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27 October 1994

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C/94/195

Mr John MacMahon  
Australian Telecommunications Authority  
PO Box 7443 St Kilda Road  
MELBOURNE VIC 3004

*Handwritten signature/initials*

Dear Mr MacMahon

As I promised during the interview on 22 September 1994, enclosed is a copy of a transcript which was made by AUSCRIPT from the audio tape of the interview. I have enclosed a copy of the tape in case you wish to confirm the accuracy of the transcript.

Thank you for your assistance in this matter.

Yours sincerely

John Wynack  
Director of Investigations

**TRANSCRIPT  
OF PROCEEDINGS**



**AUSCRIPT**

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**COMMONWEALTH AND DEFENCE FORCE  
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**RECORD OF INTERVIEW**

**CONDUCTED ON**

**THURSDAY, 22 SEPTEMBER 1994**

**INTERVIEWERS:**

**JAMES HINDS, Senior Investigation Officer  
JOHN WYNACK, Director of Investigations**

**INTERVIEWEE:**

**MR JOHN McMAHON**

MR J. HINDS: It is 3.20 pm on 22 September 1994. This is an interview with John McMahon at the offices of AUSTEL, 5 Queens Road, Melbourne. I would like those present to identify themselves. I am James Hinds, Senior Investigation Officer.

MR J. WYNACK: I am John Wynack, Director of Investigations.

MR B. MATTHEWS: I am Bruce Matthews. I work in AUSTEL's consumer protection area.

MR J. McNAMARA: And John McNamara from AUSTEL.

MR HINDS: Now, we will need to administer an oath. I am just wondering whether you want to make an oath or an affirmation.

MR McMAHON: An oath.

**JOHN McMAHON, sworn:**

MR WYNACK: Thank you, John. First of all, we're interested in filling in some understanding of the development of the fast track settlement proposal for the four original COTs which culminated in the agreement of 21 November 1993. I don't want chapter and verse. Our primary concern is what consideration was given to the processes whereby these people would be able to obtain documentation to enable them to submit their claims. So my first question is was there any discussion prior to the signing of the proposal of the means whereby the claimants could obtain documents?

MR McMAHON: Well, I think the - it was always envisaged that they would get their documentation from Telecom. Telecom wasn't going to hand it out simply by request and it was run down the FOI line and essentially AUSTEL always was under the impression that they would make FOI requests and have the documentation made available to them.

MR WYNACK: I don't have a copy of the letter with me, but AUSTEL in fact . . . . inaudible. . . . to Telecom and an FOI application lodged by Ann Garms. Robin Davey actually relayed it on to Telecom complete with the application fee. The letter concluded with a statement along the lines - or a request along the lines, "Would you process this application

urgently as Ms Garms needs the information to submit her claim to - under the FTSB." Were you aware of that letter going out, John?

MR McMAHON: Yes.

MR WYNACK: And is - was that really the expectation that Telecom would give some priority to FOI requests?

MR McMAHON: I think the background to that letter was that there was not good feelings between Telecom and the COT cases. There wasn't a high level of mutual trust at that stage and when Mrs Garms sought to get documentation from Telecom she just wanted to involve AUSTEL in the process, and so I think it was a unique set of circumstances, but rather than lodge a request directly with Telecom she wanted to relay it through AUSTEL to try to give it that extra highlighting, I guess, and certainly the COT cases had been reported to AUSTEL the difficulty that they had faced in getting documentation from Telecom. You know, we knew it wasn't really forthcoming and certainly the fast track settlement proposal sought then to lodge their submission within six weeks of agreeing I think, and so it was apparent that the success of the whole arrangement was going to revolve around getting prompt access to their documentation. And so when Mrs Garms' request was relayed by the chairman he just noted that prompt co-operation on the provision of documentation was - seemed to be important.

MR WYNACK: Do you recall whether there'd been any discussion with Telecom officers generally about giving some priority to the FOI requests.

MR McMAHON: Well, my recollection is there wasn't a - there wasn't such a discussion. We've always taken the point of view that FOI is not within our jurisdiction and it's not for us to make too much of a - too much of the issue, but as I've said you know there have been occasions in which the allegations made by the individuals that they had difficulty in getting these documentation provided was raised with Telecom, but it was raised you know as an issue of relevance and not one that we were in a position to pursue, but just in the spirit of what had been entered into it shouldn't - it was a necessary part of the process.

MR WYNACK: In that period, around November just prior to the finalising of those agreements, did Telecom and AUSTEL discuss whether there were perhaps alternatives to FOI to getting the documents to the COTs? Did Telecom for example suggest another way?

MR McMAHON: Prior to the FOI - prior to the fast track, I don't believe they - I don't believe that took place. I think from the - originally

the - originally we always thought that the FOI mechanism was the one that would be utilised. As I said, I mean, Telecom wasn't handing out documentation without FOI. And I think that you know part of Telecom's attitude was conditioned by some of the things that happened in the early stages of FOI where some of the - at least one of the COT cases got documentation which was sensitive as far as Telecom was concerned under FOI and they put it into the public arena, and the impression I got was that Telecom's attitude to FOI hardened at that point, that they didn't want to have sensitive documentation going into the public arena and so there was provision in the arbitration procedures whereby the arbitrator could determine - or if he considered that there was documentation that Telecom had that hadn't been made available, then he could seek that extra material under that provision and I think there was some suggestion that Telecom would be happier with that rather than FOI as a means of preserving the confidentiality of the documents.

MR WYNACK: These events occurred back in late February through March '94 I suspect, the ones you're talking about. That would have been between the period when an arbitration process was proposed by Dr Hughes and the period when the COTs accepted or agreed to enter into the arbitration in April - or are we talking about a different period?

MR McMAHON: We're probably talking about a probably a different period. I think we're probably talking about an earlier period and I think the - I think the things that really gave rise to the attitude was summary material on taping and that would have - that would have been, what, early - that would be early January, wouldn't it?

MR WYNACK: Yes, I think this correspondence was late December.

MR McMAHON: Yes, late December, just after Christmas, and I think the release of some suggestion as to the taping of conversations to the press was a bit of a watershed.

MR HINDS: So the proposal was in November and this correspondence that?

MR McMAHON: Yes, yes, the - the fast track settlement proposal had this provision whereby the arbitrator could seek additional detail. Now, that I believe is a fairly standard clause in arbitration. But it was probably after the - putting in the public domain some sensitive documents that Telecom started to see that that might be from their point of view a preferable mechanism. I mean, that's my judgment. I've got nothing to support it.

MR WYNACK: The fast track settlement proposal, clause 1B - have you got a copy of it there, John?

MR McMAHON: Yes.

MR WYNACK: It refers to the attached copy of a proposed arbitration procedure. Is your recollection that that proposed procedure in that paper, which I have not seen, but say - - -

MR McMAHON: Do you want it?

MR WYNACK: Yes, okay, then, perhaps it would fill out my files a little. But was it ever intended that those rules in that procedure would apply to the four COTs who were signatories to the fast track settlement proposal?

MR McMAHON: The - yes, it was a general approach. It was the approach that Telecom was suggesting that they would use in arbitration procedures and my recollection is we put these details in front of the COTs to let them get a feeling for the general approach Telecom was intending to adopt. But they - their own fast track settlement was going to have some unique provisions. So this would be the general approach, but there would be certain variations for them in terms of - yes, some of those conditions would have been liberalised for them.

MR WYNACK: We have been informed by two of the COT members that Robin Davey assured them that the rules in that document which at some stage was attached to the proposal were not to apply to the four COTs and that they were never actually given a copy of that document, the document being the attachment referred to in clause 1B. Have you any recollection if that was so?

MR McMAHON: No, I - I couldn't state firmly one way or the other. I - I do believe that - I mean, certainly my belief, without going back to the files, and I'm not even sure that the files would establish it. This is some of the chairman's own papers that don't have the COT documentation you know from the COTs themselves. It's more his writings. But I believe that they were - that this document was put in front of them and certainly - certainly discussed with them. I mean, you know we had discussions in the boardroom here as to the general approach, and I think they - my recollection - I'll just check with Bruce, but my recollection is they came back with comments on it.

MR MATTHEWS: Well, that's my general recollection as well, but I'm not certain on it either. I would have to go back and check our file documentation.

MR WYNACK: It would be difficult for us to verify whether it happened. One way to do it of course would be to speak to the former chairman - former chairman, isn't it - - -

MR McMAHON: Yes.

MR WYNACK: - - - on the matter. We did see the - what purported to be copies of the signed agreements - there were four of them - and none of those had the proposed arbitration procedure rules appended to and I'd be interested to know whether or not when - was it AUSTEL who forwarded them on to Telecom or did the Telecommunication Industry Ombudsman? I'm not sure now. But I'd be interested to know whether or not they were appended at the time they were signed.

MR HINDS: Well, would your records show that? You say you can check your records. Would they show that or - - -

MR MATTHEWS: It may show that. Our records may show that. I'd have to check that.

MR McMAHON: I would hope though they would show one way or the other, but I think pages have been on and off the file on so many occasions that I couldn't 100 per cent vouch for it, but the chances are they showed them and I guess we can identify that before you leave the premises.

MR WYNACK: No, there's no need to do that. Perhaps you can contact me some time later and let me know. So I'm quite happy for that - - -

MR McMAHON: All right. But the other thing I'd say - and sure, I appreciate the timing element in - but these conditions that are set out in the proposed procedure were also incorporated in the public COT report as to what the procedure that Telecom was proposing.

MR WYNACK: Well, I haven't looked at the report - the AUSTEL report - and the reason is that the Ombudsman's investigation here is confined to a complaint about Telecom's processing of an FOI request. The questioning I'm engaging in here now is necessary because of statements made - conflicting statements made as to what the expectations of the parties were in regard to the provision of documents prior to the formal processes being agreed with Dr Hughes, which occurred ultimately in April but commenced on 3 February.

If I could just depart from that for the moment, has AUSTEL been involved in seeking to speed up the provision of documents by Telecom by any means or is that just - once the agreement was reached did you bow out then?

MR McMAHON: I think there have been a number of occasions on which we have mentioned to the Telecom personnel that the COT cases were alleging they were having difficulty in getting it and my recollection is we probably made reference to that in one or two letter to Telecom. But again because we were - it was outside our jurisdiction you know we didn't make a big issue of it and indeed when the - when some of the COT cases have complained to us you know we've said, "Well, there's a very limited amount that AUSTEL can do about it. It's not within its power but you could well take the case to the Ombudsman's office."

MR MATTHEWS: Can I add a comment to that as well, and that is in our report - one of the recommendations in our report that goes to Telecom's treatment of FOI applications and I think the recommendation said something along the lines that Telecom should increase the resourcing of its FOI area and improve the treatment of FOI applications, so in a sense that's a general pressure that we put on Telecom to hurry up the process.

MR WYNACK: What was the date the report was issued, the AUSTEL report?

MR MATTHEWS: The final report was April - I can't remember the date in April, but April 1994. The draft report was produced in March 1994 and Telecom received their copy of that at that time.

MR WYNACK: So that observation was made by AUSTEL notwithstanding that there was in place then, or about to become in place, an arbitration process which enabled the arbitrator to make directions that Telecom provide documents?

MR MATTHEWS: It was a general statement. It didn't necessarily apply to the four COT cases. It was just a general statement.

MR McMAHON: But, yes, I mean to say you know some of the suggestions made were that FOI was not dealt with when the - when the person with that responsibility went on holidays. You know, nobody filled in for him. Whether that's right or wrong I don't know, but that was the suggestion made and I've never heard it denied. So you know - and I think that's part of the background to the recommendation that Bruce identified there.



MR WYNACK: Are you aware whether Telecom had indicated that they would not provide documentation other than under FOI? I mean, if the claimants could obtain documents through other processes, why would it be necessary to use the FOI Act and why would there be such emphasis on FOI by both AUSTEL and the COT complainants? I mean, Ms Garms put her claim in under FOI on the day I think, or soon after the day she signed the fast track settlement proposal.

MR McMAHON: Well, Mrs Garms has had FOI you know claims in the past and she's had years ago - you know that's just the path they've run down. I mean, I don't know that anybody amongst the COT cases has got any documentation other than with an FOI request and I don't think a simple request is - leads you anywhere.

MR WYNACK: Is it true that the COTs needed to obtain documents - some documentation from Telecom in order to submit the claims, and to the assessor under the proposal agreed to in November?

MR McMAHON: Well, I would think so, yes. I mean to say, the whole emphasis of the fast track settlement proposal is that there should be a case establishing the extent of loss. Now, the individuals could have had some personal diary of telephone difficulties but you know the nature of the complaints that they were dealing with meant that - in particular I guess it was instances where people were ringing them but their phone wasn't ringing. And so you know by maintaining a diary of their own, they would never know of such instances or the frequency and extent of them. You know and the other cases were people ringing but the phone being engaged when it wasn't, and again they wouldn't know that. So the Telecom documents of exchange performance, testing, you know, were really essential to get a comprehensive picture and certainly one that would have due weight before an objective assessor. So, yes, very important to be able to establish a case.

MR HINDS: So Telecom would understand that the documentation was essential.

MR McMAHON: Absolutely.

MR HINDS: Regardless of how it was to be provided to them.

MR McMAHON: Yes.

MR WYNACK: For the moment, if I can just leave that, there is some question as to what information was provided to AUSTEL. Part of Mr Schorer's Freedom of Information application referred to documents

provided to AUSTEL and some other people in the period prior to the date of his FOI application which was 24 November; he specified that date. And we were interested to ascertain whether AUSTEL has a record of the documents of Telecom which it examined in the 12 months prior to November 1993.

MR McMAHON: No, we would not.

MR WYNACK: How did you examine documents during your investigation?

MR McMAHON: We - we firstly put a direction on Telecom to make available to us all relevant documentation. The - Telecom came and said, "Look you know these are live documents that we're working on, etcetera. Rather than flood you and disrupt ourselves, would it be acceptable to you that we establish a room at Telecom headquarters in which we assemble all relevant documentation that you have sought? Where there are additional folios going onto those files you know we will continue to put them on so that you have the advantage of seeing any additional material that's coming on." And the chairman agreed to that, that we would have full access to all documentation in a viewing room in Telecom and so our personnel went over there and were able to assess - access them and where they saw material that they wanted to copy and to consider and put on - back on our record here, they took copies at the time.

MR WYNACK: So when you wanted additional information, that is, information which your people perhaps couldn't find in the viewing room, how would you go about accessing that? Would you write to Telecom or

MR McMAHON: Yes, well, you know the rules were essentially that everything relevant was to be there. So everything should be there. You know, where we did seek additional material - we might have got a clue to its existence from examining the files - yes, we did write to Telecom and ask them can they provide us with something specific in addition.

MR WYNACK: And presumably their response would be in writing and would say they're now in the viewing room, or would they deliver them to you, or was the viewing room generally regarded as the - - -

MR McMAHON: Yes, you know my recollection is there were a couple of documents which involved them in processing some material and drawing up some additional charts which they forwarded to us eventually. Other things - if it was a file to which we saw references being made in the

MR WYNACK: Those were the reports of the BCI tests. Did you ever examine the raw data on which those reports were based?

MR McMAHON: I don't believe so. I mean, it was - those reports were essentially reviewed by the technical people in AUSTEL. Yes, the background was BCI had undertaken some technical tests and the COP cases themselves and AUSTEL's technical people had some reservations about them and as a result of those reservations Telecom had BCI do those supplementary tests and the rotary hunting tests. So my recollection is that those reservations were reservations which arose from viewing the original report rather than the technical data itself, you know, the detailed technical data.

MR WYNACK: Do you have the date on which you received that Telecom submission?

MR McMAHON: We would have, yes.

MR WYNACK: It's critical for me to know whether or not it was before or after 24 November.

MR McMAHON: Right, yes.

MR MATTHEWS: We should be able to give you that today before you leave.

MR WYNACK: Yes, okay then, Bruce, if that's convenient. I don't think I need ask you any other questions, except perhaps recently you wrote a very short note to Ann Garms - - -

MR McMAHON: To Ann Garms, yes.

MR WYNACK: Yes, 14 April.

MR McMAHON: Right.

MR WYNACK: And it said, "This letter is to confirm that the fast track settlement proposal drafted by AUSTEL and signed by Telecom on 18 November and by you on 23 November refers to an assessment process and an assessor and makes no reference to arbitration or to an arbitrator." What prompted that - - -

MR McMAHON: A request from Mrs Garms, "Would you give me such a letter?"

view room but we couldn't locate it, we asked them for it and that was made available in the viewing room.

MR WYNACK: In the viewing room. So it may well be accurate to say that all of the information provided by Telecom to AUSTEL in connection with that investigation was provided in the viewing room.

MR McMAHON: That is essentially the case, yes. You know, I would say that's certainly 99 per cent.

MR WYNACK: I listed five documents in my note to you? Do they mean anything to you, those - - -

MR McMAHON: Certainly do. The first two and the last two are the same.

MR WYNACK: That's supplementary into exchange network. That's - it's not a - it suggests another name for the one report.

MR McMAHON: Yes.

MR WYNACK: And were they in existence prior to - - -

MR McMAHON: Well, the first - let's say the Telecom submission to AUSTEL - I mean, I can't say anything as to the date that it came into existence. It was made available to AUSTEL as Telecom's main submission. On the day we received it we never had any access to a preliminary draft or anything like that. It came to us in November. The other two documents that you list there, again we never saw any preliminary draft. They came to us with a - under covering letter dated 7 January.

MR WYNACK: 7 January what year?

MR McMAHON: '94.

MR WYNACK: That was - right, so the first you saw them was 7 January but you don't know when they were created?

MR McMAHON: No, but I mean let's say the - you're talking about the BCI supplementary inter-exchange network. Now, the - that was a matter of conducting some traffic tests in a range of exchanges and the document itself shows that they were - that the tests were run in December. So presumably they were run in December and the report assembled and prepared in late December, early January.

MR WYNACK: I see.

MR McMAHON: So she phoned me up, asked me would I give her such a letter and it was simply a confirmation of fact.

MR WYNACK: Had there been any other requests from the COT case people in recent times for similar confirmations about the nature of the fast track settlement proposal?

MR McMAHON: I don't think so. I don't have a recollection of it. I mean, certainly there's always been some concern, I mean, that so many - almost signings of various documents and you know they've been frightened by various aspects of them such that they - at the end they jumped and wouldn't sign this type of thing. And this has been an issue with them for a long time, whether they were going into an assessment process or an arbitration process, and the - when they were taken through - when they made their own views known and when they were taken through the way the proposal was shaping up, it was just that it was in terms of an assessor. The final documentation made reference to arbitration, but essentially gave them an assessor.

MR WYNACK: What involvement did AUSTEL have with Dr Hughes in developing the arbitration rules?

MR McMAHON: I don't know that it had any. Indeed, when Hughes' appointment was announced, there was some question as to whether he you know would want a briefing from AUSTEL as to the background of the case. To my knowledge he didn't seek that and it was very much the chairman's point of view that he wasn't going to offer or put himself forward unless there was some wish from Hughes to know of it, and I don't know - I don't know that they ever met. I've certainly never met him.

MR WYNACK: Well, thank you, John. Have you got any questions regarding any of those things?

MR HINDS: No, I don't think I have.

MR WYNACK: Would you like to add anything, John, to expand on anything you've said?

MR McMAHON: No.

MR WYNACK: Well, in that case perhaps we can terminate the interview. It's now 5 to 4. Thank you very much.

**INTERVIEW CONCLUDED**