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Exhibit 324 to 367

C.o.T. Cases Australia

493-495 Queensberry Street
P.O. Box 313
NORTH MELBOURNE VIC 3051

Telephone: (03) 9287 7095
Facsimile: (03) 9287 7001

2 December, 1997

Our Ref: 3572.doc

Attention: Senator

Dear Senator,

Re: Telstra not providing true and fair answers to The Senate in response to specific questions asked of it by individual Senators.

C.o.T. members believe many of Telstra's recent answers provided to The Senate are not true and fair answers to specific questions asked of it by individual Senators.

The attached Appendix, with the supporting documents, sets out the reasons for the C.o.T. members' belief.

C.o.T. members also believe the Telecommunications Industry Ombudsman has not given The Senate a full, true and fair account of the C.o.T. grievances about Telstra's conduct used in arbitration and the TIO's role taken in Fast Track and Special Arbitration processes.

With reason, C.o.T. members believe it is in the Public Interest for an Inquiry to be held into conduct used by Telstra when it is in dispute with its customer. For such an Inquiry to be effective, it will need to include investigation into:-

- the suitability of arbitration to equitably resolve future disputes involving customers of Telecommunications Carriers not receiving incoming telephone calls;
- the TIO's role taken in the Fast Track and Special Arbitration processes in order to determine whether the TIO should continue to administer Telstra arbitrations.

Your support for this type of Inquiry will be appreciated by C.o.T. members, other Telstra customers in dispute and all Telecommunications customers involved in a future dispute.

Thank you for taking the time in reading this correspondence.

Yours sincerely,

Graham Schorer
Spokesperson
C.o.T. CASES AUSTRALIA

324

C.o.T. Cases Australia

493-495 Queensberry Street
P.O. Box 313
NORTH MELBOURNE VIC 3051

Telephone: (03) 9287 7095
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3 December, 1997

Our Ref: 3565.doc

Attention: David Martin Hoare
Chairman of the Telstra Board
71 Carlotta Street
Greenwich NSW 2065.

Dear Mr Hoare,

Re: Telstra not providing true and fair answers to The Senate in response to specific questions asked of it by individual Senators.

C.o.T. Cases Australia Members appreciate the responsibilities and duties of Telstra board members do not require them to be aware of Telstra answers to questions asked of it by individual Senators.

With reason, C.o.T. members believe many of Telstra's recent answers provided to The Senate are neither true nor fair answers to specific questions asked of it by individual Senators.

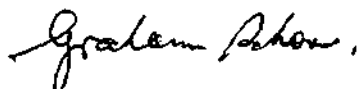
The attached Appendix, with the supporting documents, sets out the reasons for the C.o.T. members' belief.

In the case where the Telstra Board Members have been supplied with evidence that Telstra have not provided true and fair answers to The Senate, is it not the duty of the Board to ensure The Senate is provided with true and fair answers?

In consequence, will the Board kindly advise, in writing, what action, if any, it intends to take.

A prompt response will be appreciated.

Yours sincerely,



Graham Schorer
Spokesperson
C.o.T. CASES AUSTRALIA

cc: To all Senators.

325A

C.o.T. Cases Australia

493-495 Queensberry Street
P.O. Box 313
NORTH MELBOURNE VIC 3051

Telephone: (03) 9287 7095
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3 December, 1997

Our Ref: 3565.doc

Attention: Michael Joseph Montalto
Corporate Secretary
Telstra Corporation
Level 41, 242 Exhibition Street
Melbourne VIC 3000.



FILE:

Schorer

Dear Mr Montalto,

Re: Telstra not providing true and fair answers to The Senate in response to specific questions asked of it by individual Senators.

C.o.T. Cases Australia Members appreciate the responsibilities and duties of Telstra board members do not require them to be aware of Telstra answers to questions asked of it by individual Senators.

With reason, C.o.T. members believe many of Telstra's recent answers provided to The Senate are neither true nor fair answers to specific questions asked of it by individual Senators.

The attached Appendix, with the supporting documents, sets out the reasons for the C.o.T. members' belief.

In the case where the Telstra Board Members have been supplied with evidence that Telstra have not provided true and fair answers to The Senate, is it not the duty of the Board to ensure The Senate is provided with true and fair answers?

In consequence, will the Board kindly advise, in writing, what action, if any, it intends to take.

A prompt response will be appreciated.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Graham Schorer".

Graham Schorer
Spokesperson
C.o.T. CASES AUSTRALIA

cc: To all Senators.

325B

APPENDIX.

Examples of Inaccuracies in Telstra's Answers to The Senate in Response to Specific Questions asked of It by Individual Senators.

Example 1

Senator Schacht's Question:

Questions have been raised concerning alleged inaccuracies in a Bell Canada International Report dated 10 November 1993. I understand the report relates to Cape Bridgewater. Are you aware of any inaccuracies? If so, when did you become aware of the inaccuracies? What were those inaccuracies? Were the findings of the report flawed by such inaccuracies, if there are inaccuracies?

Telstra's Answer:

The Bell Canada International Report (the BCI Report) does not relate only to Cape Bridgewater, rather it also deals with other parts of the Telstra network.

The only inaccuracy in the BCI Report which Telstra is aware of is an apparent clash in the dates of two sets of testing to the Portland Exchange, Cape Bridgewater RCM (CBWR) number range, test line 055 267 211, see section 15.23 of the BCI Report.

By way of a letter dated 6 September 1994, Telstra wrote to Bell Canada International (BCI) noting this apparent clash in dates and seeking BCI's comments to same. A copy of Telstra's letter to BCI is Attachment G. Attachment H to these answers are copies of two letters received by Telstra from Gerald Kealey of Bell Canada International in response. In those letters, Mr Kealey notes:

"Unfortunately, the wrong date was recorded in the hand written notes which was transcribed to the final report for Telstra. It must be pointed out that, while the actual date was incorrectly recorded, this error does not affect the validity of the testing process or the test results and is not a significant factor in assessing the overall performance of the network."

C.o.T. Cases Australia state the truthful and fair answers to the Senator's questions should be:-

Question:

Questions have been raised concerning alleged inaccuracies in a Bell Canada International Report dated 10 November 1993. I understand the report relates to Cape Bridgewater.

Answer:

The Bell Canada International November 1993 Report (the BCI Report) does not only relate to Cape Bridgewater, it also deals with other parts of the Telstra network.

325B

Question:

Are you aware of any inaccuracies?

Answer:

Yes.

Question:

If so, when did you become aware of the inaccuracies?

Answer:

Prior to 6 September 1994.

Question:

What were those inaccuracies?

Answer:

In one test all of the start and finish times and dates as stated in the report are wrong. All of the Test Results are wrong. The inaccuracies in the test results are not detectable on reading the report as the report does not disclose that Telstra was performing NEAT test calls to the same Test Number during the times Telstra was performing test calls for BCI.

Question:

Were the findings of the report flawed by such inaccuracies, if there are inaccuracies?

Answer:

Yes.

C.o.T.'s reasons for asserting its answers to the Senator's questions are truthful and Telstra's response to the Senator's questions are wrong and misleading:

Telstra stated to The Senate:-

The only inaccuracy in the BCI Report which Telstra is aware of is an apparent clash in the dates of two sets of testing to the Portland Exchange, Cape Bridgewater RCM (CBWR) number range, test line 055 267 211, see section 15.23 of the BCI Report.

Telstra's above statement contradicts the content of its 6 September 1994 letter to BCI and other facts known to it at the time it made this statement to the Senate.

325B

In Telstra's 6 September 1994 letter to BCI, on page 2, in the paragraph commencing "It appears...", Telstra states, "... the test calls to Cape Bridgewater Test No. (055 267 211) should have been recorded as beginning at approximately 4.18 pm on 3/11/93 (rather than 12.45 pm on 5/11/93) and finishing at about 12.45 pm on 4/11/93 (rather than 4.18 pm on 5/11/93), with other aspects of the test run remaining the same as previously recorded. These timings fit in with other test runs from the Richmond TRT line and with other test runs from other exchanges to the same line at Cape Bridgewater. They also provide a logical sequence in the overall test program and a reasonable average test call interval (43.9 sec. per call)."

The above Telstra statement made in September 1994 to BCI, acknowledges in one of the tests all of the starting and finishing dates and times are wrong due to inconsistency in recording. The same statement alleges the test results were accurately recorded.

Telstra know, as a result of it conducting two different types of tests, at the same time, to the same test number, the published BCI test results for the test with amended dates and times were impossible to achieve, as it was impractical.

Telstra's reliance upon and use of Gerald Kealey of Bell Canada statement, "Unfortunately, the wrong date was recorded in the hand written notes which was transcribed to the final report for Telstra. It must be pointed out that, while the actual date was incorrectly recorded, this error does not affect the validity of the testing process or the test results and is not a significant factor in assessing the overall performance of the network." as part of their answer to The Senate is misleading, deceptive and unconscionable.

Telstra are aware BCI 11 August 1995 response to Telstra, relied upon the information contained in Telstra 6 September 1994 letter to BCI. Telstra letter to BCI failed to disclose Telstra was conducting NEAT Testing to the same Test Number for the majority of the same time of the period between the alleged new start and finishing dates and times of the test that was the subject of their correspondence. (Refer to page 157 of the April 1994 AUSTEL C.o.T. Report which identifies the dates and times Telstra conducted the NEAT Testing to the same Cape Bridgewater Test Number.)

BCI's 11 August 1995 response to Telstra can only be, at best, described as "a statement of convenience", as the test call results, as stated, are not achievable.

When all of the facts involved in the use of the Cape Bridgewater Test Number (055) 267 211 including the Types and number of tests, each type of test call separation requirement, and number of test calls are examined by an Independent Telecommunications Consultant it will prove the stated test result as being fabricated or falsified.

The following information supports this statement.

1. In the November 1993 Bell Canada International (BCI) Report, it lists alleged results of monitoring and testing Telstra performed in accordance with the BCI procedures.

The Report states CCS7 data was used to record the results of the test calls Telstra made on behalf of BCI.

This type of test call require greater than 15 seconds separation between each test call. (Refer to the internal Telstra document FOI No K03888).

325a

As each test call is held for 15 seconds, there must be more than 15 seconds separation between each test call to prevent :-

- a) the latter test call clashing with the previous test call still in progress,
- b) the latter test call being recorded as Incorrect results of busy.

2. Page 157 of the April 1994 AUSTEL C.o.T. Report, lists the table of Telstra NEAT testing results to Cape Bridgewater Holiday Camp, Test No. (055) 267 211 during the business hours of 0800-2200 for the period between 28 October 1993 to 8 November 1993 inclusive.

When NEAT testing is being performed to a telephone number, each test call is held for 100 seconds to conduct transmission tests and detect drop-outs etc. confirmed in the 10 November 1993 Telstra letter to AUSTEL. (Refer to FOI document No. K35002.)

As each NEAT test call is held for 100 seconds, there must be more than 100 seconds separation between each NEAT test call to prevent :-

- a) the latter test call clashing with the previous test call still in progress,
- b) the latter test call being recorded as Incorrect results of busy or a failed call .

During NEAT testing to a telephone number, it is impractical to perform any other form of monitoring and testing, at the same time, to that same telephone number.

Performing two (2) different types of test calls to the same Test No at the same time is impractical as it would produce negative or inconclusive results.

3. In the November 1993 BCI Report (re Cape Bridgewater), it lists dates and times of alleged test call results (of the Telstra monitoring and testing performed on behalf of BCI) made to the same Test No. (055) 267 211 at dates and times the Test No was set up for and was being used by Telstra for NEAT testing in compliance with AUSTEL directive. (Refer to page 157 of the AUSTEL April 1994 C.o.T. Report.)

As Telstra, in response to AUSTEL directive, was performing NEAT testing to the Test No. (055) 267 211, between the hours of 0800 and 2200 for the period 28/10/93 to 8/11/93 inclusive, this meant the alleged test calls performed by Telstra on 3/11/93 and 4/11/93 for BCI (with the new start and finish times) were being made at the same time to the same Test No. as the NEAT test calls, which, by Telstra's admission, is impractical. (Refer to the internal Telstra document FOI No. K03888).

3258

This alleged simultaneous testing to the same Test No during the periods of time from 1618 hours to 2200 hours on 3/11/93 and from 0800 hours to 1245 hours on 4/11/93 would have meant :-

- a) most, if not all, of the test calls for BCI would have clashed with the NEAT test calls and the BCI test results would have reported a high number of busy or failed calls,
- b) some of the NEAT test calls would have clashed with the test calls made for BCI and NEAT test results would have reported an unacceptable number of busy or failed calls,

due to, NEAT testing requirement of more than 100 seconds separation, and the BCI test call requirement of more than 15 seconds separation, between each test call.

C.o.T. member Mr Alan Smith has received from Telstra, under FOI, computer disks containing NEAT testing data and results confirming the NEAT testing as reported in the AUSTEL April 1994 C.o.T. Report did take place during the times as stated.

- 4. In 1994 Alan Smith requested from Telstra under FOI the CCS7 data on the Telstra test calls made to Cape Bridgewater Test No (055) 267 211.

During Mr Smith's arbitration Telstra supplied CCS7 data for the days between:-

- a) May 1993 and some of October 1993, representing approximately 180 days,
- b) late November 1993 to August 1994, representing approximately 270 days,

but not the CCS7 data for the 7 days, for the period of 3 November to 9 November 1993 inclusive, which are some of the specific days Mr Smith requested.

Despite repeated requests, Telstra have not provided any CCS7 data, for the time it allegedly made test calls for BCI to the Cape Bridgewater Test No (055) 267 211.

Telstra also require the CCS7 data to prove:-

- a) the test calls did take place as alleged,
- b) the test results published in the BCI Report are not fabricated or falsified.

325B

Example 2

Senator Boswell:

Why did Telstra not advise the Arbitrator, the Administrator or the C.o.T. Cases that the BCI Report was flawed?

Answer:

Telstra has not at any time believed that the BCI Report was flawed. In relation to the allegations made by Mr Smith that the BCI Report was flawed, Telstra notes that Mr Smith raised these allegations with the Arbitrator during his arbitration and with the Administrator.

C.o.T. Cases Australia state the truthful answer to the Senator's question should be:

- a) Prior to September 1994, Telstra knew that the details published in the November 1993 BCI Report about one test to Cape Bridgewater were not correct. In this particular test the reported starting and finish times and dates meant the test results were unachievable.
- b) Telstra wrote to Mr Kealey of Bell Canada International (BCI) on 6 September 1994 about the alleged anomaly found in its test call records used by BCI to compile the "Bell Canada International Inc. REPORT TO TELECOM AUSTRALIA 1 NOVEMBER 1993".

Telstra, in its letter, stated in one part, "Specifically, the start and finish times for the test run from Richmond digital exchange (RCMX), test line 03 428 8974, to Portland exchange, Cape Bridgewater RCM (CBWR) number range, test line 055 26 211, (detailed in section 15.23 of the report) are impracticable. The number of calls made during the test run could not have been completed within the time span shown and the test run would have clashed with other test runs performed within those times." The same letter suggested new start and finish times and dates as they provide a logical sequence to the overall test program and a reasonable average test call interval (43.9 seconds per call). (Refer to Telstra letter to BCI dated 6 September 1994, FOI Nos. N00005 and N00006.)

- c) In Telstra's letter to BCI, it did not disclose that Telstra were conducting NEAT testing to Cape Bridgewater Test Number 055 267 211 during the same times and dates Telstra was making test calls for BCI to the same test number. The dates and times of this NEAT testing coincided with a major period contained within the suggested new start and finish times and dates of the test Telstra previously acknowledged the result was impractical.
- d) Mr Smith raised these BCI allegations with the Arbitrator and Administrator in his arbitration. Mr Smith made repeated requests under FOI and arbitration to be supplied with the CCS7 Data of the test calls Telstra allegedly made for BCI. Telstra still has not supplied Mr Smith the requested CCS7 Data. Without hard evidence, Mr Smith was unable to conclusively prove to his Arbitrator the test results are fabricated or falsified.
- e) In August 1995, BCI, in its letter to Telstra, agreed in writing with all of Telstra's assertions contained in Telstra's letter dated 6 September 1994. BCI's confirmation to Telstra was made without being supplied the information Telstra were conducting NEAT testing during the same time to the same test number as Telstra alleged it was conducting the test calls for BCI.

3258

Example 3

Senator Boswell:

Has Telstra provided to the C.o.T. Cases "data" in disk form or hard copy, generated from the testing identified in the BCI Report?

Telstra's Answer:

Telstra has provided to various CoT members data in disk form generated from the testing identified in the BCI Report and hand written tables of data generated from the testing identified in the BCI Report. This data provided by Telstra is not a complete set of the data generated from the testing identified in the BCI Report.

C.o.T. Cases Australia state the truthful answer to the Senator's question should be:

- a) Telstra has not provided Alan Smith with CCS7 Data generated from the Telstra testing to the Cape Bridgewater Test Number identified in the November 1993 BCI Report.
- b) Telstra has not provided all C.o.T. members with its working papers created prior to, during and after the completion of its testing which were used by BCI to generate the November 1993 BCI Report.
- c) Telstra has not provided, in disk form or hard copy, information about initial test calls identifying difficulties, problems and faults within the network experienced during the beginning of the test call program and initial test call results of the testing program used in the November 1993 BCI Report.
- d) Telstra has only provided some C.o.T. members with data in disk form generated from separate testing identified in another BCI Report named Rotary Hunting Group Study Report, which was performed and created after the November 1993 BCI Report. This data does not include:-
 - those test calls from locations chosen then abandoned as a result of difficulties, problems and faults experienced during the initial test call program.
 - initial test calls identifying difficulties, problems and faults within the network experienced during the beginning of the test call program and initial test call results.

325B

Example 4

Senator Schacht:

Has Telstra provided the CoT members with all of its working documents and CCS7 data used to compile the November 1993 Bell Canada International Report? If not, why not?

Telstra's Answer:

Telstra has provided to various CoT members data in disk form generated from the testing identified in the BCI Report and hand written tables of data generated from the testing identified in the BCI Report. This data provided by Telstra is not a complete set of the data generated from the testing identified in the BCI Report.

C.o.T. Cases Australia state the truthful answers to the Senator's questions should be:

Question:

Has Telstra provided the CoT members with all of its working documents and CCS7 data used to compile the November 1993 Bell Canada International Report?

Answer:

No.

Question:

If not, why not?

Answer:

No valid reason.

3258

Example 5

Senator Schacht

Did someone from Telstra say to the then TIO, Warwick Smith, that the FTSP was always meant to be a formal arbitration process rather than a commercial assessment process? If so, did the TIO agree?

Telstra's Answer:

The FTSP was signed in late 1993. The arbitration agreements in relation to the first four CoT claimants, the FTAP, were signed in April 1994. The Telstra staff involved in those agreements are no longer with Telstra.

Given the period of time which has elapsed since those agreements were signed and that the Telstra personnel involved in the signing of those agreements have since left Telstra, Telstra cannot answer this question with any certainty. However, no present Telstra personnel are aware of such a statement. In this regard, Telstra notes that the AUSTEL Report of April, 1994 recommended that the CoT Cases be dealt with by an arbitration procedure.

C.o.T. Cases Australia state the truthful answers to the Senator's questions should be:

Question:

Did someone from Telstra say to the then TIO, Warwick Smith, that the FTSP was always meant to be a formal arbitration process rather than a commercial assessment process?

Answer:

Yes.

Question:

If so, did the TIO agree?

Answer:

Yes.

C.o.T.'s reasons for asserting its answers to the Senator's questions are truthful and Telstra's response to the Senator's questions are wrong and misleading:

- a) Mr Paul Rizzo, Telstra's Group Managing Director, Finance & Administration, was employed by Telstra prior to the signing of the FTSP in November 1993.
- b) Mr David Krasnostein consulted with Mr Rizzo on the C.o.T. matters. Mr Steve Black consulted with Mr Rizzo and/or Mr Krasnostein and Mr Harvey Parker on the C.o.T. matters. Mr Black also reported to the Telstra Board on C.o.T. matters. (Refer to Telstra document FOI No. R15962.)

325B

- c) Mr Black's duties included changing the FTSP non-legalistic assessment process into the legalistic formal arbitration process now known as the FTAP.
- d) Internal Telstra documents dated 16,18,22&24 November 1993, 15&20 December 1993 and 4 February 1994 confirm the position Telstra were taking on the FTSP. (Refer to Telstra documents FOI Nos. C00035, A05245, A00404 to A00407, A00354, D03315, R15962, A10235, A10236 and D01166.)
- e) Mr Paul Rizzo's 11 January 1994 Telstra letter to Dr Horton, Acting Chairman of AUSTEL, FOI Nos. A10235 and A10236, confirms:-
- Graham Ward and Steve Black met with Dr Horton and Neil Tuckwell of AUSTEL in the period between 24 December 1993 and 11 January 1994.
 - Telstra's assertion that Mrs Garms and Mrs Gillan, who signed the FTSP by 23 November 1993, had entered into a formal arbitration process.
 - Information which may be material to that process (arbitration) should only be released through that process, if at all.
 - An agreement had been reached between Telstra and the TIO that the FTSP was to be a formal arbitration process. (The formal arbitration process is referred to in this letter as fast track arbitration process e.g. FTAP.)
 - The agreement with the TIO *"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 agreement with the TIO *"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."*

(Refer to Telstra documents D01166 and R15962.)

- f) Mr Black and/or others from Telstra made representation to Mr Warwick Smith that the FTSP was always meant to be a formal arbitration process rather than a commercial assessment process in a meeting that took place on or before 12 January 1994.

Mr Smith alleged to Ann Garms, Maureen Gillan, Alan Smith, Amanda Davis and Graham Schorer in a meeting on the evening of 12 January 1994 that during his meeting with Mr Black:-

- he was handed a document entitled "Telstra Corporation Limited - 'Fast Track' Proposed Rules of Arbitration".

Mr Black referred to the contents of an (alleged) AUSTEL letter which confirmed the FTSP was always meant to be a formal arbitration process rather than a commercial assessment process.

Mr Warwick Smith, in the 12 January 1994 meeting with Messrs Garms, Gillan, Smith, Davis and Schorer, stated he agreed with Mr Black's proposition.

- g) The TIO has, and still is, refusing to supply a copy of the document entitled "Telstra Corporation Limited - 'Fast Track' Proposed Rules of Arbitration" to Garms, Gillan, Smith and Schorer.
- h) Telstra, in response to FOI requests made by Smith and Schorer, have refused to supply:-
 - the document entitled "Telstra Corporation Limited - 'Fast Track' Proposed Rules of Arbitration";
 - any information about how and when the document came into existence.
- i) Mr John Armstrong has access to all of the files relating to the FTSP and the FTAP agreements. When Telstra and/or Mr Armstrong want extra information from or to confirm a matter with an ex-employee regarding the FTSP or FTAP, Mr Armstrong has made phone calls to former Telstra Executives and/or employees. Recently, Mr Armstrong made such a phone call to Mr Steven Black.
- j) The Telstra statement made to The Senate in response to this question, "... *In this regard, Telstra notes that the AUSTEL Report of April, 1994 recommended that the CoT Cases be dealt with by an arbitration procedure.*", is misleading and is not a truthful and fair statement of fact.

This Telstra statement contradicts what is written in the AUSTEL Report of April 1994 on pages 5, 22, 23 & 100, the AUSTEL letters dated 18 November 1993, 17 February 1994 and 14 April 1994, and the Commonwealth Ombudsman's November 1994 Report.

CONCLUSION.

The enclosed documents supplied to support the above examples are only some of the information and evidence in the C.o.T. members' possession that support:-

- Many of the Individual test results published in the BCI November 1993 and the BCI Rotary Group Study Reports did not give a truthful nor a fair representation of Telstra's network's ability to service its customers.
- Telstra has frequently misled The Senate by not giving truthful nor fair answers to specific questions asked of it about C.o.T. matters.
- Telstra's unconscionable conduct used in disputes with its customers.
- The Fast Track Settlement Process was always meant to be a non-legalistic assessment process, not as alleged by Telstra, a legalistic formal arbitration process.

Is it not the duty of the Telstra board to ensure corrective action is taken:-

1. In 1993, Telstra were aware and concerned about the BCI Report's inaccuracies and AUSTEL's criticism of the BCI Report? Further, Telstra did not agree for AUSTEL to attach a copy of AUSTEL's 9/12/93 letter of response to the BCI Report if the latter is to be made available to the Assessor(s) nominated for the C.o.T. Cases? (Refer to Telstra's 15/12/93 Draft letter to AUSTEL, FOI Nos. A00404 to A00407 and 20/12/93 Telstra document FOI No. A00354.) (What was in AUSTEL's letter?)

Telstra have not supplied the repeatedly requested CCS7 Data for the period just before, during and just after the alleged test calls were made (for BCI) to the Cape Bridgewater Test No (055) 267 211 or proven the tests took place as alleged.

Telstra did not supply the repeatedly requested NEAT testing data until February 1996, 8 months after it was alleged Mr Smith's arbitration was finalized. The evidence not available to Mr Smith during his arbitration contained data that supports the following:-

- a) the Telstra tests for BCI did not take place as alleged, or
- b) the November 1993 BCI Report listed test result for test calls to Cape Bridgewater Test No (055) 267 211 are fabricated or falsified, and

Telstra has misled the Senate.

2. To immediately inform the Senate of Telstra error?
3. To immediately withdraw the BCI Reports from the public domain?
4. To immediately withdraw the BCI Reports from the arbitrations that are in progress?
5. To immediately reopen arbitrations in which Telstra used and relied upon BCI Reports?
6. To maintain the confidence of Telstra shareholders and the General Public in the integrity of Telstra?

325B

INDEX of the Support Documents.

1. Internal Telstra letter dated 7 July 1993 from Hew McIntosh to Steve Hodgetts, FOI No K03888.
2. Internal Telstra letter dated 10 November 1993 from D Shephard to John MacMahon of AUSTEL, FOI No K35002.
3. Photocopy of page 157 of the April 1994 AUSTEL Report on C.o.T. Cases.
4. Telstra letter dated 6 September 1994 from Alan Humrich to G Kealey of Bell Canada International, FOI Nos N00005 & N00006.
5. Internal Telstra E-mails dated 16 November 1993 from Don Pinel to Jim Holmes, cc'd to Ian Campbell, 18 November 1993 from Ian Campbell to Don Pinel, cc'd Jim Holmes, and 22 November 1993 from Jim Holmes to Ian Campbell and Don Pinel, FOI No C00035.
6. Internal Telstra E-mail dated 24 November 1993, FOI No A05245, from Keith Anderson to:-

 Frank Blount, Paul Rizzo, Graeme Ward, Doug Campbell, Gerry Moriarty, Peter Shore, Deirdre Mason, Simone Semmens, Sue Scott, Harvey Parker, Charlie Zoi, Jim Holmes, David Oertle, Ian Campbell, Chris Vonwiller, John Stanton, Betty Depiazzi, Jeff Heron, Robert Clark, Tim Lloyd-George, Bruce McKay, Barbara White, Alan Brand, Greg Schott, Steve Burdon, Gregory C Adermann, Des Scholz, Peter G Gumley, Brenda Elferink, Sharyn A Nottle, Cheryl Hanek, Ted G Taylor, Warwick Gilbert, Dennis Flentie, Audrey Korsten, Blair Feenaghty, Greg Newbold, Gina Raditsis, Ian Macphee, Keith Anderson, Mark Crohan, Pat Minihan, Ray Liggett, Steve Nason, Steve T Wright, Desley Dixon, Mardi Thomas, Max Jennings, Harry Wragge, Alan O'Neill, Shane Allan, John Tucker, Warren Grace, Brian Lovelock, Trevor Halliday, Ashley S Zanotti.
7. Telstra Draft letter dated 15 December 1993 from Ian Campbell to R Davey, Chairman of AUSTEL, FOI Nos A00404 to A00407.
8. Internal Telstra E-mail dated 20 December 1993 from Don Pinel to Dennis V Hambleton, FOI No A00354.
9. Internal Telstra letter dated 4 February 1994 from Simon Chalmers to Ian Campbell, Distrib. Steve Black, FOI No D03315.

3505b

325B

10. Telstra letter dated 11 January 1994 from Paul Rizzo to Dr R Horton, Acting Chairman of AUSTEL, FOI Nos A10235 and A10236.
11. Internal Telstra E-mail dated 2 March 1994 from Stephen Black to Frank Blount, and 3 March 1994 from Frank Blount to Stephen Black, cc'd Doug Campbell, Chris Vonwiller, Ian Campbell, Harvey Parker, Carmel Parisi, FOI No D01166.
12. Telstra internal paper for the Board Meeting No 26 on 7 April 1994.
13. Photocopy of page 5 of the April 1994 AUSTEL Report on C.o.T. Cases.
14. Photocopy of page 22 of the April 1994 AUSTEL Report on C.o.T. Cases.
15. Photocopy of page 23 of the April 1994 AUSTEL Report on C.o.T. Cases.
16. Photocopy of page 100 of the April 1994 AUSTEL Report on C.o.T. Cases.
17. AUSTEL letter dated 18 November 1993 from its Chairman, Robin Davey to Graham Schorer, Spokesperson, C.o.T. Cases.
18. AUSTEL letter dated 17 February 1994 from its Chairman, Robin Davey to Steve Black, FOI Nos A10023 and A10024.
19. AUSTEL letter dated 14 April 1994 from its General Manager, Consumer Affairs, John MacMahon to Ann Garms.

325B

Telstra executive Hew Macintosh stated in F.O.I. document K03888 that Telstra's internal PTARS 267211 testing "will hold up for 15 seconds after a test call, therefore if possible a delay of 15 seconds between calls should be inserted to avoid incorrect results".

Precede				Telecom AUSTRALIA	
To	Steve Hodgins Network Products	From	Hew Macintosh PTT02	National Network Investigation	
Postcode	(053)304219	File	NT70704	The caller from networks 100 000	
Company	Telstra Australia	Date	7 July, 1993	Agency	
Location	Balfour Exchange	Total Pages	1	Telephone (03) 657 4600 Message Box Postcode (03) 657 4600	
Other					

K03888

Test Calls to Cape Bridgewater

National Network Network Investigation, Melbourne, are currently investigating a customer at Cape Bridgewater. Some complaints have come from the Balfour area, namely Sebastopol, Cardigan (053-448367), Larnco College (053-332682, 053-301521) & Haddin (053-424675).

As previously discussed, could you please arrange for 500-1000 test calls from the following locations calling 053-267211. The issue is a PTARS connected at the Cape Bridgewater RCM. It should be noted the PTARS will hold up for 15 seconds after a test call, therefore if possible a delay > 15 seconds between calls should be inserted to avoid incorrect results of busy.

When completed, could you please fax details to National Network Network Investigation, Melbourne, on (03)654-4601.

Your assistance in this matter will be greatly appreciated and if there are any difficulties please contact NNI on (03)657-3447.

Hew Macintosh
PTT02 - National Network Network Investigation, Melbourne.
7/7/93

Telecom Australia Limited

© R.A.P.

TOTAL P.01

325B

Subject COT Network Testing Program

File

Date 10 November 1993

From D Shephard

David Shephard
Manager Networks and Interconnect
Network Performance Sub-Unit
Network Operations

Australian and Overseas
Telecommunications Corporation

Telephone: 08 2308308
03 6347462

International: + 61
Facsimile: 08 6104022

To: Mr J MacMahon
General Manager
Consumer Affairs
AUSTEL

K35002

Dear Mr MacMahon,

The network testing program specified in Paragraph 16(a) of your minute of 12 August 1993 in connection with the COT cases has been completed and results are attached.

The test lines used to terminate the calls were chosen to be within the same equipment groups as the monitored COT customer services (not necessarily in the same number group). In each case a minimum of 1000 calls were generated from a variety of origins on these test lines.

The equipment used for the tests on all but two of the exchanges concerned was the Ericsson Network Evaluation and Test System (NEAT). This system establishes calls between Network Test Units connected to customer line appearances in the exchanges. Each test call is held for 100 seconds to conduct transmission tests and detect drop-outs etc. The attached results indicate the range of origins used for each program and the spread of the test calls over time of day. In the case of the NEAT system there are some null periods in which no calls are generated due to the equipment requiring time slots to communicate with the central control unit to convey results and accept commands.

The test calls were run over a longer period of the day and in some cases over weekends in order to enable sufficient calls to be generated to achieve the target number in the required time and also to include evening and weekend high traffic periods.

For those exchanges without NEAT units (Jindabyne and Devils Bridge) the tests were conducted using either Traffic Route Testers or Electronic Automatic Exchange Testers directing calls to Test Call Answer Relay Sets located in the exchanges concerned. In each of these cases the exchanges are connected via one junction route to their parent exchange and the possibilities of access paths are therefore limited. Consequently the range of origins chosen are more restricted than those for the NEAT tests.

325B

**TELECOM'S TEST CALLING INTO CAPE BRIDGEWATER AXE/RCM
EQUIPMENT**

Cape Bridgewater Holiday Camp: 28 October 1993 to 8 November 1993
inclusive

Test No (055) 267 211
Business hours 0800-2200

	24 hour calling		Business hours calling	
	Sample	% of calls	Sample	% of calls
Total calls	1030		390	
Effective calls	1023	99.32	387	99.23
Total failed calls, as below	7	0.68	3	0.77
Congestion	2	0.19	1	0.26
Communications error	1	0.10	1	0.26
RVA/Wrong number	0	0.00	0	0.00
No answer	0	0.00	0	0.00
Couldn't break dial tone	1	0.10	0	0.00
System error	3	0.29	1	0.26

TELECOM'S TEST CALLING INTO DIXONS CREEK AXE EXCHANGE

Lovey's Restaurant: 21 October 1993 to 8 November 1993 inclusive

Test Nos (059) 652 414 and (059) 652 415
Business hours 0800-2200

	24 hour calling		Business hours calling	
	Sample	% of calls	Sample	% of calls
Total calls	1279		556	
Effective calls	1269	99.22	552	99.28
Total failed calls, as below	10	0.78	4	0.72
Congestion	5	0.39	3	0.54
Communications error	1	0.08	1	0.18
RVA/Wrong number	0	0.00	0	0.00
No answer	0	0.00	0	0.00
Couldn't break dial tone	4	0.31	0	0.00
System error	0	0.00	0	0.00

325B



6 September 1994

Central Area
Network Operations
6/171 Roma Street
Brisbane
Australia

Ph (07) 837 3212
Fax (07) 236 4247

Mr G. Kealey
Bell Canada International
Suite 800, 1 Nicholas Street
Ottawa, Ontario, Canada, K1N 9M1

Gerry,

N00005

As you have been made aware through discussions with Mr K. Dwyer, an anomaly has been found in the test call records contained in the report "Bell Canada International Inc. REPORT TO TELECOM AUSTRALIA 1 NOVEMBER 1993".

Specifically, the start and finish times for the test run from Richmond digital exchange (RCMX), test line 03 428 8974, to Portland exchange, Cape Bridgewater RCM (CBWR) number range, test line 055 267 211, (detailed in section 15.23 of the report) are impracticable. The number of calls made during the test run could not have been completed within the time span shown and the test run would have clashed with other test runs performed within those times.

An examination of the test result summary forms filled out after the test runs (a copy of the relevant record forms is enclosed) reveals that the report details have been correctly derived from the summary forms.

This inconsistency in recording of times for a test run is not a fundamental flaw in the test results or the conclusions of the report, but the proper times of the run should be recorded if at all possible.

Discussions with a number of people assisting with the test call program during that period confirmed that considerable care was taken to avoid clashes of test calls to test answering bases and to ensure that test calling devices originated calls only to a single terminating test code during any test run.

From their recollections of events several points regarding the sequence of events have been brought together:

- The tests were initiated to provide extra data from test calls into the number ranges of the CoT customers connected to Devlin's Bridge exchange and Portland exchange. The data was to be added as an addendum to the report dated 1 November 1993.
- Testing began Wednesday 3/11/93. Traffic Route Testers (TRT's) in the NIB test room 7/35 Collins Street Melbourne originated calls, via test lines connected to Richmond exchange, to test answering bases at Portland exchange and Devlin's Bridge exchange. A portable TRT at South Yarra exchange was also used to originate calls to the same exchanges.

A63152

File CoT

325B

FOI RECEIVED
26/5/95

- As Mr G. Kealey and Mr R. Baltas intended to travel to Portland exchange (via Warrnambool exchange) on Friday afternoon 5/11/93, they ensured that a TRT run from Richmond had finished and that a run from the South Yarra TRT had commenced satisfactorily before they left Melbourne at approximately 12.45 that day. They also arranged for test calls to begin from Bendigo exchange that afternoon, and made a call from Warrnambool exchange to South Yarra exchange late in the afternoon to ensure the South Yarra TRT had completed its test run program and stopped.
- No staff recalls or attendance were recorded or required at either South Yarra or Richmond exchange to attend to TRTs on Friday 5/11/93 or the weekend 6/11/93 & 7/11/93.

A complete examination of the times of the test calls from all the exchanges to the test lines at Cape Bridgewater and Devlin's bridge over the period from 3/11/93 to 9/11/93 shows that the only time the test run from the Richmond digital test line to the Cape Bridgewater 055 267 211 test answer base could have been made, without clashing with other test calls to the same test number, was between the afternoon of 3/11/93 and about midday of 4/11/93.

It appears that the details for the test run from the Richmond digital test line (03 428 8974) to Cape Bridgewater RCM (055 267 211) should have been recorded as beginning at approximately 4.18 pm on 3/11/93 (rather than 12.45 pm on 5/11/93) and finishing at about 12.45 pm on 4/11/93 (rather than 4.18 pm on 5/11/93), with other aspects of the test run remaining the same as previously recorded. These timings fit in with other test runs from the Richmond TRT line and with other test runs from other exchanges to the same line at Cape Bridgewater. They also provide a logical sequence in the overall test program and a reasonable average test call interval (43.9 sec. per call).

A table has been drawn up to show the test calls made over the period and is attached, showing the test run between the Richmond digital test line and the Cape Bridgewater test line in this logical time-slot within the overall test run program.

Could you please confirm whether or not this interpretation of the sequence of test runs matches with your recollections and personal notes, or whether there is any other way to correct the records of the test runs shown in the report.

N00006

Alan Humrich
GENERAL MANAGER
CENTRAL AREA

325B

TOTAL P.07

CoT
Holmes, Jim

From: Holmes, Jim
To: Campbell, Ian; Pines, Don
Subject: RE: Customer Contracts
Date: Monday, 22 November 1993 2:46PM

Ian/Don,

Your messages of 16 & 18 November refer. In fact the revised version of the Fast Track proposal sent to Davey is in the form of a proposal which may be formally accepted by signing in the space provided. I have already signed the offer for Telecom.

Jim

From: Campbell, Ian
To: Pines, Don
Cc: Holmes, Jim
Subject: RE: Customer Contracts
Date: Thursday, 18 November 1993 5:49PM
Priority: High

Don,

Robin Davey was going to draft one based on Clause 2(h).

Please check with Jim, and then ensure that John MacMahon is preparing as we would like for Robin Davey.

Ian

From: Pines, Don
To: Holmes, Jim
Cc: Campbell, Ian
Subject: Customer Contracts
Date: Tuesday, 16 November 1993 5:50PM

Jim,

If by some miracle the CoT group agree to the arbitration process, we need a document for them to sign ASAP to look them in. I would want to have this to put in front of them no later than Friday. If we delay into next week we may have a problem. Can you do this or should I get Simon to draft?

Don

C00035

Page 1

325B

CST

Holmes, Jim

From: Anderson, Kern
 To: Depizzi, Betty; Mason, Deirdre; Herron, Jeff; Clark, Robert; Lloyd-George, Tim; McKay, Bruce; White, Barbara; Brand, Alan; Vonwiller, Chris; Schon, Greg; Stanton, John; Shore, Peter; Burdon, Steve; Adormann, Gregory C; Scholz, Des; Gumley, Peter G; Ellerink, Brenda; Nottle, Sharyn A; Hanek, Cheryl; Taylor, Ted G; Oertle, David; Gilbert, Warwick; Flanits, Dennis; Korsten, Audrey; Feenaghy, Blair; Newbold, Greg; Raditsis, Gina; Ward, Graeme; Macphoe, Ian M; Anderson, Keith; Crohan, Mark; Minihan, Pat; Lippert, Ray; Nason, Steve; Wright, Steve T; Zol, Charlie; Campbell, Doug; Dixon, Desley; Blount, Frank; Parker, Harvey; Holmes, Jim; Thomas, Mardi; Rizzo, Paul; Scott, Sue; Jennings, Max; Wragge, Harry 242Ex; O'Neill, Alan; Allan, Shane; Tucker, John; Gracie, Warren; Lovelock, Brian; Moriarty, Gerg; Campbell, Ian; Semmens, Simone; Halliday, Trevor; Zaratti, Ashley S
 Subject: Alston statement
 Date: Wednesday, 24 November, 1998 6:48PM
 Priority: High

Senator Alston this evening issued a press statement re the C&I and BCI reports. Surprisingly (!) he did not compliment Telecom.

Critical of the reports and what he says, they didn't reveal or explain.

Welcomed the "fast track" arbitration process and the mechanism for dealing with future complaints.

AND....

"The Coalition does not see a need for a Senate inquiry at this stage".

Democrats Vicki Bourne also expressed the latter comment in a release she issued.

Alston release DID NOT attack the Govt, the lack of adequate regulation or references to any "misleading, unfair etc" handling of complaints.

Sounds like Ian Campbell lost his money last night and today. We await tomorrow's press.

Kern Anderson

405245

325B

DRAFT

Commercial & Consumer

15 December 1993

Level 5
242 Exhibition Street,
MELBOURNE VIC 3000
Australia

Telephone (03) 634 6
Facsimile (03) 634 6

VIA FACSIMILE

Mr R. Davey
Chairman
AUSTEL
Jetnet House, 5 Queens Road
MELBOURNE, Vic. 3004

Dear Mr Davey,

I refer to the following events involving AUSTEL officers in recent days regarding the Bell Canada International (BCI) report.

- A letter of 9 December 1993 from Mr Mathieson to me.
- Comments attributed to Mr MacMahon on 10 December 1993 in the "Australian Financial Review".

Advice to Telecom is that the comments attributed to Mr MacMahon are, in substance, accurate.

- A letter reported in the same article from Mr MacMahon to the CoT spokesperson, Mr Schorer.

The conclusion to be reasonably made from these events is that AUSTEL publicly judges the BCI report "fails to live up to expectations raised by the terms of reference", has inadequacies, and raises concerns. Further, AUSTEL publicly agrees with CoT views along these lines.

Reasonable inferences might be drawn about deficiencies in the competence, professional standing and integrity of BCI, and the competence and integrity of Telecom and myself in the conduct of the study and representation of the findings.

We can argue about matters of detail, but in substance these events are of concern and disappointing to Telecom.

A00404

325B

PERSPECTIVE

Before stating Telecom's position, I point out the considerable efforts Telecom has made to assist AUSTEL in its investigation of CoT cases. Telecom has gone well beyond the usual responses to AUSTEL's directions, to actively support AUSTEL in an attempt to achieve as thorough and objective an assessment as possible of the issues in the limited time available, in some cases at considerable risk to its own position.

It would be difficult to conceive of any significant, practical additional action Telecom could have taken to support AUSTEL, given resources were already stretched, to respond to AUSTEL's directions.

In Telecom's view, AUSTEL may criticise Telecom at times for shortcomings in competence or judgement, but in no way can AUSTEL claim lack of co-operation, obstruction or bad faith during the investigation in what has been a difficult period for both parties.

Indeed, Telecom hopes AUSTEL's view is the reverse.

TELECOM'S POSITION

Telecom's position regarding the recent events concerning the BCI report are as follows:

1. *The BCI study was conducted professionally by BCI and Telecom, and in the limited time available, achieved the objectives discussed and agreed with AUSTEL.*

The findings are reassuring to Telecom and ought to be reassuring and welcomed by AUSTEL and telephone users around Australia - at least for the test period there appears no evidence that there is a fundamental problem in the interexchange and local exchange network and that the network performed within specification.

You will recall the study arose following (unsubstantiated) allegations that a fundamental problem in Telecom's network may be preventing a large number of calls being delivered by the network to the terminal exchanges to which those customers were connected.

The basic aim of the BCI study was, in the short time available, to test the network and assess related operating procedures for fault detection and restoration.

Alleged failures in the letter of 9 December, such as exclusion of the CAN and exclusion of "end-to-end" testing, were not necessary to be included to achieve the aim of the study, were specifically excluded (with the agreement of your officers).

A00405

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were not included and were never purported to be included either in the findings or subsequent presentations of the findings.

The terms of reference and conduct of the BCI study were discussed on a number of occasions with your officers, and they raised no concerns of substance. Indeed, on several occasions, they apparently considered the basis of the study sufficiently sound to suggest a number of additions to the testing programme (e.g. Portland and Devlin's Bridge), and these were accepted.

My understanding is that AUSTEL further requested testing in customers' premises, but then decided that this was a duplication of the service monitoring programme directed by AUSTEL, would serve little purpose, and risked disruption of the customers' services.

You will recall in the presentation of the report to you I particularly pointed out the limitations of the study, and this was done in presentations to the Minister's office, Senators Boswell, Alston and Bourne, the media, and CoT members present at a videoconference.

In summary, the BCI study proceeded as discussed with AUSTEL, reported as directed, and the findings ought to be regarded as reassuring and welcome.

Briefly, an acceptable conclusion would have been along the lines of the previous sentence, but with a qualification that to obtain a complete assessment of the performance of a particular customer's service, "end-to-end" testing would need to be done which included the customer access network.

2. Telecom is concerned about several other aspects of these events. For example:

(a) AUSTEL reached a conclusion about Telecom without giving Telecom the opportunity to comment.

In this case, the position was advised to others and made public before Telecom was advised.

In an investigation of Telecom, it would seem reasonable that Telecom be given such an opportunity.

(b) AUSTEL allows (an unfair) position to be made public which appears to support other parties in a civil suit against Telecom.

In Telecom's view, the task of a regulator in investigations of this nature is to form conclusions and decide related recommendations and intended actions on an issue and, after due discussion with the parties, publish these in its report.

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A00406

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-4-

We believe AUSTEL risks its reputation if, during an investigation, it appears to take sides in civil proceedings between parties - in this case, arbitration, but court proceedings in the future on matters under investigation are possible.



- 3. Considering the above circumstances, Telecom cannot agree to attach a copy of AUSTEL's letter of 9 December to the BCI report if the latter is made available to the assessor(s) nominated for the CoT cases.

Accordingly, Telecom requests AUSTEL to confirm Telecom's view of the BCI report, and to consider how our concerns might be addressed.

I am available to discuss the above matters at your convenience.

Yours sincerely,

→ States there is a multitude of inaccuracies.

Ian Campbell

- This is a threat to a man of AUSTEL that we (T) will not provide assessor with all the relevant facts

A004G7

325B

COT



Holmes, Jim

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

A00354

Dennis,

I understand there is a new tariff filing to be lodged today with new performance parameters one of which commits to 96% call completion at the individual customer level.

Given my experience with customer disputes and the 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 the potential to cause us major pain in the CoT area.

Don

325B

To Ian Campbell

From Simon Chalmers

Commercial & Consumer

Company Telecom

Location

File

Date 4 February 1994

Total Pages

10th Floor
242 Exhibition Street
MELBOURNE VIC 3000
AustraliaTelephone 034 8434
Message Bank
Facsimile 034 8444

Distrib. Steve Black

Legal Professional Privilege

Dear Ian

I refer to the teleconference held yesterday afternoon concerning the proposed Canberra briefings.

I just have two short comments to make:

1. I got the impression that you thought there was a note from Grahame Powles to Don Pinel in Telecom's files which suggested that the monitoring conducted on the Tivoli's lines may have been done for purposes other than network maintenance.

The note to which I believe you referred, is enclosed. In my opinion this note does not suggest that the monitoring conducted on the Tivoli's lines may have been done for purposes other than network maintenance.

2. I am sure you realise that the document headed "Documents For Preparation Of Each Case Prior To Arbitration" which we discussed two days ago, is sensitive in that it sets out our strategy and focus for preparing our cases for arbitration. This document is subject to legal professional privilege and it would be best not to use it as part of any briefing.

Simon.
Simon Chalmers

D03315

009337

Telecom Corporation Limited
ACN 061 778 898

325



Paul J. Ryan
 Group Managing Director
 Finance and Administration
 242 Exhibition Street
 Melbourne VIC 3000
 Telephone 03 934 9991
 Sydney 02 284 9961
 Facsimile 03 934 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 first 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 that way. Once a quasi-judicial process such as the agreed arbitration

A10235

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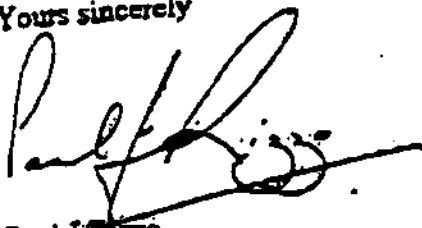
Telecom Corporation Limited
 ACR 001 779 944

process has been entered into, information which may be material to that process should only be released through that process if at all. 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.

It 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 Mr. Graeme Wood and Mr. Steve Black 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



Paul J. Kline

**GROUP MANAGING DIRECTOR
FINANCE & ADMINISTRATION**

325B

3/2/94

Campbell, Ian

From: Campbell, Iain
To: Campbell, Ian
Subject: FW: [redacted]
Date: Thursday, 3 March 1994 9:16AM

DELIVERED TO IAIN CAMPBELL INSTEAD OF IAN CAMPBELL

From: Blount, Frank
To: Black, Stephen
Cc: [redacted], Vorwiller, Chris, [redacted], Campbell, Ian
Carmel, Campbell, Doug, Parker, Harvey, [redacted] now, Paris,
Subject: RE: [redacted]
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), [redacted] 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: [redacted]
Cc: Parker, Harvey
Subject: [redacted]
Date: Wednesday, 2 March 1994 10:48PM
Priority: High

David

As discussed it appears that [redacted] and [redacted] 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 set of rules which meet all the COTS requirements and with which we might agree if we were prepared to 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 [redacted] 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 that these rules are fair. I will then send these directly to Gordon Hughes with a direct and blunt request to rule on whether they are fair.

I expect this action to be finalised by tomorrow midday.

Steve Black

001166

325B

TELSTRA CORPORATION LIMITED

FOR THE BOARD
Meeting No 26
7 April 1994

PAPER NO 1994/21
(For Decision)

SUBJECT: CEO's REPORT

0. COT Cases-Voice Monitoring

a. Arbitration Process

From previous reports, the Board will be aware that Telstra has agreed to a fast track arbitration procedure for review of the ex gratia payments made to the four initial COT members and other complaints that they have. The TIQ is involved as an Administrator whose main function is to appoint an Arbitrator (Dr Gordon Hughes, Managing Partner of Hunt & Hunt, Solicitors, Melbourne).

Unfortunately, the fast track procedure has not commenced because the COT members involved have not yet agreed to a detailed set of processes for the Arbitrator to follow in resolving the issues.

The situation changes daily and I will have [REDACTED] provide a current briefing as at 7 April.

Directors may recall that AUSTEL's Report on the COT cases was originally scheduled for Christmas 1993 and has been delayed and further delayed on several occasions since then.

The Report has now been finalised and discussed between Robin Davey, [REDACTED] and myself on 24 March. At this stage, we have not been shown or given a copy. It is clear that the Report will be critical of Telstra. Our aim is to ensure that each criticism has been properly based, and is responded to. At this stage, we expect the Report to be made available to the Minister and published as a "final", after Easter - possibly before the Board Meeting.

b. Voice Monitoring

As at 29 March, the AFP report to the Attorney-General has not been finalised and made available to us. [REDACTED] will provide a status report to the Board on 7 April.

R15862

325B

- a RAM relay armature problem which posed a risk to services using a rotary hunting facility
- local access network problems in the Fortitude Valley area
- problems inherent in the use of diverters
- Telecom's number assignment procedures for rotary hunting group line assignments which may, as suggested by Bell Canada International, lead to problems.

AUSTEL's finding that the above matters have the potential to affect the services of particular *COT Cases* does not extend to whether Telecom has failed to meet acceptable service standards or caused the losses claimed - those are issues to be addressed in the Fast Track Settlement and proposed arbitration procedures.

The extent of the problem

1.15 While the information available to AUSTEL does not allow it to determine with real precision the number of Telecom's customers who have experienced, or are experiencing, service difficulties and faults like those experienced by the *COT Cases*, it is reasonable for AUSTEL to conclude that-

- the number of Telecom customers experiencing *COT* type service difficulties and faults is substantially higher than Telecom's original estimate of 50
- the number of Telecom customers who are in the *COT Cases* category, that is, customers who have -
 - experienced *COT* type service difficulties and faults; and
 - received similar treatment in Telecom's handling of their complaints,

is higher than Telecom's original estimate of 50.

Telecom has conceded that its original estimate requires revision - see paragraph 1.65.

325B

Telecom's conduct was intentionally misleading or a result of shortcomings in Telecom's systems and procedures. Furthermore, as observed elsewhere in this report, it was not the purpose of AUSTEL's investigation to examine the impact of Telecom's conduct on individuals - that is a matter for the assessor/arbitrator under the Fast Track Settlement and proposed arbitration procedures canvassed in this report. Other comments by the COTs on the draft are reported and responded to in paragraphs 1.68 ff below.

Telecom's comments

1.64 While Telecom was critical of some aspects of AUSTEL's draft, it did indicate substantial acceptance of the recommendations outlined above. It also stated that -

"Telecom acknowledges that its handling of aspects of the COT Cases has not always been ideal and recognises that improvements need to be made, as has been evidenced by Telecom's prompt and diligent response to the recommendations of the Coopers and Lybrand Report."

(Letter dated 8 April 1994, Telecom's Group General Manager, Customer Affairs to AUSTEL)

Telecom did, however, criticise the draft for not giving sufficient recognition or prominence to -

- the fact that no telecommunications company in the world guarantees 100% service to its customers
 - the draft did (and this report does) recognise that fact - see Chapters Four and Five
- the need for an agreed standard of service against which Telecom's performance in respect of particular customers may be judged
- the possibility of vexatious complainants and the need for an agreed standard of service against which such complaints might be judged and eliminated
 - the draft did (and this report does) recognise that an agreed standard of service against which Telecom's performance may be effectively measured is being developed by Telecom in consultation with AUSTEL and that such a standard together with a relevant service verification test is essential.

325B

This standard will be finalized in time to be applied to any settlements resulting from the Fast Track Settlement or the proposed arbitration procedures canvassed in this report

- the possibility that customer mis-operation of equipment and the customer equipment itself may give rise to service difficulties and faults similar to those experienced by the COTs
 - again, the focus of this report is Telecom, not its customers or their equipment. AUSTEL's investigation (supported by Coopers & Lybrand) establishes that Telecom's network is the focal point for the alleged service difficulties. To the extent that customer equipment and its operation is relevant, AUSTEL has referred to it
- the fact that because AUSTEL's investigation involved complaints about the level of service extending over periods as long as ten years, it was not possible for AUSTEL to establish the actual level of service delivered in each case -
 - the draft did (and this report does) address that issue and concluded that it is a task for the independent assessor/arbitrator involved in the Fast Track Settlement and proposed arbitration procedures referred to in Chapter Five.
- its claim that the absence of a determination under section 121 of the *Telecommunications Act 1991* by AUSTEL of a maximum amount recoverable against Telecom in tort raised expectations in claimants and made Telecom's task of settling the COT Cases more difficult than it might have otherwise have been
 - the draft did (and this report does) address that issue - see Chapter Four. AUSTEL accepts the need for such a determination and will do so as soon as possible after a public enquiry free of the emotion attaching to the COT Cases
- the difficulties faced by Telecom as it endeavours to cope with the transition from its former monopoly status to a Government owned business enterprise in a competitive environment
 - Telecom made a similar point in its response to the Coopers & Lybrand report and the draft did (and this report does) deal with the issue in Chapter Ten.

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Customer survey

5.60 The results of the REARK customer survey (which was designed to scope the extent of the problem and which was conducted having regard to AUSTEL's input) is outlined in Chapter Two.

SETTLEMENT PROPOSALS*Fast Track Settlement Proposal for four of the original COT Cases*

5.61 Arising from Telecom's expressed willingness to further consider means by which outstanding issues and claims might be resolved, Telecom met with Mr Schorer, the spokesperson for the original COT Cases, on 16 September 1993. Mr Schorer then proposed terms upon which a final settlement might be reached. Certain aspects of the terms proposed were not acceptable to Telecom and AUSTEL volunteered to facilitate agreement between Telecom and the original COT Cases on the terms upon which a final settlement might be reached.

5.62 In the period 20 September 1993 to 25 November 1993 AUSTEL facilitated an agreement between Telecom and four of the original COT Cases to a proposal for a Fast Track Settlement of their claims.

5.63 With that agreement, responsibility then passed to the Telecommunications Industry Ombudsman to identify a suitable mutually acceptable person for appointment as an assessor. The appointment of Dr Gordon Hughes as that person was announced on 17 January 1994. Since then negotiations have been taking place to agree the terms upon which Dr Hughes would act. While the process of implementing the Fast Track Settlement Proposal has taken longer than envisaged, because AUSTEL has not been involved in that process it makes no findings as to the cause of the delay.

Proposed arbitration procedure

5.64 In the course of negotiating the Fast Track Settlement Proposal that applies to the four remaining original COT Cases, on 21 October 1993 Telecom put to AUSTEL for its consideration a proposed arbitration procedure which has the potential to form the basis of settlement of not only the claims of the customers known to AUSTEL to be experiencing COT type service difficulties and faults but also any such cases in the future.

5.65 The proposed arbitration procedure was based upon a scheme recently devised by AUSTEL's counterpart in the United Kingdom, OFTEL, in relation to telephone billing disputes.

325B

92/596 (8)

18 November 1993

Mr Graham Schorer
Spokesperson
COT Cases

Fax 328 4482

Dear Mr Schorer

FAST TRACK SETTLEMENT PROPOSAL

Following our meeting on Tuesday 16 November 1993, I put to Telecom your proposal that it should, in effect, commit in advance to making an *ex gratia* payment if the assessor were to make such a recommendation pursuant to the amended clause 2 (g) (iii) of the *Fast Track Settlement Proposal*.

Telecom has informed me that it is prepared to make such a commitment. It has indicated to me that its commitment is in no way to be regarded as a precedent in other cases and I have agreed to that. Telecom has signed the enclosed modified *Fast Track Settlement Proposal* containing its commitment (see the tail piece to clause 2 (g) of the proposal).

Telecom's commitment proceeds on the basis that you have accepted the modification to clause 2 (g) we discussed on Tuesday 16 November 1993. Telecom has also made the following modifications to the proposal -

- clause 2 (b) requires the Telecommunications Industry Ombudsman to consult with the parties about his nomination of assessor. This falls short of requiring the parties to agree to the nomination but will give Telecom and you an opportunity to discuss any reservations with the Telecommunications Industry Ombudsman before he proceeds. Telecom has informed me that it has added this requirement at this stage because the change to clause 2 (g) raised even further the importance of a suitable assessor
- clause 2 (d) relating to the reason why Mr Schorer's earlier settlement is not being permitted to be reopened

Telecom has also added a clause which provides, in effect, that the proposal will lapse at 5.00 pm at Tuesday 23 November 1993 unless you have accepted it before then in the manner indicated in clause (4).

5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 828 7300 FACSIMILE: (03) 829 3021

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Telecom informed me that if you were not to accept the proposal it would treat with you under the Proposed Arbitration Process it is developing in consultation with AUSTEL (a copy of which has been sent to you).

Telecom has confirmed that the *Fast Track Settlement Proposal* is open to all or any of the *COT Cases* named in the proposal. Telecom's agreement to, in effect, commit in advance to pay any amount recommended by the assessor pursuant to clause 2 (g) (iii) removes the objections you conveyed to me in our meetings on Monday and Tuesday of this week. I recommend that you accept the proposal as providing the independent review of your claims against Telecom that you have sought.

Please ring me if you would like to discuss the proposal.

Yours sincerely

Robin C Davey
Chairman



325B



4441

92/596 (9)

ALSTRAALIAN TELECOMMUNICATIONS AUTHORITY

17 February 1994

Mr Steve Black
Group General Manager
Customer Affairs
Telecom

Fax 632 3241

Dear Mr Black

FAST TRACK SETTLEMENT PROPOSAL

Further to our telephone conversation of even date, I confirm that the terms of the procedure to be followed by Dr Gordon Hughes in resolving the claims of the four COT Cases subject to the *Fast Track Settlement Proposal* are for Telecom on the one hand, the four COT Cases, on the other and Dr Hughes to agree. For AUSTEL to become involved in that process would be to usurp the role of Dr Hughes.

Subject to that qualification, I can, however, provide you with my understanding of the *Fast Track Settlement Proposal* by confirming the advice conveyed to you in our telephone conversation to the effect that -

- The thrust of the *Fast Track Settlement Proposal* was review and assessment. This may be seen by contrasting the words in the *Fast Track Settlement Proposal* with their emphasis on "... review ..." and on "... an assessor ..." with the words in the *Proposed Arbitration Procedure* which was attached to the *Fast Track Settlement Proposal*.
- While clause 2(f) of the *Fast Track Settlement Proposal* dealing with the causal link was based on clause 8(i)(iii) of the *Proposed Arbitration Procedure*, it quite deliberately omitted the words "... giving due regard to the normal rules of evidence relating to causation ..." which appear in clause 8(i)(iii). While clause 10.2.2. of the *"Fast Track" Arbitration Procedure* which I understand has been given to the parties appears to be consistent with clause 2(f) of the *Fast Track Settlement Proposal*, the words "... accepted legal principles relating to causation and assessment of loss ..." in clause 10.2.3 appear to be at odds with the thrust of clause 2(f).
- The *Fast Track Settlement Proposal* was silent on the issue of AUSTEL determining a maximum amount recoverable in tort against Telecom. It was certainly not my intention that any amount so determined by AUSTEL should apply to the four COT Cases' claims against Telecom.

5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 838 7300 FACSIMILE: (03) 820 3021

A10025

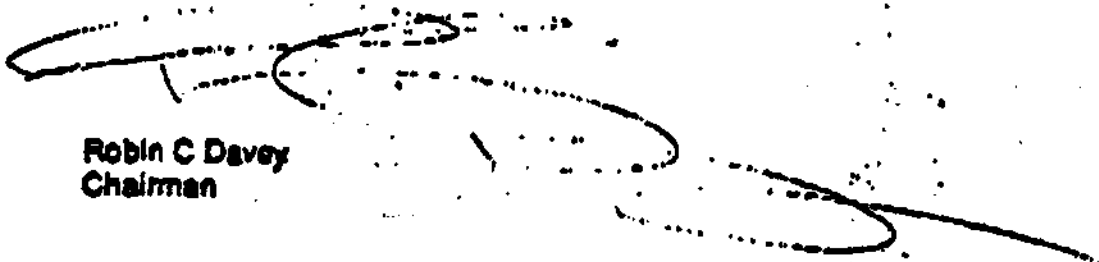
P.1

17 FEB 24 17:04 TELETYPE UNIT 3 887394

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While the *Fast Track Settlement Proposal* was also silent on the issue of "set off", I did have in mind that amounts previously paid by Telecom to any of the *COT Cases* would be "set off" against the amount, if any, determined in their favour. The issue of the "set off" of "... services carried out ..." in terms of clause 10.1.2 of the "*Fast Track*" Arbitration Procedure is one which perhaps should be clarified with Dr Hughes.

Yours sincerely



Robin C Davey
Chairman

A10024

P.2

17 FEB 94 17:05 REGISTRATION 3 028794

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AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

14 April 1994

Mrs Ann Gams
65 King Arthur Terrace
TENNYSON QLD 4105

FAX: 07 892 3739

Dear Mrs. Gams

This letter is to confirm that the Fast Track Settlement Proposal drafted by AUSTEL and signed by Telecom on 18 November 1993 and by you on 23 November 1993 refers to an "assessment" process and an "assessor" and makes no reference to "arbitration" or to an "arbitrator."

Yours sincerely

John MacMahon
General Manager
Consumer Affairs

5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004

3253

C.o.T. Cases Australia

493-495 Queensberry Street
P.O. Box 313
NORTH MELBOURNE VIC 3051

Telephone: (03) 9287 7095
Facsimile: (03) 9287 7001

5 December, 1997

Our Ref: 3572.doc

Attention: Senator John Woodley
2nd Floor, Homebase Centre
Corner Zillmere and Gympie Roads
Aspley QLD 4034.

Dear Senator,

Re: Telstra not providing true and fair answers to The Senate in response to specific questions asked of it by individual Senators.

C.o.T. members believe many of Telstra's recent answers provided to The Senate are neither true nor fair answers to specific questions asked of it by individual Senators.

Enclosed is a copy of the C.o.T. letter on this matter sent to each Telstra Board Member.

The attached Appendix, with the supporting documents, sets out the reasons for the C.o.T. members' belief.

C.o.T. members also believe the Telecommunications Industry Ombudsman has not given The Senate a full, true and fair account of the C.o.T. grievances about Telstra's conduct used in arbitration and the TIO's role taken in Fast Track and Special Arbitration processes.

With reason, C.o.T. members believe it is in the Public Interest for an Inquiry to be held into Telstra's conduct used in disputes with its customer. For such an Inquiry to be effective, it will need to include an investigation into:-

- the suitability of arbitration to equitably resolve future disputes involving customers of Telecommunications Carriers not receiving incoming telephone calls;
- the TIO's role taken in the Fast Track and Special Arbitration processes in order to determine whether the TIO should continue to administer Telstra arbitrations.

Your support for this type of Inquiry will be appreciated by C.o.T. members, other Telstra customers in dispute and all Telecommunications customers involved in a future dispute.

Thank you for taking the time in reading this correspondence.

Yours sincerely,

Graham Schorer
Spokesperson
C.o.T. CASES AUSTRALIA

326

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.

327A



Health Insurance Commission

CP00SC
06340
Run No 071

GPO Box 2436 Brisbane QLD 4001
Ph : 132 127 Fax : (07) 3004 5406

Date: 21/06/1999
HIC Ref: 60046123E

0300 0
GRAHAM J SCHORER
C/-HUNTS' SOLICITORS
L3/358 LONSDALE ST
MELBOURNE VIC 3000

NOTICE TO CLAIMANT

In relation to a compensation claim for
your injury/illness sustained on 01 May 1986

Enclosed is a Claims History Statement showing Medicare benefits paid to GRAHAM J SCHORER from 01 May 1986 to 21 June 1999.
Please note: If the date of injury/illness is prior to the introduction of Medicare on 1 February 1984, the Claims History Statement commences from that date.

Under the *Health and Other Services (Compensation) Act 1995* the Commonwealth is entitled to be reimbursed for any Medicare and nursing home/residential care benefits paid in relation to an injury/illness where compensation has been awarded for that injury/illness. This amount is payable from the amount of compensation awarded.

In order for the Health Insurance Commission (HIC) to determine the amount to be reimbursed to the Commonwealth, please answer the questions on the following pages. Firstly you need to state whether you were admitted to a nursing home or residential care facility for treatment in relation to the compensable injury/illness, and secondly, place a tick next to the Medicare services you believe relate to your compensable injury/illness.

Your response, together with the completed Statutory Declaration (attached) **must** be returned to this office in the reply paid envelope **within 28 days** of receipt of this notice. The notice must be returned even if you have indicated that there are no services which relate to this claim.

You may apply for an extension of the 28 day period by contacting the HIC before the end of the expiry period.

If the HIC does not receive the completed statement and Statutory Declaration from you by the required date, the HIC must consider that all medical services listed on the statement are related to the compensable injury/illness. This list and total amount of Medicare benefits paid will be sent to the compensation payer. This amount must be paid to the HIC before the balance of any compensation money can be paid to you.

If you have any enquiries regarding this matter, please call the HIC on **132 127** or write to the above address.

Yours sincerely

TREVOR HATCH
GOVERNMENT PROGRAMS MANAGER

327B

0087	200798	00044	55.90	55.90	DB	Surgery consultation (Professional attendance
0088	270798	00044	55.90	55.90	DB	Surgery consultation (Professional attendance
0089	030898	00044	55.90	55.90	DB	Surgery consultation (Professional attendance
0090	100898	00044	55.90	55.90	DB	Surgery consultation (Professional attendance
0091	170898	00044	55.90	55.90	DB	Surgery consultation (Professional attendance
0092	310898	00044	55.90	55.90	DB	Surgery consultation (Professional attendance
0093	070998	00044	55.90	55.90	DB	Surgery consultation (Professional attendance
0094	140998	00044	55.90	55.90	DB	Surgery consultation (Professional attendance
0095	280998	00044	55.90	55.90	DB	Surgery consultation (Professional attendance
0096	191098	00044	55.90	55.90	DB	Surgery consultation (Professional attendance
0097	261098	00044	55.90	55.90	DB	Surgery consultation (Professional attendance
0098	021198	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0099	091198	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0100	161198	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0101	241198	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0102	301198	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0103	071298	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0104	141298	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0105	211298	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0106	291298	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0107	050199	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0108	110199	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0109	140199	00170	79.45	79.45	DB	Family Group Therapy
0110	180199	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0111	010299	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0112	150299	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0113	220299	00044	56.75	56.75	DB	Surgery consultation (Professional attendance
0114	010399	00044	57.20	57.20	DB	Surgery consultation (Professional attendance
0115	150399	00044	57.20	57.20	DB	Surgery consultation (Professional attendance
0116	220399	00044	57.20	57.20	DB	Surgery consultation (Professional attendance
0117	120499	00044	57.20	57.20	DB	Surgery consultation (Professional attendance
0118	190499	00044	57.20	57.20	DB	Surgery consultation (Professional attendance
0119	260499	00044	57.20	57.20	DB	Surgery consultation (Professional attendance
0120	030599	00044	57.20	57.20	DB	Surgery consultation (Professional attendance
0121	100599	00044	57.20	57.20	DB	Surgery consultation (Professional attendance
0122	170599	00044	57.20	57.20	DB	Surgery consultation (Professional attendance
0123	240599	00044	57.20	57.20	DB	Surgery consultation (Professional attendance
0124	070699	00044	57.20	57.20	DB	Surgery consultation (Professional attendance

Services provided by: PTASZNIK, DR J - BRIGHTON RADIOLOGY S1/2-8 CHURCH ST BRIGHTON 3186

Line Number	Date of Service	Item Number	Charge \$	Benefit \$	Payment Method	Brief Item Description
0125	090197	58503	71.30	41.50	QD	Chest

Services provided by: WALLIS, DR P, L - MELBOURNE PATHOLOGY 32 SMITH ST COLLINGWOOD 3066

Line Number	Date of Service	Item Number	Charge \$	Benefit \$	Payment Method	Brief Item Description
0126	181193	69209	32.15	32.15	DB	Cultural examination
0127	181193	73915	8.40	8.40	DB	Initiation of a patient episode

Services provided by: SUSS, DR R, C - NTH MELBOURNE MED CTR 448 VICTORIA ST NORTH MELBOURNE 3051

Line Number	Date of Service	Item Number	Charge \$	Benefit \$	Payment Method	Brief Item Description
0128	100599	00023	32.00	21.50	QC	Surgery consultation
0129	110599	00023	32.00	21.50	QC	Surgery consultation

Services provided by: CYGLER, DR C - 20 MITFORD ST ST KILDA 3182

Line Number	Date of Service	Item Number	Charge \$	Benefit \$	Payment Method	Brief Item Description
0130	281098	00044	55.90	55.90	DB	Surgery consultation (Professional attendance

Services provided by: OVENDEN, MR J, A - 113 SWANSTON ST MELBOURNE 3000

Line Number	Date of Service	Item Number	Charge \$	Benefit \$	Payment Method	Brief Item Description
0131	270988	00180	35.30	35.30	DB	Initial Optometrical Consultation

Services provided by: CHESTER, DR L, J, J - 6A LINDSAY ST BRIGHTON 3186

Line Number	Date of Service	Item Number	Charge \$	Benefit \$	Payment Method	Brief Item Description
0132	130187	00142	116.00	98.60	QD	Psychiatric Consultation
0133	160187	00140	96.00	81.60	QD	Psychiatric Consultation
0134	200187	00140	96.00	81.60	QD	Psychiatric Consultation
0135	230187	00140	96.00	81.60	QD	Psychiatric Consultation
0136	270187	00140	96.00	81.60	QD	Psychiatric Consultation
0137	300187	00140	96.00	81.60	QD	Psychiatric Consultation

FAXED
30/9/97

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:	Pauline Moore Secretary	Date:	29 September, 1997
Company:	Environment, Recreation, Communications and The Arts	Our Ref:	3476
From:	Graham Schorer	Fax No:	(06) 277 5818
		Total Pages (including Header):	5 + 18 = 23

Mailed: Yes () No (X)

PRIVACY AND CONFIDENTIALITY CLAUSE

The information in this facsimile is private, privileged and strictly confidential and intended only for use of the individual or entity named above. If you are not the intended recipient, please call by telephone the sender immediately upon receiving this facsimile as any dissemination, copying or use of the information is strictly prohibited.

Dear Ms Moore,

Re: **Senate Hearing on C.o.T. and Related Cases - 26 September 1997.**

I believe it is in the public interest that the contents of the Telstra Status Report be made public.

I draw attention to the fact Telstra have provided the Committee Members with a Status Report on Graham Schorer and other related entities, companies etc claim against Telstra that contains omissions, misleading statements and assertions that contradict facts.

The Fast Track Arbitration Procedure contains the enforced Telstra Confidentiality Clause. (Copy enclosed.)

Telstra can rely upon a claimant's breach of this Confidentiality Clause to have a claim struck out.

Providing Telstra give an undertaking to the Senate Committee not to rely upon this Confidentiality Clause, I have no objection to all information provided to the Senate Committee be made public.

In order to correct Telstra's omissions, misleading statements and assertions that contradict facts in its Status Report to the Committee Members, I have enclosed an amended Status Report that represents the facts.

If Committee Members are uncertain as to which Status Report accurately represents the facts in regards to matters pertaining to FOI, Mr Wynack, the Director of Investigations from the Commonwealth Ombudsman's Office, is in the position to provide an impartial opinion. His direct contact telephone number is (06) 276 0164.

My preferred position is for the Telstra Status Report to be accompanied by this letter and my amended Status Report.

Should you or the Committee Members require further information or clarification, please do not hesitate to make contact.

Yours sincerely,



Graham Schorer

328

Graham Schorer, other related entities, companies etc Status Report to the Senate Committee about its claim against Telstra.

1 Nature of the Claimants' Claim

- 1.1 Graham Schorer, other related entities, companies etc have made an Interim Claim against Telstra relating to telephone service difficulties, problems and faults in not receiving incoming telephone calls experienced in the period between April 1986 and September 1996.
- 1.2 The claimants have suffered economic loss as a consequence of not receiving incoming telephone calls.

2 Quantum of Claim

- 2.1 The claimants' Interim Claim for loss, as at 30 September 1996, is a minimum \$4.3 million to a maximum of \$12.6 million.

3 Current Status of the Matter

- 3.1a The claimants lodged an Interim Statement of Claim on 15 June 1994, a further Interim Statement of Claim on 30 September 1996 and cannot lodge its Final Statement of Claim until after it has received all requested documents from Telstra.
- 3.1b Under the Fast Track Settlement Proposal (FTSP), the 'agreed to' Discovery Process between Telstra and the claimants, on the recommendation of AUSTEL, the ready availability in being able to access documents from Telstra, only held by Telstra, was for the claimants to lodge FOI applications with Telstra who promised to fast track all FOI applications.
- 3.1c Under the Fast Track Arbitration Procedure (FTAP), part of the 'agreed to' Discovery Process for accessing documents from Telstra was the use of FOI applications.
- 3.1d Currently there are complaints registered with the Commonwealth Ombudsman about Telstra's refusal and failure to correctly process the November 1993 and subsequent FOI applications.
- 3.1e In August 1995, the Administrator refused to conduct a meeting with Graham Schorer and other C.o.T. members to address the wrongs of his predecessor.
- 3.1f On or about December 1995, the Administrator received complaints about Lane Telecommunications having conflict of interest that could disadvantage C.o.T. members.

To date, Mr Schorer and other C.o.T. members have not received any information that clarifies there was a thorough impartial investigation into this complaint.

- 3.2 Telstra filed its defence to the Interim Claim on 26 November 1996.
- 3.3a Before and after 31 January 1994, the claimants maintain they have been prevented from completing their claim by Telstra's refusal and failure to correctly disseminate documents requested under FOI.

The claimants maintain that Telstra's withholding of key documents requested under FOI is preventing the completion of their claim.

328

In this regard the claimants have lodged numerous complaints with the Commonwealth Ombudsman. The latest complain about Telstra was lodged in September 1997.

The claimants have also made requests of the Arbitrator to direct Telstra to provide specific key documents. Apart from the Arbitrator's last direction to Telstra, Telstra have not fully complied with the previous arbitrations directions.

3.3b On 18 August 1997, the Arbitrator instructed his Resource Unit to "examine the material submitted to date with a view to submission, as soon as practicable, of the technical materials to Mr Howell for technical evaluation".

3.3c It is now wrongly alleged Mr Howell comprises the Arbitrator's Technical Resource Unit.

Mr Schorer has advised Mr Pinnock, the Administrator, and the Arbitrator that he considers Mr Howell, like Lane Telecommunications, also has a conflict of interest.

At this time the claimants are awaiting the response from the Administrator regarding its complaint about Mr Howell's conflict of interest.

3.4 In September 1996, Mr Schorer, under FOI, requested from Telstra copies of Excel spreadsheets.

Telstra refused to process this FOI application by claiming legal professional privilege.

In November 1996, by telephone, Mr Schorer took this matter up with Mr Armstrong from Telstra. Mr Armstrong stated the documents would be available under arbitration as the contents would be covered under the Arbitration Confidentiality Clause.

After repeated requests, an edited and masked version of the original spreadsheet was eventually provided to Mr Schorer under arbitration.

Since the Senate Committee hearing in June 1996 and pursuant to a directive made by the Arbitrator provided that document to Mr Schorer in full on 28 August 1997.

3.5 In November 1996, the proprietors of Lane Telecommunications notified the Australian Securities Commission Lane Telecommunications was a defunct company.

On 27 May 1997, the Administrator advised, in writing, Lane Telecommunications' business had been purchased from Pacific Star by Ericsson Australia.

3.6 On 16 July 1997, the Administrator expressed a written view the Ericsson's ownership of Lane Telecommunications put Lane Telecommunication in potential conflict of interest.

On 20 August 1997, the Administrator advised Lane Telecommunications have formally withdrawn from Telstra arbitration.

The Telecommunications Industry Ombudsman is involved in discussions with Mr Schorer as to the appointment of an appropriate new Technical Resource Unit.

328

4 Results arising from Freedom of Information complaints to the Commonwealth Ombudsman

- 4.1 In January 1994, Mr Schorer lodged the first complaint about Telstra's refusal to process his November 1993 FOI application.

In November 1994, the Commonwealth Ombudsman released her report of her investigation of complaints made by Mr Schorer about Telstra's administration of his FOI requests.

In that report the Ombudsman recommended that Telstra ought to compensate Mr Schorer for its defective administration of those FOI requests.

In January 1995, Telstra appointed a former Judge of the Supreme Court of Victoria, the Honourable Kenneth Marks QC, to determine the amount of costs that Telstra ought to pay Mr Schorer pursuant to that recommendation.

Mr Schorer provided a claim to Mr Marks. Mr Schorer became ill during the process of the claim, requiring matters to be put 'on hold'.

During this recess period, Mr Marks accepted an assignment in Western Australia to conduct an inquiry into the "Penny Easton" affair.

Telstra dispensed with Mr Marks' services. Telstra did not consult with or give prior notice of intent to the Commonwealth Ombudsman or Mr Schorer.

It was some months after Telstra had dispensed with Mr Marks' services that inadvertently Mr Schorer was advised of Telstra's actions.

Telstra was recently advised by the Commonwealth Ombudsman's office that Mr Schorer was not yet in a position to lodge his final claim for these costs.

- 4.2 Since November 1994, further complaints about Telstra's refusal to discover, identify and supply key documents requested under FOI have been lodged with the Commonwealth Ombudsman.

The Commonwealth Ombudsman's ongoing inquiry into the FOI complaints is causing Telstra (be it ever so slowly) to release documents requested.

5 Matters to be completed

- 5.1a The claimants are now waiting for the Administrator to:-

- . convene a meeting regarding Mr Howell's conflict of interest.
- . convene a meeting to address matters raised about the Administrator and his predecessor.
- . convene a meeting to address assertions that the Fast Track Arbitration Procedure should be declared null and void and/or failed.

- 5.1b The claimants are still conducting a search for a Technical Resource Unit that has the required expertise and impartiality.

- 5.1c The appointment of a new Technical Resource Unit.

328

- 5.2a In September 1996, January 1997, April 1997, Mr Schorer made further Freedom of Information requests of Telstra in order to rectify the refusal of Telstra to correctly discover, identify and supply key documents previously requested under FOI.
- 5.2b On 22 September 1997, Mr Schorer referred Telstra's response to some of these FOI requests to the Commonwealth Ombudsman. The Commonwealth Ombudsman is yet to seek a response from Telstra, the claimants understand she will do so shortly.
- 5.2c Correspondence addressed to the Chairman of the Telstra Board in April and September 1997, and all Board Members in mid September 1997, informing them of Telstra's continual violation of the 'agreed to' Discovery Process which includes the FOI Act, has received no acknowledgment whatsoever.
- 5.2d Telstra's agreement to:-
- what constitutes a correct agenda for a meeting to resolve complaints about existing FOI applications.
 - a date for a meeting to assist Telstra in understanding the scope of existing FOI applications.

328

Facsimile



To Tara Ducker
Senate Legislation Committee

Parliament House Canberra

Facsimile 02 6277 ~~5008~~ ⁵³¹⁸

From Graham Murphy
Federal Government Relations

Subject Senate Responses

Date 7 November 1997

File Total Pages

Attention 4

39th Floor
242 Exhibition Street
Melbourne Vic 3000
Australia

Telephone (03) 9 632 3811
Facsimile (03) 9 634 5436



Tara

Attached is the final response from Telstra.

Sorry about the delay.

Regards

Graham

329

SENATE LEGISLATION COMMITTEE QUESTIONS ON NOTICE

Senator Carr: How many of the 5,000 legal cases mentioned were small business/residential customer service issues? Please provide a breakup of the 5,000 by calls; charging/billing; harassment; monitoring.

Answer:

A copy of Telstra's answer to a question from a previous Senate Estimates hearing is attached ("Telstra's previous answer"). Telstra understands that this is the answer referred to in the present question from Senator Carr.

Telstra's previous answer noted that at the end of the last financial year, Telstra had over 5,000 legal matters which were being handled internally by the Telstra Legal Directorate or externally by Telstra's legal service providers. The areas covered by those matters are listed in Telstra's previous answer.

Telstra's previous answer also noted that of those 5,000 legal matters, over 1,500 involved claims or legal disputes which had been brought by or against Telstra by various parties including customer, employees, competitors and other members of the public. Those claims involved customer claims, public liability claims, employee compensation claims, property damage claims, outstanding debt claims, native title claims and various other disputes.

Of those 1,500 matters, approximately 600 related to claims made by residential or small business customers for compensation arising out of the provision of the telephone service. Of those 600 claims, there are approximately ten claims which are the subject of court proceedings and four further claims which are outstanding CoT arbitrations. Otherwise these claims were not the subject of court proceedings, rather they were claims for compensation made to Telstra which were referred to Telstra's Legal Directorate by the relevant Business Unit for advice as to resolution of the claim. These claims may have included claims made by the customer to the Small Claims Tribunal.

**DEPARTMENT OF COMMUNICATIONS AND THE ARTS
1997-98 ESTIMATES HEARINGS QUESTION NO 112**

Sub-Program 4.3 Telstra Corporation

Senator Carr asked the following question on notice:

On the more general issue of legal action involving Telstra, can Telstra advise the committee of:

- All legal disputes entered into for the last financial year;
- the total costs of legal action, both internal costs and external over the last financial year;
- all legal firms appointed, the dispute or advice involved and the cost in each instance for the last financial year?

Answer:

At the end of the last financial year Telstra had over five thousand legal matters which were being handled internally by the Telstra Legal Directorate and externally by Telstra's legal service providers. These matters covered areas such as:

- general commercial contract matters,
- construction contracts,
- supply contracts,
- corporate law banking,
- consumer law and finance,
- debt recovery,
- defamation and media,
- environmental law,
- occupational health and safety law,
- employee compensation,
- employment law,
- administrative law,
- foreign law,
- industrial relations,
- insolvency law,
- insurance law,
- intellectual property, including trademarks and patents,
- litigation,
- maritime law,
- privacy law,
- native title,
- product liability,
- property law,
- joint ventures,
- acquisitions and divestitures,
- telecommunications law,
- general commercial law,

- superannuation,
- tax and sales tax, and
- trade practices law.

Of the five thousand plus matters that were being handled over 1,500 involved claims or legal disputes which had been brought by or against Telstra by various parties including customer, employees, competitors and other members of the public. The claims involve customer claims, public liability claims, employee compensation claims, property damage claims, outstanding debt claims, native title claims and various other disputes.

→ During the last financial year the total costs of providing advice for legal matters including costs of the Telstra Legal Directorate and litigation and arbitration costs resulting from disputes and claims was approximately \$52 million. Of this amount approximately \$40 million was spent with external service providers including legal firms and patent attorneys.

Telstra has a panel of external legal firms which it uses. The legal firms on the Telstra panel provide advice to Telstra and act for Telstra in various nominated categories of legal matters. The law firms listed in Attachment A have, in the last financial year, provided advice or acted for Telstra in relation to a legal matter in Australia. The categories of law involved in the matters that they have handled for Telstra is also set out in Attachment A. The matters being handled by these firms are at different stages. Costs involved in each matter vary depending on the type of matter and the stage it is at.

In addition to law firms which have provided advice in Australia, Telstra obtains advice from law firms in different parts of the world as is required from time to time depending upon the nature and type of matter being handled.

C.o.T. Cases Australia

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12 December, 1997

Our Ref: 3584.doc

Attention: Mr John Wynack
Director of Investigations
Commonwealth Ombudsman's Office
6th Floor, 1 Farrell Place
Canberra ACT 2601.

By Express Post.

SENDER TO KEEP
LIFT & PEEL
BV1906783

Dear Mr Wynack,

Enclosed is a copy of the correspondence sent to all Senators and a copy of correspondence sent to all Telstra Board Members, including Appendix and Index of support documents, plus all support documents.

I draw the Ombudsman's particular attention to the C.o.T. response contained in Example 5.

It is my opinion that the internal Telstra documents prove the validity of the C.o.T. assertion that Telstra always intended to change Fast Track Settlement Proposal non-legalistic assessment process into a legalistic Arbitration process.

I am aware that the Commonwealth Ombudsman has been advised by Dr Hughes it was only his decision to change the assessment process into an arbitration process.

However, the documents now in the possession of C.o.T. confirm there was an agreement reached between Telstra and the then TIO, Mr Warwick Smith, on or before 12 January 1994, for a legalistic arbitration process to be used with the C.o.T. Four who signed the FTSP, which was before Dr Hughes was appointed.

This is one of many examples of how Telstra used misleading, deceptive and unconscionable conduct against C.o.T. members to gain an unfair advantage in the dispute resolution process. Telstra's unfair advantages gained by unethical tactics and unlawful conduct is resulting in C.o.T. members being financially disadvantaged.

This conduct must be investigated and exposed for what it is in order to make Telstra accountable and be restrained in the future from engaging in like conduct.

Regards.


Graham Schorer

330A

Senator SCHACHT—You can show them the *Hansard* of my remarks.

Mr Pinnock—I can do that to them.

Senator SCHACHT—It would be in my view extremely short-sighted of them not to adopt what I think are the minimum changes that you have outlined here to the process. If they do not, I suspect the TIO itself—not you personally—will start to have its own credibility undermined because of the influence on the TIO council of the carriers, which is always an issue.

Mr Pinnock—With the greatest respect, I correct you there. The carriers do not hold sway in the council at all. I report to my council, I am present at every council meeting and I can state categorically that the influence of the carriers in the council is the influence of the membership of the TIO balanced against the interests of consumers represented by independently appointed and consumer and user group representatives who are employed after consultation with the minister.

Senator SCHACHT—I am pleased you put that on the record. I am pleased to hear that again. We have to keep stating that because there is perception that the influence, directly and so on, because of the clout of the carriers—

Mr Pinnock—The perception is wrong.

Senator SCHACHT—But, being able to hear, I just the same think that this is a test coming up for the council, that these changes if they are not adopted will further increase the perception maybe as wrong as they are now that the influence of the carriers is too strong. I just raise that. I put my hand up back five or six years ago for the TIO to be created and all of that. This is a revolutionary process and with the privatisation of Telstra—the third privatisation under way—the world keeps changing. The state-owned monopoly is now operating in a different area. If further amendments to the Trade Practices Act about unconscionable conduct are strengthened, the officers of Telstra, like any others, are going to have to be witnesses and be available for those actions. That will be an excellent step forward vis-a-vis the power of Telstra versus small business.

Can I now just go to some questions to Telstra. Did Simone Simmons on behalf of Telstra state on Channel 9's *Current Affair* program in August 1996 that the findings of the Bell Canada International report into the performance of the Telstra network substantiate that there were no systematic problems within Telstra's billing system?

Mr Benjamin—I am not aware of that particular statement by Simone Simmons, but I think that would be a reasonable conclusion from the Bell Canada report.

Senator SCHACHT—Since then of course—not in conversations but elsewhere—we now have major litigation running into hundreds of millions of dollars between various

service providers and so on which are complaints about the billing system. Does that indicate that she may have been partly wrong?

↙ **Mr Benjamin**—From memory, I do not think the Bell Canada inquiry looked at billing systems.

Senator SCHACHT—The claim is that she said that Bell Canada's international report substantiated that there were no systematic problems within Telstra's billing system; that was her claim. I am just saying that, since then, you have got major litigation running into hundreds of millions of dollars between various service providers and other telecommunications providers claiming false overbilling running into hundreds of millions of dollars.

(**Mr Ward**—I cannot comment on the Simone Simmons statement and I guess we will get that checked if it is not with us today.

Senator SCHACHT—So we start at the right place. That is another question being taken on notice.

Mr Ward—No, I did not say that. We will check if we can get the information from the people we have here. The comment I was going to make about billing was that, since that time, the development in the wholesale market of service provision between Telstra and service providers has taken off quite significantly, and that is a wholesale, if you like, billing service based on, at that stage, a retail platform. I suspect—and we will have this checked—that the Bell Canada report would not have looked at that aspect of the billing.

↙ **Senator SCHACHT**—Has Telstra received any complaints from CoT members and other people about the BCI report findings being flawed or fabricated?

(**Mr Benjamin**—Yes, there have been complaints made—sorry, not fabricated; there have been complaints made by various CoT members about disagreement with aspects of the Bell Canada report.

Mr Armstrong—Can I just add I think one of the CoT members has alleged that the Bell Canada report was fabricated.

↙ **Senator SCHACHT**—That is what I am saying: there is a pile of stuff there that has come into my office from a range of CoT case people and I am trying to summarise a range of their complaints. They claim it is fabricated. I do not automatically accept that. I want to get them on the record in order to get the cases into the open. I want to get to the bottom of many of those complaints. As a result of those complaints, did you find that Telstra had to take any action in respect of the BCI report to rectify any inaccuracies or shortcomings in the system?

Mr Armstrong—Yes. The basis upon which it was put that the report was fabricated was an apparent clash of dates, as I recall, with two sets of testing. This goes back a couple of years. I believe that claimants raised the matter with the TIO. Telstra went to Bell Canada and raised the clash of dates with it. As I recall, Bell Canada provided a letter saying that there was an error in the report.

Senator SCHACHT—Can you please provide us with a copy of that letter from Bell Canada?

Mr Armstrong—I do not have it with me.

Senator SCHACHT—Can you get it for us?

Mr Armstrong—Yes.

Senator SCHACHT—I will put that question on notice. As to the complaints to Telstra from the CoT cases—Mr Benjamin, you may think that you have drawn the short straw in Telstra, because you have been designated to handle the CoT cases and so on. Are you also a member of the TIO board?

Mr Benjamin—I am a member of the TIO council.

Senator SCHACHT—Were any CoT complaints or issues discussed at the council while you were present?

Mr Benjamin—There are regular reports from the TIO on the progress of the CoT claims.

Senator SCHACHT—Did the council make any decisions about CoT cases or express any opinion?

Mr Benjamin—I might be assisted by Mr Pinnock.

Mr Pinnock—Yes.

Senator SCHACHT—Did it? Mr Benjamin, did you declare your potential conflict of interest at the council meeting, given that as a Telstra employee you were dealing with CoT cases?

Mr Benjamin—My involvement in CoT cases, I believe, was known to the TIO council.


Senator SCHACHT—No, did you declare your interest?

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 Telecommunications
Ombudsman's Office at approximately midday today.

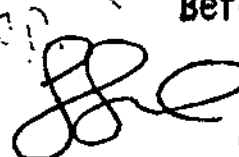
She advised me that the Bell Canada International Inc Report to
Telecom Australia dated 1 November 1993 and the addendum dated
10 November 1993 were flawed documents.

 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. SAVAGE
COMMISSIONER 29345

33/A

C.o.T. Cases Australia

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19 November, 1997

Our Ref: 3559.doc

Attention: Jenny Fox
Senator Schacht
By facsimile: (06) 227 3121.

FAXED
19/11/97

Dear Senator Schacht,

Telstra's and John Pinnock's recent answers to The Senate in response to Questions on Notice do not give a true and fair representation of events. In a number of instances, answers are misleading and/or contained statements that contradict fact.

During Telstra's and John Pinnock's recent appearances before The Senate, they both provided The Senate with explanations/account of the Telstra arbitrations, which was not a true and fair representation of events.

A classic example is:-

On Tuesday, 24 June 1997, Mr Ted Benjamin told The Senate, "*The agreements were negotiated before anyone here was connected with these matters, but my understanding is that there was a mutual agreement in respect of confidentiality.*", which is a statement that contradicts fact.

During the month of January 1994, Mr Graeme Ward, with Steve Black and others, was involved in meetings with AUSTEL to do with C.o.T. matters. Telstra's Mr Paul Rizzo's 11 January 1994 letter to AUSTEL confirms a meeting between Mr Ward, Mr Black, on behalf of Telstra, and Dr Horton and Mr Tuckwell of AUSTEL, took place (copy enclosed). Mr Ward has been a Telstra representative on the TIO Board since its inception.

Mr Benjamin, since January 1994, according to internal Telstra documents, has been involved in these C.o.T. matters in one Telstra position or another, including when he was Manager of Telstra's FOI Unit. Mr Benjamin has been a representative of the TIO Council since its inception.

C.o.T. members were invited to appear before The Senate on 24 June 1997. They were told The Senate would give C.o.T. members an opportunity to give the Senators their version of events that did or did not take place, plus be available to answer questions.

Unfortunately, no C.o.T. member was given an opportunity to provide The Senate with the C.o.T. version of events that have or have not taken place or address the misleading and inaccurate statements made to The Senate by Telstra and Mr Pinnock in their opening statements or response to questions.

C.o.T. Cases Australia will appreciate you arranging with The Senate for just one member (speaking on behalf of all members and Related Cases) the opportunity to speak before The Senate for fifteen (15) minutes in Point form in order to set the record straight.

The attached Appendix contain C.o.T. responses to Telstra's and John Pinnock's answers and suggestions of questions to be asked without notice or notice.

On behalf of all C.o.T. members and Related Cases, thank you for your interest and support.

Ann Garms and I, on behalf of all C.o.T. members and Related Cases, will be present at tomorrow's Estimates' Hearing.

Yours sincerely,


Graham Schorer
Spokesperson
C.O.T. CASES AUSTRALIA

331B

C.o.T. Cases Australia

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North Melbourne VIC 3051

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15 December, 1997

Our Ref: 3585.doc

Attention: Mr John Wynack
Chair, Senate ERCA Working Party
By facsimile: (06) 249 7829.

FAXED
15/12/97

Dear Mr Wynack,

Re: Agenda for Meeting on 16 December 1997.

I wish to include other items on the Agenda under the following headings:-

1. Bell Canada International

Is there any reason why Telstra:-

- a) has not provided the C.o.T.s with, and
- b) will not provide the C.o.T.s with

the working papers, testing data and other relevant information created before, during and after the testing of the Telstra network relating to the Telstra test calls performed in accordance with the Bell Canada International (BCI) requirements before BCI completed its November 1993 Report and its attached Appendix, or for the Working Party to consider if the information is relevant?

2. Telstra's Working Party Representative

- a. The Working Party to consider if its Terms of Reference objectives' progress will be assisted by a change of the Telstra representative to a person who has the technical expertise and practical knowledge of the network's design, construction and operation?
- b. Is there any reason why Telstra:-
 - (i) has been represented at the Working Party by a solicitor who has no knowledge or understanding of the Telstra network?
 - (ii) cannot be represented at the Working Party by the Director responsible for and in charge of the network's design, construction and operation?
 - (iii) cannot be represented at the Working Party by a person, who has the technical expertise and practical knowledge of the network's design, construction and operation, nominated by the Director in charge of the network?

332

when the list of documents Telstra must provide in accordance with the Terms of Reference, in most instances, relate to Telstra's network performance, service difficulties, problems and faults of the network, or of the party business telephone service?

3. Questions to consider asking the Senate Committee

In order to speed up the progress of the Working Party, such questions could be relating to the changes to the Terms of Reference to authorise the C.o.T. representatives to the Working Party to meet directly with nominated Heads of Telstra Departments and/or inspect archives of those Departments and report back to the Working Party their findings.

Should you require further information or clarification, please do not hesitate to make contact.

Yours sincerely,



Graham Schorer
Spokesperson
C.o.T. CASES AUSTRALIA

cc: John Armstrong
Ann Garms

By facsimile: (03) 963² 0965. ✓
By facsimile: (07) 3257 1583. ✓

Ref No: A/97/123

19 December 1997



Mr Graham Schorer
 Golden
 PO Box 313
 NORTH MELBOURNE 3051

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Dear Mr Schorer

Attached is the letter I sent to the Senate ERCA Committee re the Working Party's activities.

I decided not to send the appendix which you sent to me late yesterday as I do not think it is relevant to the purpose of the letter and I think that those issues should be the subject of debate in the Working Party in the first instance.

Yours sincerely


 John Wynack
 Chair, Working Party

Ref No: A/97/123

19 December 1997



Senator John Tierney
 Chair
 Senate Environment, Recreation, Communications
 and the Arts Legislation Committee
 Parliament House
 CANBERRA ACT 2600

Dear Senator Tierney

I refer to your letter dated November 1997 in which you agreed to my request for the Senate Environment, Recreation, Communications and the Arts Legislation Committee (the Committee) to amend the terms of reference of the Working Party convened to report on various matters relating to Telstra and COT/COT related cases by extending to 18 December 1997 the date by which the Working Party shall report to the Committee.

Notwithstanding that the members of the Working Party and the COT members who are Parties in the exercise have worked very hard to provide the information which the Working Party needs to comply with the Committee's Terms of Reference (TOR), we are unable to provide you with a conclusive report by the due date. This is largely due to fundamental disagreements as to what are 'relevant documents' and to disagreements between the Telstra representative and the COTs' representatives about the adequacy and relevance of the network information which Telstra provided to the Working Party in compliance with clause 2.3 of the TOR. I have been unable, within the present time frame, to resolve these disputes which are very technical, so I am notifying you as required by clause 4.4 and in accordance with Ms Moore's letter to the Acting Ombudsman on 24 October 1997. I have attached copies of letters from Telstra and from the COTs' representatives which illustrate some of the areas of dispute.

I am not requesting the Committee's intervention at this time, to resolve those disputes; but I thought that I should explain why we are unable to report by 18 December 1997 and explain in general terms why I believe that the Working Party will be able to comply with, at least, most of the TOR within a reasonable time frame. I think that the initiatives described below will enable

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333

the Working Party to progress the exercise to what we believe the Committee would consider an appropriate outcome.

The 'List' (Part2 of TOR)

Telstra provided lists of documents at the first Working Party meeting on 21 October 1997. The lists were not comprehensive and were not presented in a manner which would enable the Working Party to comply with the requirements of Part 2 of the TOR. I mention that Telstra did not purport that they were comprehensive or in a form designed to comply with the TOR. The Working Party decided that the lists would not assist in complying with the TOR.

The Working Party decided that the Parties should submit to the Working Party lists of documents which they consider the Working Party should consider to comply with the Senate Committee's TOR. Attached is a copy of the letter the Working Party sent to the Parties on 18 November 1997. The Working Party decided to assist the Parties by providing two sets of information which Telstra undertook to prepare. The first were diagrams which identified the networks which were used to service the Parties' telephone services. The second was a document which sets out those areas of Telstra which Telstra considers are likely to have documents which are relevant to the Parties' telephone services. The Working Party also relayed to the Parties offers by the two COTs' representatives on the Working Party to provide secretarial assistance.

The Working Party received submissions from the Parties progressively over the period 20 November 1997 to 16 December 1997. I think that most submissions have been completed to the extent that the Parties can provide them without the network information which the Parties claim that Telstra should provide.

On 16 December 1997, Telstra advised that it is able to provide to the Working Party:

- A list of those documents reviewed by Telstra in the preparation of its defence of the Parties arbitrations, including documents reviewed by Telstra since the filing of its defence, such as documents reviewed in response to questions from the Arbitrators' resource unit;
- A list of those files reviewed when responding to FOI requests of the various COT members;
- A list of those documents which were exempted in full pursuant to those FOI requests, noting which documents Telstra is prepared to provide to the COTs.

Note: Telstra has not undertaken to provide the information in a form which will enable the Working Party to comply with the TOR (particularly clauses 2.4, 2.5, 2.6, 2.7 and 2.9). Telstra advised that it is concerned about the magnitude of the task and it does not believe that the task would necessarily further the aim of identifying those documents which have not been provided by Telstra.

During the meeting on 16 December 1997, the Working Party agreed that I should ask the Senate Committee to agree to accept, as an interim measure, an

'exception report' is a report on those documents included in the Parties' submissions which have not been provided by Telstra.

In reaching that view, the Working Party had regard to Telstra's assertion that it would take many months for Telstra to provide the information required by the TOR, in the form specified in the TOR, and also to the fact that the Working Party would have to rely on the Parties to provide a statement of the veracity of Telstra's submissions and a view that the Parties would have difficulty in complying with requests from the Working Party within a reasonable period.

Network Information. (Part 2.3. of TOR)

The Working Party has decided that it will need independent advice to settle disputes about technical issues including one issue which the COTs' representatives on the Working Party consider fundamental to the exercise viz what network information is relevant to the Parties' claims? The attached letters illustrate some of the areas already in dispute.

Telstra has agreed to meet the costs of an independent adviser and the Working Party has agreed that the Chair should obtain details of two independent experts and submit them to the Working Party members for consideration.

The Working Party considers that it is likely that the Senate Committee would need to seek independent technical advice on technical matters in dispute and it may be more efficient if the Working Party were to provide the Senate Committee with independent advice in its report to the Senate Committee.

Composition of the Working Party.

The Working Party believes that it is inappropriate that the Telstra representative on the Working Party is a lawyer with limited knowledge of the technical issues which the Working Party is considering. The Working Party believes that Telstra should nominate a senior technical person who is au fait with such matters as the network and network performance matters and who can quickly identify the areas within Telstra which can provide the information being sought by the Working Party.

Telstra notified me on 18 December 1997 that Telstra has agreed that it will send a senior technical person with the appropriate qualifications to future Working Party meetings. I am clarifying with Telstra whether that commitment is to replacing the existing Telstra representative with the 'senior technical person'.

Change in Strategy.

In view of the disputes about the availability of information, particularly about network performance, the Working Party has decided that it should make inquiries directly of persons who are involved with the relevant parts of the network servicing the Parties' telephones. The Working Party will consult an independent adviser regarding the value of such an exercise, with a view to asking Telstra to agree to the Working Party members, accompanied by an independent adviser, visiting sites early in January 1998.

Telstra asked me to inform you that Telstra has not agreed to the proposition as Telstra believes it is simply premature to consider such a course. Telstra is hopeful that the engagement of an independent technical adviser will assist the Working Party to reach agreement as to which documents it is that Telstra has not provided.

Prognosis.

It is my opinion that the Working Party has made some progress and that the proposed changes in strategy will enable the Working Party to make a useful report to the Senate Committee within a reasonable period.

The Telstra representative advised the Working Party that Telstra will adopt a more liberal approach to release of documents which are considered relevant than that which was dictated by the arbitration process and the FOI Act. He stated that Telstra's approach will be to release documents unless there is a very good reason for withholding them. This is a significant undertaking and should result in a substantial reduction in the size of the report under clauses 2.7, 2.8 and 4.3.

I should be grateful if you would agree to extend the date for submission of an interim report, being largely along the lines of the 'exception report' described above, until 30 January 1997. Although the Working Party will concentrate on that interim report, the Working Party will also work toward complying fully with the TOR as soon as possible.

Regrettably the Working Party members were unable to brief me in sufficient time for me to write to you yesterday and I apologise for our failure to do so. I should be grateful if you could give this matter your early attention as I would like to proceed, as soon as possible, to select appropriate people for consideration by the Working Party for appointment as independent technical adviser.

Yours sincerely



John Wynack
Chair, Working Party

333

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Gordon Hughes
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Our reference
GLH:686753

29 December 1997

Mr W M Hunt
Hunt's Solicitors
358 Lonsdale Street
Melbourne Vic 3000

Dear Mr Hunt

ARBITRATION - SCHORER

I confirm the outcome of the Directions Hearing held at Minter Ellison on 22 December 1997 was as follows:

- due to a perceived conflict of interest arising from my commencement at Blake Dawson Waldron, I shall forthwith cease to act as arbitrator;
- the arbitration is to continue but is effectively suspended until a new arbitrator is appointed;
- the TIO will appoint a new arbitrator;
- the TIO will also propose a mediator, whereupon the parties will give further consideration as to whether mediation should take place;
- the Resource Unit will suspend further work on this arbitration, pending directions from a new arbitrator.

I noted the following reservations and qualifications expressed by the parties:

- Mr Schorer has reservations as to whether the arbitration should continue;
- Mr Benjamin has some reservations as to whether a mediation should be commenced;
- Mr Schorer objects to the involvement of Mr Howell as a technical expert (although this is an issue which has previously been addressed by me).

MELBOURNE
SYDNEY
BRISBANE
PERTH
CANBERRA
LONDON
PORT MORESBY
JAKARTA
SHANGHAI
HONG KONG

334

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Mr Ted Benjamin
Telstra

Page 2

Notwithstanding these reservations and qualifications, I remain hopeful that parties will during January 1998 embark upon a mediation in good faith with a view to resolving this long standing dispute.

Yours sincerely



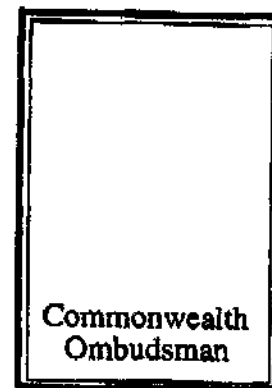
GORDON HUGHES

cc G Schorer, E Benjamin, J Pinnock, P Bartlett, L McCullagh, S Hodgkinson

334

Ref No: A/97/123

7 January 1998



Mr Graham Schorer
 Golden
 PO Box 313
 NORTH MELBOURNE 3051

ADDRESS:
 6 TH FLOOR
 1 FARRELL PLACE
 CANBERRA ACT 2601

POSTAL:
 PO BOX 442
 CANBERRA ACT 2601

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 (06) 276 0111

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 1 800 133 067

FACSIMILE:
 (06) 249 7829


INTERNATIONAL
 FACSIMILE:
 61-6-249 7829

Dear Mr Schorer

Attached is a copy of a letter Telstra sent to me on 5 January 1998, in which they suggest that I write to Bell Canada International asking that BCI provide to the Working Party certain documents relating to its reports which were published in 1993.

I should be grateful for your comments on Telstra's suggestion. Should you decide to request me to write to BCI, please provide details of the documents you think BCI might hold which are covered by the Working Party's Terms of Reference.

Yours sincerely


 John Wynack
 Chair, Working Party

335

C.o.T. Cases Australia

493-495 Queensberry Street
P.O. Box 313
North Melbourne VIC 3051

Telephone: (03) 9287 7095
Facsimile: (03) 9287 7001

9 January, 1998

FAXED
9/1/98

Our Ref: 3603.doc

Attention: Mr John Wynack
Chair, Working Party
Senate ERCA Legislation Committee
By facsimile: (06) 249 7829.
Total pages (including this page) : 6.

Dear Mr Wynack,

Re: Telstra's suggestion that instead of Telstra writing directly to Bell Canada International (BCI) requesting information and documentation created prior to, during and just after BCI compiled its two Reports, that the task should be executed by the Chairman of the Working Party.

Ann Garms and Graham Schorer have discussed this matter and are both in agreement that it would be improper and would not be appropriate for the Chairman of the Working Party to write directly to Bell Canada International to request information.

We are both very annoyed that Telstra has wasted fifteen valuable days of the short life granted to the Working Party before it decided to make this improper request to the Chairman.

This Telstra request to the Chairman should have been addressed in the 16 December 1997 Working Party meeting and there was every opportunity during the meeting for Telstra to make the request of the Chairman and have the matter immediately addressed by all present.

This is another example that demonstrates the difference between Telstra's stated willingness to assist in complying with requests for information versus Telstra's actual intent, which is, to limit, delay or prevent receipt of information requested.

In Telstra's letter to the Chairman of the Working Party dated 2 January 1998, Telstra are incorrectly asserting the requests to be made of Bell Canada only applies to Bell Canada's working notes and other documentation compiled by it in the preparation of the BCI Reports, being those reports published in late 1993.

With reason, C.o.T. maintain the Telstra assertion made to the Chairman, about the request to be put to Bell Canada, is incorrect because it does not correspond with:-

- the written requests individual C.o.T.s submitted to the Working Party,
- individual C.o.T. member's FOI requests made upon Telstra,
- individual C.o.T. member's correspondence to Telstra clarifying the scope of their FOI requests,
- the late 1993 undertaking given by Mr Ian Campbell, the then Director of Telstra, to Graham Schorer,
- Graham Schorer's correspondence to Telstra confirming and clarifying Mr Campbell's undertaking,
- the C.o.T. Working Party representatives provided further clarification to Telstra during the 16 December 1997 Working Party meeting. Refer to Transcript, pages 80 to 86 inclusive.

Telstra has always refused to "understand" FOI requests relating to BCI. Telstra has always failed to correctly process FOI requests relating to Telstra's involvement in the testing results published in the two BCI Reports.

Telstra is again refusing to "understand" and correctly respond to the requests made through the Working Party relating to Telstra's involvement in the testing results published in the two BCI Reports.

Because Telstra is again refusing to correctly respond to the Working Party request to identify the existence of types and classes of information and documents relating to "BCI's" testing of the network, C.o.T. are clarifying with the Chairman of the Working Party its previous request made to Telstra about the alleged BCI testing of the Telstra network.

Before C.o.T. clarify the BCI request with the Chairman, the C.o.T. representatives draw the Chairman's attention to the fact that it was Telstra personnel using Telstra equipment who:-

- performed all of the monitoring and testing referred to in each of the Bell Canada International (BCI) Reports,
- fixed any difficulty, problems and faults experienced during the period Telstra was making the "BCI" test calls in accordance with the BCI requirements,
- created the test call data and compiled results of each series of test calls that were referred to in the Bell Canada Report.

C.o.T. members were informed of the above by the Bell Canada representatives present at the meeting between Telstra, C.o.T. members and BCI representatives held in Melbourne at the Hilton Hotel in late November 1993.

In its simplest form, the C.o.T. request to Telstra about the two BCI Reports, each Report has three parts:-

1. The first part is that which has been created by Telstra.
2. The second part is that part which has been created by BCI and a copy has been provided to Telstra.
3. The third part is all the correspondence exchanged between parties, minutes of meetings held between Telstra and BCI, and minutes of all Telstra meetings held about BCI.

The attached Appendix sets out in detail a re-worded description encompassing all of the previous requests to Telstra for documents relating to the two Bell Canada Reports.

C.o.T. have reason to assert to the Chairman of the Working Party, Telstra did have most, if not all, of the BCI information and documentation in its possession at the time it received the first batch of FOI requests from a number of C.o.T. members responding to the Fast Track Settlement Proposal in late November and during December 1993.

Telstra has been on notice since late November 1993 that the BCI information has been required by all the C.o.T. members responding to the FTSP Agreement.

The C.o.T. Working Party representatives request the Chairman to inform Telstra to:-

- immediately comply with this "BCI" request.
- make this "BCI" information and documentation available to all of the representatives of the Working Party five (5) working days prior to the next Working Party meeting.

Should Telstra not comply with the Chairman's request, the C.o.T. representatives will insist the Working Party seek the Senate Committee intervention.

Should you require further information or clarification, please do not hesitate to make contact.

Yours sincerely,


pp. 
Ann Garms & Graham Schorer
The C.o.T. Working Party Representatives

APPENDIX.**RE: BELL CANADA INTERNATIONAL NOVEMBER 1993 REPORT AND ITS ATTACHED APPENDIX.****Part 1.**

Telstra documents, working papers, diary notes, instructions and data created before, during and after the testing of the Telstra network by Telstra personnel relating to the Telstra test calls performed in accordance with the Bell Canada International (BCI) requirements before BCI completed its November 1993 Report and its attached Appendix.

The scope of this description of documents includes all records of:-

- difficulties, problems and faults experienced in setting up the test call program, initial test calls, the test calls used in the BCI Report, plus
- the identity of each difficulty, problem and fault experienced, and
- action taken to remedy each difficulty, problem and fault, plus
- time taken to remedy each difficulty, problem and fault, plus
- all of the CCS7 Data on each test call of all completed test programs and attempted test programs not completed for any reason.

The scope of this category of documents should not be confused with or limited by only those documents and information used, reviewed and/or referred to by Bell Canada International when compiling its November 1993 Report and its attached Appendix.

Part 2.

BCI documents, working papers, diary notes, instructions and data created before, during and after the testing of the Telstra network by Telstra personnel relating to the Telstra test calls performed in accordance with the Bell Canada International (BCI) requirements before BCI completed its November 1993 Report and its attached Appendix.

The scope of this description of documents includes all records of:-

- difficulties, problems and faults experienced in setting up the test call program, initial test calls, the test calls used in the BCI Report, plus
- the identity of each difficulty, problem and fault experienced, and
- action taken to remedy each difficulty, problem and fault, plus

- time taken to remedy each difficulty, problem and fault, plus
- all of the CCS7 Data on each test call of all completed test programs and attempted test programs not completed for any reason.

The scope of this category of documents should not be confused with or limited by only those documents and information used, reviewed and/or referred to by Bell Canada International when compiling its November 1993 Report and its attached Appendix.

Part 3.

All correspondence exchanged between the parties, minutes of meetings held between the parties, minutes of Telstra meetings relating to BCI.

RE: BELL CANADA INTERNATIONAL ROTARY GROUP STUDY REPORT.

Part 1.

Telstra documents, working papers, diary notes, instructions and data created before, during and after the testing of the Telstra network relating to the Telstra test calls performed in accordance with the Bell Canada International (BCI) requirements before BCI completed its Rotary Group Study Report.

The scope of this description of documents includes all records of:-

- difficulties, problems and faults experienced in setting up the test call program, initial test calls, the test calls used in the BCI Report, plus
- the identity of each difficulty, problem and fault experienced, and
- action taken to remedy each difficulty, problem and fault, plus
- time taken to remedy each difficulty, problem and fault, plus
- all of the CCS7 Data on each test call of all completed test programs and attempted test programs not completed for any reason.

The scope of this category of documents should not be confused with or limited by only those documents and information referred to, reviewed and/or used by Bell Canada International when compiling its Rotary Group Study Report.

Part 2.

BCI documents, working papers, diary notes, instructions and data created before, during and after the testing of the Telstra network relating to the Telstra test calls performed in accordance with the Bell Canada International (BCI) requirements before BCI completed its Rotary Group Study Report.

The scope of this description of documents includes all records of:-

- difficulties, problems and faults experienced in setting up the test call program, initial test calls, the test calls used in the BCI Report, plus
- the identity of each difficulty, problem and fault experienced, and
- action taken to remedy each difficulty, problem and fault, plus
- time taken to remedy each difficulty, problem and fault, plus
- all of the CCS7 Data on each test call of all completed test programs and attempted test programs not completed for any reason.

The scope of this category of documents should not be confused with or limited by only those documents and information referred to, reviewed and/or used by Bell Canada International when compiling its Rotary Group Study Report.

Part 3.

All correspondence exchanged between the parties, minutes of meetings held between the parties, minutes of Telstra meetings relating to BCI.



27 February 1998

Telecommunications
Industry
Ombudsman

John Pincock
Ombudsman

Mr Ted Benjamin
Director Consumer Affairs
Regulatory & External Affairs
Telstra Corporation
Lvl 38/242 Exhibition Street
MELBOURNE 3000

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

Fast Track Arbitration Procedure

On 22 December 1997, Dr Gordon Hughes held a Directions Hearing in this matter.

Subsequently, Dr Hughes advised the parties, the Administrator, the Special Counsel and the Resource Unit that:

- due to a perceived conflict of interest he had ceased to act as Arbitrator;
- the arbitration should continue with the appointment of a new Arbitrator by the Administrator;
- the Resource Unit should suspend further work pending directions from a new Arbitrator.

The parties then held discussions about the possibility of a mediated settlement. However, to date nothing concrete has emerged from these discussions.

Advice from the Special Counsel confirms.

- the Arbitration remains on foot;
- as Administrator, I should appoint a new Arbitrator;
- the Arbitrator must give directions about the release of the Preliminary Technical Evaluation Report prepared by Mr Paul Howell at the direction of Dr Hughes and now held by the Resource Unit.

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

AWARD 827
Website: www.tio.com.au
E-mail: tio@tio.com.au
TTY: 1800 675 692
National Headquarters
#15 Exhibition Street
Melbourne Victoria 3000

Telecommunications Industry Ombudsman Ltd ACN 057 634 787

Box 18098
Collins Street East
Melbourne
Victoria 3000

Telephone (03) 9277 8777
Facsimile (03) 9277 8797
Tel. Freecall 1800 067 058
Fax Freecall 1800 630 614
Translating Interpreter
Service 13 1450

337

There has been a history of delay in this matter which I regard as intolerable and which reflects on the TIO as Administrator of the FTAP. In view of this I intend to appoint an Arbitrator as soon as possible.

Naturally, I will consult with the parties before making such an appointment.

I direct the parties to attend at the offices of the TIO, 315 Exhibition Street Melbourne at 10.00am on Friday 13 March 1998.

I will expect the parties to advise each other by 6 March 1998 of any suggested nominations or preferences for appointment of Arbitrator and to exchange relevant curriculum vitae. I shall also advise the parties of potential nominations by that date.

Concurrently, if the parties wish to revive discussions about a mediated settlement that is a matter for them. I will not, however, tolerate any further delay in the appointment of an Arbitrator.

It has been suggested that the claimant has reservations as to whether the Arbitration should proceed. My advice is that the FTAP is a binding agreement between the parties. If for any reason the Arbitration does not proceed, I make it clear that the TIO will not sponsor any further resolution of this dispute and the parties will be left to other available legal remedies.

Yours sincerely



**JOHN PINNOCK
OMBUDSMAN**

cc **Peter Bartlett, John Selak.**

AM/arb/827

337

6 March 1998

**RE: COTCASE
CONVERSATION BETWEEN W R HUNT & G SCHORRER**

GS: On 12 January, 1994 Peter Bartlett and Warwick Smith in a meeting at the TO's office in the evening informed us that Mr Stephen Black from Telstra provided him with a document called 'Telstra Corporation Limited Fast Track Preferred Rules of Arbitration'. I turned around when the others said it's not an arbitration process. Warwick Smith said that based upon the material and the evidence given by Steve Luck he didn't agree with our opinion. I asked for a copy of the document. He said we weren't going to get one. Peter Bartlett also supported him. The reason for not giving us one - because he said it would confuse matters. I said he was not empowered, nor did we give him the authority to pass this document on as requested from Steve Luck of Telstra on to the assessor when appointed, because it wasn't it was an assessment process not arbitration. Warwick then said he didn't need our authority or consent - he'd do what he liked anyway (or words to that effect).

On Friday 14 January, 1994 in the evening Warwick Smith met with Gordon News who returned back from Queensland early to meet with him. He was unofficially appointed as the Assessor of the Fast Track Settlement Proposal which was to be made public and the appointment official on Monday 17 January, 1994. The Press Release was released midnight or Sunday to that effect.

When Com..... was interviewing people including Dr. Hughes in relation to F I investigations, Dr. Hughes told him that yes he had such a document in his possession and on Monday he either forwarded or spoke to Mr Sheldon from Minter Ellison the same legal firm from where Peter Bartlett came from who was special and discussed this document. Dr Hughes wrote to the four Cot people including myself on Tuesday 18 February. In that letter he advised us that he had received this document, he didn't say precisely how he got it, but he advised he had received it. He was considering the merits of it. He didn't want a proposition from us or a discussion from us until he had an opportunity to examine the document and form a view, then he would take a submission from us.

I rang Hughes and said 'this is nonsense, you're considering a proposition when it shouldn't even be considered. We're a commercial assessment process not arbitration'. He said 'well that's the way I'm playing it' (or words to that effect).

I then got a letter on 3 February, 1994 and enclosed in it was a document called "Fast Track Arbitration Proposal(or Procedure)". Written on it in pencil up in ,I think, the top right hand corner was 2/2/94. This was received from Dr. Hughes and this was allegedly a document drafted by Mr Sheldon at Minter Ellison

reflecting the wishes and the wants of Dr. Hughes after his consideration. So without consulting with us the document was drafted. In other words the decision was made for arbitration without us having any knowledge or input or agreement to.

I then hit the roof, rang Lound(?), spoke to Anne - we were all upset - and I was still after the original agreement. Warwick Smith still wouldn't give it to us. Peter Bartlett still wouldn't give it to us. I did not know at that time that the T I was not covered under FOI and when I couldn't get to Warwick Smith I said to his assistant - Jenny somebody - 'Well if I have to I will do an FOI on the TIO and this is bullshit and this is a conspiracy'. I had a very irate Warwick Smith ring me back and this was about the 7th or 8th February, who turned around and said to me 'One, we're not covered under FOI - I can do what I like, here I'm trying to help you and you're just making wild accusations'. I said 'No I want a copy of the document'. He said 'You're not getting it, you're not entitled to it and that's it and Peter Bartlett supports me'. I said 'Well I'm not going to arbitration'. He said 'Well let me tell you this - the rules are very clear on the Fast Track Settlement Proposal and I was appointed under the Fast Track Settlement Proposal by Austel. You can't take it back to Austel unless I refer the matter back to Austel and I'm not referring the matter back to Austel, and if you keep carrying on like this I will resign as the Administrator of the Fast Track Settlement Proposal without referring it back to Austel and that will leave you no alternative but to take it to court and you know and I know that Telstra have destroyed all your records, your monitoring and testing and so forth so you'll have no hope in Hell (or words to that effect) of achieving any form of claim against Telstra in a normal court of law. So you're stuck with arbitration'. That's what he told me.

I kept on at Warwick over that right up to the signing as you know on 21 April, 1994 of that agreement with a couple of minor modifications.

When Warwick Smith left at the end of 1995, as soon as I knew John Pinnock was the new Ombudsman and allowed him about a month to get his feet under the table, I rang him and said 'Right. New broom to start clean. I want to talk to you about lots of things I want to discuss about how we've been pushed into this process under duress, how the process has failed and more importantly I want a copy of this particular document that Peter Bartlett has.' That's when I had the first telephone conversation with John Pinnock and he yelled and screamed.

I've since consistently asked for it, as you are aware, in other meetings and correspondence and this has been covered under my FOI request and I have made a specific FOI request about this.

Now that I have the document and when I compare that document with the document that was allegedly drafted by Minter Ellison, under the rules of copyright or plagiarism, one is a copy of the other and what changes or what differences there are if you look at the one I got from Minter Ellison or Dr. Hughes in February, 1994, if anything has superficial changes because in the original document it left open spaces for periods of time between each particular step in the process. So in effect is what we've got is us being arbitrated by an instrument designed by Telstra's solicitors to minimise Telstra's liability to us.

I'm not accusing John Pinnock of the wrongdoing of his predecessor or the special council, what I am saying is that John Pinnock is not acting with due care. He's failing his due care to us. He is not acting impartially. He has concealed the misconduct of his predecessor and that disqualifies him from acting in this position. As a matter of fact because it's not only John Pinnock but it's also Peter Bartlett involved and it's the TIO involved. The TIO have lost the right to be the administrator of these processes and they must step down.

Now, I'm accused of being a political animal. I admit that I do when I believe I've exhausted all other areas - like approaching the ACCC, approaching Austel or their replacement ACA or the TIO. I do take matters up with the Senate. Now what I want to know is I'm quite happy to give John Pinnock the opportunity to save face. If he's not prepared to save face, I'm not prepared to allow my claim to be butchered by him and Telstra. There is a conspiracy. So I don't know whether I should be present on Tuesday at this discussion with him or whether you should be there on your own. But I'm not going to be involved in an arbitration or a commercial assessment process with the TIO acting as the administrator. The TIO knows that these arbitrations have failed. The TIO has had some very serious allegations brought to their attention. The TIO has failed to investigate those allegations in an impartial and thorough manner. They've allowed these arbitrations to continue while it's been said that there's been conflict of interest with the It has allowed the arbitration to continue when it's been brought to his attention and documents given to him by Alan Smith that reports have been pulled by the arbitrator to do with the technical resource and accounting and he still allows it to continue. It's even been brought to his attention that Telstra has withheld documents that we've correctly requested under the FOI and arbitration. The latest document I'll give you to read in a minute of how serious this is. Where Telstra are saying point blank in the case of Anne, that her network wasn't upgraded, there were no major works done on the network and now here she is twelve months after arbitration - she's got the proof that the network was upgraded substantially and because of the monitoring that Austel did, which I've never got those figures, she managed to get them by default twelve months after the arbitration was finished, which shows where the month

after the work was done there was 150% to 3600% increase in additional incoming phone calls. Yet the documents she's requesting about network performance have been withheld. This is another way of proving it. This is what we're dealing with. Now Mr Pinnock is going to have to put his hand up one way or the other or I'm going to have to chop his head off.

MEMO: file
RE: Golden Messenger and Telstra
FILE: Arbitration

18 March 1998

Yesterday from 1:45 when we were picked up outside the building, WRH and I in attendance at Telecom Industry Ombudsman's office for meeting re arbitration with Telstra. We then walked back to the office and got there just before 4pm.

In attendance at the meeting with WRH and myself: Graham Schorer, Neil Pinnock (TIO), Peter Bartlett Special Counsel for TIO and Ms Lucy McCullough both from Minter Ellison, Ted Benjamin and Neil Mercer from Telstra.

The following is an account of what was said, it is not verbatim, but taken from my notes of the day:

TIO: I have received independent advice from Special Counsel. The Arbitration is still on foot and I should appoint an Arbitrator and he should give directions as to the release of technical unit information. The findings of the Senate Working Party is related to the arbitration re release of documents but this is not related to the appointment of an arbitrator. I want the parties to nominate a list of possible arbitrators. A list may be gotten from the Institute of Arbitrators.

GS: I need notice. I thought the appointment was going to wait until after the SWP findings.

TB: That was about a mediator. Telstra wants the arbitration to go ahead full speed.

GS: When we discussed mediation we talked about how the mediator should be appointed and if it failed should the mediator be the arbitrator. I won't be agreeing to a figure that's not fair and reasonable and if new information comes from the SWP then it would be likely that the case would be opened up.

TB: ~~Telstra won't be put in the position of production of documents ...~~ It won't happen unless there is an agreement that its full and final.

WH: You may remember that I asked if this meeting could be taped.

TIO: Yes. I forgot to ask Telstra, and then forgot to organise it. I will go and see what can be done.

[TIO leaves room. Discussion re mediation. TIO re enters room]

TIO: The machine is on the blink. I suggest we carry on and put down matters in writing before we leave today.

I have no problem with the parties attempting to mediate. Mediator and Arbitrator should not be the same person as it is not appropriate.

The delays in this arbitration are intolerable. I have had to provide to the Senate committee details of every kind of complaint made to TIO by COTs. It took so much

time when others could criticise my role as administrator for the delays in this arbitration. My duty is to appoint an arbitrator without further delay subject only to the parties putting forward their own nominations including detailed CV.

I will write to the chairman if there are any further delays. The TIO didn't have to get involved in this but volunteered. If the parties don't assist, I will seek advice as to what I should do. I won't be delayed with continuing the arbitration or subject to criticism.

TB: [tenders 3 CVS] We also have 3 other names: Jeff Nettle QC, Julian Burnside QC and Mr Mott.

TIO: It was clear since the letter from Gordon Hughes dated 29 December 1997 that the new arbitrator would be appointed by the TIO.

WH: He had resigned at that stage.

GS: I am keen to be done with all this but don't want to be in a situation where more information will come after any settlement.

PB: Any mediation agreement will have a release that no further claims will be made.

WH: Are you special counsel for Telstra or TIO?

PB: I merely refer to other discussions where Telstra has expressed need for finality.

GS: I just want to let you know that I have never criticised the TIO [interrupted by TIO several times] for the delays or had anything to do with the Senate Committee asking for the details. I can understand how that would piss you off but it had nothing to do with anything I had done. My criticism has been aimed at Telstra and relates to the production of documents.

I rang Dr Hughes re meeting of 22 December 1997, and he hasn't responded ...

TIO: [interrupting GS] I am not interested in what was the correct interpretation of what took place on 22 December. If there is a dispute as to the contents of a letter to all parties I would expect to be told. I haven't. I am not concerned as to that meeting. The only purpose of this meeting is to provide information about arbitrators, to agree on an arbitrator. I want the parties' submissions within say 14 days.

GS: You raised the letter...

TIO: I have received independent advice..

WH: May we have a copy of any written advice from Special Counsel?

TIO: Yes

GS: 14 days is not enough.

TIO: You've had since December.

GS: I'm not denying I knew the arbitration was to continue. There was an agreement

TIO: I wasn't party to an agreement. I wasn't at the meeting. It was never suggested that the appointment of the arbitrator should be delayed. The letter of 22 February 1998 from Mr Hunt didn't mention it.

WH: I put the proposition to you at the time of our meeting.

TIO: No you didn't.

WH: What do you think was the purpose of my visit?

TIO: To persuade me not to appoint an arbitrator yet

WH: Do you believe it would be inferred that that was the understanding?

TIO: Yes

WH: I put to you that it was reasonable for it to be delayed because the arbitration started on two wrong feet. Undertakings were given by Telstra, TIO and Austel for that matter that we would have access to documents. The original process was to be a Fast track settlement procedure and not an arbitration, we have been had.

It doesn't impinge on your reputation to not appoint an arbitrator unless it is appropriate.

TIO: Had I been told there was agreement reached not to appoint Arbitrator until the Senate Working Party was completed. But that wasn't put and it is contrary to Dr Hughes letter. I expected I would be told about it. There are already documents in the arbitration that a new arbitrator would have to familiarise himself with.

TB: We want the arbitration to go ahead full speed. If you have problems you can take it to the arbitrator.

WH: I see no point in appointing an arbitrator at this point. Either way the findings of the Senate Working Party should out Schorer in a proper position. My experience in arbitrations has been with two others where documents have appeared after the arbitration is concluded.

TIO: Is Schorer's claim based on the findings of the Senate Working Party?

WH: No, but it is related to the access to documents.

TIO: If documents are not provided will he proceed?

WH: I don't know.

PB: The arbitration procedure allows the arbitrator to order that documents be produced.

GS: But not if they're not delivered.

I need time to research and put up appropriate people.

TIO: Graham, What is a reasonable time for you to submit possible arbitrators?

GS: Can I ask some questions of Telstra. I don't necessarily want a legal person as the arbitrator.

TB: We are not excluding any category.

PB: It is preferable if they have had experience as an arbitrator.

GS: What about someone who has experience in telecommunications?

TB: We want someone who can do the job.

TIO: Graham, What is a reasonable time?

GS: Well it took me 2 months to research the technical resource unit. I am interested in the quality and the character of the purpose and may not even object to someone who has had prior dealings with Telstra.

PB: It is not a good starting point having someone linked with Telstra.

TIO: Given the problems that have happened in this arbitration, I am not interested in defending an arbitrator where there is bias. If we're talking about technical experts then there'd be a problem, but we're not. If there are any reservations I want to know about them.

GS: I am clear about stating my reservations. I learned that by entering into this arbitration. Can I have two months?

TIO: I feel the parties are in control of this and I have to defend it. I hold no responsibility for delay in this procedure. You have two months.

GS: Thank you.

TIO: You better get this down so there will be no arguments.

WH: Can you talk slowly?

TIO: The parties will obtain detailed CVS of nominations for appointment of arbitrators by 16th May 1998. The parties will meet with the TIO 7 days thereafter. I note that Telstra has already provided 3 nominations and CVS and three other names with no CVs. Given the long period of time, the parties are to make nominations and provide CVS of any resource unit to be appointed.

The TIO will circulate details of possible resource units. Sue Silvano has advised the AMBIDGI (?) Group that she is unavailable.

In 14 days the TIO will provide a list of the technical component for the resource unit. Telstra already has them in effect. Inquiries will be made of Mr Topp as to his suitability and availability.

GS: What about Howell

TIO: The TIO's opinion on Mr Howell is that at the moment he is the resource unit. If either party has any problem with his report it is a matter to be referred to the arbitrator.

Howell in conjunction with Lanes had a conflict of interest he had a duty to bring it to the arbitrator but he didn't.

GS: It is the administrator that appoints and decommissions people.

TIO: I don't know that I have the power to dismiss. If you have an issue with conflict of interest, put it to me in writing within 14 days.

If you have got a problem with the role of the technical resource unit then put it in writing in the next 14 days.

GS: I'll put them to you.

25
19 March 1998

BY COURIER

Mr Graham Schorer
Golden Transport Agency
493-495 Queensbury Street
NORTH MELBOURNE 3051

Dear Mr Schorer

Schorer and Telstra Arbitration: Appointment of new Arbitrator and new Technical Resource Unit

I refer to the meeting at the TIO on Tuesday, 17 March 1998.

At the conclusion of this meeting I gave various directions in relation to the future conduct of your arbitration. I note that two of the dates by which certain actions were to be taken by the parties fall on a weekend. To prevent any misunderstanding, I now summarise my directions, providing revised dates where required:

1. By Friday, 15 May 1998 the parties are to have provided one another and the TIO with detailed curriculum vitae for nominations for the appointment of a new Arbitrator;
2. The parties will attend a meeting to be held at the TIO on Friday, 23 May 1998 at 2pm to discuss the appointment of a new Arbitrator and a new Technical Resource Unit;
3. The TIO will circulate to the parties within 14 days information, including curriculum vitae, for nominations for the Technical Resource Unit.
4. Any further submissions which you may wish to make to the TIO in relation to the composition and role of the Resource Unit must be provided to me by 5pm on Tuesday, 31 March 1998.

I note that Telstra have provided curriculum vitae for three nominations, namely Dr Clyde Croft, Mr George Golvan and Mr Maurice Phipps. Telstra have also proposed Mr Geoff Nettle QC, Mr Julian Burnside QC and Mr Jonathan Mott, but have not provided curriculum vitae in respect of these three nominations.

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340

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Victoria 3000

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National Headquarters
15 Exhibition Street
Melbourne Victoria 3000

MAR 26 '98 10:36 AM
10:36 No. 002 P. 01

26 MAR '98

ID:03-92877001

GOLDEN

Golden
19 March 1998

2

In accordance with my direction, I now enclose copies of the curriculum vitas of the following five potential Technical Resource Units which have all been approved by Ferrier Hodgson Corporate Advisory:

- Mr Paul Howell;
- Itcom Australia Pty Ltd;
- Consutel Telecommunications and IT Services;
- Telecommunications Consultants Pty Ltd (TCP); and
- Ambidji.

In relation to the Ambidji application please note that Ms Sue Salvano is not available to assist in the Technical Resource Unit.

Yours faithfully



Alan Pinnock
Ombudsman

340



MINTER ELLISON

L A S T O F F I C E

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CONTACT
Lucy McCullagh
(03) 9229 2173

PARTNER
Peter Bartlett
(03) 9229 2623

OUR REFERENCE
PLB 928549

26 March 1998

BY FACSIMILE 9277 8797

Mr John Pinnock
Telecommunications Industry Ombudsman
Box 18098
Collins Street East
MELBOURNE VIC 3000

Dear John

Future conduct of the Schorer and Telstra Arbitration

We confirm our previous advice to you in respect of the above Arbitration:

1. Appointment of new Arbitrator

1.1 Clause 1 of the Fast Track Arbitration Procedure ('FTAP') states that:

'This procedure provides arbitration pursuant to the Commercial Arbitration Act 1984 (Victoria), as amended, ("the Act")'.

1.2 Clause 3 of the FTAP states that the Arbitration:

'will be administered independently by the TIO.. ("the Administrator") and conducted by Dr Gordon Hughes.. ("the Arbitrator")'.

1.3 Although the FTAP does not specify the manner of appointment of the Arbitrator, the Arbitrator was in fact appointed by the TIO, with the agreement of the parties. We enclose a copy of a press release dated 21 April 1994 and issued by Graham Schorer, COT spokesperson, which confirms that Dr Hughes was appointed by the TIO.

1.4 The FTAP does not contain any specific reference to the circumstances where the Arbitrator's position becomes compromised by a conflict of interest and the Arbitrator ceases to act.

1.5 Section 9 of the Act provides:

'Unless otherwise agreed in writing by the parties to the arbitration agreement, where a person has a power to appoint an arbitrator or umpire, that power

TIO
26 March 1998

2

extends to the appointment of a new arbitrator or umpire in place of an arbitrator or umpire who dies or otherwise ceases to hold office.'

Conclusion

- 1.6 In the absence of any specific provisions in the FTAP, the TIO, as Administrator, appointed Dr Hughes to the position of Arbitrator of the FTAP. In our opinion, this *de facto* power of appointment brings the TIO within the ambit of section 9 of the Act. In the words of section 9, the TIO is a 'person with a power to appoint an arbitrator'. The effect of section 9 is that the TIO has the power to appoint a new arbitrator in circumstances such as the present where Dr Hughes has ceased to hold office.
- 1.7 In keeping with the spirit of the FTAP and the manner in which Dr Hughes was appointed, it is preferable that any new arbitrator be appointed with the agreement of the parties.
2. **Arbitration remains on foot**
 - 2.1 We advise that the Schorer and Telstra Arbitration remains on foot despite Dr Hughes ceasing to hold office. The Act provides that when an arbitrator ceases to act, either the court or person with the requisite power shall appoint a new arbitrator. Neither the Act nor the FTAP provide that the Arbitration shall cease if an Arbitrator ceases to hold office.
3. **Status of Technical Resource Unit report**
 - 3.1 We confirm our previous oral advice to you that any preliminary report prepared by the Technical Resource Unit, at the direction of Dr Hughes, should only be released at the direction of the new arbitrator. The Technical Resource Unit are appointed to assist the arbitrator and it would be inappropriate for any report to be released to the parties without the Arbitrator giving it his or her due consideration and approval for release. We note that clause 8.3 of the FTAP provides that the Arbitrator shall disclose to the parties in writing all advice received from the Resource Unit. The Administrator is not vested with this power.

We trust this advice is of assistance.

Please do not hesitate to contact me should you have any queries.

Yours faithfully
MINTER ELLISON
me

Peter L Bartlett

341

21 April 1998

COT CASES

On the Thursday before Good Friday (9th April) I had made special arrangements with Mr. Schorer to be available to go through the material that he had been working on for purposes of the "working party" for the Senate representations he was wanting to make. The idea was I would be at home and he would come and see me at any time that suited him other than on Good Friday although home all the time I did not hear from him at all nor did he bring the matter up on the return to work on Easter Tuesday.

On Friday morning 17th April in the middle of the morning he rang me and asked for urgent help to provide copies of documents that he had prepared for the submissions to the arbitrator Hughes. I asked him what had happened over the previous long weekend and he had been too busy and too exhausted. The first set of documents were an account prepared by him Schorer in or about the middle of June 1994 which were supported by a statutory declaration. This took some finding because of the mass of papers and it was a telephone call for a courier to come and pick it up. He then asked me to then also find whatever it was that we had lodged with the arbitrator being as it turned out simply an interim statement of claim and then a final statement of claim with a long gap in between them. I rang Schorer, told him that the material would be ready within quarter of an hour after I had located it as I needed to copy it and that was about 4 o'clock. The courier had not arrived until well after quarter past 5 when I rang Schorer who had forgotten about it.

Schorer also said in one of these phone conversations that he and Thorpe were considering increasing or making a payment of some sort to me because of my general availability. I said that was a matter for him to work out for himself. I wasn't asking for it at this stage.

342

MINTER ELLISON

LAWYERS

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FACSIMILE

22 April 1998

TO	Mr Graham Schorer Golden Messages	Facsimile 9287 7001
FROM	Lucy McCullagh/David Poulton	Telephone (03) 9229 2173 Our ref PLB 928549
SUBJECT	Schorer and Telecom Arbitration	

Letter to follow.

343

NOTE — If you do not receive 2 page(s) including this one, please telephone MINTER ELLISON on (03) 9229 2000 as soon as possible.

IMPORTANT — The contents of this facsimile (including attachments) may be privileged and confidential. Any unauthorised use of the contents is expressly prohibited. If you have received the document in error, please advise us by telephone (reverse charges) immediately and then shred the document. Thank you.



**Telecommunications
Industry
Ombudsman**

**John Pinnock
Ombudsman**

22 April 1998

BY FACSIMILE 9679 3111

Dr Gordon Hughes
Partner
Blake Dawson Waldron
DX 187 MELBOURNE

Dear Gordon

Schorer and Telecom Arbitration

As of 22 December 1997, you ceased to act as arbitrator in the above arbitration.

The TIO proposes to appoint a new arbitrator as soon as possible. Until such an appointment is made, I consider that it would be appropriate for the TIO, as administrator, to hold for safe keeping all the documents and correspondence submitted to you, as well as your own files, in relation to this Arbitration. This documentation can then be provided to the new arbitrator as soon as he or she is appointed.

I look forward to receipt of this documentation at your earliest convenience.

Yours sincerely

**John Pinnock
Ombudsman**

cc: Mr Graham Schorer
Mr Ted Benjamin

343

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MINTER ELLISON + 92872001

22/04/98 17:35

FACSIMILE
TRANSMISSION

FROM HUNTS' **OUR FAX:** (03) 9670 6598
Solicitors and Consultants

SENDER: Wm. R. HUNT **DATE:** 04 May 1998

TO: Golden Messengers **YOUR FAX:**

ATTENTION: Graham Schorer Esq.

MESSAGE:

This is being sent at Wm. R. Hunt's request for your general information.

He will telephone you tomorrow to speak about it and the current time constraints upon you.

Hunt

PAGES: 5

(Including this page)
IF ANY PART OF THIS TRANSMISSION
HAS NOT BEEN RECEIVED OR IS
ILLEGIBLE PLEASE CONTACT
THE SENDER ON (03) 9670-5694

344

A. J. DEVER PTY LTD
acn: 006 767 997
BARRISTERS' CLERK

To the Senior Litigation Partner

I wish to advise that **Gavan Griffith QC** has returned to active practice after some 14 years as Solicitor-General of Australia. I have enclosed a curriculum vitae for your information.

RE: MARCH 1998 VICTORIAN BAR READERS COURSE

In addition we have accepted onto this list the following, who are currently completing the March Bar Readers Course. They will be available from the 29th May 1998.

We believe them to be exceptional lawyers providing the sort of litigation support that you and your clients demand.

BATT, David

B.Comm, LLB (Hons), LLM

Admitted 1994 - Articles: Arthur Robinson & Hedderwicks

Areas of practice: Administrative & Constitutional Law; Corporations & Securities; Banking & Finance; Credit; Insurance; Taxation; Torts (including professional negligence); Property

BOURKE, Richard

LLB (Hons), BA (Hons)

Admitted 1995 - Articles: Piesse Clareborough

Areas of practice: Crime; Administrative Law; Industrial/Employment; Coroners Court; Childrens Court.

CLEMENTS, Andrew

BA, LLB (Hons) LLM (Lond)

Admitted 1995 - Articles: Clements Hutchins & Co.

Masters of Law at King's College, London 1993/94,

specialising in insurance law, employment law and commercial litigation.

Areas of practice: Insurance law; employment law; torts (incl. professional negligence); product liability - public liability; personal injuries; coronial inquests; commercial law.

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Mobile: 041 6087999

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HOME PAGE :<http://www.ajdever.com>

344

HANNAN, Paul

BA, LLB

Admitted 1993 - Articles: Godfrey Stewart 1992

Associate at Slater & Gordon 1995-1998. Solicitor with Rhodens 1993-1995

Areas of practice: Family Law, De Facto Property, Commercial Litigation, Civil Litigation

FINANZIO, Adrian

BA, LLB

Admitted 1996 - Articles: Maddock Lonie & Chisholm

Areas of practice: Town Planning, Local government, Administrative Law.

Previously a solicitor advocate with broad experience
before the Planning Division of the AAT.

MOORE, Steven

B.Ec (Hons), LLB (Hons) MA

Admitted 1994 - Articles: Holding Redlich

Areas of practice: Commercial Litigation, Trade Practices, Employment/Industrial Law,
Crime, Coronial Inquests.

O'MEARA, Stephen

BA, LLB, Grad. Dip. Media Law

Admitted 1992 - Articles: Sly & Weigall

Formerly Senior Associate with Arthur Robinson & Hedderwicks

Areas of practice: Commercial, Media (including Broadcasting and Telecommunications),
Torts, Trade Practices, Regulator Inquiries, Crime

Yours sincerely,



John Dever

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344

GAVAN GRIFFITH QC
Barrister, Australia

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Owen Dixon Chambers West
205 William Street
Melbourne 3000
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Clerk: A J Dever
Tel: 61 3 9608 7999

London
Essex Court Chambers
24 Lincoln's Inn Fields
London WC2A 3ED
Tel: 44 171 813 8000
Fax: 44 171 813 8080

PROFESSIONAL QUALIFICATIONS

1965-1983, sole practice as Barrister and Queen's Counsel, within Australia, and also in England, specialising in commercial law, intellectual property, corporations, mining and shipping law, taxation and anti-trust, including commercial arbitrations and litigations.

1984-1997 Solicitor-General of Australia.

The office of Solicitor-General is a non-political tenured office of lead counsel and legal adviser to the Australian Government. As the most senior counsel in public and private practice in Australia, the Solicitor-General appears as the counsel for the Commonwealth to advise and to plead constitutional and other actions, in Australia and overseas, on behalf of the Australian Government. Responsibility included appearances as counsel to plead over 250 constitutional and other litigations involving the Australian Government at the final level of appeal.

1989-1995. Counsel and agent for Australia at the International Court of Justice -

Nauru v. Australia 1989-1993

East Timor (Portugal v Australia) 1981-1995

New Zealand v France (Nuclear Tests) Application 1996

Nuclear Weapons Advisory Opinion 1996

1994-1995. Consultant counsel, United Nations, New York, to the Under Secretary-General for Legal Affairs to write a report (now implemented) for the re-organisation of the internal legislative structure of the United Nations.

Current - Practice as a Queen's Counsel, at the Australian Bar and in London

Academic

LLM., Melbourne University.

D.Phil, Magdalen College, University of Oxford.

Member of Lincolns Inn, London.

Visiting fellow and lecturer at Magdalen College Oxford, between 1969 and 1995.

APPOINTMENTS AND MEMBERSHIP OF ARBITRAL INSTITUTIONS

Member, Permanent Court of Arbitration, The Hague, since 1987. Member of its Steering Committee 1992-1997 (which proposed and promulgated revised arbitral rules, including provision for arbitration between State and non-State entities).

Member, INTELSAT Panel of Legal Experts 1988-1997 including Chairman 1992-1994.

Member, Panel of Arbitrators of the International Centre for Settlement of Investment Disputes (ICSID), World Bank, Washington.

Sole arbitrator 1996-1997, Case No ARB96/2 *Misima Mines v Independent State of Papua New Guinea*.

Member, Panel of Arbitrators, International Chamber of Commerce (ICC), Paris. Member, International Panel, American Arbitration Association, New York. Member, London Court of International Arbitration (LCIA), Member, Pacific Council, Australian Chapter. Leader, Australia's delegation to the United Nations International Trade Law Commission (UNCITRAL) at New York and Vienna 1984-1997; Vice Chairman 1987-1988 and 1995-1996.

Participated in the adoption of the UNCITRAL Model Law of International Commercial Arbitration at Vienna 1985

Leader, Australian delegation to The Hague Conference on Private International Law, Den Haag, since 1992.

Board, Australian Centre for International and Commercial Arbitration. Member, Association of International Arbitrators in Australia. Member, International Law Association's Committees on International

Civil and Commercial Litigation; International Law in National Courts; and Responsibility of International Organisations.

PUBLICATIONS AND LECTURES

Monographs, articles, chapters and lectures on the subjects of international litigation and arbitration, particularly the UNCITRAL Model Law of International Commercial Arbitration, international law and practice, constitutional, commercial and maritime law. Most recently and in publication -

La Cour Permanente d'Arbitrage (1995) 69 ALJ 434.

Modernising the Conduct of the Courts Business, in Peck and Lee (ed)

Increasing the Effectiveness of the ICJ (1997) Kluwer

The Duty of Impartiality in Tribunals, 1998 Foreign Investment Law Journal (ICSID Review).

The Role of the Legal Adviser in Litigation Involving Questions of International

Law as part of a collection of essays, 1998, Office of Legal Counsel, United Nations Chapter in International Law at the Close of the Twentieth Century: The Nuclear Weapons Advisory Opinion, 1998, Cambridge University Press. Explanatory

Document on the UNCITRAL Model Law, issued by the Commonwealth Secretariat, London.

Papers and presentations on international arbitration issues, including

- UNCITRAL Congress on Uniform Commercial Law, United Nations, New York, May 1992
- International Court of Justice's, 50th Anniversary Symposium at Den Haag, April 1996
- 14th ICSID/ICC/AAA Joint Colloquium on International Arbitration, World Bank, Washington, November 1997
- UNCITRAL's 1998 Colloquium on New York Convention, United Nations, New York, June 1998

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Mobile 61 0419 250 666 (+ Voicemail)

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344

15 May 1998

Regulatory & External Affairs
Customer Response Unit

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Australia

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Facsimile 03 9634 8728

Mr John Pinnock
Telecommunications Industry Ombudsman
315 Exhibition Street
MELBOURNE VIC 3000

By Facsimile: 03 9277 8797

Dear John,

I refer to your correspondence of 25 March, 1998 regarding the appointment of a new Arbitrator and Technical Resource Unit.

I attach for you copies of curriculum vitae for Mr Geoff Nettle QC, Mr Julian Burnside QC and Mr Jonathan Mott for consideration.

Yours sincerely



Lyn Chisholm
Case Manager
Arbitration

cc Mr Graham Schorer
By Facsimile: 03 9287 7001

345

18 May 1998



Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

BY FACSIMILE

Mr Graham Schorer
Golden Transport Agency
493-495 Queensbury Street
NORTH MELBOURNE 3051

Dear Mr Schorer

Schorer and Telstra Arbitration: Appointment of new Arbitrator and new Technical Resource Unit

I refer to my letter of 19 March 1998.

I confirm that by Friday 15 May 1998, the parties were to have provided one another and the TIO with curriculum vitae for nominations for the appointment of a new Arbitrator. I have to date received no such documentation.

I request that you immediately provide me with your nominations for the appointment of a new Arbitrator.

I confirm that a meeting will be held at the TIO on Friday, 22 May 1998 at 2 pm to discuss the appointment of a new Arbitrator and a new Technical Resource Unit.

I look forward to hearing from you.

Yours faithfully

A handwritten signature in black ink, appearing to read "John Pinnock".

J.P.
John Pinnock
Ombudsman

cc Mr William Hunt

346

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19 May 1998

RE COT CASES

On today's date I had a conversation with Schorer and with Lyn Chisholm and Harry Thorpe on the telephone at Golden's office. The upshot was that Benjamin is still holding back on agreeing to the proposition for stage one of Chisholm's proposals because of fear that the arbitration would be blamed and he would be criticized in Parliament. I repeated incessantly that we would give a letter to the contrary and failing that let them draft a letter and let me have a look at it. Lyn Chisholm more or less agreed to do that after she had spoken to her immediate superior Moucher.

347A



Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

21 May 1998

Mr David Hawker MP
Federal Member for Wannon
Electorate Office
190 Gray Street
HAMILTON 3300

Facsimile 03 5572 1141

Dear Mr Hawker

Mr Alan Smith

I refer to your letter of 14 May 1998.

As you may be aware, Mr Smith has written to this office on numerous occasions concerning aspects of his Arbitration which was completed in May 1995.

The vast majority of Mr Smith's complaints seek, in effect, to review the conduct of the Arbitrator, or the Resource Unit or both, as well as the Arbitrator's Award. I advised Mr Smith from the outset that these matters which can properly be raised only by way of an appeal against the Arbitrator's Award. Mr Smith has not accepted this advice and has sought to reopen the Arbitration through other venues.

Recently, Mr Smith has raised a question as to whether the Arbitrator's Award dealt with his complaint that he had been overcharged on his 800 (now 1800) freecall service. As this is a matter which I can properly consider, I have made preliminary enquiries of Telstra and have also sought advice from Mr Peter Bartlett, Special Counsel, Minter Ellison.

I have also decided to discuss this issue with the former Arbitrator, Dr Hughes.

Yours sincerely


JOHN PINNOCK
OMBUDSMAN

347B

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Ar/plainant/894

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25 May 1998

RE COT CASES

On Thursday 21st May various telephone calls between Schorer and myself following telephone conversations I had had with Lyn Chisholm on the previous Monday the 18th May.

After speaking with Chisholm on the Monday I had endeavoured to contact her to get clarification of the changes that as I understood Benjamin was indicating or Chisholm was to their concerns about agreeing with my request that they join in having Pinnock's meeting etc. put off for a month. I left constant messages for her which were received by her answering machine in Sth Aust. Ultimately I got to speak to her on either the Wednesday afternoon or Thursday morning very briefly and she said she would be attending a meeting at my office with Schorer and Thorpe that afternoon at 4 or 4.30. Later I rang Schorer to put this off as it was more convenient for me to go to Schorer's office.

On the Thursday afternoon I was at Schorer's office from 4.00 until after 8.00 o'clock. Lyn Chisholm was quite late coming to the meeting. It was not until about 5 o'clock that she arrived. Her recitation of the three stages of alternate procedure to settle the matter remain much the same as it had been explained before. The only difficulty was that the importation of the requirement of Benjamin that nothing would happen unless the figure was below \$4 million. Chisholm produced a letter which I thought was near enough to meaningless and have not got a copy of it which she expected Schorer to put before Benjamin in the expectation that Benjamin would if it had added to it the \$4 million qualification he would then agree to go along with our request for an adjournment of appointing the arbitrator etc.

On the Friday morning after some short enquiries at my office by Schorer relayed by Julian as to the necessity for me to attend the meeting I ultimately got to the meeting having been picked up by Schorer we got there about quarter past 2. Before that outside the building and earlier in a phone conversation I had put to Schorer that we should still make the offer at a figure below \$4 million and we settled on \$3.87. At the meeting which was taped as we had previously requested to be done Benjamin was present. Lyn Chisholm wasn't although she previously said she would be there. I put up the proposition as I understood it and I was being invited to make an offer and on a without prejudice basis and that it was then hampered somewhat by the insertion of a requirement by Mr. Benjamin that it had to be under \$4 million. I did not specify the \$4 million figure. I merely said it was a specified figure. When I had finished speaking Benjamin was very rude and very forthright in saying that everything I had said was in fact incorrect

348^{fl}

↙ and he said that if wanted to we could make an offer but that was a matter for us and as far as he was concerned he regard various claim figures that he had heard relating to Schorer being from \$4 million up to \$12 million is completely ridiculous and unacceptable and impossible.

The meeting then proceeded to try and appoint an arbitrator which failed. All of this is recorded separately. After the meeting Pinnock in conversation with Schorer and me said it would do no harm, in fact he thought it was a good idea, for an offer to settle still to be made and I think so too.

Schorer returned to the office with me for further discussion. Engaged about a quarter of hour or so and confirmed the making of the offer. I will draft the letter.

348A

↑

↑
V R E F N T

**FACSIMILE
TRANSMISSION**

FROM HUNTS'
Solicitors and Consultants

OUR FAX: (03) 9670 6598 .

SENDER: Wm. R. HUNT

DATE: 25-5-98

TO: Golden Meninger

YOUR FAX: 9287-7001

ATTENTION: Mr Jason Scherer

RE: Telstra.

MESSAGE:

This follows suggested letter of
~~the~~ offer on a without prejudice basis
as discussed.

PAGES: 6.

93/194

(Including this page)
IF ANY PART OF THIS TRANSMISSION
HAS NOT BEEN RECEIVED OR IS
ILLEGIBLE PLEASE CONTACT
THE SENDER ON (03) 9670-3694

348B

Graham Schorer & Alan Smith
FAX INTERCEPTION EXHIBIT 3
 PREPARED FOR ALLEN BOWLES, JANUARY 2007

Towards the end of September 1993 I advised Graham Schorer that I had received a telephone call from a lady in Cairns, Queensland, followed by a letter I believe to be from the same person. The letter was badly written, but the phone call was very much to the point and warned me not to enter into litigation with Telecom because their lawyers had easy ways to access a claimant's legal documents during litigation.

Late in May 1994 I went with Clair Allston of Waterford Farm in Yarra Junction, Victoria to a meeting with Warwick Smith, then the TIO. Ms Allston, who is wheelchair-bound, described to the TIO the many problems she was experiencing with her own telephone service, along with similar problems she had when trying to phone me. At this same meeting I warned Warwick Smith that I believed I should not be involved in the Telstra arbitration process while my privacy complaints (which were part of my pending arbitration claim) were still being investigated by the Australian Federal Police (AFP). I also explained that I could not properly complete my arbitration claim until the AFP had completed their findings.

At a later impromptu meeting with Warwick Smith, at Tullamarine airport, I again alerted him to my concerns regarding the AFP investigation and the way my arbitration claim was being affected because the AFP had not yet completed their findings. The TIO told me that he understood my concerns; that he had reached the conclusion that Ann Garms and I were not paranoid in relation to issues of interception; and that the AFP's findings would be made available under the confidentiality agreement included in the Fast Track Arbitration Procedure rules. None of the AFP's findings were ever provided, either by the AFP or the TIO, to enable me to correctly complete this part of my claim

The information included in the documents called "Interception 1" and "Interception Fax Exhibit 1 & 2" show that Telstra has learnt nothing from the 1994 AFP investigations into the COT interception issues.

DATE	FROM	TO	COMMENT
4 May 98	William Hunt, Solicitor	Graham Schorer	Confidential legal information faxed from Mr Hunt's office to Graham Schorer's office at Golden Messengers. Comment: Note the correct business fax identification of William Hunt 61 3 96706598.
25 May 8	William Hunt, Solicitor	Graham Schorer	Confidential legal information faxed from Mr Hunt's office to Graham Schorer's office at Golden Messengers. Comment: Between sending the fax recorded directly above (4 th May 98) and this fax (25 May 98) Telstra put William Hunt and Godfrey and Godfrey onto FaxStream 1 – without permission. (see below). Godfrey and Godfrey

349

			shared Mr Hunt's fax service.
29 Jun 98	William Hunt, Solicitor	Alan Smith	I faxed this letter and attachments to William Hunt. Two of the 7 pages arrived blank, without even any fax identification. On the second page, signed by William Hunt, there is a faint square with a cross inside it in the top right corner. Comment: The information in the letter and attachments was all related to Telstra.
19 Oct 98	William Hunt, Solicitor	Graham Schorer	Freehill Hollingdale & Page, Telstra's lawyers, first sent this eleven-page document to William Hunt. Mr Hunt then faxed it on to Graham Schorer. Comment: This information was received via Telstra's Fax Streaming service
21 Oct 98	William Hunt, Solicitor	Graham Schorer	The same letter as noted immediately above (19 Oct 98) was faxed again to Graham Schorer, from William Hunt's office. Comment: This information was received via Telstra's Fax Streaming service.
4 Nov 98	Paul Cosgrove, Barrister	Graham Schorer	This document was faxed to Graham Schorer via the same FaxStreaming process. Mr Cosgrove has told Graham that neither he nor anyone on his staff has ever authorised Telstra to put his business onto FaxStream.
5 Nov 98	William Hunt, Solicitor	Graham Schorer	Fourteen-page legal document sent from William Hunt to Graham via FaxStream
9 Nov 98	William Hunt, Solicitor	Graham Schorer	Fifteen-page legal document sent from William Hunt to Graham via FaxStream
12 Nov 98	Paul Cosgrove, Barrister	Graham Schorer	Six page document also received via FaxStream
10 Feb 99	William Hunt, Solicitor	Graham Schorer	Confirmation that neither William Hunt nor Godfrey & Godfrey (who share Mr Hunt's fax service) have ever authorised Telstra to put their businesses onto Telstra's FaxStream.
26 Feb 99	Alan Smith	Graham Schorer	Graham's fax journal confirms that only two of three faxes I sent to Graham actually arrived, even though I was charged for all three.

SUMMARY:

Considering all the information now on file, including information not yet tabled, it is now clearly proved that Telstra has selectively intercepted faxes between my office and Graham's office during 1998 – and possibly longer.

On each of the FaxStream accounts I received I was charged a \$20 fee a month for a FaxStream service I never requested, authorised or signed for.

349

Even more alarming, as detailed on "Fax Interception, Exhibit 3", is the proof that Telstra unethically intercepted confidential, client-lawyer-privileged information and this has not yet been addressed.

As you can see, some of the information faxed from William Hunt to Graham recommended Lawyers, Barristers and Queens Counsels for Graham. I also contacted various legal firms and, on at least two occasions, after I had faxed information to Slater & Gordon and Phillip Fox & Associates, and they had agreed to look at my matters (possibly pro bono), they withdrew their offer within days of receiving my faxes. While these two matters are only speculation on my part, the information from two separate legal firms to Graham is not speculation.

In Appendix two I have attached page 77 from the Environment Recreation, Communications and the Arts Senate Legislation Hansard report on the COT Telstra related issues dated 24th June 1997. It is evident from this Hansard and other similar Senate Hansards that government ministers are aware that Telstra has been intercepting COT case telephone calls for years. Some of the investigations into the Cot arbitration matters have been so serious that the government conducted these Senate Hansards In-Camera. In my case I have been threatened a possible jail sentence by the government if I expose publicly the contents of the In-Camera Telstra CoT Arbitration investigations.

I ask you to consider the following two statements from the Hansard here:

Senator CARR – *"In terms of the cases outstanding, do you still treat people the way that Mr Smith appears to have been treated? Mr Smith claims that, amongst documents returned to him after an FOI request, a discovery was a newspaper clipping reporting upon prosecution in the local magistrate's court against him for assault. I just wonder what relevance that has. I am sure you would be familiar with the documentation that he has distributed far and wide. He makes the claim that a newspaper clipping relating to events in the Portland magistrate's court was part of your files on him."*

Mr Armstrong – *"...I am not aware of the document that you have there. I have not seen that document. I am not aware of any such article being any part of our files."*

Senator CARR – *"...I draw it to your attention. Yes, that is fine. I will give you a photocopy of that."*

Senator SCHACHT – *"...It does seem odd if someone is collecting files. That is a matter that has nothing to do with his telecommunications business. It seems that someone thinks this is a useful thing to keep in a file that maybe at some stage can be used against him. If it is true, I do not know why you would be collecting that information."*

Mr Benjamin – *"...I know of no-one who is collecting that information."*

Senator CARR – "...Mr Ward, we have been through this before in regard to the intelligence networks that Telstra has established. Do you use your internal intelligence networks in these CoT cases?"

It is evident from the information we have in our own files that Telstra has been intercepting our private telephone and business conversations including intercepting in-confidence lawyer to client legal information. Is this information held by Telstra's internal intelligence network?

349

18 January 1995

Dr Gordon Hughes
Arbitrator
C/- Messrs Hunt & Hunt
Lawyers
GPO Box 1533N
MELBOURNE VIC 3001

Dear Dr Hughes

**ARBITRATION - TELECOM - ALLAN SMITH -
CAPE BRIDGEWATER HOLIDAY CAMP
REPLY TO TELECOM'S DEFENCE DOCUMENTATION**

Mr Arbitrator I would like to draw attention and address the following issues in respect to Telecom's Defence Documentation.

SECTION ONE

Initially I would draw your attention to the Telecom document headed Witness Statements which has eighteen sections.

Statement One - Rosanna Noelle Pittard

I note Telecom's defence to contain the statement from Ms Pittard indicating at point 3 in regard to previous payment for loss due to telephone service that Ms Pittard has not supplied supporting documentation to her statement. I would submit that the Telecom document obtained under F.O.I. number C04006 (attached) would clearly demonstrate the real reasons in respect to the payment for loss due to the telephone service. You will note that point 16 is particularly relevant and contradicts Telecom's defence.

Ms Pittard as the General Manager admits Telecom's defence is doubtful on causality and I would submit that this matter is extremely pertinent to your assessment of my claim.

350

I find it interesting to consider that Ms Pittard is General Manager of Telecom Commercial Victoria/Tasmania and that she has mentioned nothing about my phone faults. It is also interesting as to why in the last six months of 1993 she instructed me to refer all complaints to Freehill Hollingdale & Page, Telecom's Solicitors. I would refer you to Appendix Telecom Defence documents Appendix 3 at 23, Ms Pittard deliberately attempts to hoodwink Freehill Hollingdale & Page, to downplay my communication/telephone faults. I would consider that this only showed Freehill Hollingdale & Page a one sided overview of the Cape Bridgewater Holiday Camp. I would submit that for Ms Pittard as General Manager of Telecom Commercial Victoria/Tasmania to take these actions and execute these actions is one of negligence and a breach of statutory duty.

The fact that Ms Pittard hid the truth about my known phone faults, the ones that Telecom Commercial had acknowledge as factual is undoubtedly deception. I consider that Ms Pittard has misled Ms McBurnie of Freehill Hollingdale & Page who at the time was my Telecom contact.

I would also note that Ms Pittard mentions nothing in her Statutory Declaration about my considering applying for F.O.I documents in 1992, documents on registered faults, 1100 and the Warrnambool Exchange. I note Telecom Defence document Appendix 5 at 22 is one page of a two page letter from a Peter Taylor, Telecom employee of Warrnambool Exchange. It appears that Telecom forgot to produce the other page of this letter in their defence documents. For the benefit of the Resource Team I shall supply the information on the missing page from memory, "Sorry Mr Smith, there are no historic documents prior to June 27, 1991." This would appear that not only do we have Ms Pittard as Telecom Management in 1993 downplaying my faults, we also have Telecom Commercial supplying an inaccurate statement on registered faults prior to 1991.

I would question Ms Pittard's remarks in her letter to Jim Holmes, Telecom Corporate Secretary, (please refer Cape Bridgewater Submission One). These particular remarks show that Ms Pittard considered charging me for F.O.I documents in early May 1993 even if the F.O.I documents that I sought were not available. "I have enclosed this document and attached it hereto." The document is not numbered so I have called it C5.S. I would also table a letter as a result of my F.O.I request and dated 17 June 1993. (Refer CBHC Defence reply Appendix attached hereto). The author of the letter is Rosanna Pittard and I quote:-

350

"I refer to our telephone conversation regarding the material contained in Mr Macintosh's briefcase.

Please find attached a letter from Austel requesting information regarding the incident whilst I can respond to the details regarding the information provided to him at the time of settlement, I cannot comment on the variation between what Mr Smith was told and the contents of the Network Investigations files. I need your assistance for this.

Can we discuss as soon as possible please?"

I would note that this letter is addressed to Network Investigations.

I feel that it is an appropriate time to indicate to you my interpretation of events of 11 December 1992, my date of settlement. I recall that I arrived at 10.00am and left for lunch at 12.10pm I arrived back at 1.00pm and finished at approximately 2.15 to 2.30pm. I would make mention that I had no legal representation and was completely on my own. I recall using the telephone twice. The affair, the bizarre type of negotiations, started at bargain basement style: \$20,000.00 was offered, then \$40,000.00 and then Ms Pittard left the room. On her return, she showed me two letters of guarantee that my phone was now up to network standard. These letters I had already seen, one was from Bob Beard, General Manager, Telecom Commercial. I was told by Ms Pittard that Telecom had only found one fault, which was in MELU switching and related to a wrong data program. According to Ms Pittard this fault had lasted only three weeks and a few minor problems had been uncovered. At this point \$60,000 was in the offering and I showed Ms Pittard some letters from past customers who had experienced difficulties in contacting Cape Bridgewater Holiday Camp and Convention Centre.

As stated above at 12.10 I went to the Village Green (a Hotel in Springvale Road and close to Telecom Commercial), for lunch. When I arrived back for my second bout of negotiations at 1.00pm we started hassling over what would happen if I chose to go to Court considering I had no evidence as such. I recall that Ms Pittard deliberately stated that Telecom had time on their side which in my opinion Ms Pittard was attempting to say that Telecom would stretch me financially in respect to getting to Court. At \$80,000.00 Ms Pittard once again left the room giving me time to think.

Her parting words were similar to "That's as far as I will go, Mr Smith it's up to you." Due to the stresses placed on me at the time, the fact that I felt that Telecom was threatening me with tying me up in legal action I took the settlement. I took this settlement because I believed Telecom at their word in respect to faults.

I now find that Telecom did have records of faults prior to June 1991. I find also that Telecom withheld documents from my hearing with Ms Pittard. I can also note the connotation of Ms Pittard's letter to Network Investigations, "I cannot comment on the variations between what Mr Smith was told on the settlement day and the contents of the Network files." I would state this, in closing, in respect to Ms Pittard's Statutory Declaration: I have been misled in not only the negotiations at the settlement in 1992, but I was also deceived in regard to my F.O.I. Application in 1992. How many unethical business transactions would Telecom expect me to swallow. When I showed that I had had enough I was cunningly transferred over to Freehill Hollingdale & Page where I was misled and deceived by them also. Perhaps, inadvertently, stress nearly won the day for Telecom. The fact that a fault report, via Freehill Hollingdale & Page Telecom's Response Unit, could take up to two weeks to get an answer mattered not to those in charge of Telecom Commercial. Breach of terms and conditions for the supply of a Telecom communication service has taken place.

Mr Arbitrator you would find that Telecom has been negligent in their dealings with my phone service and the actions of Ms Pittard in refusing me historical fault information prior to the settlement was not only negligent, misleading and deceptive, it was also unconscionable conduct. ✓
 Mr Arbitrator you would also have to wonder about Ms Pittard's statement that I had unlimited use of a telephone and that she was aware that in her absence I made several telephone calls during the negotiation period. Was Ms Pittard that concerned about me that she had this telephone monitored?

Statement Two - Ross Stewart Anderson

I would address the following issues in respect to the defence statement of Mr Anderson.

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 ROSANNE NOELLE PITTARD

I, **ROSANNE NOELLE PITTARD** General Manager Customer Sales and Service Vic/Tas of Telecom Australia's Commercial and Consumer Business Unit of 540 Springvale Road, Glen Waverley in the State of Victoria, solemnly and sincerely declare and affirm as follows:

EMPLOYMENT DETAILS

1. I have been employed by Telecom for approximately 20 years. I have been in my current position as described above for approximately 1 year.
2. I have held General Manager positions within various areas of Telecom for approximately 4 years with line control for customer sales and service. Prior to this I held a variety of positions in business planning, marketing, strategic planning and quality control. In total, I have held an executive position in Telecom for approximately 7 years.

SMITH'S COMPLAINTS

3. On December 1992 I had a meeting in my office with Mr Smith at which settlement of Mr Smith's claim against Telecom was reached. The meeting commenced in the morning and was concluded in the afternoon. The negotiations were conducted in an amicable way. He determined of his own volition to accept an ex gratia offer of \$80,000 and a 008 telephone service for his business with a \$5000 credit in full and final satisfaction of all his claims to the date of settlement. During the negotiations Mr Smith provided various letters and documents in support of his position and made claims as to the extent of the financial loss which he had allegedly suffered to his business. Although my own opinion was that the claims Mr Smith was asserting against Telecom and the effect on his business were exaggerated it was determined to resolve all matters involving Mr Smith on the basis of the offer made to and accepted by him. Mr Smith left my office at lunch time and later returned to recommence our negotiations. During our settlement discussions Mr Smith had unlimited use of the telephone so that he could speak to his advisers if he required. I am aware

Emma Zeffir

Rosanne Pittard

351



that in my absence Mr Smith made several telephone conversations during the negotiation period.

- 4. Attached hereto and marked "RNP-1" is a copy of the letter recording the settlement agreement which was signed by Mr Smith and myself.
- 5. The settlement was arrived at after discussions between myself and Mr Smith over the period between September and December 1992 and reflected the free and voluntary consent of Mr Smith and T to the resolution of all claims and matters concerning Mr Smith in the settlement and release of T given by Mr Smith.

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

DECLARED at Glen Waverley)
 in the State of Victoria)
 this 11th day of December 1994.)

Rosanne Pittard

Before me:

12/12/94

Emma Zipper

EMMA ZIPPER
 Froehll Hollingdale & Page
 101 Collins Street, Melbourne
 A Solicitor holding a current
 Practising Certificate pursuant
 to the Legal Profession
 Practice Act 1958.

Our Ref: 3808.doc

GOLDEN

26 May, 1998

TELEPHONE (03) 9287 7099

Attention: Mr Graeme Ward
Group Director
Regulatory and External Affairs
Telstra
242 Exhibition Street
Melbourne Vic 3000.

FAX (03) 9287 7001

493-495 QUEENSBERRY STREET
NORTH MELBOURNE VICTORIA 3051
PO. BOX 313 NORTH MELBOURNE 3051

By facsimile: (03) 9632 4271 and hand delivery.

Dear Mr Ward,

FAXED
26/5/98

WITHOUT PREJUDICE - URGENT.

Re: Graham Schorer, other related claimants, companies, etc. (GOLDEN) claim against Telstra.

Re: Schorer/Telstra Arbitration.

On Wednesday the 13th May last, I was visited at my Company's Headquarters by an officer of your Corporation (Ms Lyn Chisholm) who spent most of the afternoon in without prejudice discussion with me directed towards finding a solution to the disputes between GOLDEN and Telstra, the subject matter of the above arbitration.

Ms Chisholm had previously approached me discussing various aspects of my concerns and complaints about the treatment I and my companies had suffered at the hands of Telecom/Telstra. The upshot of the discussions on Wednesday were that:-

1. Telstra was currently examining the possibility of obtaining a quick resolution of the problems between the two parties.
2. It was considered a possibility that a quick solution might be reached if each party was both restrained and reasonable in its attitude to the problems and its possible solution.
3. Hence Telstra was inviting GOLDEN to make a without prejudice (and utmost minimum) offer to settle the dispute between the parties.

The amount of the offer would be an indication to Telstra if (from Telstra's point of view) it was low enough to indicate that GOLDEN was responding sympathetically to the reasonableness of Telstra indicating it was prepared to settle. Agreement could only be reached on the basis that both sides are now endeavouring in good faith to arrive at a figure that would be acceptable to each party.

352

However, on the basis that Mr Benjamin may not necessarily express properly the views of Telstra, and assuming that Telstra is prepared to deal with GOLDEN if both sides made substantial concessions as was in fact represented to me, GOLDEN in the spirit of what was put to it by Ms Chisholm and in the belief that she must have had some authority from within Telstra to make the proposals in the first place, now makes the following offer of settlement on a without prejudice basis to Telstra.


- 1. ↓ GOLDEN believe its immediate compensation, without incurring further time and costs, for matters referred to and covered by the arbitration process originally agreed to as a Fast Track Settlement Procedure in November 1993 should not be less than \$7.183 million.
- 2. ↓ Notwithstanding the \$4 million limit imposed late as set out above, and on the basis that Ms Chisholm was genuine in her discussions with me on 13th May last and was acting with the knowledge and authority of some of her superiors in Telstra and that in consequence Telstra was in good faith indicating its readiness to make substantial concessions if GOLDEN could likewise respond then GOLDEN is prepared to accept \$3.8746 million in full settlement of all the matters referred to in the arbitration proceedings or covered by or arising there out up to the present time.

The amount of compensation is to be paid at Telstra's discretion on such date as it chooses between 6th July and 1st August 1998.

- 3. This settlement offer is made to Telstra on the condition that it will have lapsed if not accepted by 4:00 p.m. on Thursday the 4th day of June next in writing delivered or faxed to GOLDEN's headquarters at 493-495 Queensberry Street North Melbourne.

I wait on hearing from you.

Yours faithfully,


 Graham Schorer

cc: Ms Lyn Chisholm, Case Manager - Arbitration, Telstra

352

Our Ref: 3815.doc

GOLDEN

28 May, 1998

TELEPHONE (03) 9287 7099

Attention: Mr Ted Benjamin
Director, Consumer Affairs
Telstra
Regulatory & External Affairs
Level 37, 242 Exhibition Street
Melbourne Vic 3000.

FAX (03) 9287 7001

493-495 QUEENSBERRY STREET
NORTH MELBOURNE VICTORIA 3051
P.O. BOX 313 NORTH MELBOURNE 3051

By facsimile: 9632 3235.

FAXED
28/5/98

Dear Mr Benjamin,

WITHOUT PREJUDICE

Telstra's advise that the 1st of June 1998 is the earliest it can arrange for the inspection of GOLDEN's accounts, documents, and discuss GOLDEN's methodology used to calculate its claim, is acceptable to GOLDEN. We will provide answers to any question about how we formulated our claim.

GOLDEN conditionally agree to make copies of certain documents whilst Telstra assesses information obtained from GOLDEN.

This conditional agreement involves Telstra's undertaking:-

- 1) not to copy documents supplied to it;
- 2) not to disclose contents of documents to other parties; and
- 3) return the copies of GOLDEN documents back to GOLDEN by 4:00 p.m. Thursday, 4 June 1998.

If these arrangements meet Telstra's approval, please advise.

Yours sincerely,


Graham Schorer

353



29 May 1998

Regulatory & External Affairs
Consumer Affairs

37/242 Exhibition Street
MELBOURNE VIC 3000
Australia

Telephone 03 9634 2977
Facsimile 03 8632 3235

Mr Graham Schorer
Golden
493-495 Queensberry Street
NORTH MELBOURNE Vic 3000

By Facsimile: 03 9287 7001

WITHOUT PREJUDICE

Dear Mr Schorer

Thank you for your letter of 28 May 1998 confirming Monday 1 June 1998 for the opportunity to inspect Golden's accounts and obtain an understanding of the basis for your claim. Telstra representatives will attend your office in North Melbourne at 9am.

In respect to the conditions you have placed at point 2), Telstra will need to seek advice from it's professional legal and accounting advisors and therefore reserves its rights to disclose contents of documents to the above mentioned parties solely for the purpose of assessing Golden's claim. Any information assessed by these advisors would be conditional to confidentiality arrangements currently in place.

Telstra accepts the conditions 1) and 3) that you have made with respect to documents. Should the conditions and the short time allowed to consider the basis for your substantial and complex claim prevent Telstra from completing a proper assessment, then Telstra may need to review these conditions with you. Telstra will contact you if this becomes necessary.

Yours sincerely

M. Mansfield

for

Ted Benjamin
Director, Consumer Affairs

*John Seton
on receipt of M.
+ advised NFA*



Official Partner

Telstra Corporation Limited
AON 051 778 686

354



FACSIMILE TRANSMISSION

FROM HUNTS' SOLICITORS AND CONSULTANTS **OUR FAX:** (03) 9670 6598

SENDER: Wm. R. HUNT **DATE:** 04 May 1998

TO: Golden Messengers **YOUR FAX:**

ATTENTION: Graham Schorer Esq.

MESSAGE:

This is being sent at Wm. R. Hunt's request for your general information.

He will telephone you tomorrow to speak about it and the current time constraints upon you.

Hunt

PAGES: 5

(Including this page)
IF ANY PART OF THIS TRANSMISSION
HAS NOT BEEN RECEIVED OR IS
ILLEGIBLE PLEASE CONTACT
THE SENDER ON (03) 9670-6694

355



2 June 1998

**CONFIRMATION
OF
FACSIMILE**

**Telecommunications
Industry
Ombudsman**

BY FACSIMILE

**John Pinnock
Ombudsman**

Mr Graham Schorer
Golden Transport Agency
493-495 Queensbury Street
NORTH MELBOURNE 3051

Dear Mr Schorer

Schorer and Telstra Arbitration: Meeting on Friday, 22 May 1998

We refer to the above meeting and regrettably advise that the tape recording made of this meeting is inaudible due to radio interference.

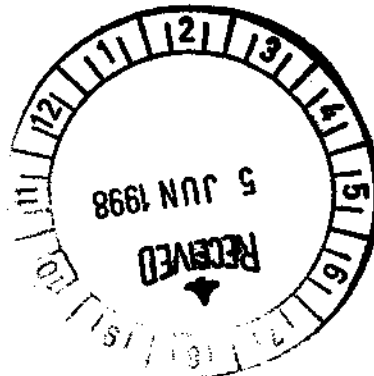
Fortunately, Lucy McCullagh took notes throughout the meeting. On the basis of these notes we have prepared the enclosed draft minutes of meeting. As a formal transcript is not available, we request that you peruse the enclosed draft minutes and provide us with your comments and amendments in order for us to prepare a final set of agreed minutes. We shall incorporate comments by yourself and Telstra.

We trust this course is agreeable to you.

Yours faithfully

John Pinnock
Ombudsman

enclosure



356

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

Telecommunications Industry Ombudsman Ltd ACN 057 634 787

M_MATTER522437_1
Website: www.tio.com.au
E-mail: tio@tio.com.au
TTY: 1800 675 692
National Headquarters
315 Exhibition Street
Melbourne Victoria 3000

Box 18098
Collins Street East
Melbourne
Victoria 3000

Telephone (03) 9277 8777
Facsimile (03) 9277 8797
Tel. Freecall 1800 062 058
Fax Freecall 1800 630 614
Translating Interpreter
Service 13 1450

SCHORER V TELSTRA ARBITRATION

Minutes of Meeting
22 May 1998, 2pm

ATTENDEES:

Graham Schorer, Claimant
William Hunt, Claimant's solicitor
Ted Benjamin, Telstra
Neil Mounsher, Telstra
John Pinnock, Telecommunications Industry Ombudsman
Peter Bartlett, Special Counsel, Minter Ellison
Lucy McCullagh, Minter Ellison

1. Mr Pinnock commenced the meeting by reviewing the directions made at the conclusion of the last meeting on 17 March 1998. He stated that both parties had submitted, albeit late, nominations for the new Arbitrator. The TIO had circulated curriculum vitae for the nominations for the new Technical Resource Unit. The TIO was to make enquiries of Mr Tott, if necessary.
2. Mr Pinnock outlined the purpose of this meeting was to exchange nominations, reach agreement and appoint a new Arbitrator. Mr Pinnock asked whether there was any agreement in relation to the nomination.
3. Mr Hunt asked if he might make a submission on something which may affect the direction of this meeting. Mr Hunt advised that ten days ago or more he was asked by Telstra whether Mr Schorer would be prepared to indicate an amount that he would be prepared to accept in full settlement. Mr Hunt said the inference arising from the conversation was that Telstra would make a counter-offer to Mr Schorer's offer.
4. ^{later} Mr Hunt advised that a considerable amount of time had been spent on this issue. Telstra had indicated that Mr Schorer's offer must be less than \$x or else it would be a pointless exercise and would not be considered. Mr Hunt advised that Mr Schorer was now prepared to make an offer if the Arbitration proceedings were put on hold until 4 or 5 June 1998, to enable the offer to be made and Telstra to respond. Mr Hunt indicated that Mr Schorer would provide a letter to the effect that any delay was not at the fault of Telstra. Mr Hunt asked for an adjournment of the Arbitration until 5 June 1998.
5. Mr Benjamin stated that Telstra's position was that it had invited Mr Schorer to make an offer as Mr Schorer had indicated interest in settlement and that Mr Benjamin was not opposed to this and would entertain negotiations. He stated that there was no formal approach by Telstra to Mr Schorer. In relation to the figure stated, he said this was done because Mr Schorer had previously given unrealistic figures. He stated it was not a figure around which Telstra would negotiate but just that anything beyond the figure would be out of the ballpark.
6. Mr Benjamin said that Telstra's position is that we should proceed with the appointment of an Arbitrator. He said Telstra had not received anything from Mr Schorer and given the history of the matter, whereby Mr Schorer has vigorously attacked Telstra, Mr Benjamin does not wish to be party to any further delay.

7. Mr Hunt briefly queried the basis upon which Telstra would provide Mr Schorer with documents. Mr Benjamin replied that documents will be provided on the basis of the orders of the Arbitrator.
8. Mr Schorer said that he wanted to state Telstra's offer. He said that Telstra had said it would give consideration to what he was prepared to settle for. Mr Schorer indicated that a figure did not come to mind when this offer was made.
9. Mr Benjamin interjected and stated that there was no offer made by Telstra. Mr Benjamin stated that Lyn Chisholm was the Telstra officer who spoke with Mr Schorer.
10. Mr Schorer stated that there was an opportunity given for him to say what it was worth for him today to get rid of the claim and Telstra would then look at that figure.
11. Mr Pinnock stated that he understands the position of both parties and summarised it as 'an invitation to make an offer' by Telstra to Mr Schorer. Mr Pinnock stated he does not see why there is a good reason to defer the appointment of the Arbitrator, although he cannot force the parties to reach agreement on the appointment of an Arbitrator, it was clearly understood by both parties that the meeting today was for this purpose. He stated that the parties can still pursue settlement negotiations in parallel. Mr Pinnock stated that he cannot see why we should further delay the matter and the appointment may help to focus the parties. It would not be proper to delay the Arbitration anymore.
12. Mr Benjamin stated that he was open to any proposition of Mr Schorer. He stated that given past delays, Telstra sought finality and believed the Arbitration should go underway as soon as possible.
13. Mr Hunt asked Mr Benjamin whether it was true or false that Telstra had made the invitation.
14. Mr Benjamin responded and stated that an offer of \$4m-\$12m was not likely to get a favourable response from Telstra.
15. Mr Pinnock reiterated that 'an invitation was made to make an offer'.
16. Mr Schorer stated that there was a three-tier offer made by Telstra. Namely, that Mr Schorer could make a bottom-line offer, this would then be open to negotiation and if not resolved it would be subject to commercial assessment. He stated that he agrees he has not provided Telstra with sufficient information to support his claim. Mr Schorer raised the fact that he now has a copy of Telstra's proposed Rules of Arbitration and asked if someone would tell him if the document in his possession is this document.
17. Mr Pinnock stated that if independently of the Arbitration procedure the parties wish to negotiate a settlement, they are entitled to do that. However, the Arbitration shall proceed. He stated he has been given legal advice that the agreement between the parties is still on foot and now he is required to appoint an Arbitrator. He asked the parties whether they are prepared, today, to agree to appoint a particular person as Arbitrator.
18. Mr Schorer requested a short break to confer with his solicitor, Mr Hunt.

***** (Short break) *****

19. Mr Schorer proposed Tom Amos as Arbitrator.
20. Mr Benjamin stated that Telstra reject Tom Amos because he is not a legal person. He stated the Garms appeal indicates that adhering to correct procedure is a very important aspect of the Arbitration and Mr Amos is not the sought of person who Telstra considers appropriate.
21. Mr Schorer stated that he is the only person he can find that meets the criteria of the TIO in relation to expertise etc. In relation to the other persons suggested by Telstra, Mr Schorer indicated he was not prepared to appoint a solicitor or QC as Arbitrator.
22. At this point Mr Pinnock indicated that the parties were at an impasse and have not agreed on an appointment for the new Arbitrator. Mr Pinnock concluded the meeting.

DRAFT

Our Ref: 3825.doc

10 June, 1998

Thru copy
Received 19/6/98



TELEPHONE (03) 9287 7099

Attention: Mr Neil Mounsher
Manager, Customer Response Unit
Telstra
242 Exhibition Street
Melbourne Vic 3000.

FAX (03) 9287 7001

493-495 QUEENSBERRY STREET
NORTH MELBOURNE VICTORIA 3051
PO. BOX 313 NORTH MELBOURNE 3051

By facsimile: (03) 9634 8728 and hand delivery.



Dear Mr Mounsher,

WITHOUT PREJUDICE

Further to our meeting of Tuesday, 9 June 1998, I am enclosing a copy of my thoughts, comments and opinions based upon my understanding of the events that took place at the meeting for Telstra's consideration.

These matters are set out in the attached Appendix.

Given the difference of opinions between Peter Crofts and Graham Schorer on the validity of how the other party calculated GOLDEN's job losses then quantum, there does not seem to be a realistic likelihood of reaching agreement on this very basic matter. While this difference of opinions remain unresolved, the prospect of achieving resolution by this unique process does appear unlikely to eventuate.

If these circumstances still remain unchanged after Thursday, 18 June 1998, providing both parties are willing to continue pursuing resolution under this process, there may be merit in both parties considering use of a third party to provide an independent opinion as a way forward solution.

Should it be necessary and Telstra and GOLDEN are in agreement for the need to involve an independent third party, discussion will need to take place to set the objectives and ensure the involvement of the third party will be a cost and time effective solution.

I am still committed in giving this new process every opportunity to achieve the mutually desired outcome.

Yours sincerely,

Graham Schorer

cc: Ms Lyn Chisholm By facsimile: (03) 9634 8728.

357

- 3 -

GOLDEN**WITHOUT PREJUDICE****Point 4.**

Excluding Mr Crofts' formula and his discussion on the same matter, I refer to Table identified as Call Loss Variables.

Then taking into all the other matters he raised as to why he found GOLDEN's base claim unacceptable/unreasonable/unbelievable (my words, not his), in my opinion, all of his concerns for Telstra have been addressed by my most generous offer to discount GOLDEN's base claim of \$8.33Million by 53.85% to equal \$3.846Million.

As a further incentive as pointed out in Point 3, I have discounted the perspective Grand Total claim of more than \$12.681Million by 69.66% to equal \$3.846Million, which is the same amount as pointed out in Point 2.

Point 5. Conclusions.

In my opinion, either Mr Crofts and/or GOLDEN are both horribly wrong in our different methodologies used to calculate the value of my claim, or one of us is being realistic in the methodology and discounting applied.

The \$64.00 question is which is the correct answer.

From my perspective, I have demonstrated my willingness to settle with Telstra and I have been more than reasonable in the offer made to Telstra for settlement.

In my opinion, Mr Crofts is mistakenly taking into consideration the \$200,000.00 paid into Court re Flexitel Customer Premises Equipment.

The involvement of an independent third party may be needed.

357

Our Ref: 3835.doc

GOLDEN

17 June, 1998

TELEPHONE (03) 9287 7099

Attention: Mr John Pinnock
Telecommunications Industry Ombudsman
315 Exhibition Street
Melbourne Vic 3000.

FAX (03) 9287 7001

493-495 QUEENSBERRY STREET
NORTH MELBOURNE VICTORIA 3051
PO. BOX 313 NORTH MELBOURNE 3051

By facsimile: 9277 8797 and post.

FAXED
17/6/98

Dear Mr Pinnock,

Re: Minter Ellison's Draft of Events it alleged took place at the TIO meeting of 22 May 1998.

Re: Schorer Vs Telstra Arbitration.

I received Minter Ellison's draft Minutes of the TIO 22 May 1998 meeting by facsimile at close of business Tuesday 2nd of June 1998.

The GOLDEN response has been made in consultation with Mr William Hunt in order to address all of the deficiencies within the Minter Ellison Draft.

The attached Appendix identifies the required corrections to and the omissions from the provided Minter Ellison Draft. The GOLDEN response identifies each of the points contained in the Minter Ellison Draft.

The GOLDEN comments made against each point are deliberately kept brief. Key words and the context of key statements made at the meeting, omitted from the Draft, are underlined.

A copy of this correspondence is being sent to Telstra for their comment.

Please note: It is GOLDEN's requirement that all future meetings must be taped by the use of professional equipment in order to protect the interests of both Telstra and GOLDEN, and in order to maintain the TIO's independence.

I will appreciate receiving Telstra's comments, if you already have them, and a further Draft copy of what is being proposed to be signed off as the actual events that took place at this meeting.

Yours sincerely,



Graham Schorer

358

cc: Mr Ted Benjamin, By facsimile: 9632 3235. ✓
Mr Neil Mounsher, By facsimile: 9634 8728. ✓

APPENDIX.

Point	Comments
--------------	-----------------

1. Mr Tott should read Mr Topp. No other comment other than to say, agreed in principle.
2. No comment other than to say, agreed in principle.
3. Not agreed. Out of context.

In this point, the second sentence should read, "Mr Hunt advised that ten days ago or more, Schorer was asked by Telstra whether he would be prepared to indicate an amount that he would be prepared to accept in full settlement."

4. Not agreed. Out of context.

In this point, the second sentence should read, "Telstra, at a later date, advised Mr Schorer that his offer to Telstra must be less than \$x or else it would be a pointless exercise and would not be considered."

The third sentence should read, "Mr Hunt advised he had numerous contacts with the Telstra Officer who had made the offer to Schorer."

The third sentence in this point should now be read as the fourth sentence.

The fourth sentence in this point should be read as the fifth sentence, with the following additions made, "Because of Telstra's stated concern about receiving criticism from the Senate, Mr Hunt indicated that Mr Schorer would provide a letter to the effect that any delay was not at the fault of Telstra."

5. Not agreed. Out of context.

The record of events fails to make note of Mr Benjamin's comments that included stating "the Schorer \$12 million claim" Require Mr Hunt's comments.

6. Not agreed. Out of context.

The record of events fails to include all of the key/strong words used by Telstra when attacking the credibility of Schorer.

7. Documents referred to in this paragraph relate to those documents identified in the Senate Working Party and this was clarified in Mr Hunt's question put to Mr Benjamin.

8. Schorer stated he wanted to clarify his understanding of the Telstra offer. Schorer commenced repeating his understanding before being interrupted.

358

- 9. Agreed in principle.
- 10. Agreed in principle.
- 11. Agreed in principle.
- 12. Agreed in principle.
- 13. Agreed in principle.
- 14. Agreed in principle.
- 15. Agreed in principle.
- 16. Not agreed. Out of context.

The part re Telstra's Proposed Rules of Arbitration should be under a separate point and as it was a question directed by Schorer to Peter Bartlett.

Schorer stated he was, then did, provide Peter Bartlett with a copy of the alleged Telstra's Preferred Rules of Arbitration and sought confirmation from Peter Bartlett as to whether document is in fact a copy of Telstra's Proposed Rules of Arbitration provided to Warwick Smith and himself by Telstra prior to 12 January 1994. Mr Peter Bartlett was requested by Schorer to confirm if the copy was one and the same document after he had the opportunity to examine the document.

- 17. Agreed in principle.
- 18. Agreed.
- 19. Not agreed. A substantially incomplete description of this event.

Schorer did propose Tom Amos as Arbitrator, which included citing his reasons for nominating Tom Amos.

Schorer's reasons cited at the meeting included:-

- a) Amos is a recognised captain of industry who has an industry reputation for integrity.
- b) The Industry acknowledges Amos' independence.
- c) Amos is a qualified Telecommunications Engineer.
- d) Amos is an experienced Mediator and facilitator of dispute resolution.
- e) Tom Amos was appointed by the Federal Government to perform certain due diligence test upon Telstra in preparation for the proposed 1/3 privatisation via a public float. Part of that due diligence test included assessing matters pertaining to the Telstra/C.o.T. issues.

358

20. Not agreed. A substantially incomplete description of this event.

Mr Benjamin's response to Schorer's nomination of Tom Amos as the FTAP Arbitrator was stated in words to the effect:-

- a) Mr Amos is known to Telstra.
- b) The C.o.T. arbitration is a highly legalistic process.
- c) Garms' Court action demonstrates the need for the Arbitrator to be a QC.
- d) Tom Amos is not a QC.
- e) Mr Amos is not acceptable to Telstra.
- f) Telstra will accept any of the QC's nominated by the TIO and the current Arbitrator, Mr Mott.

21. Not agreed. A substantially incomplete description of this event.

Schorer stated to the meeting Telstra were changing the mutually 'agreed to' criteria for the selection of the Arbitrator. The mutually 'agreed to' criteria did not include the requirement for the Arbitrator to have to be a QC or a legal person.

The structure of the Fast Track Arbitration Procedure included the appointment of a Special Counsel, who is available to provide the Arbitrator with a legal opinion when requested.

The Fast Track Arbitration Procedure is a process to address highly technical telecommunications matters to do with call loss, and Mr Amos is more than ably qualified to deal with these matters.

The Fast Track Settlement Process has been presented to us, C.o.T.s, as a non-legalistic process. The purpose of the process was to independently determine the value of quantum Telstra should pay in relation to each claim.

Mr Amos is the only independent Telecommunications Engineer known to Schorer who meets the pre-determined mutually 'agreed to' criteria who is prepared and available to act as Arbitrator.

Schorer stated to the meeting he does not know of a person who is a qualified Telecommunications Engineer and a Solicitor.

Schorer stated he was not prepared to accept the appointment of a QC or a Solicitor as his Arbitrator, and this decision was justified by need for the Garms' Supreme Court Appeal.

Mr Amos meets all of the pre-determined mutually 'agreed to' criteria set down in December 1993.

358

22. Not agreed. A substantially incomplete description of this event.

Mr Pinnock acknowledged the parties were at an impasse. Pinnock stated because of the parties were not in agreement on who he should appoint, under the rules/guidelines of the Administrator, he did not have the power to appoint a new Arbitrator while the parties are in disagreement.

The meeting was concluded on the basis:-

- a) Mr Pinnock had previously advised he had made a prior commitment to attend a meeting and needed to leave shortly to meet that commitment.
- b) Telstra had previously indicated they had made similar commitments.
- c) There is no indication that the differences between the parties about the appointment of an Arbitrator will be resolved in the available time left.

358



18 June 1998

Regulatory & External Affairs
Consumer Affairs

37/42 Exhibition Street
Melbourne
Victoria 3000
Australia

Telephone (03) 9634 2977
Facsimile (03) 9632 3235

Mr John Pinnoek
Telecommunications Industry Ombudsman
GPO Box 18098
Collins Street East
MELBOURNE VIC 3000

Facsimile No 9277 8797

Dear John

Schorer and Telstra Arbitration: Meeting on Friday, 22 May 1998

I have received a letter dated 17 June 1998 from Mr Schorer attaching his proposed amendments to the minutes of the above meeting.

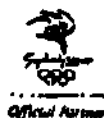
Telstra does not agree with Mr Schorer's suggested amendments to paragraphs 20 and 21. It believes that the minutes should remain as is, because they more accurately reflect the meeting proceedings than do Mr Schorer's proposed amendments.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ted Benjamin'.

Ted Benjamin
DIRECTOR, CONSUMER AFFAIRS

cc. Mr G. Schorer
Fax No 9287 7001



Our Ref: 3843.doc

GOLDEN

18 June, 1998

TELEPHONE (03) 9287 7099

Attention: Mr John Pinnock
Telecommunications Industry Ombudsman
Telecommunications Industry Ombudsman's Office
315 Exhibition Street
Melbourne Vic 3000.

FAX (03) 9287 7001

493-495 QUEENSBERRY STREET
NORTH MELBOURNE VICTORIA 3051
PO. BOX 313 NORTH MELBOURNE 3051

By facsimile: 9277 8797 and hand delivery.

Dear Mr Pinnock,

Since the meeting of 22nd of May 1998, I have telephoned your office twice to speak to you. On both occasions, I was told you were unavailable. The both messages I left with the TIO's receptionist was a request that you return my call.

The purpose for ringing was to have a brief discussion on the resultant outcome of the meeting and seek your answers to three of my questions.

In regards to the meeting outcome, your statement at the meeting, in words to the effect:-

"If the parties (Telstra and GOLDEN) cannot reach an agreement as to who should be appointed as Arbitrator, the TIO, as Administrator, does not have the power to appoint a new Arbitrator while the parties are in disagreement."


is a correct assessment of the facts.

Had my phone calls been returned, these are the questions I had intended to ask of you:-

1. Do you intend to refer this matter back to the Regulator, Australian Communications Authority (ACA, formerly AUSTEL)? And if this is your intent, when?
2. Do you intend to call another meeting to establish if either party, Telstra or GOLDEN, have a way forward solution?
3. Am I correct in my assumption that the document I provided to Mr Bartlett at the 22 May 1998 meeting entitled, "Telstra Corporation Limited - 'Fast Track' Proposed Rules of Arbitration", is in fact a copy of the Telstra document provided to Warwick Smith on or before 12 January 1994? Please confirm.

I will appreciate being informed of what the TIO intends to do before it takes any action.

Yours sincerely,


Graham Schorer

360



18 June 1998

Regulatory & External Affairs
Customer Response Unit

2/242 Exhibition Street
Melbourne Vic 3000
Australia

Telephone 03 9632 3224
Facsimile 03 9634 8728

Mr Graham Schorer
Golden
493-495 Queensberry Street
North Melbourne Vic 3051
By Facsimile: 03 9287 7001

Dear Mr Schorer,

WITHOUT PREJUDICE

Thank you for your letter of 10 June, 1998 regarding our meeting of 10 June, 1998.

I am encouraged that the discussions between Golden and Telstra have been productive but am disappointed that the difference of opinion between the parties is in your view unlikely to result in an agreement. Telstra believes it made a sound assessment of the information you provided and discussed in some detail our assessment. I acknowledge the points you have raised in your letter and note that there are matters in your Appendix that Telstra would take issue with but it is not proposed to do so in this response.

Telstra continues to consider how to expeditiously resolve the dispute with you. If we are able to make progress in this regard, I will contact you.

Notwithstanding the above, Telstra is not prepared to let the arbitration process be unduly delayed and I have been instructed to seek the appointment of a new arbitrator. I enclose a copy of Telstra's letter to the TIO on this matter.

As per our agreement, Telstra will arrange to return any documents provided by Golden to your office by Friday 19 June, 1998.

Finally, I acknowledge that the two sets of documents provided to your Solicitor and your Accountant were returned to this office today.

Yours sincerely

Neil Mounsher
Manager



Our Ref: 3846.doc

GOLDEN

19 June, 1998

FAXED
19/6/98

TELEPHONE (03) 9287 7099

Attention: Mr John Pinnock
Telecommunications Industry Ombudsman
Telecommunications Industry Ombudsman's Office
315 Exhibition Street
Melbourne Vic 3000.

FAX (03) 9287 7001

493-495 QUEENSBERRY STREET
NORTH MELBOURNE VICTORIA 3051
P.O. BOX 313 NORTH MELBOURNE 3051

By facsimile: 9277 8797 and hand delivery.

Dear Mr Pinnock,

Re: Schorer and Telstra Arbitration: Meeting on Friday, 22 May 1998.

At 11:44 a.m. Friday, 19 June 1998, my office received a Telstra facsimile dated 18 June 1998, addressed to the TIO, containing comments on my response to the errors within and omissions from the Draft Minutes of the 22nd of May 1998 meeting.

It has been with reason I have always insisted that all meetings between the TIO, Telstra and/or GOLDEN are taped and transcribed. The disputes that have occurred in the initial meetings not taped and transcribed is well known to all parties. I have been disadvantaged in my self interest efforts taken to protect my entitlement to receive a fair non-legalistic commercial assessment of my claim as a result of these unnecessary disputes caused by the convenient selective memory of others.

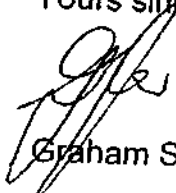
It is unfortunate for all present at the meeting that the Draft of the brief notes taken by Lucy McCullagh do not record all of the key words used and key statements made by each party at the meeting. Telstra's assertion the Draft should remain as is cannot take place because it does not mirror the meeting's procedures and content.

The only action the TIO is entitled to take is to produce a set of Minutes that includes reference to my correction of the errors and the omissions of key words/key statements made by individual parties, plus record Telstra's belief the Minutes should remain as is, on their stated grounds they believe the Draft "*more accurately reflect the meeting proceedings than do Mr Schorer's proposed amendments*".

Please advise what action the TIO intends to take.

Should you require further information or clarification, please make contact.

Yours sincerely,


Graham Schorer

362

Our Ref: 3844.doc

GOLDEN

19 June, 1998

TELEPHONE (03) 9287 7099

Attention: Mr John Pinnock
Telecommunications Industry Ombudsman
Telecommunications Industry Ombudsman's Office
315 Exhibition Street
Melbourne Vic 3000.

FAX (03) 9287 7001

493-495 QUEENSBERRY STREET
NORTH MELBOURNE VICTORIA 3051
P.O. BOX 313 NORTH MELBOURNE 3051

By facsimile: 9277 8797 and hand delivery.

FAXED
19/6/98

Dear Mr Pinnock,

Re: Arbitration between Telstra Corporation Ltd and Golden Messenger & Ors.

I refer to the Telstra facsimile received at my office after the close of business yesterday, Thursday, 18 June 1998.

I have noted that Telstra are asserting to the TIO the current situation of the Telstra-Schorer arbitration cannot be allowed to continue indefinitely and its inquiry made of you being, *"In the circumstances, do you intend, in your capacity as Administrator of the arbitration process, to appoint an Arbitrator unilaterally?"*

I agree with your previous statements made in words to the effect, the TIO does not have the power to appoint a new Arbitrator under circumstances where the parties do not agree on who should be appointed, again repeated at the 22 May 1998 meeting.

After re-reading the previous correspondence between AUSTEL, TIO and myself, and my other notes on the same matter, it is quite clear the TIO's only option is to refer this matter back to the ACA (formerly AUSTEL).

If the TIO intends to do anything other than refer this matter back to the ACA, I do require receiving prior notification of the TIO's intent, in order to afford me the opportunity to take the necessary steps to protect my self-interest.

Should you require further information or clarification, please make contact.

Yours sincerely,


Graham Schorer

363

18 June 1998

Regulatory & External Affairs
Consumer Affairs

37/242 Exhibition Street
Melbourne
Victoria 3000
Australia

Telephone (03) 9634 2977
Facsimile (03) 9632 3235

Mr John Pinnock
Telecommunications Industry Ombudsman
PO Box 18098
Collins Street East
MELBOURNE VIC 3000

Facsimile No 9277 8797

Dear John

**Arbitration between Telstra Corporation Ltd and
Golden Messenger & Ors.**

I note that, despite recent efforts, the parties have been unable to agree to date upon an Arbitrator to replace Dr Gordon Hughes.

The Arbitration has now been in limbo for some months as a result, a situation which clearly cannot be allowed to continue indefinitely. In the circumstances, do you intend, in your capacity as Administrator of the arbitration process, to appoint an Arbitrator unilaterally?

I look forward to your response.

Yours sincerely



Ted Benjamin
DIRECTOR, CONSUMER AFFAIRS

364

GOLDEN

Our Ref: 3840.doc

18 June 1998

TELEPHONE (03) 9287 7099

Attention: Ms Lyn Chisholm
Case Manager
Telstra
2/242 Exhibition Street
Melbourne VIC 3000.

FAX (03) 9287 7001

493-495 QUEENSBERRY STREET
NORTH MELBOURNE VICTORIA 3051
PO. BOX 313 NORTH MELBOURNE 3051

By facsimile: (03) 9634 8728 and hand delivery.

Dear Ms Chisholm,

Re: Telstra's supply of documents pursuant to GOLDEN's Submission to the Senate Working Party.

On behalf of GOLDEN, I formally request Telstra to supply the types and classes of documents the Ambidji Group considered reasonable and relevant to GOLDEN's claim.

This request of Telstra has been made by GOLDEN in accordance with Telstra's undertaking given to the Chair of the Senate Working Party.

I will appreciate receiving immediate written advice when Telstra intends to supply the documents it has discovered and notification of what period of time it will take Telstra to discover and supply the documents which have yet to be discovered.

Telstra are required to include in its written advice to GOLDEN what arrangements it has made to supply the documents covered under the scope of GOLDEN's November 1993 and my April 1994 FOI requests, and GOLDEN's Submission provided to the Senate Working Party re the 1st of November 1993 BCI Report and its attached Appendix.

To avoid future misunderstanding and confusion, the previously requested "BCI" documents not supplied by Telstra include those covered under Part 12 of Schorer's Revised Submission to the Senate Working Party, which is:-

REVISED SUBMISSION PART 12 -

1 November 1993 Bell Canada International Report and its attached Appendix.

12.1

Telstra to list and describe each of the 500 pages referred to in Telstra's 1994 letter to Dr Hughes.

365

GOLDEN**12.2**

- (i) Telstra to list and describe all of Telstra documents it created during the period of set up and conducting of the monitoring and testing performed by Telstra on its customers (identified in the BCI Report and its attached Appendix) under the directive of Bell Canada International.
- (ii) This request includes all of the working papers, work instructions, E-mails, diary notes, of all Telstra personnel involved with BCI's engagement, directives, monitoring and testing programs and the compiling of BCI's November 1993 Report.
- (iii) This request includes all Telstra correspondence to and from Bell Canada International.
- (iv) This request includes all documents, work orders, work instructions, diary notes, working papers, raw data and other pre-dial information generated during the pre-dial testing program, faults traced and remedied, including the identity of each fault, location of fault and time taken to fix. The lists must include any short term fixes made such as utilising alternative routes or configurations to alleviate the situation.

12.3

- (i) Telstra to list and describe all of the data it created during the period of set up and conducting of the monitoring and testing performed by Telstra on its customers (identified in the BCI Report and its attached Appendix) under the directive of Bell Canada International.
- (ii) This request specifically includes the part of the BCI Report that refers to Cape Bridgewater, Portland, Victoria.

12.4

Telstra, when responding to this request, must provide all test and monitoring information, including the pre-dial testing and monitoring, as set out in the attached George Close & Associates' description of Telstra's testing and monitoring. This requests for all pre-dial and final run results and information, including raw data, in print-out and disk format.

12.5

Telstra, when responding to all parts of this request, are to take into consideration the C.o.T. Working Party representatives' statement that Telstra have not provided all documents and data re the November 1993 Bell Canada International Report, despite repeated requests made and Telstra's current assertion to the Working Party made on 12 March 1998 which is not correct.

365

GOLDEN

Given the intensive activities of the Working Party, which provided Telstra with a full understanding of the scope of each part of the Schorer Submission, the alleged efforts it has been stated Telstra has made in identifying where the documents are located, it is not unreasonable for GOLDEN to expect Telstra to respond prior to close of business Thursday, 25 June 1998.

If there are matters in which I can assist, please do not hesitate to make contact.

Yours sincerely,

Graham Schorer

365

GEORGE CLOSE & ASSOCIATES
DATA-TELECOMMUNICATION CONSULTANTS
TEL-FAX 07 5445 3198 MOBILE 041 22 88 88 6

TELSTRA TESTING AND MONITORING

Telstra, over the years, have carried out network testing and monitoring as a regular and standard part of their maintenance activities of the Public Switching Telephone Network (PSTN).

These routine and special event applications do apply when testing or monitoring:-

- . Within an exchange - all types
- . Exchange to exchange
- . Exchange Inlets/outlets
- . Exchange Main Distribution Frame (MDF) to Customer Premises Equipment (CPE) via Customer Access Network (CAN)
- . Between any two or more nominated points

The manner in which these events are controlled and handled, varies. The variations can include:-

- a) types of testing or monitoring used,
- b) types of equipment used.
- c) time of day.
- d) day of week.

All testing and monitoring is performed with one purpose, to determine the success rate of the calls, in order to optimise the particular path or paths under test or monitoring.

This task can be performed in several different ways and with several different modes but whatever the manner in which these maintenance functions are expedited the rationale for their existence is to find faults, if any, and fix where practicable, or in the short term, make use of alternative routes or reconfigurations to alleviate the situation.

In order to achieve this set of conditions, the technician will set up a pre-dial test or monitoring run. This pre-dial procedure can include a run of 100 or 200 calls depending on the nature of the test or monitoring.

The results of the first (1st) Pre-dial test or monitoring are checked against pre-determined parameters, and if exceeded, the cause traced and identified, then the fault is "fixed".

A second (2nd) pre-dial test-monitoring run is then carried out to confirm the "fix".

If the "fix" is confirmed, it is followed by a longer test-monitor run.

This may comprise several hundred or several thousand calls, sufficient to clearly establish the new reliability level of the part of the network that is in question.

It is the results of the final test run, after all the faults have been "fixed", that Telstra use as evidence against the COT complainants, to discredit the validity of the complainants' claim.

This means that the final test and monitoring results produced for confirmation of the standard of service provided by Telstra in their defence documents are misleading and deceptive unless accompanied by all of the pre-dial information.

365 1

The first (1st) Pre-dial testing or monitoring information is the one and only realistic reflection of the actual performance of the part of the network in question, prior to and up to, the time of the first (1st) pre-dial testing or monitoring commenced.

The foregoing has been acknowledged by Peter Gamble, Telstra's Senior Telecommunications Engineer used in the COT arbitrations, during an arbitration.

It is of little value providing the pre-dial or final runs in summary form. They all must be supported by the raw data from which the summaries are produced. Only an exact analysis of the nature and relationship of each of the calls can provide the information required to establish the facts.

In essence, the COTs require all test runs and monitoring to be accompanied by all:-

1. 1st Pre-dial test or monitoring Information, including:
 - Faults found - includes switching, MFC, congestion and under-dimensioning.
 - Identification of each fault
 - Faults fixed
 - Time taken to fix each fault
 - Period of time fault existed
 - Location of fault - definition of location includes where in exchange and network
2. 2nd Pre-dial test or monitoring information and so forth
3. Final test or monitoring Run information

All Pre-dial and Final run results and information are to be accompanied by raw data, preferably in print-out and disk format.

SUMMARY.

The majority of the faults experienced by the COTs originate from the Telstra network.

The COTs must demand to be supplied with all pre-dial test and monitoring information requested and Telstra must be made to comply with all requests.

Tests or monitoring final run results are not evidence of the network, or part of the network in question, performance at the time the telephone difficulty, problem and fault was experienced and/or the time the complaint was made.

CONCLUSION.

The absence of all pre-dial test information and generated raw data not accompanying the final test or monitoring run results prevents the COTs proving actual network performance during the periods telephone difficulty, problems and faults were experienced.

Telstra insistence that final test and monitoring results are evidence of network performance at the time the telephone service difficulty, problems and faults were experienced is misleading and false. The Technical Resource Unit and the Arbitrator's insistence Telstra is correct, is not only wrong, but also results in gross injustice being done to the COT claimant.

365



18 June 1998

Regulatory & External Affairs
Consumer Affairs

37/242 Exhibition Street
Melbourne
Victoria 3000
Australia

Telephone (03) 8634 2977
Facsimile (03) 8632 3235

Mr John Pinnock
Telecommunications Industry Ombudsman
PO Box 18098
Collins Street East
MELBOURNE VIC 3000

Facsimile No 9277 8797

Dear John

**Arbitration between Telstra Corporation Ltd and
Golden Messenger & Ors.**

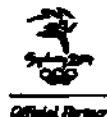
I note that, despite recent efforts, the parties have been unable to agree to date upon an Arbitrator to replace Dr Gordon Hughes.

The Arbitration has now been in limbo for some months as a result, a situation which clearly cannot be allowed to continue indefinitely. In the circumstances, do you intend, in your capacity as Administrator of the arbitration process, to appoint an Arbitrator unilaterally?

I look forward to your response.

Yours sincerely

Ted Benjamin
DIRECTOR, CONSUMER AFFAIRS



Official Partner

Telstra Corporation Limited
ACN 081 775 668

364

WM. R. HUNT, M.A., LL.B.
SOLICITOR

CONSULTANT:
F. J. R. HUNT, B.A., LL.B.

ASSOCIATE:
J. R. P. HUNT, B.A., LL.B.

YOUR REF. **WRH.DF**
OUR REF.

HUNTS'
SOLICITORS AND CONSULTANTS

MITCHELL HOUSE
358 LONSDALE STREET
MELBOURNE 3000
(CNR. ELIZABETH & LONSDALE STREETS)

PHONE: 9670 5694
FAX: 9670 6598

29 June 1998

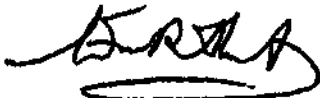
Mr Alan Smith
Capebridgewater Holiday Camp
RMB 4408
PORTLAND VIC 3305

Dear Mr. Smith,

There are enclosed six sheets of paper which are the material received by fax from you this morning. I have numbered each of the pages at the bottom in ink and signed my name on the two blank pages.

There is a seventh separate page which is a read-out from our fax machine as at quarter to three this afternoon.

Yours truly,



HUNTS'

(SENT TO THE TIO.)

365

⑤ 5-20-68

② BRWA

DATE	START TIME	REMOTE TERMINAL IDENTIFICATION	TIME	RE-SULTS	MODE	TOTAL PAGES	PERSONAL LABEL	FILE NO.
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	03:34PM		00'31"	OK	ESM	01		010
	04:28PM		05'35"	OK	SM	06		014
	05:18PM		00'57"	OK	SM	01		023
JUN 29	09:09AM	96083016	00'49"	OK	ESM	02		024
	09:36AM		01'16"	OK	ESM	03		025
	09:38AM		00'28"	OK	ESM	01		026
	10:50AM		00'27"	OK	ESM	01		029
	02:16PM		00'27"	OK	ESM	01		031
	02:52PM	COMBANK IB	00'33"	OK	ESM	01		033
	03:08PM	CBA FIN MARKETS	00'32"	OK	ESM	01		034
	03:18PM		00'43"	OK	ESM#	02		036
	03:18PM		00'35"	OK	ESM#	02		037
	03:20PM		00'45"	OK	ESM	02		035
	03:33PM		00'54"	OK	ESM	02		038
***** RECEPTION *****								
JUN 26	01:37PM		00'42"	OK	ES	01		098
	02:20PM		01'29"	OK	S	01		099
	02:23PM		00'56"	OK	S	01		100
	02:27PM		01'44"	OK	S	02		002
	02:45PM		02'36"	OK	S	03		004
	03:19PM		00'48"	OK	ES	01		006
	03:20PM		00'48"	OK	ES	01		007
	03:22PM		01'01"	OK	ES	03		008
	03:42PM		00'26"	OK	ES	01		012
	04:23PM		01'49"	OK	ED	03		013
	04:35PM		00'58"	OK	ES	02		015
	04:37PM		05'10"	OK	S	05		016
	05:07PM		00'53"	OK	ES	01		019
	05:50PM		00'55"	OK	S	01		021
JUN 29	10:11AM		00'35"	OK	ES	01		027
	10:31AM		02'16"	OK	S	04		028
	12:00PM		00'36"	OK	ES	01		030
	02:42PM		01'43"	OK	ES	04		032

TX:016754

RX:014657

E)ECM >)REDUCTION S)STANDARD @)FORWARDING M)MEMORY C)CONFIDENTIAL *)BATCH
 D)DETAIL F)FINE \$)TRANSFER P)POLLING

FACSIMILE INTERCEPTION

Exhibit 2

PREPARED FOR ALLEN BOWLES, DECEMBER 2006

When assessment is being made of my claims regarding the way my faxes have been intercepted over an extended period, the following evidence must be taken into consideration. This evidence relates particularly to a third party, with access to Telstra's network, carrying out this interception.

EXHIBIT 1

This is a copy of my fax account from Telstra, for my 03 55 267 230 line. This document includes the words "Your FaxStream Service 03 55 230;" but I have never given Telstra permission to fax stream my faxes and, before August 1998, I was not even aware that fax screening was occurring. In the table following, I have listed intercepted faxes that were sent to Graham Schorer's office between 2nd July and 3rd October 1998. Some of these faxes included more than one page, but they all match up with the times and dates on my Telstra fax accounts.

Telstra may argue that I knew fax streaming was occurring, because they used this process for fault finding on my fax line, but there are still many questions to answer.

EXHIBIT 2

When I began to believe that Telstra was intercepting my faxes, I switched my fax machine from the designated line (267 230) to my incoming phone line (267 267). The two-page document faxed to Graham Schorer's office on 3rd November 1998 from my business phone appears therefore on my business phone account, not my fax account. These seven exhibits confirm that a third party intercepted these faxes that were sent from my business phone line.

Ten minutes before I faxed this particular letter to Graham, I faxed the same letter, plus five attachments, to the Hon Peter Costello's office. My phone account confirms that it took eight minutes to transmit this information, which, as can be seen, arrived with the correct business identification of "CAPE/BRIDGE/CAMP" on all seven pages.

So why was Telstra only fax screening or fax streaming documents sent to certain destinations?

EXHIBIT 3

This my private residence phone account for 03 55 267 265 and it proves that Telstra has had a go at my residential service line as well. Again, this example is of a fax sent to Graham Schorer's office on 1st December 1998, at 01.28 pm, as both the fax and the account confirm.

EXHIBIT 3 (a)

My letter dated 24th December 2002, to the ACA, was also faxed from my residence so here are two examples confirming that faxes have been intercepted without my knowledge or consent, at least between December 1998 and December 2002.

The questions here are who has benefited from seeing the information in these faxes before they were sent on their way to their designated destination?

EXHIBIT 4

- (a) A copy of a letter dated 23rd September 1998, from Graham Schorer to Neil Jepson who was then Barrister and Solicitor for the Victoria Police Major Fraud Group.
- (b) A copy of my letter dated 20th September 1998 to Wally Rothwell, Deputy TIO, regarding fax interception issues and the loss of 43 documents I faxed to the arbitrator's office during my arbitration with Telstra in 1994/5. This was also faxed to Graham Schorer's office.

Comment – Exhibit 4

There were two occasions, during the Major Fraud Group's investigation of the Telstra/COT issues, when documents I faxed to Neil Jepson's office never arrived.

EXHIBIT 5

One of the documents in exhibit 1 is attached again here (at point a) so it can be compared with the other two documents at points b and c:

- (a) This was faxed at 09:37 on 1st September 1998 from my office to Graham Schorer. It does not have the correct identification across the top.
- (b) This is the same letter as at point (a), but it was faxed at 3.40 pm on 31st August 1998 from my office to the Commonwealth Ombudsman (02 627 6011). This does have the correct identification.
- (c) My Telstra account for my fax line (55 267 230) shows that both the faxes were sent at the times shown on the faxes themselves (except for a one-hour difference which was daylight saving time).

Comment – Exhibit 5

Telstra should be asked why they fax screen and/or fax-stream only some documents from a particular service, and not others. Since these two documents were faxed to different destinations within a day of each other (except for the daylight savings difference), it seems that Telstra was systematically intercepting faxes between my office and Graham's and between my office and Australian Communications Authority (see example below)

EXHIBIT 6

These six documents were faxed from my business phone line (267 267) but were still intercepted, even though it was not a designated fax line.

EXHIBIT 7

This document part (a) shows charges for seven faxes to Dr Hughes on 23rd May 1994, but apparently they did not arrive and, on the same day, Tony Watson of Telstra's arbitration defence unit, looked into why and decided that it was because all the arbitrator's fax machines were busy at the time I tried to send my faxes to him (see part two) Why Telstra still charged me for these faxes that never arrived at the arbitrator's office has never been correctly investigated.

EXHIBIT 8

This letter dated 30th July 1998, to Wally Rothwell, Deputy TIO, is the one that was intercepted between my office and Graham Schorer's on 29th December 1998. The letter is also important though, because it described how only part of a multi-page fax from my office to Dr Hughes (arbitrator) was received. When I later received my claim documents back from the arbitrator's office, this letter had part of another COT claimant's claim stapled to it, where my documents should have been. How many other faxed documents from my office to the arbitrator's office were lost in a similar manner?

Comment – Exhibits 7 and 8

All this type of information, and many similar examples of lost faxed documents, including lost legal claim documents have been before Telstra and the TIO since 1995. Why have they never investigated my valid claims?

EXHIBIT 9

These two examples of blank received documents, dated 22nd April 1994 and 29th June 1998, have also been discussed in Facsimile Interception, Exhibit 1, but they are linked to Exhibit 2 as well.

- (a) This letter dated 1st July 1998, to Wally Rothwell, Deputy TIO, was faxed to the TIO on their free-call number, 1800 630614, and therefore does not appear on my Telstra account. The letter discusses two examples of people receiving blank fax pages from my office. In relation to this, it is also interesting to note that, at least twice during my arbitration in 1994, (excluding Exhibit 7, the example from 23rd May 1994) the arbitrator's secretary was adamant that they had not received any faxes from me either the previous night or early that morning, but I was charged for sending the faxes that never arrived, confirmation that a transaction had occurred.
- (b) The first example raised in my letter to Wally Rothwell relates to three blank pages that were received by the regulator, AUSTEL, on 22nd April 1994 (confirmed by the attached copy of their fax journal print-out). One of those blank faxes, Telstra FOI number K37979 (also attached), also confirms the receipt of blank pages: note, in the top left corner of this blank fax, a small imprint of a square with a cross in it. My Telstra account covering 22nd April 1994 (attached) also confirms that these three faxes were sent to AUSTEL.
- (c) The second example raised with Wally Rothwell relates to two other blank pages, this time received by my solicitor, William Hunt, on 29th June 1998. These two pages are also attached, each one signed by Mr Hunt. Please note the same square and cross imprint in the top right corners (very faint).
- (d) My letter dated 1st July 1998, to Mr Rothwell, was intercepted on 2nd July 1998, at 16:36, via Telstra's fax screening/streaming, en-route to Graham Schorer's office (see Exhibit 1).

The question here is: why did Telstra allow a copy of my letter to Mr Rothwell to go unhindered at 13:59 on 2nd July 1998 but, two and a half hours later, screen the same document when I sent it to Graham Schorer?

EXHIBIT 10

On the twenty-sixth of February, 1999, I sent three faxes to Graham Schorer: the first and third of these faxes arrived at Graham's office as intended but the second has never arrived. Graham's fax journal, attached below, covers the time span during which I sent faxes from my fax machine and shows the two faxes were received, marked with an arrow. Graham's fax line number 03 92877001, appears quite clearly on my Telstra residential phone account 0355267265. Obviously, according to Telstra, I sent these faxes to the right number and so I was duly charged for the long-distance transmission of them. Comparison of my phone account to Graham's fax journal confirms that Graham received the fax I sent at approximately 10:53 and the fax that I sent a approximately 1:35 (this appears on Graham's journal as 13:35) but the document sent from my fax at 11:20 did not arrive at Graham's fax machine.

If I hadn't happened to phone Graham to discuss the document which didn't arrive, we would probably have never discovered that it had 'gone 'walkabout' between our fax machines.

Both exhibit 10 and exhibit 3 above, have one thing in common:

Exhibit 3, confirms a fax sent on 1st December 1998, to Graham Schorer, from my residential phone number 0355 267265 (not a designated fax service) was also intercepted. When we compare the telephone account as displayed in exhibit 3, with the phone account displayed here it is evident there is no wording at the top of the account stating - Your FaxSteam Service. Why then were these faxes intercepted on route from my residential phone service?

In my unpublished manuscript "*Ring for Justice*", on page 199 I have related the story of forty-three faxes which 'went missing' just like the example here.

Lastly, two samples of how my two different fax machine printouts displayed my business fax identification on faxes as they were sent.

Example 1: (Xerox Machine)

CAPE/BRIDGE/CAMP ID: 0355267230

Example 2: (Panasonic Machine)

FROM CAPE BRIDGE HDAY CAMP

NOTE: Faxes subjected to fax screening only show either "Fax from 03 55267230" or "Fax from 055 267230".