach of the Act. If certain public servants of the ACMA are afraid to disclose what they know concerning AUSTEL's involvement in allowing Telstra to submit false evidence into an arbitration process because of the provision of various sections of the Crimes Act 1914, then the Act needs to be changed.

I decided to respond to your letter of 31st August because it was written after I had written to Mr Samuel and because of the seriousness of the issues I raised with Mr Samuel in my letter of 1st September, particularly the situation that arose as a result of this doctored Government Report being accepted as true evidence when the major findings against Telstra had been removed before it was submitted to the Government and arbitrator – a clear breach of AUSTEL's statutory obligation to me (as one of the complainants whose matters were the subject of the AUSTEL's investigations) under Section 335 (1) and 342 of the Telecommunications Act 1991 which states: (1) *"After concluding an investigation under subsection 335(1). AUSTEL may prepare and give to the Minister a report under this section. (2) After concluding an investigation under subsection 335 (3) AUSTEL must prepare and give to the Minister a report under this section. (3) A report under this section must cover: (a) the conduct of the investigation concerned; and (b) any findings that AUSTELL has made as a result of the investigation."*

In your letter you have noted that, in your view: *"... it is not clear that any conduct that arose in these arbitrations or in the Senate would constitute "in trade or commerce" as is required to consider any possible contravention of section 52 in Part V of the TPA"*. While I respect your view in this matter, the problems I have raised are not just arbitration issues, they are issues of a Government Regulator (AUSTEL) allowing a Government-owned Corporation (Telstra) to submit, into a litigation process, evidence that the Regulator (AUSTEL) and the defendants (Telstra) both knew had been falsified in a so-far successful attempt to conceal, from the arbitrator, exactly how bad the telephone problems at the Cape Bridgewater Holiday Camp were. What makes this cover-up even worse is that AUSTEL's 3rd March 1994 secret draft report, *"Alan Smith – Cape Bridgewater"* was provided to Telstra but withheld from the Minister, the arbitrator and me.

In my letter dated 8th August 2010, to Mr Chris Chapman, Chairman of the ACMA (copied to Mr Samuel), I described the secret arrangement that had been reached between AUSTEL's Mr Horton (Acting Chairman, Telstra and the TIO on 11th January 1994, when they agreed between themselves that any documents that AUSTEL obtained from Telstra during AUSTEL's regulatory investigations into COT claims of ongoing telephone problems would not be released to the arbitration process until they had first been vetted by the TIO.

On 2nd August 1996, eighteen months after the arbitrator (Dr Hughes) had completed his deliberations on my arbitration the TIO-appointed arbitration resource unit (Ferrier Hodgson) wrote to advise Dr Hughes that, during my arbitration, they had vetted various letters addressed to him from AUSTEL and Telstra and chose to withhold that information from being investigated. This admission is clearly linked to the secret agreement entered into between AUSTEL, Telstra and the TIO on 11th January 1994 four months before the COT claimants even signed the arbitration agreement.

It is also astonishing to find that this same Government Regulator (AUSTEL) supplied their adverse findings regarding a Government-owned Corporation (Telstra) to Telstra but hid that information from the relevant Government Minister and the public while the Government-owned Corporation (Telstra) submitted false testament in defiance of the Regulator's warnings, and told the arbitrator in a Government-endorsed arbitration process that the claimants (the members of COT) had no case against Telstra, even though the Regulator's draft report proved otherwise. In other words, even though Telstra was aware of AUSTEL's adverse findings concerning my telephone problems they still chose to lie under oath to the arbitrator concerning these proven findings: clearly Telstra knowingly perverted the course of justice in defence of my arbitration claims.

CONCLUSION

The attached Report dated 16th September 2010, is a report addressed to Mr Graeme Samuel AO Chairman of the ACCC titled: *"Is Section 70 of the Crimes Act 1914 being exploited by public officials to the determent of Australia's constitution? - Did AUSTEL breach their statutory obligation under Section 335 and 342 of the Telecommunication Act 1991 No 98 of 1991"?* This report and the accompanying exhibits will help you understand what really transpired during the COT arbitration process. As with all COT matters, what you have is a very small business fighting large Government Corporations and Departments. It would be bad enough if we had to fight Telstra alone, but we have also had to fight the Government Regulator AUSTEL because, as I have previously proved, they withheld vital evidence that, in my case, would have given me grounds to demand further investigation under the already signed Fast Track Settlement Proposal (FTSP). If that FTSP had been allowed to proceed, rather than the claimants being forced to move to an Arbitration Process, and if AUSTEL had provided the draft version of their Cape Bridgewater Holiday Camp report to the Minister, the arbitrator, and me, there would not have been any

need for an arbitration procedure because AUSTEL's secret draft report had already found so adversely against Telstra. After all, how could Telstra have argued against the legitimate findings of the Government Regulator, whose findings had been based on documents the regulator had sourced from Telstra? All that would have been required would have been for the assessor to award quantum and ensure that my phone problems had all been fixed.

In summary – AUSTEL's hiding of their true findings has cost me dearly and what the TIO, AUSTEL and now the ACMA have failed to understand is that it took eighteen months of my life and an enormous financial burden to complete my arbitration and all I was unknowingly doing was attempting to prove the facts that AUSTEL had already proved (in their draft report) while Telstra submitted false witness statements, under oath, denying there were any problems affecting my business!

Have the ACMA Chairman Chris Chapman, the ACMA Board or the TIO fully understood what happened as a result of AUSTEL concealing from the arbitrator and me what they knew to be the truth regarding my ongoing telephone problems? Senate Estimate Committee Hansard records confirm that Telstra spent millions of dollars in legal fees defending COT claims when, as it has now been revealed, the claims of at least two and possibly eight COT claimants had already been proved, months before the claimants signed the arbitration agreement.

Have the ACMA Board, the TIO Board and the TIO Council fully understood how much it has cost tax payers for Telstra to defend the COT claims when Telstra was a fully-Government-owned corporation? The cost to the taxpayer included the hiring of the TIO-appointed arbitrator; the TIO-appointed Special Counsel; and the TIO-appointed Resource Unit of DMR Canada and Lanes Telecommunications. The Resource Unit alone worked on assessing claim and defence documents from 1994 to 1998 – and all this money was spent as part of process where the Government Regulator had already secretly found in favour of eight of the COT claimants. If this isn't in the public interest then I would like to know what is.

On top of all these expenses (plus the enormous cost to the claimants) you can then add the cost of investigations run by Senate Estimates Committee Hearings between 1997 and 1999 and the Commonwealth Ombudsman's Office into the way Telstra refused to provide the claimants with the FOI documents they had a legal right to, particularly since the Government Regulator's secret draft report had already determined that Telstra had been at fault all along. The extra cost to the families who supported the COT claimants in this mammoth battle with the goliath Telstra Corporation simply can't be counted but that cost was also increased e normously by the protection that AUSTEL provided to Telstra so they could withhold vital evidence during the TIO-appointed arbitrations. If withholding the true findings of a Government Regulator's official investigation from the relevant Minister, a legally appointed arbitrator and legitimate claimants during a Government-endorsed arbitration process, at the cost to the Australian public (as part-owners of Telstra when it was fully owned by the Government) of millions of dollars, is not a matter of public interest then I have to ask again, what is in the public interest?

The issues detailed above are alarming, just on their own, and the enormous costs entailed could well have been avoided completely if the Government Regulator had exposed the evidence they uncovered in 1994 instead of hiding it, but this all pales into insignificance when you realise that the same Government Regulator is now demanding a $1,845.20 FOI fee to provide me with some of the very same documents that they must have acquired from Telstra in order to produce their draft Cape Bridgewater report, but which they hid from everybody involved in the arbitration – except Telstra.

I will now wait to hear whether Mr Samuel believes this matter should be investigated by the ACCC or another Government agency.

Sincerely,



Alan Smith
Cc Mr Chapman, Chairman of the ACMA and other interested parties