

**CAV**  
**CHRONOLOGY**  
**LGE**

**Exhibit 448 to 458**

TELECOM CORPORATE SOLICITORS OFFICE  
LEGAL SUPPORT SERVICES

---

7TH FLOOR 470 COLLINS STREET  
MELBOURNE 3000 AUSTRALIA

FAX NO: (03) 614 7186

TELEPHONE: (03) 606 8007

FAX OPERATOR: (03) 606 5431

---

Page 1 of 2 Pages (Total)

C04550

DATE: 2 November, 1990

RECIPIENT: TELECOM BUSINESS TERMINALS.

ATTENTION: MR PETER GAMBLE.

FAX NO: (03) 642 0091

FROM: TREVOR HILL

RE: TELECOM V GOLDEN MESSENGER LEGAL PROCEEDINGS

---

If you do not receive all pages please telephone (03) 606 5431

COMMENTS:

PETER,

AS DISCUSSED, THE FOLLOWING COMMENTS ARE OFFERED TO ASSIST YOUR BRIEFING OF FRANK JONES:

(1) AT THIS MORNING'S DIRECTIONS HEARING IN THE FEDERAL COURT THE MATTER WAS STOOD OVER UNTIL THE 7TH DECEMBER 1990. THIS WAS AGREED TO BY BOTH PARTIES.

(2) BETWEEN NOW AND THE 7TH DEC. TELECOM WILL BE REQUIRED TO FINALISE THE DISCOVERY OF DOCUMENTS RELEVANT TO THE PROCEEDINGS.

(3) TELECOM WILL ALSO NEED TO INSPECT ANY DOCUMENTS LODGED BY GOLDEN MESSENGER AS PART OF ITS (GM'S) DISCOVERY OBLIGATIONS

GS 448-A

C04551

(4) TELECOM NEEDS TO EXAMINE THOSE DOCUMENTS PERTAINING TO THE TESTS CARRIED OUT ON NORTH MELB. EXCHANGE TO DETERMINE IF ANY OF THOSE DOCUMENTS HAVE BEEN GENERATED AS A RESULT OF AN "INTERCEPTION". IF SO, THEN TELECOM WILL BE PRECLUDED FROM DISCLOSING THEM UNDER THE DISCOVERY PROCESS. I INTEND TO ASK MR PAUL KILLEEN OF NETWORK INVESTIGATIONS TO UNDERTAKE THIS TASK.

(5) THE AUSTRALIAN GOVERNMENT SOLICITOR, ON BEHALF OF TELECOM, HAS WRITTEN TO THE SOLICITORS ACTING FOR GOLDEN MESSENGER SEEKING THEIR UNDERTAKING NOT TO DISCLOSE TO THEIR CLIENT OR OTHERS THE CONTENTS OF THE REPORT ON THE NORTH MELB. EXCHANGE. TO DATE, THERE HAS BEEN NO RESPONSE.

(6) AT THIS STAGE IT IS UNLIKELY THAT THIS CASE WILL BE HEARD BEFORE JUNE 1991.

(7) TELECOM NEEDS TO CONSIDER THE TACTICAL QUESTION AS TO HOW TO BEST PRESENT ITS EVIDENCE AT THE FINAL HEARING. THAT IS, ORALLY OR IN WRITTEN (SWORN AFFIDAVIT) FORM.

WOULD YOU PLEASE KEEP ME INFORMED AS TO ANY DEVELOPMENTS THAT MIGHT OCCUR IN FUTURE DISCUSSIONS BETWEEN TBS AND GOLDEN MESSENGER AS TO SETTLEMENT OF THIS LITIGATION.

SHOULD YOU OR FRANK HAVE ANY QUESTIONS IN RELATION TO THIS MATTER PLEASE DON'T HESITATE TO CONTACT ME ON 606 8007.

REGARDS,



TREVOR HILL  
MANAGER - LEGAL SUPPORT SERVICES

CO:TREVOR1:19

448

ERC&A 36

SENATE—*Legislation*

Tuesday, 24 June 1997

---

Mr White—Yes.

Senator O'CHEE—And what were you told in that induction briefing about the group's role?

Mr White—In the first induction—and I was one of the early ones, and probably the earliest in the Freehill's area—there were five complainants. They were Garms, Gill and Smith, and Dawson and Schorer. My induction briefing was that we—we being Telecom—had to stop these people to stop the floodgates being opened. ↙

---

Senator O'CHEE—What, stop them reasonably or stop them at all costs—or what?

Mr White—The words used to me in the early days were that we had to stop these people at all costs. ↙

---

Senator O'CHEE—So when you were told to do a document better, that meant to do a better job of stopping them at all costs?

Mr White—I would say explaining the information available to the best of my ability. That is the best way I can explain it.

Senator O'CHEE—To the satisfaction of—

Mr White—The team leader.

GS 448 B

**FREEHILL  
HOLLINGDALE  
& PAGE**

Melbourne Office

**COPY**

To:	Rosanne Pittard/Ann Law	From:	Russell Berry
At:	Telecom	Direct line:	(03) 288 1581
		Switch:	(03) 288 1234
To fax:	562 1926	From fax:	(03) 288 1567
Phone:	550 7500	Date:	29 March 1993
Page 1 of		Matter No:	1633197 Pin No: 430
		Approval:	<i>RBB</i>

The information in this facsimile is privileged and confidential, intended only for the use of the individual or entity named above. If you are not the intended recipient, any dissemination, copying or use of the information is strictly prohibited. If you have received this communication in error, please immediately telephone us (we will accept reverse charges) on:

(03) 288 1341 Fax (03) 288 1567 (International phone codes + [61 3]) or Telex AA33004  
and return the original facsimile to  
Level 43, 101 Collins Street, Melbourne Vic 3000 Australia

Dear Rosanne and Ann

AOTC at GM (Melbourne) Holdings Pty Limited

I refer to my telephone conversation with Ann this afternoon.

I confirm that we have just received a Notice of Acceptance of the Payment into Court made by AOTC. A copy of that Notice is enclosed.

As a result of the service of that Notice both the claim by GM and the cross-claim by AOTC will be compromised by GM taking the \$200,000 paid into court together with the payment of its costs to the date of Notice of Acceptance of Payment into Court.

In the circumstances it seems to us that the result is extremely favourable to AOTC given the apparent intransigence of GM to settlement during the interlocutory stages of the proceeding. It is particularly interesting to note that the activity which we initiated, including:

- (i) seeking further and better discovery of the Applicant's documents;
- (ii) seeking further and better answers to interrogatories;
- (iii) briefing appropriate and aggressive Senior Counsel (whose reputation was known to the Applicant and its solicitors);
- (iv) briefing appropriate specialist accounting experts to assist in the assessment in the alleged loss by the Applicant;
- (v) making an informed payment into court;

**449**

A06155

28 March 1993

**COPY**

- (vi) attending at GM's premises for a number of days to interrogate and inspect the Applicant's documents; and
- (vii) the application to the court for and the issuing of numerous subpoenas including those addressed to GM's bank, auditors, and related corporations which sought relevant accounting and tax documentation;

Had the desired result of forcing the Applicant to focus on the real risks of continuing to litigate this matter against a proactive Respondent.

Prior to receiving the Notice of Acceptance of the Payment into Court we met with Senior Counsel and the Accountants from Duesbury's for the purposes of discussing Duesbury's latest report. That report was created following the attendance by ourselves and the accountants at GM's premises for the purposes of inspecting the Applicant's documents in detail. A copy of that report is enclosed to complete your file. In particular you will note from that report that on one scenario Duesbury's concluded that GM may have considerably underestimated its claim for damages.

In our meeting today with Senior Counsel we examined in detail the accounting documents which we had obtained from GM at the recent inspection at GM's premises. Senior Counsel was relishing the opportunity of cross-examining Mr Schorer in relation to those accounts. However, he is disappointed at being deprived of that opportunity but nonetheless is slated at the settlement which has been able to be achieved in this matter. Indeed, you will recall that the Applicant's claim was originally for \$2,000,000 plus interest plus costs and, in the circumstances of the latest report by Duesbury's the settlement is extremely favourable to AOTC.

Unfortunately, the settlement is not confidential, however the payment which has been accepted by the Applicant is made by AOTC with a denial of liability. Accordingly, any publicity which Mr Schorer wishes to make from the acceptance of the sum paid into court can be met by AOTC pointing out that the settlement was for commercial reasons and made with a denial of liability. The settlement also ensures that each of AOTC's witnesses will not be subject to lengthy cross-examination concerning the Flexi-tel system, its various sales pitches and the functionality of the North Melbourne exchange. It also deprives Mr Schorer of an opportunity to berate AOTC in the witness box from which the press may have given significant coverage at a time when AOTC needs to be concerned as to any adverse publicity arising out of court proceedings.

We will arrange for the monies in court to be paid out to the Applicant and we will advise you on the Applicant's claim for costs as and when we receive details of the same from the Applicant's solicitors.

A06156

449

IP81172/IP

29 March 1993

COPY

If you have any queries concerning the settlement of this matter or any of the above matters please do not hesitate to contact me or Andrew Moyle.

Kind regards

~~FREEMAN~~ HOLLINGDALE & PAGE



Russell A Berry  
Partner

enc.

cc. Mr Trevor Ryan  
Telecom Australia  
Fax No. 562 1926

Mr Ian Row  
Telecom Australia  
Fax No. 634 8832

Ms Denise McBurnie  
Telecom Australia  
Fax No. 639 1748

A06157

IP81172/IP

449

- 329 7422 (PABX Number) for Enquiries/Operations Supervisor, plus two auxiliary numbers

2

- 329 7099.

- 4 On 1 January 1994 Golden Messenger was provided with an ISDN (Integrated Services Digital Network) telephone service. This ISDN service provides a primary rate access link which can simultaneously accommodate 30 voice channels plus associated control signalling. Golden Messenger has also been allocated four hundred telephone numbers and has full discretion over how these numbers are configured.
- 5 Golden Messenger currently operates both sets of services, and is phasing out the numbers served by analogue switching equipment (numbers with 329 prefix).
- 6 The files made available by Telecom in response to AUSTEL's direction of 12 August 1993 do not provide a comprehensive history of the problems reported, dealings with the customer or of testing undertaken. Of particular note is the limited number of, and information in, exchange files relating to the North Melbourne Exchange (and any other exchange having involvement with this case).  
The exchange files provided by Telecom contained limited information on a relatively small number of interactions with the customer along with some records of testing undertaken. In view of other relevant papers which have come to hand, the length of time that the customer has reported problems, the level of testing and customer interaction



**GOLDEN MESSENGER**

- 1 Golden Messenger is a courier delivery service based in North Melbourne, its proprietor is Mr Graham Schorer.

**GENERAL OUTLINE**

- 2 Golden Messenger is served by the North Melbourne Exchange. The North Melbourne Exchange is equipped with digital (AXE) and analogue (ARE) switching equipment. All numbers with a 329 prefix are serviced by ARE switching equipment.
- 3 Until 1 January 1994 Golden Messenger was supplied with the following telephone services -
  - 329 0055 (PABX Number) for bookings, plus nineteen auxiliary numbers
  - 329 7133 (PABX Number) for Major Customers, plus five auxiliary numbers
  - 329 7255 (PABX Number) for Sales, plus one auxiliary number
  - 329 7355 (PABX Number) for Accounts and Administration, plus five auxiliary numbers.

over the past eight years and the high profile that this case has had it seems surprising that there was such a limited volume of exchange files and information.

3

- 7 The absence of a structured or systematic set of records in the files provided by Telecom not only precludes the construction of a comprehensive outline of the history of this case, but also provides little evidence to suggest that Telecom adopted a systematic and methodical approach to tracing and rectifying faults, or identifying and considering alternative options for service delivery whilst problems persisted over the eight year duration of this case.
  
- 8 The files provided by Telecom do, however, contain sufficient information concerning a number of significant events and interactions between Telecom and Golden Messenger to enable an assessment against some of the allegations of improper behaviour and also to identify salient features of this case.

#### **COMPLAINT OF SERVICE**

- 9 Golden Messenger has claimed a history, spanning the past eight years, of unsatisfactory service which has impacted on its business operations causing business losses.
  
- 10 Golden Messenger has regularly reported faults, many of which were/are of a recurring nature. Golden Messenger initially reported faults to the designated Telecom contact point; however, by early 1986 it decided to elevate its problems to Telecom Senior Regional

Management and has since continued to report faults experienced to the designated reporting point as well as making frequent representations to senior management.

4

11 Essentially Golden Messenger has complained of the following problems -

- No Ring Received
- Busy when Free
- Calls Dropping Off
- No Dial Tone
- Recorded Voice Announcements.

12 Golden Messenger also alleges, that following advice from a Telecom technician in January 1987 that the problems being experienced were related to malfunctioning of a multiphone system rented from Telecom, Golden Messenger purchased a new telephone system (Flexitel) recommended by Telecom as being most appropriate to meeting its then current and future needs. Almost immediately after installation of the replacement telephone system Golden Messenger began to complain about the inadequacy of the system and of continuing problems with the level of service.

5

13 Documentation made available by Telecom falls into three distinguishable categories -

- pre 1991
- 1991 - August 1992
- post August 1992.

#### Pre 1991

14 Considerable documentation was made available relating to interactions between Golden Messenger and Telecom on the Flexitel and continuing service problems, however, limited exchange files or information were provided.

15 The key issues identified in this documentation were -

- Golden Messenger claimed that it -

- suffered from unsatisfactory service caused by unidentified network problems
- followed Telecom's advice and purchase a Flexitel system which was subsequently found to not meet its operating requirements and that these problems caused business losses.
- Telecom maintained that the network and the Flexitel system were working satisfactorily despite having internal information that there were problems with the network and that the Flexitel system did not meet Golden Messenger's business needs.

6

**January 1991 - August 1992**

16 Whilst there is limited documentation provided relating to this category, the documentation revealed that Golden Messenger continued to report problems with its telephone service, and that it considered moving to an ISDN service in an effort to improve the quality of its service.

**Post August 1992**

- 17 Considerable documentation was provided in relation to this category, however, this related predominantly to correspondence between Telecom and Golden Messenger with limited exchange or testing records being made available. 7
- 18 The documentation revealed that Golden Messenger continued to report recurring problems with its level of service and that Telecom, whilst finding and rectifying a number of significant problems within the network, adopted the approach that as its testing did not identify any faults that would give rise to the range and level of faults claimed by Golden Messenger, it had no evidence to suggest that the network was working unsatisfactorily.
- 19 The following six common themes appeared throughout the three categories -
- service faults were reported with many being of a recurring nature
  - Golden Messenger advised Telecom of other network users in the area experiencing similar problems
  - Telecom conducted testing and rectified faults as they were found; however, it maintained that the results of the testing demonstrated that the network was performing satisfactorily

- Telecom advised of the testing conducted and the results of that testing, ie test calls generated by other exchanges to the North Melbourne Exchange, but did not explain how the testing related to the faults being reported and, in particular, explained the testing regime in light of the views by Golden Messenger that the problems stemmed from -

8

- being connected to ARE switching equipment
- network congestion
- difficulties in integrating differing technologies

which, Golden Messenger claimed, by their nature may only present themselves on an intermittent basis and at any stage in the transmission process

- Telecom has employed its statutory immunity prior to July 1991 as a negotiating instrument in its dealings with Golden Messenger
- Telecom has adopted the approach that the network and the Flexitel system were operating satisfactorily despite having internal information that significant problems did exist with each of them.

#### COMPLIANTS ON CUSTOMER HANDLING

**MISLEADING AND DECEPTIVE BEHAVIOUR**

9

- 20 Telecom records (file note of conversation with G Schorer on 1 February, 1988) indicate that Golden Messenger was reporting problems since mid 1986 and various file notes also indicate that during the period 1986-1988 frequent representations were being made by Golden Messenger to report continuing problems. The problems being reported were primarily -
- clients sometimes obtaining ring tone but not getting through
  - calls dropping off when answered.
- 21 Telecom file notes also reveal that on 1 February 1988, Golden Messenger advised of concerns at network faults causing lost business.
- 22 Telecom records quite early in this case reveal that it was aware that network problems did exist with the North Melbourne exchange. Three such records are -
- (i) Telecom Minute of 30 June 1986 from Network Investigations Unit, NSW, to Network Investigation Section, Victoria.
- As previously discussed, during network investigations in the Canberra area it was observed that congestion was being experienced to 03 codes and that this was a significant component of the Canberra congestion. In most instances the*



*congestion (A3 + B4) signal was being returned from the terminating Melbourne Main Switching Centre which suggests that the congestion is in the Melbourne network.*

10

*The attached list indicates the Melbourne (03) codes that fall into the above category and it would be appreciated if your Section could examine the codes and indicate whether they correspond to known congested routes in the Melbourne network*

*A list of Melbourne 03 codes experiencing congestion was attached to the minute and showed that 55.22% of total congestion was attributed to the North Melbourne exchange.*

- (ii) *Telecom file note of 14 April 1988, incorporates the following extract -*

*Following assurances from Footscray District Staff that there was no congestion causing concern to Golden Messenger, Manager, State Business Sales, agreed to arrange connection of a number which the customer previously had in the 329 7000 group. When the request was placed to connect the number, the exchange advised that no more numbers could be connected in the 329 7000 group due to CONGESTION. Golden Messengers had \$1,500.00 worth of stationery printed. Manager, State Business Sales has agreed to provide compensation to the customer.*

- (iii) Telecom minute of 31 October 1988 from Network Investigations Section, Victoria to Manager - BCS (North) incorporated the following extracts -

11

*Regarding the service received by customers off North Melbourne exchange, the following information is provided.*

*At the last meeting between Telecom and Golden Messenger (G.M.) resolved that Network Investigations would assist with problems where customers could not reach G.M., and that G.M. would provide a list of such customers.*

*We have only ever obtained one list of customers names and numbers on the 27/7/88. This highlighted that 10 of the 12 customers were served by AXE exchanges, the remaining 2 by ARE. All customers reported that they had experienced "engaged tone" with 11 of the 12 reporting the cases on or before 6/7/88. It is presumed by NI that this may be busy tone or congestion tone as customers can generally not discern the difference.*

*It was found that at or before this time there were changes made in the trunking of IDN originated traffic to North Melbourne, and Footscray DSC realising that the IDN exit route from Footscray Node to North Melbourne was severely congested initiated action to increase the number of circuits. This route has subsequently been increased from 37 circuits to 57 at 5/7/88 and then to 81 approximately one week later.*

No further complaints have been received by this office from G.M. since that time.

12

More recently the route has been increased to a total of 111 circuits. Metro Network Engineering advise that this route is designed to be 180 circuits for the 8th AXE Bulk Order. Current traffic readings show that the 111 circuits are carrying a TCBH traffic of 86 Erlangs which means it would be offering a grade of service of better than the designed level of 0.002. However the traffic is increasing and discussions between this section and MNE have resolved that the route will be increased by a further 10 to 15 circuits, depending on GV inlets and MUX availability at North Melbourne.

This time however it was revealed that between 5 and 14% congestion was being experienced. In observing the calls it was noticed that there were two cases where congestion was being received. The first was congestion almost as soon as dialling was completed. This was assumed to be route or equipment congestion. The second case was congestion tone approximately 30 seconds after dialling was completed which would then go to Line Lock Out. This case was assumed to be a device timing out due to an equipment or signalling fault.

Test calls were also made from Exhibition tandem and Footscray Node, but the level of congestion was much lower.

Further testing from Footscray node revealed that the number of CL blocks (used for call supervision and clearing) were

*As a result of that meeting it was decided that Golden  
Messengers would not keep their Flexitel system as they could 14  
not hold more than two calls on each station. .... and  
.....were not able to offer any technical solution to this  
problem . ( names deleted)*

*inadequate and these were subsequently increased. Insufficient CL's resulted in the immediate congestion tone case mentioned above.*

13

*The tests from Footscray also revealed a particular FIR at North Melbourne were experiencing repeated failures. North Melbourne Exchange staff traced this to a held up switch train from that FIR to an indial FUR-CX. This resulted in revertive signalling failures causing a timeout and thus the delayed Congestion tone.*

23 The network service difficulties reported by Golden Messenger appear to have been compounded by the purchase and installation of a Telecom supplied and serviced PABX. The PABX, a Flexitel system, was purchased on the recommendation of Telecom and was installed in July 1987, Telecom records indicate that very soon after installation Golden Messenger reported problems with the system and the following documents reveal that Telecom was aware, early in the case, of problems with the Flexitel -

- Telecom letter of 14 January 1988 from Regional Sales Manager to Golden Messenger which acknowledged some of the reported deficiencies of the system and suggested action to overcome the non-compliance with the terms of contract.
- Telecom minute of 27 January 1988 from Regional Business Sales Manager - North to Manager, State Business Sales advised of the following decisions that were arrived at during the course of a meeting between Telecom and Golden Messenger -

*Golden Messenger has stated that they want Telecom to pay for a system that will do what they expected the Flexitel system to do. They have also stated that if they have to take litigation against Telecom they will also seek damages for lost business.*

15

- Telecom minute of 29 January 1988 from Manager, State Customer Liaison Unit to Public Relations Manager, Victoria states -

*It appears sold equipment which failed to meet his needs.*

- Telecom letter of 3 February 1988 from Manager, State Business Sales to Golden Messenger proposed two options to overcome the operational deficiencies of the Flexitel System -

- Option 1 - by providing additional equipment and modification to the system

- Option 2 - replace with a Phillips D1200 PABX.

- Telecom letter of 10 March 1988 from Manager, State Business Sales advised Golden Messenger that Option 1 caused the system to be slowed to such an extent that it could not then cater for an expansion to cover the company's administration section. Telecom suggested that another Flexitel system be installed and linked to the first system with tie lines. This was accepted by Golden Messenger and the additional system was installed on 9 and 10 April 1988.

- Telecom minute of 30 March 1988 from Regional Business Sales Manager-North to Manager, State Business Sales states -

*That advice from Legal and Policy Headquarters indicate that Golden Messenger appeared to have a case against us and that we should negotiate a settlement to prevent legal action proceeding.*

This advice was also contained in Telecom minutes of 27 April 1988 and 5 January 1992.

- Network Investigation Section progress report of 17 May 1988 on its investigation into Golden Messenger stated -

*The major problem still appears to be the slow response time of the Flexitel. This combined with high call through put resulted in operators misusing the system resulting in adverse service to their customers.*

- Telecom Minute of 23 May 1988 from Commercial Engineering Section - Customer Terminals to State Business Sales - HQ advised of the following -

17  
10

*As you are aware we are having real problems with this system. We appear to have the speed up to what we hope is an acceptable level by the dodgy expedient of removing some of the DSS modules. This may or may not be acceptable to the customer (bless him) in the longer term.*

*The most pressing problem now is the intermittent failure of the station displays. The displays do not fail completely, remaining able to show "unobtainable" at the correct times as required, but nothing else. No CDR card is fitted. We intend to try and fit one but this may not be possible given the large size of the system.*

- 24 Despite having internal advice that network problems were being experienced at the North Melbourne exchange and that there were problems with the Flexitel system, on 11 October 1988, Telecom advised Golden Messenger as follows -

*I refer to the Flexitel System ordered by Golden Messenger and the continuing complaints by Golden Messenger that deficiencies in the public switched telephone network have resulted in Golden Messenger suffering damages due to loss of business.*

*As you are aware extensive investigations, reports and discussions, I confirm that Telecom cannot accept your*



*allegations and claims. In Telecom's view, all reasonable efforts to inquire into your complaints have been unable to substantiate the allegations and claims.*

25 On 17 November 1989 Network Investigation Section issued the Golden Messenger - FINAL REPORT. Findings within this report related to both Flexitel and network issues. Some of the key findings were -

- *Congestion existed on the IDN exit route from Footscray Node to North Melbourne due to IDN changes and traffic growth*
- *Under dimensioned CL and PD individuals at Footscray Node were causing congestion*
- *Faults were also found with various exchanges in the network which affected the Grade of Service (GOS) received by G.M.*
- *The response time of the Flexitel was excessive causing misoperation by the operators. Whilst the Flexitel was configured in accordance with design rules, it was the 'sluggish' response to station keystrokes that was its worst characteristic.*
- *The inability to meet the customers requirements for call queing was also a weakness and had to be overcome by the appendage to the Flêxitel main equipment of call sequencers.*
- *Customers cited by G.M. were investigated and although they experienced similar symptoms of COS and BWF, they were in*

*the main caused by conditions unrelated to those of the G.M.s  
Flexitel.*

19

- 26 No record was found of Telecom advising Golden Messenger of the findings contained within the report. The findings of the report appear to confirm the views expressed by G Schorer, at the time, that Golden Messenger was affected by exchange problems and network congestion.
- 27 The only direct references within Telecom documentation to other customers experiencing similar problems to Golden Messenger appear in the Progress Report 2 of 17 May 1988 and the Final Report dated 17 November 1989 issued by Network Investigation Section. These reports conclude that the customers cited by Golden Messenger as having similar problems, were affected by network problems specific to themselves. However, the significant network problems found related to network congestion and the integration of new technology, and would have impacted on all customers connected to the exchange.
- 28 No documentation was found where Telecom acknowledged that the customers cited as having problems similar to Golden Messenger did actually experience customer specific as well as network-wide faults.
- 29 On 19 June 1990, Golden Messenger wrote to Telecom advising of continuing problems with the level of service and problems with the Flexitel system, and of business losses suffered as a result. The letter was Golden Messenger's last attempt before litigation to obtain a solution to problems experienced with the Flexitel system. Golden Messenger was also seeking compensation for business losses.

30 The following extracts from Telecom correspondence, which were prepared in response to the Golden Messenger letter of 19 June 1990, indicate a continuation of the situation where Telecom maintained that the Flexitel system and the network were operating satisfactorily whilst having internal information that problems did exist.

20

- Telecom minute of 29 June 1990 from Telecom Business Service (North Victoria Region) to Corporate Secretary -

*Some further information regarding the draft response to representation from Mr Graham Schorer of Golden Messenger. You need to be aware that I have had some sixty hours in face to face negotiations with Mr Schorer on this matter as well as other complaints about the Network. The whole issue is a complex one. Despite our position on the issue of compensation, the Flexitel product has been a difficult product to market, install and maintain and we have already removed many from service due to service difficulties. However it is our view that the Flexitel provided for Golden Messenger is operating satisfactorily.*

*It is also clear that the Network has not been kind to Mr Schorer as there was period of about six months when the congestion on North Melbourne Exchange was such as it could have adversely effected his courier service.*

- Telecom response of 6 July 1990 to Golden Messenger -

problems. However, the view that Golden Messenger's claims regarding lost calls were being taken seriously and the subsequent re-opening of the technical investigation were not advised to Golden Messenger, and the results of the re-opened technical investigation were not included or referred to in any of the documentation provided by Telecom.

24

- 33 In its response of 23 September 1992 to a letter from G Schorer (in his capacity as spokesperson for the COT Group, comprising Golden Messenger, Tivoli Restaurant, Japanese Spare Parts and Cape Bridgewater Holiday Camp), Telecom did not acknowledge the re-opening of the investigation when it advised -

*At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards.*

- 34 Telecom fault records for the period 15 April 1993 to 28 June 1993 reveal considerable interaction between Regional Technical staff and Golden Messenger in trying to identify the cause of faults being reported during this period. Of note is the claim by G Schorer of 4 June 1993 that the intermittent problem (rectified on 27 April 1993) regarding the SL marker switches controlling the 0 thousands number group was identified by Honeywell whilst testing the PABX. He further stated that Telecom testing failed to reveal the cause of the problem. Telecom fault reports show a high level of testing and problems being reported by the customer and also indicate that the PABX Maintainer did identify a problem with an incoming exchange line, however, the

32 The following two extracts from Telecom Minutes -

- Minute of 11 September 1992 from General Manager, Telecom Commercial Vic/Tas to Fault Management and Diagnostics and National Products Sections -

23

*Thank you for your reports on Golden Messenger and other customers. I need you to do some further investigation in to the Golden Messenger case. Mr Graeme Schorer of Golden Messenger is reported to have told a Telecom representative that he is still losing 50 calls per day and that there was some improvement in May 1992, coincident with a change in dial tone. This is the sort of claim we normally treat seriously. It is the first I have heard of it. Could you please re-open your investigation and even instigate some additional tests if necessary? Am I correct in the belief that Graeme Schorer refused testing as recently as last March? Please check file details.*

- Minute of 14 September 1992 from General Manager, Telecom Commercial Vic/Tas to Group Managing Director -

*Golden Messenger - Graeme Schorer. Graeme's claim that he is losing 50 calls a day staggered us. I have re-opened the technical investigation as a result.*

indicate that Telecom was aware that Golden Messenger may have been experiencing service problems in line with the faults being reported, and also indicate a commitment to investigate these

- Recorded voice message
- Clients being connected to wrong numbers
- Receiving wrong numbers.

22

*I refer to your letter of 19 June 1990 to the Managing Director about difficulties experienced with your company's Flexitel telephone system.*

*My enquiries have revealed that following the installation of the Flexitel system in July 1987 a number of difficulties were experienced with the operation of the system. These were due either to incorrect operation of equipment by your staff or incorrect programming and dimensioning of the system. In order to overcome these difficulties Telecom provided customer training and upgraded the facilities of the Flexitel system.*

*In the circumstances, Telecom considers that it has met its obligations in regard to the provision and maintenance of the Flexitel system and accordingly does not believe that compensation is warranted.*

31 As noted at paragraphs 6 and 7 earlier in this paper, limited exchange files were provided by Telecom. The relatively small number of exchange files along with the limited information contained in these files is surprising given the level of customer interaction over the past eight years. The information in these files did contain a number of summaries of various customer interactions and showed that for the time period covered by the summaries regular contact was made by Golden Messenger reporting problems such as -

- Busy when free
- Call dropout

reports make no mention of the PABX Maintainer contributing to the identification of the marker switch fault.

25

- 35 The letter of 29 April 1993 from Telecom which advised Golden Messenger of the above situation stated -

*The effect of this fault was to occasionally present "Busy Tone" to calls when the line was idle.*

- 36 It is AUSTEL's view that this advice does not provide a full outline of the possible impact of this fault on Golden Messenger's service. This problem with the SL Marker Switch controlling even numbers could have impacted on the bookings directory number line along with 10 out of 19 auxiliary lines. Therefore, depending on where in the switching system the fault occurred, the impact could have ranged from all "bookings" calls receiving busy tone to a total of 11 out of 20 lines being affected with this problem. The Telecom letter also states that -

*Telecom had no knowledge of the existence of this fault condition until your trouble report was received when the situation was rectified.*

however, there is no advice of how long this intermittent fault may have remained undetected.

#### **ARROGANT AND BULLYING BEHAVIOUR**

- 37 Findings under the previous section - Misleading and Deceptive Behaviour indicate that Telecom has maintained the position that the



Flexitel system and the network were operating within acceptable standards despite having information, obtained from internal investigations and technical staff, that problems did exist and that these problems did impact on the level of service provided to Golden Messenger.

26

### **Customer Equipment**

- 38 The documentation reviewed indicates that Telecom has had access to information from internal technical and legal experts regarding the Flexitel system which confirmed claims made by Golden Messenger that problems were being experienced. Documentation reviewed indicates that Telecom did not only not share information available to it, but also provided advice which contradicted its own internal information, and in doing so took advantage of its privileged position of being the system supplier, technical expert and network service provider in dealing with Golden Messenger.

39 Golden Messenger has claimed that in September 1988 a senior Telecom Management person implied that only when Golden Messenger was prepared to issue a writ would Telecom would be in a position to respond to demands for relocation to another exchange and for compensation for business losses. Golden Messenger further claims that Telecom strongly inferred that when a writ was issued, it would place Telecom in a position of authority to be able to resolve all outstanding matters without creating a precedent, and that Telecom would assist in ensuring that the matter was brought to a speedy trial to eliminate unnecessary loss of time and expense.

27

40 Golden Messenger issued a writ in June 1990 in the Federal Court of Australia under the Trade Practices Act 1974 and the Fair Trades Practices Act 1974 regarding the Flexitel system. Golden Messenger claims that despite having estimates of business losses audited by two independent companies, KPMG Peat Marwick and Hall Chadwick, Telecom extended the negotiation process. Golden Messenger has advised that the effect of this extended negotiation process was -

*Golden's legal adviser advised Golden to fold the court case as Golden could not afford to run the case for the length of time Telecom were planning to expand the time the case was going to be heard.*

41 Golden Messenger provided the following advice on reasons for eventually accepting a settlement of less than 10 percent of claimed losses -

*Golden's solicitor advised Golden of the potential cost of a daily appearance in the Federal Court stating the new rules required Golden to pay all council fees in advance, and as he was aware of Golden's current financial position he couldn't in all conscience advise Golden to continue with the action when he knew Golden would have to borrow the full amount from their bankers to fund the Federal Court Action.*

28

QUESTION

*Golden has taken the \$200,000 paid into court, placed it in a separate bank account, in readiness to pay it back to the appropriate authorities when Golden has been able to demonstrate the validity of reopening this case on the basis of Telecom knowingly withheld information directly relating to this case.*

①

- 42 Whilst the documentation revealed no evidence to confirm the views expressed by Golden Messenger that Telecom extended the settlement process, the course of the negotiation process, and in particular, where Telecom maintained that the Flexitel was operating satisfactorily despite having -
- Internal technical advice that problems did exist with the Flexitel
  - Internal legal advice that Golden Messenger appeared to have a case and that it should negotiate a settlement to prevent legal action proceeding (paragraph 23 refers)

is not inconsistent with Golden Messenger's claims.

**Network Service**

43 Documentation reviewed indicates that Golden Messenger has reported problems with the level of service provided to it since mid 1986, however, whilst Telecom has had access to information from internal sources which advised that network problems did exist and would have impacted on Golden Messenger, it maintained the position that the network has performed within acceptable standards.

44 The following views put forward by Telecom Regional Technical staff and Senior Management indicate that Telecom, at various levels within that organisation, had formed the view that as its testing had not identified the source/s of recurring faults being reported, that there was no evidence to suggest that the network was performing unsatisfactorily -

- Telecom letter of 23 September 1992 -

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

*The proposed testing regime is also a necessary prelude to the suggestion that your members be moved to different exchanges. Without an understanding of the causes of your problems, moving exchanges may merely compound them and for both Telecom and your members this would only be costly, time consuming and eventually futile. If the testing shows that problems outside normal performance are related to the exchange equipment to which your members are attached, we will quickly and at our expense move your members to another exchange under the terms and conditions discussed. Settlement discussions would also immediately commence.*

- Telecom minute of 28 October 1992 from General Manager, Commercial Vic/Tas to Group Managing Director, Commercial and Consumer -

31

*Discussions with the technical experts who have drawn up the schedule and those involved in previous testing have raised serious concerns about this next series of testing and I promised them that I would convey these to you. These people believe that extensive testing has already been performed and that all indications other than the customers own comments are that the telephone services are performing satisfactorily.*

45 This approach has essentially placed Golden Messenger in a catch 22 situation, where Telecom maintain that the results of their testing indicate a network working to an acceptable standard, but offering further such testing as means of assessing the customers claims that the network is not working to an acceptable standard as a pre-condition to relocation to another exchange and/or commencing settlement discussions. The above referred letter of 28 October 1992 also illustrates that Telecom's internal technical experts raised serious concerns on Telecom's insistence on further testing.

46 Whilst it is evident from records reviewed that Telecom technical staff have provided oral advice to Golden Messenger of what testing had taken place and of the results of that testing, typically the advice has been "X" number of test calls have been conducted with no, or a very small number of, failures and the results are within network performance standards. What is not evident in the documentation reviewed is whether Golden Messenger was advised how the testing

addressed the faults being reported on a continuing basis or how the testing would isolate and thereby identify the causes of the faults being reported.

32

- 47 This issue of Telecom claiming that its testing showed that the network was operating satisfactorily, has been of particular concern to Golden Messenger as the level of service actually experienced did not correspond with claimed test results.
- 48 By their nature some of the faults reported during the duration of this case may have occurred anywhere in the network and would have required more than one type of testing, coupled with careful analysis of data obtained during such testing, to locate the causes of these faults. Whilst Telecom claimed that testing showed a network working satisfactorily, Golden Messenger was not advised whether the testing covered the full network, ie end to end testing, or whether the testing was primarily restricted to a series of programs, each of which only tested section(s) of the overall network. No documentation was found to indicate that Telecom explained how the various types of testing were being employed, their limitations, what their findings were and how these findings were being interpreted to detect the cause(s) of faults reported.

49 The following three behaviours exhibited by Telecom -

33

- providing external advice not in line with internal information
- relying on its testing to refute claimed service problems over an extended period of time without explaining how the testing would identify the causes of the problems being reported
- insisting on further testing as a pre-condition to relocation to another exchange and/or settlement action
  - despite serious concerns expressed by its own technical experts on the further testing
  - without explaining how such testing would differ from the previous eight years testing

indicates that Telecom has taken advantage of its particular position in the telecommunications industry as service provider and technical expert.

50 Given the absence of detailed information from Telecom on how past testing could locate claimed faults, the insistence on further testing prior to any settlement or relocation to AXE switching equipment without explanation on how the further testing would differ from past testing, does not seem to be a positive contribution to problem resolution or settlement.



- 51 Similarly Telecom's insistence that relocation and settlement action could not proceed until faults were identified and services agreed to as normal, is also not seen as a positive contribution to problem resolution or settlement. Golden Messenger has claimed that it has repeatedly requested, in years 1980, 1989, 1990 and 1991 to be reconnected to different exchange equipment. Telecom documentation makes no reference to these requests, but does show that for a significant period of time, Telecom did not pursue the options of relocating Golden Messenger to AXE switching equipment. It is noted that on 15 September 1992, during discussions between G Schorer and Telecom, G Schorer suggested the transfer to AXE exchange. Whilst Telecom confirmed this on 16 September 1992 as an option even if only to try an action different to what had been tried before, it subsequently withdrew this option on 23 September 1992 (relevant extract previously referred to at paragraph 45).

34

#### **INAPPROPRIATE BRIEFINGS**

- 52 On 9 August 1993 the Minister for Telecommunications wrote to Telecom advising of serious complaints raised by customers known generally as COT (Casualties of Telecom).
- 53 On 17 August 1993 Telecom provided a brief on the COT customers, including Golden Messenger, to the Minister for Telecommunications on progress that had been made with the customers. It is AUSTEL's view that this brief should have provided balanced and accurate advice to ensure that the Minister was fully informed and in a position to make sound judgements on issues at hand. It is AUSTEL's view that the brief provided by Telecom to the Minister does not provide a balanced

and full outline of the situation at hand and therefore created a situation whereby the Minister may have formed the wrong impression due to having a less than comprehensive understanding of the issues .

35

- 54 A number of statements have been extracted from this brief and comments, in terms of the findings against the other allegations, are provided. These comments form the basis of AUSTEL's view that the briefing to the Minister was not a balanced or full representation of the situation at hand.

### **Extract**

- 55 *Financial settlements have been reached with each of the original five customers although with two exceptions (Japanese Spare Parts, Society Restaurant) the customers continue to express dissatisfaction with their service and one customer in particular (Cape Bridgewater) is seeking to re-open the issue of compensation. It would be fair to say that even those customers that are no longer active in the COT arena will remain dissatisfied customers of Telecom.*

### **Comments**

- Telecom did not convey to the Minister the impact of Telecom's statutory immunity from losses/problems prior to July 1991 and that Telecom had advised the COTs of this in their dealings regarding settlement matters.
- By July 1991 the COTs were claiming that due to continued inadequate service they had suffered business losses and that

their customer bases had been eroded to such an extent that they were in financial difficulties.

36

- A balanced brief would have advised of the capability of the COTs to fund proceedings in the Federal Court.
- This statement does not advise that the two COTs no longer complaining of unsatisfactory service had ceased operating.
- This statement does not advise that settlement with Golden Messenger related to legal action under the Trade Practices Act 1984 and the Fair Trading Act 1985.

#### **Extract**

56 *The settlements reached to date have been, in Telecom's opinion, very generous and have contained a not insignificant component beyond that which could be supported by objective analysis of the factual evidence. This business judgement was made in the interests of settling the claims in a manner that clearly addressed the customer's perceived problems in the expectation that such settlement would avoid ongoing debate (with associated costs) and alleviate the acrimony that had developed over an extended period. This approach has obviously not been successful.*

#### **Comments**

- There is sufficient evidence to suggest that Golden Messenger has experienced problems with the network and that these

problems impacted on its business operations. A balanced brief would have acknowledged that network problems were found, and whilst every effort was made to repair such faults, they would have impacted on the customer.

37

- Telecom's reliance on its statutory immunity prior to July 1991 and insistence that as its testing regime could not locate the cause of the claimed ongoing problems it found no evidence that the network was operating unsatisfactorily, were two key items in the negotiation processes. These do not support Telecom's claims that the claims were settled in a manner that addressed the customers perceived problems.
- In view of internal information confirming network problems and advice of other network users that had difficulty in reaching Golden Messenger or experienced similar problems, Telecom's reference to customers problems as perceived problems is not considered a balanced approach.

#### **Extract**

57 *The businesses involved in these disputes have all received very fair treatment of their cases - some would argue that the settlements reached have, in fact, been excessively generous given the factual evidence. Telecom's testing (whilst identifying some faults from time to time) has repeatedly demonstrated the integrity of the network and ample evidence exists to support this contention. Only one of the customers (Golden Messenger) involved has been prepared to take court action against Telecom and this action did not relate to network*

*issues. Telecom would welcome the opportunity to present its case in court but there is not accepted mechanism for it to initiate court proceedings on these matters. Hence Telecom must continue to bear the brunt of negative media activity despite its attempts to resolve these cases.*

38

### **Comments**

- Golden Messenger has advised that its decision to accept a settlement and not proceed with legal action was made on the basis that it was not in a position to fund the legal action in the Federal Court. It should be noted that for five years prior to the settlement, that is for the entire duration of the dispute period, Telecom maintained that the Flexitel System was satisfactory whilst internal correspondence from technical and legal staff acknowledged that -
  - the system did not meet Golden Messenger operational requirements (paragraphs 23,24 and 25 refer)
  - Golden Messenger was likely to be successful in establishing that Telecom engaged in misleading and deceptive behaviour (Legal Briefing Paper, dated 1 July 1992, prepared by Principal Legal Officer).

The above findings do not support Telecom's claim of COT receiving fair treatment.

- Comments offered against the previous extract regarding Telecom's statutory immunity and non-finding of faults as evidence that the network is performing satisfactorily are also applicable to Telecom's claim that COT received fair treatment.
- The statement regarding only one customer being prepared to take court action and this did not relate to network issues does not reflect the difficulties faced by the COT in dealing with Telecom's statutory immunity prior to July 1991 or the inability of COT to sustain extended court action.

39

It should also be noted that Golden Messenger commenced legal action regarding customer equipment sold and installed by Telecom in June 1990, and that at that time it was the only course of legal action available to Golden Messenger.

- Telecom testing has revealed problems with the network, and whilst this led to action to overcome the problems found, there is sufficient evidence to suggest that these problems have impacted on the level of service to and business operations of Golden Messenger.
- The comment regarding testing demonstrating the integrity of the network is not seen, as balanced. Telecom have found major and minor faults in many components of the overall network and whilst Telecom may choose to deal with these as individual situations, it would appear that the cumulative and ongoing effect on the customer is one of claimed ongoing unsatisfactory service. This is best summed up by a statement

contained within a Network Investigation Report of August 1991  
of another COT case (Lovey's Restaurant - see Appendix F) -

*Over a period of several weeks, a number of faults were identified in different parts of the network. These faults would not cause major difficulties individually, but compounded to form a complicated sequence of events that appeared as continuous service difficulty for the customers in the area.*

58 Golden Messenger has claimed that Telecom advised that there were no problems with the network and that Golden Messenger's problems would be overcome with the purchase and installation of improved customer equipment. The customer equipment recommended by Telecom as most appropriate for meeting Golden Messenger's then current and foreseeable needs was the Flexitel System.

41

59 Documentation reviewed does not provide direct evidence to support Golden Messenger's claim that Telecom advised that problems being experienced would be overcome with the installation of new customer equipment. However, the following extracts from the Telecom quotation for the design and installation of the Flexitel System -

*The equipment Telecom has offered is the Flexitel and meets the service requirements of your company. It is Telecom's opinion that the system is the best and most advanced presently available to Australian users.*

*Telecom selected the Flexitel only after intensive evaluation, and proving to our own satisfaction the superior facilities, reliability and flexibility of the system.*

along with the frequency of problems and deficiencies reported and statements made by technical and legal staff within Telecom internal correspondence (examples of which are provided within the Misleading and Deceptive Behaviour Section), indicates that Telecom assessed and subsequently installed a system that did not meet these



requirements. Furthermore, whilst having internal expert advice that problems did exist with the Flexitel system, Telecom maintained the position that the system was working satisfactorily.

**IN THE MATTER OF an arbitration  
pursuant to the Fast Track Arbitration  
Procedure**

**Between**

**GRAHAM JOHN SCHORER and Ors**

**Claimants**

**and**

**TELSTRA CORPORATION LTD trading as**

**TELSTRA**

**Telstra**

**TELSTRA'S PRINCIPAL SUBMISSIONS**

**PART A. INTRODUCTION**

For convenience Telstra's Principal Submissions have been divided into the following parts:

- a review of the scope of the arbitration. In particular, the identity of the Claimants, the nature of the dispute that is the subject of this Arbitration and the effect of the earlier settlement are considered;
- a brief history of this Arbitration is provided as this is relevant to, amongst other things, the future progress of this Arbitration;
- the Claim Documents filed by the Claimants and their inadequacy is considered;
- a review of the results of Telstra's extensive investigation of the Claimants; services and other matters relevant to the claims made in the Claim Documents;

**GS 451**

- adoption of Telstra's Quantum Submissions;
- adoption of Telstra's Legal Submissions;
- general submissions as to the history of Telstra and the service obligations imposed on Telstra; and
- a conclusion.

## **PART B. SCOPE OF THE ARBITRATION**

### ***The Claim Documents***

1. In this Arbitration, the Claimants have filed the following documents:
  - (a) a document entitled "History of events and complaints about telephone service difficulties problems and faults..." dated 15 June 1994 (the "History"). This document was attached to a Statutory Declaration of the same date by Mr Graham John Schorer;
  - (b) a document entitled "Interim Statement of Claim" dated 15 June 1994 (the "Interim Claim"). This document was attached to a Statutory Declaration of the same date by Mr Schorer;
  - (c) a document entitled "The Statement of Claim of the Claimants" dated 23 December 1995 (the "Second Claim"). This document was attached to a Statutory Declaration of the same date by Mr Schorer; and
  - (d) a document entitled "Statement of Claim" dated 30 September 1996 (the "Final Claim").

(together referred to as the "Claim Documents")
2. There is a significant amount of overlap in the Claim Documents. There was no explanation from the Claimants as to which of Claim Documents was intended to be their actual claim document. Telstra, in its defence documents, primarily addresses the allegations contained in the Final Claim as it was the later in time and was therefore presumably intended to replace the earlier documents.

***Identity of the Claimants***

3. Schedule B to the Fast Track Arbitration Procedure (the "Rules") provides that the customers for the purposes of this Arbitration are:
  - (a) Mr Graham John Schorer;
  - (b) Maller Schorer Trading Trust;
  - (c) Graham John Schorer Family Trust;
  - (d) Graham John Schorer Family Trust No 2;
  - (e) GM (North Melbourne) Holdings Pty Ltd ACN 005 030 839;
  - (f) GM (Melbourne) Holdings Pty. Ltd ACN 005 905 046;
  - (g) Godden Nominees Pty Ltd ACN 005 030 848; and
  - (h) Forty First Advocate Management Pty Ltd ACN 005 570 034.
4. According to the Australian Securities Commission's records, there are numerous other entities that are apparently related to some or all of the Claimants. Some of these entities apparently were or are operated from the Claimants' current or previous premises and may therefore have shared some telecommunications equipment with the Claimants.
5. Telstra is not aware of the structure of the Claimants' business and is unable to determine what, if any other, entities were involved in the business known as "Golden Messenger". Telstra has on numerous occasions sought clarification of the structure of the Claimants. For example, in a letter to the Arbitrator dated 29 October 1996, Telstra sought confirmation as to the identity of all the Claimants and all the entities that allegedly could have a potential claim against Telstra in relation to the business known as "Golden Messenger".
6. On 1 November 1996, the Arbitrator wrote to the Claimants' solicitors indicating that if he did not receive any submissions from the Claimants, he was likely to direct that the only relevant entities were the Claimants. No submissions or documents have been received from the Claimants and consequently Telstra's defence has been prepared on the basis that only the above listed eight entities

are the Claimants for the purpose of this Arbitration and that no other entities could have a claim against Telstra in relation to the business known as "Golden Messenger".

7. By reason of the above, Telstra submits any loss allegedly suffered by any entity other than the Claimants is irrelevant to this Arbitration and that no award can be by reason of this loss (if any).
8. Telstra further understands that no other entities could have a claim against Telstra in relation to the telephone services provided to the business known as "Golden Messenger".

#### ***Claim Period***

9. In accordance with the Arbitrator's letter dated 1 November 1996 Telstra's defence has been prepared on the basis that the relevant claim period commences in April 1986.
10. Telstra submits that no award can be made in favour of the Claimants for loss (if any) suffered prior to April 1986.

#### ***The Dispute and the Flexitel Litigation***

11. The Rules provides for arbitration as a final and binding method of resolving the disputes ("the Dispute") listed in Schedule A between Telstra and the Claimants.
12. The Dispute is defined in Schedule A to the Fast Track Rules as:  
*"For Graham Schorer (plus other related claimants, companies, etc):*
  1. *The liability of Telecom to the claimant in respect of alleged service difficulties, problems and faults in the provision to the claimant of telecommunications services (other than the matters covered by the earlier settlement between Graham Schorer's company and Telecom);*
  2. *If Telecom Australia is found liable in accordance with paragraph 1 above, the quantum of compensation payable by Telecom Australia to the claimant for the claimant's proven loss (other than in relation to the matters covered by the earlier settlement between Graham Schorer's company and Telecom)."*

13. It is therefore essential to determine what are the matters covered by the "earlier settlement" as these are excluded from the current Arbitration.
14. The reference to the "earlier settlement" is a reference to the settlement of the Federal Court proceedings no. VG193 of 1990 commenced by G.M. (Melbourne) Holdings Pty Ltd ("GM") against Telstra in July 1990 (the "Flexitel Proceedings"). Attached to these submissions as annexure A is a copy of certain pleadings filed by GM in these proceedings.
15. These proceedings were settled after GM accepted in March 1993 the amount of \$200,000 that Telstra had paid into court.
16. In the Flexitel Proceedings, GM essentially claimed damages for Telstra's conduct in relation to the supply and alleged malfunctioning of the Flexitel system that was provided to GM by Telstra in July 1987. GM claimed that it suffered and continued to suffer loss and damage because of the deficiencies in the Flexitel system. GM claimed that the Flexitel caused and continued to cause GM to lose (amongst other things) clients and carriers. GM claimed the sum of \$2,209,791 as damages.
17. The adequacy of the settlement of the Flexitel Proceedings is not for re-examination in this Arbitration. Any loss that was caused by matters that were the subject of the Flexitel Proceedings are expressly excluded from the scope of this Arbitration. Therefore, any loss caused by the performance of the Claimants' Flexitel is excluded from the this Arbitration and may not be the subject of an arbitral award.
18. The Claim Documents filed by the Claimants do not expressly acknowledge the affect of the settlement of the Flexitel Proceedings. However Telstra submits that the Claimants are obliged to distinguish between the loss (if any) caused by the Flexitel and the loss caused by other sources for which the Claimants allege that Telstra is responsible.

## **PART C. HISTORY OF THIS ARBITRATION**

19. Telstra submits that the history of this Arbitration is relevant as it provides the background as to why Telstra has now submitted its defence although the Claimants, in Telstra's submissions, have not provided sufficient claim material to justify Telstra filing any defence or any award being made in the Claimants' favour.
20. Telstra's submits this history should be taken into account by the Arbitrator in the future direction of this Arbitration.
21. Set out below is a brief history of this Arbitration
  - (a) On 21 April 1994, more than two years ago, Mr Schorer on behalf of the Claimants signed a Request for Arbitration in accordance with the Rules. The Claimants' claim and supporting documents were due shortly thereafter;
  - (b) In June 1994, Telstra received the Claimants' Interim Claim and the History which was supported by a Statutory Declaration of Mr Schorer;
  - (c) In 1994, Telstra advised the Claimants in writing what further documents and information that Telstra considered should be included with the Claimants' final claim documents. Included as annexure B to the Statutory Declaration of Peter Crofts filed by Telstra in this defence is the documents and information identified by Telstra. Essentially, Telstra was seeking documents that would be relevant to the Claimants' allegations that there were technical problems with the telecommunication service provided by Telstra and the effect of those problems on the Claimants' business;
  - (d) In December 1994, Telstra received the Second Claim. As with the above claim documents, this document is a very general document and was not supported by any further documentary evidence (other than the attached spread sheets);

- (e) At a meeting on 5 February 1996, the Claimants' indicated they would provide a list of 5 or 6 "problem areas" from the list of exchanges prepared by Telstra. Subsequently, Telstra received one of the Claimants' maps with 90 areas circled being the areas from which the Claimants claim they had difficulties receiving calls;
- (f) On 10 April 1996, a meeting was held to again try and resolve the issue of providing documents to the Claimants. Telstra gave a presentation at the meeting providing a general outline to the routing of traffic in the network, emphasising the dynamic nature of the network;
- (g) It was agreed at this meeting that the Claimants would ask certain questions which would be provided to Telstra for it to consider. Telstra has on various occasions requested these questions;
- (h) The Claimants still have not complied with the steps agreed on 10 April 1996;
- (i) On 22 July 1996 the Arbitrator directed that the Claimants file their Statement of Claim in accordance with clause 7.2 of the Rules;
- (j) On 30 September 1996 the Claimants submitted the Final Claim;
- (k) On 9 October 1996, Telstra wrote to the Arbitrator in relation to the failure of the Claimants to provide the documents and information identified by Telstra as being relevant to this Arbitration;
- (l) the Claimants have not provided any further information other than the documents referred to above. In particular, the Claimants have not provided any of the documents identified by Telstra as being relevant even though the Claimants could be expected to have most if not all the documents identified;
- (m) the Claimants have refused to consent to Telstra being able to use the documents discovered by the Claimants in the Flexitel Proceedings which Telstra currently has in its possession;



- (n) the Claimants have refused to provide written permission to some of their employees, ex employees and business associates to allow them to provide information to Telstra about their telecommunications service;
- (o) the Claimants have refuse to provide written permission to some of their service providers ie Motorola and AT&T to allow them to provide information to Telstra about the Claimants' telecommunications service;
- (p) Telstra has not received any documents from the Claimants in response to the above requests notwithstanding that the Claimants would have some or all of the documents requested.

#### **PART D. THE CLAIM DOCUMENTS**

22. Clause 7.2 of the Rules requires the Claimants to prepare a Statement of Claim and any written evidence and submissions in support which are to include with sufficient particularity;

*"7.2.1 the identity of the Claimant;*

*7.2.1 the service difficulties, problems and faults in the provision to the claimant of telecommunications service which are alleged to have occurred including the periods over which such service difficulties, problems and faults allegedly occurred;*

*7.2.3 the loss allegedly suffered and particulars of how that loss is calculated."*

23. Clause 6 of the Rules requires all written evidence in the form of an affidavit or Statutory Declaration.

24. In this context, the Claimants have asserted that there is a basis at law in their claim for compensation and, in the Final Claim, they have set out the factors on which they rely to attribute legal liability to Telstra in respect of alleged faults or problems in the telephone service provided to the Claimants. In particular, it is alleged that:
- (a) Telstra breached a contractual duty (express or implied) to the Claimants in the supply of telecommunication services;
  - (b) Telstra owed a statutory duty to supply telecommunication services to the Claimants and, in the circumstances, it has breached such duty;
  - (c) Telstra owed a common law duty of care to the Claimants and, in the circumstances, it has breached such duty; and
  - (d) Telstra is liable by reason of provisions of the *Trade Practices Act* (in particular, sections 52 and 53) and *Fair Trading Act 1985* (section 12).
25. Telstra denies that it breached any of the above duties to the Claimants or that it engaged in conduct in contravention of the *Trade Practices Act* and *Fair Trading Act 1985*.
26. Telstra has analysed the Claim Documents but has not been able to identify the particulars or basis upon which the Claimants assert that Telstra has breached any alleged legal responsibility which Telstra may have, or may have had, to the Claimants in respect of the provision of telecommunications services. The Claimants have also failed to provide particulars of the faults relied upon to substantiate these claims.
27. The allegations made by in the Claim Documents are unsubstantiated and uncorroborated. The evidence in support of the Claimants' claim is made up solely of the Claimants' own assertions. This is important as many of the complaints, by their nature, are complaints of which the Claimants can have no personal knowledge. For example, complaints of phone engaged when not ("BWN"), not receiving ring ("NRR") and recorded voice announcement ("RVA") can only be substantiated by the incoming caller. Telstra accepts that the

Claimants must, of necessity, derive knowledge of these complaints through other persons. However, the Claimants have not provided third party verification or corroboration of any of their complaints. As a result there is no foundation upon which reasonable inferences can be made.

28. Much of the Claimants' evidence that faults occurred is based on the Claimants' assertion of telephone service problems reported or allegedly reported to Telstra. It is submitted that the fact that a telephone service complaint was reported does not necessarily mean that an actual fault occurred.
29. Even assuming the Arbitrator accepts that the Claimants have suffered losses over the claim period, unless the Arbitrator is able to conclude that Telstra caused the loss claimed, there is no basis for a claim against Telstra. Telstra submits that there is no such basis.
30. Telstra has identified documents that it submits should have been provided by the Claimants. Not only have the Claimants not provided these documents but the Claimants have also not allowed Telstra to obtain access to other documents and information.
31. Telstra submits that based on the Claim Documents there is no material that could substantiate an award in the Claimants' favour in this Arbitration.

## **PART E. TELSTRA'S EVIDENCE**

34. Telstra refers to and adopts the material contained in the Briefing Document lodged as part of Telstra's Defence Documents and the Statutory Declarations made by Telstra technical and customer service staff and non-Telstra personnel.
32. Primarily the Claimants have based their claim on loss of business caused by:
  - (a) their clients being unable to call them. The Claimants allege that their clients when calling received false busy, ring tone without call registration at the Claimants' CPE, silence, RVA, disconnections, etc; and

- (b) the inability of the Claimants to be able to contact their carrier drivers by radio systems that rely on Telstra's leased line services.
33. Over the Claim period, Telstra has extensively investigated the telecommunications services provided to the Claimants. In doing so, Telstra has examined the performance of the three main aspects of their service being:
- (a) the telephone exchanges that have been important to the Claimants for call delivery;
  - (b) the Claimants' Customer Access Network ("CAN"); and
  - (c) the Claimants' Customer Premises Equipment ("CPE").
34. Set out below is a summary of the information Telstra has been able to identify relating to the provision of services by Telstra to the Claimants. The supporting documents and Statutory Declarations are filed by Telstra in this defence.

***Background to the Claimants' services***

35. The telephone exchanges that the Claimants' PSTN and ISDN services were connected to since April 1986 were:
- (a) North Melbourne ARE-11 exchange (NMEL), provided the (03) 329-7xxx & 0xxx services from April 1986 to April 1995;
  - (b) North Melbourne ISDN exchange (NMEX), provided the (03) 286-00xx, 286-02xx, 287-07xx, & 287-70xx services from 15 December 1993 to present;
  - (c) North Melbourne System-12 exchange (NMEE), provided the (03) 329-7xxx & 0xxx services from April 1995 to April 1996; and
  - (d) North Melbourne System-12 RTSU (NMEK) parented off Brunswick System-12 Host (BRUB), provided the (03) 9348-9xxx services from April 1996 to present.

36. The Claimants have emphasised in the Claim Documents the importance of incoming calls to their business and that the problem they experienced related to incoming calls. Due to the structure of the Claimants' telecommunications systems, the following exchanges are the most relevant to the Claimants' incoming calls from their clients (ie demand and major customer groups) :

- (a) April 1986 to 15 December 1993 - NMEL;
- (b) December 1993 to present - NMEX.

### ***Claimants' Complaints***

37. In the period July 1987 to date, Telstra has been able to locate records of 236 complaints made by the Claimants. This analysis does not include complaints relating to the Claimants' leased line services. This is an average of 2.15 complaints per month or less than one complaint per service per annum.

38. Of these complaints, Telstra was able to identify the cause or the probable cause of 88 complaints (37.3%). The causes of these complaints were as follows:

- (a) 25 - exchange or network faults (28.4%);
- (b) 4 - Customer Access Network (4.5%);
- (c) 40 - Claimants' Flexitels (45.5%);
- (d) 14 - Claimants' other CPE (15.9%); and
- (e) 5 - Claimants' mis-operation or other conduct (5.7%).

39. Therefore the majority of complaints with identifiable causes were either the Claimants' responsibility (Claimants' other CPE and Claimants' mis-operation or other conduct) or due to the Claimants' Flexitels (which are excluded from this Arbitration) which when combined equates to 59 or 67% of the causes.

### ***Claimants' Exchange Performance - PSTN***

40. Generally the PSTN exchanges (NMEL, NMEE & NMEK) performed well within Telstra's internal targets and/or Telstra's BCS tariff undertakings. However callers to the Claimants in late 1987 to mid 1989 could have experienced some

congestion. Telstra's estimates of the level of congestion for callers from the Melbourne metropolitan region to the Claimants for this period is:

- (a) 1% from September 1987 to June 1988;
  - (b) 5.6% for two weeks in June 1988;
  - (c) 2.8% from July 1988 to October 1988; and
  - (d) 1.2% from November 1988 to July 1989.
41. Apart from the above congestion, the records and data that Telstra has been able to locate together with the Statutory Declarations filed by Telstra in this defence confirm that these PSTN exchanges were not responsible for the level of complaints that the Claimants made and that their performance did not adversely impact upon the Claimants' business.

#### ***Claimants' Exchange Performance - ISDN***

42. From 15 December 1993 the Claimants primary telecommunications service was an ISDN service (Macrolink) which was connected to NMEX.
43. The records and data that Telstra has been able to locate together with the Statutory Declarations filed by Telstra in this defence establish that the performances of NMEX and the Macrolink were excellent and well within Telstra's internal targets and/or Telstra's BCS tariff undertakings. For example, TROB data shows an average network loss of less than 0.1% to the Claimants' ISDN code ranges for January 1994 to August 1996. The performance of NMEX and the Macrolink did not adversely impact on the Claimants' business.

#### ***Claimants' CAN***

44. In the period April 1986 to date, Telstra has been able to locate records of only four faults in the Claimants CAN for their ISDN and PSTN services.
45. The Claimants' PSTN CAN generally consisted of over 40 lines from 1986 until April 1996 when the Claimants reduced their PSTN lines to 8. Taking this into consideration, these four CAN faults would not have had any significant impact on call delivery to the Claimants (and consequently their business).

46. The Claimants also have a 30 Channel ISDN Macrolink service provided on 15 December 1993 (that uses the CAN from NMEX to the Claimants' premises). Telstra has not been able to locate records of any CAN faults for this Macrolink having occurred and this CAN had no adverse impact on call delivery to the Claimants (and consequently their business).

***Claimants' CPE***

47. The Claimants' CPE has consisted of a Multiphone (from 1986 to April 1987), Flexitel/s (April 1987 to April 1996) and an AT&T PABX (October 1992 to present). The CPE primarily responsible for receiving incoming calls changed over time as follows:
- (a) 1986 to April 1987 - the Multiphone;
  - (b) April 1987 to October 1992 - the Flexitel/s; and
  - (c) October 1992 to present - the AT&T PABX.
48. The performance of the Flexitel was the subject of the Flexitel Proceedings and is outside the scope of this Arbitration. Consequently, the Claimants are not entitled to compensation for any loss or damage caused by the Flexitel/s. As the PABX was not purchased from Telstra and has not been maintained by Telstra the Claimants are not entitled to compensation for any loss or damage caused by the AT&T PABX.
49. There are 40 and 14 complaints caused or probably caused by the Claimants' Flexitel/s and AT&T PABX respectively. These represented 67% of the complaints with identified causes. It is clear that the Claimants' CPE contributed significantly to their complaints.

***Claimants' Leased Lines***

50. The Claimants have had five leased lines in total for the claim period, three were standard leased lines and two are leased lines used for radio transmission. The three standard lines have over 19 years of combined service with no records of complaints reported. The two radio leased lines have had six complaints

recorded as having been made, of which 2 were caused by Telstra and 4 were caused by the Claimants' CPE.

51. Telstra is unaware what the Claimants used the five leased lines for, however, it would appear that faults with these lines would not have prevented the Claimants' clients contacting them. In any event, the identified faults attributable to the leased lines are insignificant in number and effect to the Claimants.

***General Observations***

52. During the whole of the claim period, Telstra:
- (a) had in place procedures by which complaints about service difficulties could be made by customers, including the Claimants;
  - (b) had in place procedures to enable investigation of reported service difficulties;
  - (c) properly investigated the Claimants' reports of service difficulties in accordance with established procedures;
  - (d) undertook extensive testing and monitoring exercises in the course of investigating the Claimants' complaints;
  - (e) had in place equipment and appropriate preventative and reactive maintenance procedures to identify faults and/or potential faults;
  - (f) had procedures in place to rectify identified faults and/or potential faults;
  - (g) replaced CAN cabling, exchange equipment and CPE on various occasions to eliminate possible sources of service difficulties even though, with few exceptions, there was no evidence that the replaced cabling and equipment was faulty;
  - (h) provided additional services to the Claimants without cost on an ex gratia basis.



53. Telstra found on numerous occasions that it was the Claimants (or their employees) who had failed to properly utilise their own CPE equipment by, for example:
- (a) failing to answer their telephone properly causing the "hookflash" problem with the Flexitel;
  - (b) advertising unallocated PABX telephone numbers and incorrectly configuring their PABX so that callers to these unallocated numbers would receive busy tone instead of a recorded message;
  - (c) claiming that callers received a busy signal when their telephone was idle, when monitoring data showed the telephone was in use;
  - (d) dialling insufficient digits and misdialling numbers.
54. Telstra's response to the Claimants' fault complaints was pro-active and included:
- (a) special inspections of the Claimants' exchange (NMEL - at the time), Customer Access Network ("CAN") and Customer Premises Equipment ("CPE");
  - (b) the use of a variety of call event recorders to monitor activity across the Claimants' telephone lines (including ELMI);
  - (c) special investigations by National Network Investigations ("NNI") into all aspects of the Claimants' telephone service; and
  - (e) Service Verification Tests (when and to the extent permitted by the Claimants).

## **PART F. QUANTUM SUBMISSIONS**

55. Telstra refers to and adopts the expert Statutory Declaration of Mr Crofts in relation to issues of quantum pertaining to this claim and the Legal Submissions insofar as they relate to quantum.

## **PART G. LEGAL SUBMISSIONS**

56. Telstra refers to and adopts the legal submissions contained in the separate document headed "Telstra's Legal Submissions" lodged as part of Telstra's Defence Documents.

## **PART H. BACKGROUND TO THE AUSTRALIAN TELECOMMUNICATIONS REGULATORY STRUCTURE**

### *History of Telstra*

57. Prior to 1989, telecommunications services were provided by the sole telecommunications carrier in Australia, the Australian Telecommunications Commission, trading as Telecom Australia. Telecom provided telecommunications services in accordance with the provisions of the Telecommunications Act 1975.
58. In 1989 the Australian government undertook its first steps towards introducing competition and deregulation into the telecommunications industry in enacting the Telecommunications Act 1989. This Act was enacted to establish the legal framework for the introduction of competition. A new independent regulatory body, AUSTEL, was set up pursuant to the Act to regulate the provision of telecommunications services in Australia.
59. The Australian government implemented further changes to the telecommunications services industry through the introduction of the Telecommunications Act 1991 and related legislation. Telecom Australia and OTC were merged to form the Australian and Overseas Telecommunications Corporation (AOTC). Later, the name AOTC was changed to Telstra Corporation Limited.
60. AOTC/Telstra was granted a general carrier licence pursuant to the Telecommunications Act 1991.

***Telstra's Customer Relationship and Service Obligations***

61. Telstra does and always has provided fault reporting bureaus to give assistance to subscribers experiencing difficulties or faults with their telephone service. These bureaus are staffed 24 hours a day and all customer reported difficulties are subsequently forwarded to a database for analysis and further action if required. After problems are reported, the bureaus direct competent technical staff to examine the reported difficulty or fault and to rectify established difficulties or faults without cost or charge to the subscriber.
62. The fact that a complaint is made by a customer in relation to a telephone service does not necessarily mean that a fault exists. Although faults can and will inevitably occur, the fact that a fault occurs does not mean that Telstra has any liability for the consequences of that fault even if it is attributed to a Telstra network or system.
63. Telstra does not guarantee to its customers, and has never guaranteed, the provision of a fault free telephone service. A fault free telephone service is impossible to provide, due to the nature and magnitude of the telephone network and the inherent nature of electrical circuits, telephones and telecommunications. Even where faults are shown to exist the customer's misunderstanding of CPE, mis-operation of CPE and CPE wear and tear is often responsible for the fault.
64. Telstra provides services to the Australian community under the Telecommunications Act 1991 (the "Act") and prior to that enactment, its predecessors.
65. Telstra does not, and never has, had a duty to provide a specified level of service to an individual customer. Under the Act, Telstra's charter is to provide services to the Australian community as a whole. Whilst section 3(a)(iii) of the Act makes it an objective, but not a standard or legal requirement, of Telstra to ensure that telephone services are supplied at performance standards which reasonably meet the social, industrial and commercial needs of the Australian community, there is no legal obligation or duty brought into existence by the Act in favour of individual members of the public.

66. Any assessment of Telstra's obligations and responsibilities must take into account the following factors:
- (a) the vast cost of designing, establishing and maintaining the network;
  - (b) the size of Australia and the demographic spread of the Australian community;
  - (c) Telstra's obligation to ensure that standard telephone services are reasonably accessible to all people in Australia (known now as the "universal service obligation" and, prior to 1991, as the "community service obligation");
  - (d) the financial ramifications of providing this level of service;
  - (e) the availability and allocation of public resources;
  - (f) the cost and availability of new technology solutions;
  - (g) the complexity of network design and engineering; and
  - (h) the large number of calls carried each day by Telstra.

## **PART I. CONCLUSION**

67. The Claimants' Claim Documents do not disclose the basis of any legal responsibility which Telstra may have, or may have had, to the Claimants in respect of the provision of telecommunications services.
68. The Claimants' allegations are uncorroborated and are unsubstantiated.
69. Telstra has devoted an enormous amount of time and money investigating the Claimants' complaints. Telstra has endeavoured, over a considerable period of time, to assist the Claimants in locating the cause of their complaints. Telstra to date has been unable to identify any faults in the network that could explain the level of complaints made by the Claimants.

70. Based on all the records and data that Telstra has been able to locate and the Statutory Declarations that Telstra has filed in this defence, the Claimants generally received a very good service. By far the major identified cause of the Claimants' complaints were their various CPE. However, as indicated below there was some congestion that would have had a minor impact on the Claimants' incoming calls for a period of 14 months. No other Telstra customers in the Claimants' immediate geographical location have made complaints of service difficulties to the same extent that was reported by the Claimants or for any extended period of time. The faults found and rectified could not have been responsible for the level of reported service difficulties.
71. The overall level of service provided to the Claimants by Telstra in terms of complaint co-ordination and investigation, pro-active special inspections, line testing and monitoring, exchange testing and, where necessary, fault rectification was in fact at a very high level as evidenced by the various Statutory Declarations and documents filed by Telstra in this Arbitration.
72. The complaints made by the Claimants were, over the entire period of this claim, handled diligently by Telstra by ensuring that investigations and testing were promptly undertaken by experienced and appropriately qualified Telstra technical staff trained to investigate and rectify the matters complained of as evidenced by the various Statutory Declarations and documents filed by Telstra in this Arbitration. The technicians and engineering staff were highly trained in operating and maintaining the equipment, exchanges and services provided to the Claimants.
73. Telstra further submits that it is not obliged to provide a fault free service and Telstra cannot guarantee that its service will be fault free.
74. Further, the faults claimed by the Claimants, even if proved, would not entitle the Claimants to the sum claimed by them. This is established by the Statutory Declarations filed by Telstra in this Arbitration. Reference is made in particular to the Statutory Declaration of Mr Crofts.

75. There should be no finding for the Claimants, having regard to all the circumstances.

AS AT: 6TH MAY, 1993.

95/0608-02  
129

A BRIEF SUMMARY OF EVENTS REGARDING GOLDEN MESSENGERS' DEALINGS WITH TELECOM:-

1986 - JUNE/JULY:-

Golden Messenger contacted Telecom Footscray District office, regarding continuous service difficulties which were increasing in intensity, placing Golden at risk of client loss, due to Telecom related difficulties.

The telephone service difficulties Golden were experiencing:-

- a) The client ringing Golden would have the telephone ring out as if there was no one in attendance to answer the call.
- b) Clients ringing Golden would receive an engaged signal, as though all Golden's lines were busy when in fact they were free, with people waiting to take calls.
- c) Golden clients would receive a pre-recorded message stating that 'this number is no longer connected, please consult your current telephone directory and try again'.
- d) When clients were able to make contact with Golden, the call would drop out upon answering the call and/or during the conversation.

A Mr. John Searle, senior Telecom Engineer, undertook to do a thorough investigation of Network and Exchange.

1987 - LATE JANUARY:-

John Searle reported that there was nothing wrong with the Network or Exchange that Golden was connected to. All the problems were directly connected to the internal Multiphone telephone system Golden was renting from Telecom. (Golden was advised by Telecom to purchase a new telephone system to cure the faults).

Mr. Searle organised a senior Telecom Communications Consultant to study Golden's telecommunications operations, to advise what new telephone system to purchase, that would meet Golden's current and foreseeable future requirements and needs.

1987 - JULY:-

Golden purchased a new Flexitel system from Telecom, which was installed on 18th July, 1987.

The Flexitel system was recommended by Telecom to meet Golden's current and foreseeable future requirements and needs.

452

000611

AS AT: 6TH MAY, 1993.

95 / 0608 - 02  
129

A BRIEF SUMMARY OF EVENTS REGARDING GOLDEN MESSENGERS' DEALINGS WITH TELECOM:-

1986 - JUNE/JULY:-

Golden Messenger contacted Telecom Footscray District office, regarding continuous service difficulties which were increasing in intensity, placing Golden at risk of client loss, due to Telecom related difficulties.

The telephone service difficulties Golden were experiencing:-

- a) The client ringing Golden would have the telephone ring out as if there was no one in attendance to answer the call.
- b) Clients ringing Golden would receive an engaged signal, as though all Golden's lines were busy when in fact they were free, with people waiting to take calls.
- c) Golden clients would receive a pre-recorded message stating that 'this number is no longer connected, please consult your current telephone directory and try again'.
- d) When clients were able to make contact with Golden, the call would drop out upon answering the call and/or during the conversation.

A Mr. John Searle, senior Telecom Engineer, undertook to do a thorough investigation of Network and Exchange.

1987 - LATE JANUARY:-

John Searle reported that there was nothing wrong with the Network or Exchange that Golden was connected to. All the problems were directly connected to the internal Multiphone telephone system Golden was renting from Telecom. (Golden was advised by Telecom to purchase a new telephone system to cure the faults).

Mr. Searle organised a senior Telecom Communications Consultant to study Golden's telecommunications operations, to advise what new telephone system to purchase, that would meet Golden's current and foreseeable future requirements and needs.

1987 - JULY:-

Golden purchased a new Flexitel system from Telecom, which was installed on 18th July, 1987.

The Flexitel system was recommended by Telecom to meet Golden's current and foreseeable future requirements and needs.

GS 452

000611



The Flexitel was represented as being far superior and more flexible than the then Telecom Commander telephone system used by Goldens' major competitors.

The installation of the Flexitel system installed was incomplete, (i.e. no music 'on hold', no headsets etc.).

1987 - LATE NOVEMBER:-

Golden demanded a meeting with senior Telecom Management, regarding the standard of telephone service and loss of clients as a result of service difficulties.

A meeting was held where Telecom undertook to look at the Exchange performance and the Flexitel performance and investigate Goldens' allegations of its incomplete installation.

1988 - JANUARY:-

Telecom reported there was no problem with the Network, the Exchange, denied that the Flexitel installation was an incomplete installation, or that it was not functioning in accordance with Goldens' requirements.

Golden asked Telecom to arrange a mutual time and date to arrange for the removal of the Flexitel, on the basis that Telecom understood that they would be held fully accountable for supplying an inadequate system that did not eliminate our previous service difficulties as per their undertakings.

1988 - FEBRUARY/MARCH:-

Many meetings were held with Senior Management of Telecom, where statements were made that the Network was not at fault and the Exchange was not at fault.

Telecom stated that their fault reports database did not support the claims regarding Goldens' telephone difficulties. (They were referring to the computerised database complaints compiled from the fault reports made to 1100).

Golden pointed out that they had been advised to ring other telephone numbers to lodge their complaints. The telephone number Golden was advised to ring had changed a number of times from 1986-1988.

Golden conducted its own independent telephone survey of other users in North Melbourne and identified approximately sixty (60) other North Melbourne telephone dependent users, who were experiencing the same telephone difficulties of equal or greater and/or lesser intensity, who stated that Telecom had also told them that they were the only client in the North Melbourne district complaining of this problem.

Schorer organised a Telecom meeting at Golden and had two North Melbourne Telecom telephone dependent clients at that meeting.

One of the clients was being told to replace their internal telephones, as it was the cause of their problems.

1988 - APRIL (APPROX.):-

Telecom replaced the then existing Golden Flexitel system with another Flexitel system that had a lot of modifications, to try and get the telephone system to meet Goldens' requirements.

1988 - SEPTEMBER:-

Telecom stated they could not provide any indication of when they were going to upgrade the old ARE Exchange to the new AXE equipment at North Melbourne. They did state that what ~~AXE Exchanges were at North Melbourne, were~~ ~~india~~ Exchanges that wouldn't suit Goldens' application.

Telecom were not prepared to provide out of area dialling at their expense to bypass the North Melbourne Exchange. In response to Goldens' question regarding relocation of the business to an Exchange area that didn't have these problems, Telecom were not prepared to provide Golden with a list of their metropolitan exchanges that did not have this problem.

Senior Telecom personnel denied that Golden was experiencing telephone difficulties caused by Network, Exchange and/or Flexitel.

Telecom wrote a letter stating that Golden was not being disadvantaged by the service it was receiving, as it was equal to the standard of service received by Goldens' direct competitors.

Senior Telecom personnel implied that the only way Telecom would be in a position to respond to Goldens' demands of out of area dialling and/or new telephone equipment and/or compensation, could only be acted upon when Golden instigated legal proceedings.

It was explained that Telecom, by the sheer size of their 9 million plus users, could not create a precedent of providing additional resources and/or justify investment in other equipment and/or consider compensation, without Golden first issuing a writ, as it would open up the floodgates of nuisance claims, demanding the same treatment based upon the precedent created.

It was inferred that by Golden being prepared to issue a writ, it placed Telecom in the position of being able to consider the purchase of equipment and/or use other Telecom resources to solve service standards including dealing with the question of compensation for loss of business.

1988 (SEPTEMBER) - 1990 (JUNE):-

Continuous complaints were made, the problem continued to increase in intensity, the flexitel regularly failed in whole or part.

1990 - JUNE:-

Senior Telecom personnel recommended that Golden seriously consider connecting to the ISDN Network, as a means to bypass the North Melbourne Exchange.

It was pointed out at that meeting that connecting to ISDN Network would mean ~~"metered timed local calls"~~.

1991 - JANUARY:-

A letter of comfort was received, enabling Golden to take the Telecom recommendation seriously.

1991 - JANUARY/JUNE:-

Golden commenced investigating ISDN Digital Telephone systems that had the feature of providing call centre functions, i.e: Multi line high incoming call answering capacity, that could be successfully managed by a minimum of staff.

Most systems were unaffordable as they ranged in cost from \$150,000 to \$250,000.

1991 - FEBRUARY/MARCH:-

133

Examination of Telecom documents produced under the Federal Court procedure of discovery showed that Telecom had identified congestion of the North Melbourne Exchange - there were insufficient lines between the North Melbourne Exchange and other exchanges, to bring the traffic to the North Melbourne Exchange.

The documents gave figures of how they increased the carrying capacity of the lines between other exchanges to the North Melbourne Exchange.

Telecom documents stating that the equipment supplied to Golden was sold out of its depth.

Telecom Flexitel specifications documents showing that the equipment was incapable of handling all of Goldens' lines at any one time.

Other internal Telecom documents stating that they had withdrawn most of the Flexitels sold to clients, where one District Manager was questioning why this had not been done in Goldens' case.

Graham Schorers' summary after reading the court documents is that "at all times Telecom knew of the problems regarding the Exchange, Network and Flexitel" and were making verbal and written statements contrary to the facts contained in their working documents.

Telecoms' own documents acknowledged that a lot of Telecom documents relating to Golden had been destroyed.

1991 - JUNE:-

Golden signed up to be connected to the Telecom ISDN Network on 12th June 1991, in the belief that it had successfully identified an affordable telephone system that would meet its requirements.

The intended purchase of this equipment did not proceed, as it was discovered that the equipment would not provide the necessary features required by Golden.

1991 (LATE) - 1992 (EARLY)? :-

The North Melbourne Exchange Manager informed Schorer that Telecom had removed 50% of the subscribers on the 329 exchange to another exchange (Goldens; question was why were they not given the opportunity to move to the latest exchange?).

1992 - MAY:-

Golden received a phone call from Ericcsons, enquiring whether Golden were still having telephone problems, as Ericcsons' client Skyroad in North Melbourne on the 329 Exchange were being told that all the problems they were experiencing identical to Goldens', was directly related to the Ericcson P.A.B.X. they had purchased.

Golden rang Telecoms' Footscray District Manager to organise a meeting between Telecom, Ericcsons, Skyroad and Golden. Telecom declined to be present at the meeting on the basis that Skyroad was a subsidiary of Mayne Nickless, Mayne Nickless was a shareholder of Optus and Optus was their future direct competitor.

They were only prepared to meet Golden on a one to one basis.

// Up until October 1992 when Golden put the new AT & T system in, Golden was continually plagued with telephone difficulties. The major complaint then was call 'drop out' upon answering the telephone.

1992 (AUGUST) - 1993 (JANUARY):-

Five Telecom users formed a 'user group' C.O.T. Cases Australia, (which stands for Casualties of Telecom) which resulted in having two meetings with Doug Campbell of Telecom and numerous telephone calls.

C.O.T. Cases objectives were:-

1. To restore telephone services to where individuals received the same standard of service as their direct competitors, regardless of where they or their direct competitor was located.
2. To be compensated for loss of goodwill and damages caused by Telecoms' conduct in not providing a commercially acceptable telephone service over an extensive period of time.
3. For Telecom to agree to appointing an independent assessor to determine loss and damage, for all parties to be bound by the assessors' decision.

These talks broke down as C.O.T. Cases' spokesperson stated that all Telecom had to do was experience the problems. It was unreasonable for Telecom to place a condition on C.O.T. Case members, that Telecom needed to identify the faults, considering the length of time since the initial complaints - which in some cases, were eight (8) years.

The terms of reference that Telecom were asking C.O.T. Case members to agree to were considered by the members to be unrealistic and unreasonable in the light of the evidence that was already available to Telecom.

95/0608-02

1992 - OCTOBER:-

135

ISDN  
The newly purchased Honeywell AT&T Computerised Call Management Centre PABX Digital Telephone System capable of being connected to the ISDN network was installed, replacing the Flexitel System in Goldens' operations centre.

The installation was planned in 2 parts for the following reasons:-

- (1) Initial installation was only to replace the Flexitel used in operations using the existing PSTN lines connected to the North Melbourne ARE exchange equipment without any change to existing telephone numbers.

The reason Golden took such a cautious approach was to prove the Honeywell equipment would perform as stated before we notified Clients of the change in telephone numbers which would take place when connecting to the ISDN network.

- (2) It was Goldens intention to connect to the ISDN network after 4 weeks satisfactory operation. Telecom had agreed to install the ISDN link at Goldens' premises and run it connected to Goldens' new equipment for 4 weeks to see if there was any anomalies before advising Goldens' Clients of the number change.

This cautious approach was deemed necessary by Golden management to avoid any additional inconveniences and/or difficulties to Goldens' Clients in making a simple telephone booking.

During the settling in period of the Honeywell system, senior Telecom personnel informed Golden management that the North Melbourne Exchange was only to be a satellite exchange, not a fully enmeshed exchange as originally undertaken by Telecom prior to Golden signing the ISDN network application and purchase of ISDN compatible telephone equipment.

The disadvantages to Golden being connected to a satellite ISDN exchange increased by more than 50% the prospects of Goldens' telephone service becoming inoperative in comparison to being connected to a fully enmeshed ISDN exchange.

Other benefits stated to be available prior to Golden signing up for the ISDN network and purchasing new ISDN compatible equipment have needed to be reinforced and have taken further negotiations and time to be reconfirmed.

Automatic re-routing of Goldens' incoming ISDN calls to Goldens' PSTN lines when connectd to AXE exchange equipment, in the event of the ISDN exchange and or carrier failure, is still a current issue being denied as being available by Telecom.

95 / 0 8 0 8 - 0 2  
136

1992 - OCTOBER:-

Golden, following up a fault report made to 132674, was informed that the fault had been cleared before the technician went to the exchange. The explanation was that clearing faults from the computer was a standard practice that made their figures look good.

This matter was reported to Doug Campbell, as Schorer believed it was a Telecom procedure that would be producing incorrect statistics as to Telecoms' ability to correct faults in Exchange or Network.

1992 - NOVEMBER/DECEMBER:-

The Corporate Secretary in a telephone conversation to the C.O.T. Cases spokesperson, in his endeavour to demonstrate how reasonable Telecom had been in the past in dealing with a genuine complaint where Telecom had caused damage to the user, stated that Telecom had bought a new house for a person whose silent telephone number had been incorrectly published in the White Pages Telephone Directory.

The Corporate Secretary made more than one reference to his statement regarding Telecom purchasing the house, as the spokesperson kept referring that his statement was inconsistent to the way that C.O.T. Cases members had been treated to date.

Based upon the Corporate Secretarys' assurances that Telecom would be reasonable in their future dealings of the C.O.T. Cases members, the spokesperson strongly recommended to the members, that they enter into discussion of drawing up a written agreement for the appointment of an independent assessor. The written agreement would contain the independent assors' charter.

1992 - NOVEMBER:-

Telecom personnel informed Schorer at Golden, that being connected to AXE equipment was available to Golden for approximately 3 years for approximately \$50 per line changeover costs.

Schorer made enquiries of Senior Management at Telecom to verify this statement, as he was not aware of this choice, nor would he have had the need to purchase new ISDN compatible equipment at greater cost and greater line rental charges, to bypass the old North Melbourne Exchange.

Senior Management of Telecom informed Schorer that the availability of Golden being connected to AXE equipment, was approximately 2 years and could not give a reason as to why Golden were not informed of this option.

95 / 0608 - 02

1992 - OCTOBER - CURRENT:-

137

Telecom have been demanding that Golden sign a new ISDN application before they will connect the equipment and until their letter was received on 6th May 1993 (dated 5th May 1993) Telecom were demanding that Golden place their expectations in writing, before they would authorise the ISDN connection.

Telecom have dropped their undertaking of the automatic emergency procedures available to Golden made before the signing of the ISDN application in June 1991, regarding the availability of automatic re-routing of incoming Golden ISDN calls to Golden's PSDN lines when connected to AXE equipment, in the event of ISDN Exchange and/or bearer failure.

Telecoms' new conditions require Golden to notify Telecom in writing at the time Golden requires re-routing of incoming ISDN calls due to ISDN Exchange and/or bearer failure.

1993 APRIL - CURRENT:-

Golden clients have been experiencing continuous engaged signals. Delayed response from Telecom in identifying and fixing complaints lodged by Golden and Honeywell.

Golden do not wish to sign a new ISDN agreement with Telecom, considering what Telecom are now stating will happen under the ISDN emergency procedures.

1993 APRIL - CURRENT:-

of rang Schorer after reading about Golden's experiences in the Sun newspaper. Dawson stated his business was having the same problems as reported Golden had received. Their problems started at least 4 years ago. [In April 1993, Telecom personnel had acknowledged to and his wife that Telecom had bullshitted to them long enough and questioned as to what would be a creative way of getting around the problem.

They then asked had he considered re-locating his business to enable the business to be connected to an AXE exchange.

suggested different locations until one location mentioned did not meet any objections.

Telecom were proving to be difficult in the re-location attempt in providing enough rotary lines and an acceptable, advertisable rotary number.

Recently Telecom have been bending over backwards in assisting to re-locate his business. Schorer, by this time, had let the Telecom senior fault person for Victoria know of his awareness of problems.



has a fear of going public with regards to Telecoms' cooperation in future dealings with him. He does not mind being named to the Senators and will give evidence if called upon.

has done a limited telephone survey of his exchange area and identified 10 other major users with the same problems including:-

Western and General Hospital  
Department of Defence  
Highpoint City Shopping Centre  
including the Hoyts Theatre Group located there.

The Highpoint City Shopping Centre administration would not officially acknowledge their problems. [Question - Is there legal implications that prevents them from doing so?]

APRIL 1993:-

When a Major Honeywell client with serious difficulties reported to Telecom by the Honeywell Service Manager, Telecoms' response was as that Client did not have a service maintainance agreement with Telecom for their PABX, Telecoms' response time would be 8 hours, not their normal 2 hour response time.

This Honeywell Client received this treatment twice in recent weeks.

copy of sheet ?

**SUMMARY OF FINDINGS  
CONCERNING THE TELEPHONE SERVICE TO  
GOLDEN MESSENGER**

**BACKGROUND**

Golden Messenger operates a courier delivery service and is attached to the North Melbourne Exchange (beginning with a 329 prefix).

Golden Messenger has claimed a history, spanning the past 8 years, of unsatisfactory telephone service and has also claimed that the unsatisfactory service has impacted on its business operations causing business losses and erosion of its customer base.

Golden Messenger reported faults to the designated Telecom contact point, however, by early 1986 it decided to elevate its problems to Telecom's Regional Offices and to Senior Regional Management.

Golden Messenger has consistently reported faults, many of which were/are of a recurring nature.

Golden Messenger also alleges that following advice from a Telecom technician in January 1987 that the problems being experienced were related to malfunctioning of a Multiphone system rented from Telecom, Golden Messenger decided to purchase the new telephone system recommended by Telecom as being the most appropriate to meeting its then current and future needs.

Almost immediately after installation of the replacement telephone system Golden Messenger reported complaints about the inadequacy of the system and of continuing problems with the level of service.

The 329 North Melbourne exchange is comprised of ARE technology and this exchange is not scheduled for upgrade to AXE technology until the 1994-95 financial year

**SUMMARY OF FINDINGS**

Review of documentation reveals that this case can be categorised into the following three phases -

- pre 1991
- 1991 - August 1992
- post August 1992

**Pre 1991**

The key features of the pre 1991 phase are the claims by Golden Messenger that it -

G5 453

- suffered from unsatisfactory service caused by significant network problems
- followed Telecom's advice and purchased a Flexitel system which did not meet its operating requirements

and that these problems caused business losses and erosion of its client base.

Telecom maintained that the network including the Flexitel system were working satisfactorily despite having internal information that there were significant problems with the network and that the Flexitel equipment did not meet Golden Messenger's business needs.

#### **1991 - August 1992**

Whilst there is little documentation relating to this phase, the documentation available indicates that Golden Messenger continued to experience and report service problems, and that it considered moving to an ISDN service in an effort to improve the quality of its telephone service.

#### **Post August 1992**

This phase is characterised by the formation of COTs and the request for Telecom to not only improve the level of service to an acceptable standard, but to also compensate the COTs for claimed business losses caused by unsatisfactory service.

Telecom adopted the approach that as its testing did not identify any faults that would give rise to the range and level of service faults claimed, it had no evidence to suggest that the network was working unsatisfactorily. Telecom advised the COTs that further testing was required to locate and resolve any faults, and that it would be necessary for the COTs to agree to the level of service as being normal prior to -

- commencing discussions on settlement for claimed business losses
- relocating to an AXE exchange.

The following five common themes appear throughout all three phases -

- service faults were frequently reported with many being of a recurring nature
- Telecom conducted testing and whilst it isolated and repaired faults as they were found, it maintained that the results of the testing demonstrated that the network was performing satisfactorily
- Telecom advised of the testing and the results, ie TRT runs, but had not explained how the testing addressed the faults being frequently reported, and in particular, explained the testing regime

**Golden Messenger****Allegation (i)****FINDINGS**

On 26 August 1992 the COTs put forward the following two questions to Telecom -

- |            |  |
|------------|--|
| Question 1 | Is Telecom prepared to restore its telephone services of our foundation members within 28 days from today at no cost to the foundation members?              |
| Question 2 | Is Telecom prepared to resolve the issue of financial compensation for the foundation members within 28 days from today by way of an independent arbitrator? |

Telecom responded by suggesting that it appoint an internal project manager to review each case.

The negotiating point for Telecom was Mr D Campbell, Group Managing Director Commercial and Consumer and Mr G Schorer, in his capacity as COT spokesperson, was the negotiating point for COT.

On 11 September 1992 D Campbell was forwarded a technical report from Victoria Region Network Investigation and Fault Management and Diagnostics areas within Telecom. This report was supported by the General Manager, Telecom Commercial Vic/Tas.

This brief two page report drew the following conclusions -

- Various network faults were found which would have influenced the customer's service. All these problems were corrected by 25 October 1988.
- It is evident by the fault reports from the customers since 24 October 1988 that the system and the network are now operating at an acceptable standard.

The Telecom Victoria regional technical staff expressed strong views as to the validity of the continuing faults claimed by the Victoria COTs and maintained that network services were performing satisfactorily. Two key indicators of these views held by regional technical staff were -

- Telecom Minute from General Manager, Telecom Commercial Vic/Tas to Group General Manager, Consumer and Commercial of 28 October 1993 which advised of serious concerns that the technical experts had in conducting further testing, and their view that extensive testing has already been performed and that

**Golden Messenger****Allegation (1)****BRIEF**

The original COTs were advised that Telecom could not settle until the telephone problems had been resolved and a service at normal network standards provided. This is especially clear in the Smith settlement. Question whether others ( ) stopped reporting faults to promote settlement.

- For each of the 10 clients - is this relevant
- identify documents
  - what were the undertakings
  - relevance of findings in Level 1
  - post-settlement service level

in light of the views by Golden Messenger that its problems stemmed from -

- being attached to ARE exchanges
- network congestion
- difficulties in integrating differing technologies

which by their very nature may only present themselves on an intermittent basis.

- Telecom has employed its statutory immunity prior to July 1991 as a negotiating instrument in its dealings with Golden Messenger
- Telecom has not adopted a proactive approach in dealing with settlement matters.

all indicators other than the customers own comments are that the telephone services are performing satisfactorily.

- Telecom Minute from National Manager, Planning and Development to Managing Director Commercial of 26 November 1992 which advised that (for Golden Messenger) there are no outstanding technical issues with this customer excluding those associated with the installation of his new AT&T PABX.

The record of conversation, prepared by D Campbell, of the meeting of 15 September 1992 between himself and G. Schorer reveals that -

- Regional Telecom people appear convinced that there were no problems beyond normal
- COT customers left no doubt that they viewed the situation quite differently and in some cases found the service totally unsatisfactory
- D Campbell recommended further testing, including the placement of Telecom staff in COT customer premises, to get a more accurate perception of the customer's problems and undertake monitoring to positively identify the extent and type of problems
- G. Schorer was of the view that it was important to fix the problem even if it meant "bypassing the problem" and suggested that Telecom should try unique solutions and indicated that all COT customers should be moved to other exchanges
- G. Schorer stated that if Telecom would put his new number in the next Yellow Pages he would waive any claims to loss of business due to number change and he would not want Telecom to pay for any special advertising other than an RVA on his old number
- D. Campbell reminded G. Schorer that until the cause of the problems was known there was no certainty that service would improve by relocating to another exchange

Telecom appear to have considered the request for relocating to new exchanges and D. Campbell's letter to G Schorer of 16 September 1992 sets out the following three key items as outcomes of their meeting of 15 September 1992 -

- Telecom to move quickly to finalise their understanding of the problems
- COTs to advise of possibility of Telecom providing people to work with COT members in their businesses to obtain first hand exposure to the problems on a continuous basis

- G. Schorer to discuss with (COT) members willingness to consider being reassigned to another exchange - which might involve a number change in an attempt to quickly improve the quality of service and whilst this in itself does not necessarily mean an improved performance it would be an action different from that undertaken to date. Telecom to assist financially with advertising as well as with recorded voice announcement to old number

COT expressed the view that their service problems were due to two factors -

- network congestion
- the age of the exchanges to which they were connected

Letter of 22 September 1993 from G. Schorer to D. Campbell advises that COT have no objections to further testing, but request immediate connection to AXE exchanges in the same charging zone. Letter also states that COT cannot accept that Telecom need to do further testing to be satisfied that problems have been experienced.

Letter of 23 September 1993 from D. Campbell to G. Schorer incorporated the following statements -

- The key problem is that discussion on possible settlement cannot proceed until the reported faults are positively identified and the performance of your member's services is agreed to be normal
- ..... we cannot move to settlement discussions or arbitration while we are unable to identify faults which are affecting these services. At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards
- the proposed testing regime is also a necessary prelude to the suggestion that your members be moved to different exchanges

The approach stated by D. Campbell in the aforementioned letter was subsequently reaffirmed on the following occasions -

- Telecom letter of 14 October 1992 from D. Campbell to G. Schorer
- Telecom letter of 21 October 1992 from D. Campbell to G. Schorer
- Telecom letter of 6 January 1993 from D. Campbell to G. Schorer which advised that as a suitable process of comprehensive testing was not agreed the offer of arbitration was withdrawn and stated that he did not feel that further talking would be beneficial, suggested that COT's recourse is further negotiations or the courts.



"at this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards"

It should be noted that on 11 September 1992, one day after receiving a technical report (referred to earlier) the General Manager, Telecom Commercial Vic/Tas advised the authors of the technical report that -

Mr Graeme Schorer of Golden Messenger is reported to have told a Telecom Representative that he is still losing 50 calls per day and that there was some improvement in May 1992, coincident with a change in dial tone. This is the sort of claim we normally treat seriously. It is the first I heard of it. Could you please re-open your investigation and even instigate some additional testing if necessary.

The General Manager, Telecom Commercial Vic/Tas advised D. Campbell on 14 September 1992 that the investigation was re-opened and that the claimed loss of 50 calls per day had staggered them. There is no documentation to show that the re-opened investigation into G. Schorer's claim of losing 50 calls per day, had been finalised.

Whilst the Telecom Regional technical experts had reported that there were no outstanding technical problems with Golden Messenger and that the network was performing satisfactorily, Golden Messenger was regularly reporting faults as confirmed by monitoring information provided by Telecom. A summary of reported faults for the period 29 July 1992 to 8 September 1993 is located on the Golden Messenger monitoring file. Internal Telecom documentation reveals that considerable testing has been conducted since 1 November 1989 and that these tests indicated the network was performing satisfactorily. Missing in any of the documentation within the Telecom files is how the testing was structured to address the problems reported, and in particular, the claims that these problems were being caused by network congestion, being connected to an ARE exchange and having a network comprising differing technologies and computer systems. This appears to be the core of the differing views put forward by the Telecom technical experts and the COT customers.

D. Campbell appeared to be willing to consider the request put forward by G. Schorer on 15 September 1992 to move COT customers to different exchanges. In his letter of 16 September 1992 D. Campbell requested G. Schorer to discuss with COT members their willingness to be reassigned to another exchange in an attempt to quickly improve service, and stated that whilst this in itself does not necessarily mean an improved performance it would be an action different from that undertaken to date.

This willingness to consider a different approach ceased when D. Campbell advised G. Schorer on 23 September 1992 that the proposed testing regime is also a necessary prelude to the suggestion that your members be moved to different exchanges. It should be noted that in the cases of  
and , each was subsequently moved to  
another exchange with AXE technology in late November 1992, and that R.

Davey advised D. Campbell on 13 January 1993 that both customers claimed to have experienced an increase in calls from 300% to 500%.

49

In view of the above information, the validity of the insistence of further testing as a precondition to moving to a new exchanges is questioned.

Information contained within the Performance Report of Selected Exchanges (based on TROB dated from 1 January 1991 to 30 September 1992) revealed the following for the North Melbourne "329" exchange -

- 67.4% calls were effective for the 329 -0 number range
- 39.4% calls were effective for the 329 -7 number range

This indicates that all of the Golden Messenger auxiliary lines are located in high traffic ranges. In view of this information Telecom's reluctance to move Golden Messenger to an AXE exchange, even if only to try a new approach as suggested by G. Schorer and considered by D Campbell, is not understood. Moving Golden Messenger to a more modern exchange would have overcome one of the major problems with an ARE exchange by enabling the spread of auxiliary numbers throughout the entire exchange number range to minimise exposure to congestion at the exchange, but also could have relieved congestion on that exchange for other customers.

Reaction of COTs to the above approach was that COT members did not accept precondition of testing prior to moving to more modern and different exchange equipment. COTs were prepared to allow Telecom to do as much testing as it needs to in order to try and locate exchange faults, but their business operations should not be jeopardised. These views were contained in the letter of 23 December 1992 from G. Schorer to D. Campbell.

Record of conversation of 13 January 1993 between R. Davey (AUSTEL) and Blount (AOTC) reveals -

- Blount indicated that AOTC wanted to make tests and that the complainants did not want them to do that. As a result of this there was no substantial material upon which AOTC might resolve the difficulties
- Davey advised of comments received from [redacted] and [redacted] that their call rates had increased between 300% to 500% since moving to a new exchange

No information was available on Telecom files or correspondence received from G. Schorer on the specific makeup of the further testing proposed by D. Campbell.

D. Campbell did not appear to indicate how his proposed testing would differ from previous testing. This is a particularly important issue as Golden Messenger has continued to report a wide range of problems since 1987 and it would appear that existing testing has not resolved the problems. Whilst D Campbell's purpose for the further testing was clearly outlined in his minute of 26 October 1993 to Holmes - "to try and break the deadlock between our Commercial staffs views that there were no problems outside normal network failures and the COT members views that performance was much worse", his proposed methodology was not contained in any documentation or record of discussions. The effectiveness of the proposed testing was questioned by Telecom's own technical experts.

No evidence was found of a structured and co-ordinated approach to demonstrate how this proposed further testing would specifically address the problems claimed by Golden Messenger (and the other COTs). In view of

- the strong views of Telecom regional technical experts that the network was operating satisfactorily
- the absence of any specific methodology to be followed for the proposed further testing thereby creating a situation where these same experts would conduct the same testing procedures that led them to forming the view that the system was operating satisfactorily

it is doubtful that the proposed further testing would identify the causes of claimed faults that have been frequently reported since 1987.

In his letter of 23 September 1992 Mr Campbell states that -

**Golden Messenger****Allegation (ii)****BRIEF**

Failure to keep clients advised - general concerns expressed by COTs etc. and Fortitude Valley clients that outcome of monitoring, investigations, etc. are not made available to them

- contrast with set informal procedures and Morris Report
- any statements on file.

**GOLDEN MESSENGER****FINDINGS - ALLEGATION (II)**

Documentation obtained during a search of Telecom files reveals that prior to August 1988 Telecom was aware that -

- the trunking of IDN originated traffic to North Melbourne caused severe congestion in the IDN exit route from Footscray Node to North Melbourne
- failures with components of ARE exchanges were identified
- an additional number in the 329 7000 group, which the customer formerly had, could not be connected due to congestion.

and that a network investigation had commenced into the faults reported by Golden Messenger over the preceding two years. However, on 11 October 1988, Telecom advised Golden Messenger as follows -

I refer to the Flexitel System ordered by Golden Messenger and the continuing complaints by Golden Messenger that deficiencies in the public switched telephone network have resulted in Golden Messenger suffering damages due to loss of business.

As you are aware extensive investigations, reports and discussions, I confirm that Telecom cannot accept your allegations and claims. In Telecom's view, all reasonable efforts to inquire into your complaints have been unable to substantiate the allegations and claims.

In the circumstances, Telecom now demands immediate payment of all outstanding charges, namely -

Telecom Flexitel	\$46,977.00
Exchange Lines	\$10,809.11
Total	\$57,786.11

Accordingly, I confirm that unless the amount of \$57,786.11, being the outstanding charges due to Telecom, is received not later than 4.30 pm on 12th October 1988 Telecom will institute legal proceedings to recover the outstanding charges without further notice. To this end I have placed the matter in the hands of W J Lawrence, Debt Recovery Agency.

On 31 October 1988 the Supervising Engineer - Network Investigations wrote to the Manager, Business Communications Services North (Victoria) and

advised of the following regarding the service received by customers off North Melbourne Exchange -

- it was revealed that between 5 and 14% congestion was being experienced and that this congestion related to two different underlying conditions -
  - the number of CL blocks were inadequate which resulted in the immediate congestion tone
  - a particular FIR at North Melbourne was experiencing repeated failures. This resulted in revertive signalling failures causing a time out and thus the delayed congestion tone.
- the IDN exit route from Footscray Node to North Melbourne was increased from 37 circuits to a total of 111 circuits, and that this could be further increased in the near future.

On 18 January 1989 Network Investigation Section were advised by Metro Design North that the IDN exit from Footscray would be increased to 200 circuits by May 1989 to meet expected traffic levels.

No record was found where Telecom acknowledged that major network problems did exist and that these could have caused the problems/faults experienced by Golden Messenger.

On 17 November 1989 Network Investigation Section issued the Golden Messenger - FINAL REPORT. Findings within this report contained the following -

- there was congestion on the IDN exit route from Footscray Node to North Melbourne
- under dimensioned CL and PD individuals at Footscray Node were causing congestion
- faults were also found with various exchanges in the network which affected the grade of service received by Golden Messenger.

This report concluded that several network conditions influenced the customer service and that problems found had been rectified. The following extract from this report is particularly noteworthy -

The faults found and corrected were not based on customer reports to 1100 or 1109, rather by employing indicators such as REA page data, ICM and AXE end of selection tracing. In actual fact the reports to 1100 were frequent and recurring but did not address the problems frequently reported as BWF.

This extract indicates that faults were reported on a frequent and recurring basis during the investigation, but that the causes of the faults were not found by using routine fault reporting mechanisms.

No record was found of Telecom advising Golden Messenger of the findings contained within the report. Of particular interest is that the findings of the report confirm the views expressed by G Schorer, at the time, that Golden Messenger was affected by exchange problems and network congestion.

From late November 1989 to 26 August 1992 little documentation was found in the files presented by Telecom and the next significant documented event occurred on 26 August 1992. On 26 August 1992 a meeting took place between members of COT, representatives of Telecom and two representatives from AUSTEL as observers. The meeting covered a wide range of issues with the two key issues being -

- COT members were still dissatisfied with the level of service and that they continued to experience problems
- COT members had not received satisfactory service from Telecom over a lengthy period of time and that as a result of this COT members had suffered business losses, personal stress and hardship.

This meeting resulted in the COTS seeking a transfer to AXE exchanges in their respective charging zones and action to commence financial settlement for claimed business losses due to unsatisfactory service from Telecom. Telecom insisted on further testing to identify perceived faults and for agreement that the level of service was normal prior to further discussions on settlement or relocation to an AXE exchange. This matter has been addressed in further detail within Allegation (i).

On 23 September 1992 Telecom advised Golden Messenger that -

at this point I have not evidence that any of the exchanges to which your members are attached are the cause of problems outside of normal performance standards.

This advice reflected the views put forward by Regional Technical staff in Victoria. No record was found on how the past testing specifically addressed the continuing and recurring problems claimed by Golden Messenger or how the testing established that there were no significant faults. Telecom appear to have maintained the position that as it could not identify the cause of the problems with its testing, it did not accept that the level of service provided was unsatisfactory.

It is noted that Telecom fault records show that for the period 27 September 1992 to 8 September 1993 Golden Messenger continued to frequently report faults, many of a recurring nature.

Customer complaints records provided by Telecom for the period 15 April 1993 to 28 June 1993 reveal considerable interaction between Regional Technical staff and Golden Messenger in trying to identify the cause of some faults reported. Of note is the claim by G Schorer of 4 June 1993 that the intermittent problem regarding the marker switches, controlling the 0 thousands number group, solved on 27 April 1993 was identified by Honeywell whilst testing the PABX. He further stated that Telecom testing

failed to reveal the cause of the problem. Telecom fault reports show a high level of testing and repeated faults being reported without locating a fault. The Telecom fault reports also confirm G Schorers claim that the PABX maintainer identified where the fault was to be located.

From the customer complaint records it is evident that Telecom technical staff have advised Golden Messenger of what testing had taken place, and of the results of that testing. What is not evident in any of the documentation is whether the customer was advised how the testing addressed the faults being reported on a continuing basis or how the testing would isolate and thereby identify the causes of the faults being reported.

In view of the continuing nature of the faults being reported, the level of testing undertaken by Telecom, past history where Telecom did not appear to identify major causes of faults using the 1100 fault reporting mechanism, and the above situation where the PABX Maintainer provided the critical insight to locate a serious fault doubts are raised on the capability of the testing regime to locate and isolate the causes of faults being reported.



**Allegation (III)****BRIEF**

For the COTs in particular it is alleged that Telecom said they had no fault or the fault was of minor nature.

- material on file
- identify and record
- relevant to                      complaints
- Telecom files - any difference?

**GOLDEN MESSENGER****FINDINGS - ALLEGATION (iii)**

Findings at Allegation (ii) are also relevant to this Allegation. Telecom have maintained the position that network service was within acceptable standards despite having considerable information, obtained from internal investigations, that major problems did exist with the network and that these problems did impact on the level of service provided to the customer.

The following extracts from views put forward by Telecom Regional Technical staff and Senior Management -

- Telecom Minute from General Manager, Telecom Commercial Vic/Tas to Group General Manager, Consumer and Commercial of 28 October 1993 which advised of serious concerns that the technical experts had in conducting further testing, and their view that extensive testing has already been performed and that all indicators other than the customers own comments are that the telephone services are performing satisfactorily.
- Telecom letter from D Campbell to G Schorer of 23 September 1992 which advised that "At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside of normal performance standards."

indicate that Telecom has formed the view that as its testing had not identified the source/s of the recurring faults being frequently reported, that there was no evidence to suggest that the network was performing unsatisfactorily.

However, whilst maintaining this view Telecom had -

- been receiving fault reports frequently, with many of the faults being reported on a recurring basis
- been informed of other network users that had experienced difficulties in contacting Golden Messenger or experienced similar problems
- located and rectified significant faults within the network.

The key issue is again the extent to which the testing regime is capable of identifying the problems that occurred, and in particular, testing the network as a whole.

**Allegation (iv)****BRIEF**

For the COTs and some clients claims were made that Telecom suggested that the faults would be overcome if they purchased improved consumer equipment when Telecom knew that this would not rectify the faults or was not sure that it would. -- also maintains that he was told to relocate

- check files for details
- identify documents
- consider wording carefully
- check the Telecom files
- record any evidence of improvement.

**GOLDEN MESSENGER****FINDINGS - ALLEGATION (iv)**

Golden Messenger has claimed that Telecom advised that there were no problems with the network and that Golden Messengers problems would be overcome with the purchase and installation of improved customer equipment. The customer equipment recommended by Telecom as most appropriate for meeting Golden Messengers then current and foreseeable needs was the Flexitel System.

Documentation reviewed does not provide direct evidence to support Golden Messengers claim, however, the following extracts from the Telecom quotation for the design and installation of the Flexitel System -

"The equipment Telecom has offered is the Flexitel and meets the service requirements of your company. It is Telecom's opinion that the system is the best and most advanced presently available to Australian users.

Telecom selected the Flexitel only after intensive evaluation, and proving to our own satisfaction the superior facilities, reliability and flexibility of the system."

along with the frequency of problems with the system and statements made by technical and legal staff within Telecom internal correspondence, suggests that Telecom recommended and subsequently installed a system that clearly did not meet Golden Messengers operational requirements.

**Allegation (v)****BRIEF**

COTs and many in \_\_\_\_\_ allege that Telecom told them that their fault was unique in the area (or no one else was complaining to the same extent)

- check files for details and identify documents
- check the Telecom files (especially Network Investigation)
- evidence of wider problem
- extent of this advice in \_\_\_\_\_

**FINDINGS - ALLEGATION (v)**

The documentation reviewed indicates that the principal response from Telecom to Golden Messenger was that all reasonable efforts to inquire into complaints of unsatisfactory service have been unable to substantiate the claims of recurring faults resulting in business loss.

Telecom appear to have maintained this approach despite having internal information, on a number of occasions, that problems did exist in the network.

The only direct reference within Telecom documentation to other customers experiencing similar problem to Golden Messenger appears in the Final Report dated 17 November 1989 into Golden Messenger. The report concluded that two of the three customers cited by Golden Messenger as having similar problems, were affected by network problems specific to themselves.

This is difficult to understand as the major problems referred to in the report -

- congestion problems in the network
- problems with equipment in various exchanges and problems in integrating AXE and ARE technology

would have impacted on all other customers connected to the North Melbourne exchange.

No documentation was found where Telecom acknowledged that the customers cited as having problems similar to Golden Messenger did actually experience customer specific as well as network wide faults.

**Allegation (vi)****BRIEF**

has alleged that information relevant to making a claim was withheld from despite FOI. and both complain of difficulty in gaining access under FOI, including 30 day rule applying only when FOI officer returns from leave, personnel other than FI officer determining questions of access. There are allegations that they were not told of the nature of the fault when this information was known to Telecom.

- check files and identify documents
- check Telecom files, including FOI files
- check Telecom manuals.

**FINDINGS**

Review of documentation within Telecom files, provided by G Schorer and contained within AUSTEL files did not reveal difficulty in gaining access under FOI.

**Allegation (vii)****BRIEF**

The COTs have complained that the period of settlement was unreasonably extended during a time of financial pressure on themselves ( ), that they were required to settle under duress ( ), that they were misled into taking legal action which was then unreasonably extended (Schorer) and that secrecy conditions on settlement are unwarranted, that reliance was unreasonably placed on Telecom's immunity from suit, etc.

- check files for detail
- check Telecom files
- check Telecom manuals
- check settlement conditions.



**GOLDEN MESSENGER****FINDINGS - ALLEGATION (vii)**

Golden Messenger has claimed that it has incurred business losses due to unsatisfactory service and being sold customer equipment that did not meet its operational requirements.

Golden Messenger has obtained a settlement in regard to the customer equipment (Flexitel System) sold and installed by Telecom, however, it has not been successful in negotiating a settlement for business losses claimed due to unsatisfactory service.

**Unsatisfactory Service**

Documentation reviewed indicates that Golden Messenger has continued to report problems with the level of service provided to it. Findings at Allegations (i) and (ii) reveal that Telecom has had internal information confirming that significant problems had existed in the network and that these would have impacted on the quality of service provided to Golden Messenger.

Findings at Allegations (i), (ii) and (iii) also reveal that Golden Messenger has -

- continued reporting faults over the past seven years
- provided Telecom with advice of other network users who have experienced difficulty in contacting Golden Messenger or have experienced problems similar to those reported by Golden Messenger.

Telecom has maintained the position that as its testing had not identified network faults that would produce the range and extent of customer service faults claimed, there is no evidence to indicate that the network has not performed satisfactorily.

On 23 September 1992, Telecom advised Golden Messenger that discussion on possible settlement cannot proceed until the faults are positively identified and the performance of your members services is agreed to be normal.

This approach has essentially placed Golden Messenger (and the other COTs) in a catch 22 situation, where Telecom maintain that the results of their testing indicate a network working to an acceptable standard, but offering further such testing as means of assessing the customers claims that the network is not working to an acceptable standard as a pre-condition to commencing settlement discussions.

In the absence of detailed information from Telecom on how the further testing would specifically address the claimed problems such as -

- not receiving ring
- clients receiving engaged signal

- call drop out on answer

and how this testing would differ from previous testing, the insistence of further testing is not seen as a positive contribution to a settlement process.

### **Customer Equipment**

Documentation reviewed reveals that -

- The Flexitel System was proposed by Telecom after a list was submitted by Golden Messenger of all facilities required. Telecom determined that the Flexitel System best suited Golden Messengers business requirements. The Flexitel System was installed in July 1987.
- Almost immediately after installation, Golden Messenger was making complaints to Telecom about the performance of the system and non-compliance with the terms of the contract.

Telecom letter of 14 January 1988 acknowledges some of the reported deficiencies of the system and suggested action to overcome the non-compliance with the terms of the contract.

At a meeting between Telecom and Golden Messenger on 15 January 1988 it was decided that Golden Messenger would not keep their Flexitel System as they could not hold more than two calls on each station.

On 3 February 1988 Telecom proposed two options to overcome the operational deficiencies of the Flexitel System -

- Option 1 - by providing additional equipment and modification to the system
- Option 2 - replace with a Phillips D1200 PABX with UCD.

On 10/3/88 Telecom advised Golden Messenger that Option 1 caused the system to be slowed to such an extent that it could not then cater for an expansion to cover the administration section. Telecom suggested that another Flexitel system be installed and linked to the first system with tie lines. This was accepted by Golden Messenger and the additional system was installed on 9 and 10 April 1988.

Golden Messenger continued to report difficulties with the system and also with the network on regular basis.

On 17/5/88 the Network Investigation Section provided a progress report on its investigation into Golden Messenger and stated that the major problem still appears to be the slow response time of the Flexitel. This combined with high call through put results in operators misusing the system resulting in adverse service to their customers.

Telecom Minute of 23/3/8 advised of the following -

"As you are aware we are having real problems with this system. We appear to have the speed up to what we hope is an acceptable level by the dodgy expedient of removing some of the DSS modules. This may or may not be acceptable to the customer (bless him) in the longer term.

The most pressing problem now is the intermittent failure of the station displays. The displays do not fail completely, remaining able to show "unobtainable" at the correct times as required, but nothing else. No CDR card is fitted. We intend to try and fit one but this may not be possible given the large size of the system."

On 11/10/88 Telecom wrote to Golden Messenger advising that after extensive investigation, reports and discussions that claims of problems with the system were not able to be substantiated.

The Final Report dated 17/11/89 on Golden Messenger advises of significant problems with the Flexitel System.

On 19/6/90 Golden Messenger advised Telecom of continuing problems and frustrations in obtaining appropriate action from Telecom and of business losses suffered as a result of such continuing problems, and enclosed a statement of claim to be filed in the Federal Court.

on 6/7/90 Telecom advised -

My enquiries have revealed that following the installation of the Flexitel system in July 1987 a number of difficulties were experienced with the operation of the system. These were due either to incorrect operation of equipment by your staff or incorrect programming and dimensioning of the system. In order to overcome these difficulties Telecom provided customer training and upgraded the facilities of the Flexitel system.

In the circumstances, Telecom considers that it has met its obligations in regard to the provision and maintenance of the Flexitel system and accordingly does not believe that compensation is warranted.

↓  
Telecom Minute of 29/1/88 states that it appears customer sold equipment which failed to meet his needs.

↓  
Telecom Minute of 30/3/88 states that advice from Legal and Policy Headquarters indicate that Golden Messenger appeared to have a case against us and that we should negotiate a settlement to prevent legal action proceeding. This advice was also contained in Telecom Minutes of 27/4/88 and 5/1/92.

↓  
Telecom Minute of 22/9/92 states that the Australian Government Solicitor had advised Telecom that Golden Messenger is likely to be successful in establishing that Telecom engaged in misleading and deceptive conduct contrary to the Trade Practices Act and that the consequence of lost calls or

calls not getting through was likely to lead to an immediate loss of business in relation to that call and potential loss of future business from the customer.

Documentation reviewed did not provide evidence of misleading advice to take legal action which was then unreasonably extended. Letter of 10/8/93 from Golden Messenger states that -

Golden's solicitor advised Golden of the potential cost of daily appearance in the Federal Court stating new rules required Golden to pay all council fees in advance, and as he was aware of Golden's current financial position he couldn't in all conscience advise Golden to continue with the action when he knew Golden would have to borrow the full amount from their bankers to fund the Federal Court Action.

What is evident from the above findings is that immediately after the installation of the system, Telecom knew of major deficiencies with the system and that the system's deficiencies were confirmed by Telecom's technical staff. Telecom was also aware from 29/1/88 that the Flexitel System would not meet the customers operational requirements and that internal legal advice of 30/3/88 confirmed that the customer had a case against Telecom. Despite all this information available within Telecom, Telecom maintained that the system was working satisfactorily and adopted this approach in dealings on this settlement issue.

**Allegation (viii)****BRIEF**

It is alleged ( ) that Telecom misled the Ombudsman, AFP and politicians and AUSTEL as regards complaint. and Schorer allege that politicians being briefed re possible Senate Inquiry were provided with an unbalanced and incomplete brief.

- check latter brief in terms of above allegations
- check and identify allegations on file
- check Telecom files.

There are also allegations that personnel in Queensland gave inaccurate briefings to senior national Telecom personnel (eg re briefing to re compensation/goodwill issue).

**FINDINGS - ALLEGATION (viii)**

Review of the Telecom brief of 17 August 1993 to The Hon David Beddall MP, Minister for Communications revealed that the brief did not present a balanced representation of the situation.

A number of statements have been extracted from this brief and comments, in terms of the findings against the other allegations, are provided on these extracts.

**Extract**

Financial settlements have been reached with each of the original five customers although with two exceptions ( ) the customers continue to express dissatisfaction with their service and one customer in particular (Cape Bridgewater) is seeking to re-open the issue of compensation. It would be fair to say that even those customers that are no longer active in the COT arena will remain dissatisfied customers of Telecom.

**Comments**

- Telecom did not convey to the Minister the impact of Telecom's statutory immunity from losses/problems prior to July 1991 and that Telecom had advised the COTs of this in their dealings regarding settlement matters.
- The COTs were not in a position to commence legal proceedings to seek recompense for business losses prior to July 1991.
- By July 1991 the COTs were claiming that due to continued inadequate service they had suffered business losses and that their customer bases had been eroded to such an extent that they were in financial difficulties.
- A balanced brief would need to advise of the capability of the COTs to fund proceedings in the Federal Court.
- This statement is also misleading as it does not advise that the reason that the two COTs are no longer complaining of unsatisfactory service is that they have ceased operating.
- This statement does not advise that settlement with Golden Messenger related to legal action under the Trade Practices Act 1984 and the Fair Trading Act 1985.

**Extract**

The settlements reached to date have been, in Telecom's opinion, very generous and have contained a not insignificant component beyond

that which could be supported by objective analysis of the factual evidence. This business judgement was made in the interests of settling the claims in a manner that clearly addressed the customer's perceived problems in the expectation that such settlement would avoid ongoing debate (with associated costs) and alleviate the acrimony that had developed over an extended period. This approach has obviously not been successful.

### **Comments**

- In the case of the settlement with Golden Messenger, a balanced brief would have advised that the claimed amount exceeded the settlement by a factor of ten and that the claimed amount was supported by independent assessment of business losses by two accounting firms.
- There is sufficient evidence to suggest that Golden Messenger has experienced problems with the network and that these problems impacted on its business operations. A balanced brief would have acknowledged that network problems were found, and whilst every effort was made to repair such faults, they would have impacted on the customer.
- Telecom's reliance on its statutory immunity prior to July 1991 and insistence that as its testing regime could not locate the cause of the claimed ongoing problems it found no evidence that the network was operating unsatisfactorily, were two key items in the negotiation processes. These do not support Telecom's claims that the claims were settled in a manner that addressed the customers perceived problems.
- In view of internal information confirming network problems and advice of other network users that had difficulty in reaching Golden Messenger or experienced similar problems, Telecom's reference to customers problems as perceived problems is not considered a balanced approach.

### **Extract**

The businesses involved in these disputes have all received very fair treatment of their cases - some would argue that the settlements reached have, in fact, been excessively generous given the factual evidence. Telecom's testing (whilst identifying some faults from time to time) has repeatedly demonstrated the integrity of the network and ample evidence exists to support this contention. Only one of the customers (Golden Messenger) involved has been prepared to take court action against Telecom and this action did not relate to network issues. Telecom would welcome the opportunity to present its case in court but there is not accepted mechanism for it to initiate court proceedings on these matters. Hence Telecom must continue to bear the brunt or negative media activity despite its attempts to resolve these cases.

**Comments**

70

- The decision made by Golden Messenger to accept a settlement and not proceed with legal action was made on the basis that it was not in a position to fund the legal action in the Federal Court. It should be noted that for five years prior to the settlement, that is for the entire duration of the dispute period, Telecom maintained that the Flexitel System was satisfactory whilst internal correspondence from technical and legal staff acknowledged that -
  - the system did not meet Golden Messenger operational requirements
  - Golden Messenger was likely to be successful in establishing that Telecom engaged in misleading and deceptive behaviour.

The above findings do not support Telecom's claim of COT receiving fair treatment.

- Comments offered against the previous extract regarding Telecom's statutory immunity and non-finding of faults as evidence that the network is performing satisfactorily are also applicable to Telecom's claim that COT received fair treatment.
- The statement regarding only one customer being prepared to take court action and this did not relate to network issues does not reflect the problems faced by the COTs in dealing with Telecom's statutory immunity prior to July 1991 or their respective financial difficulties.

It should also be noted that Golden Messenger commenced legal action in June 1990 regarding customer equipment sold and installed by Telecom, and that at that time it was the only course of legal action available to Golden Messenger.

- Telecom testing has revealed problems with the network, and whilst this led to action to overcome the problems found, there is sufficient evidence to suggest that these problems have impacted on the level of service to and business operations of Golden Messenger.
- The comment regarding testing demonstrating the integrity of the network is not seen as balanced. Telecom have found major and minor faults in many components of the overall network and whilst Telecom may choose to deal with these as individual situations, the cumulative and ongoing effect on the customer is one of claimed ongoing unsatisfactory service. This is best summed up by a statement contained within a Network Investigation Report of August 1991 of another COT case ( ) -

Over a period of several weeks, a number of faults were identified in different parts of the network. These faults would not cause major difficulties individually, but compounded to form a complicated sequence of events that



appeared as continuous service difficulty for the customers  
in the area.

71

Allegation (1)

BRIEF

Isn't this more Arrogant + Bullying behaviour?

The original C problems had provided. Th others (1

... settle until the telephone ... ards ... whether ... ent.

For each of

①. Telecom staff to be identified by name - Glossary of names + positions in appendix

Is this all

②. Conclusion at front of allegation - easier to focus on substantiation of case.

Observe AUSTE follow

ation within ... ie above response

Docum

③. Produce documents referred to in argument.

Did A

make settlement?

- AG may ... can this be produced as 'non evidence' - it is clearly only hearsay. She has not produced any evidence to support this - and how could she? - any evidence would be testimonials by people who claimed difficulties were being experienced by ... on TBA records on other Telecom monitoring recording faults. Testimonials may be challengeable - no TBA records available.

**OBSERVATIONS**

On 26 August 1992 the COTs put forward the following two questions to Telecom

73

- Question 1            Is Telecom prepared to restore its telephone services of our foundation members within 28 days from today at no cost to the foundation members?
- Question 2            Is Telecom prepared to resolve the issue of financial compensation for the foundation members within 28 days from today by way of an independent arbitrator?

Telecom responded by suggesting that it appoint an internal project manager to review each case.

The negotiating point for Telecom was Mr D Campbell, Group Managing Director Commercial and Consumer and Mr G Schorer, in his capacity as COT spokesperson, was the negotiating point for COT.

On 11 September 1992 D Campbell was forwarded a technical report from Victoria Region Network Investigation and Fault Management and Diagnostics areas within Telecom. This report was supported by the General Manager, Telecom Commercial Vic/Tas.

This brief two page report drew the following conclusions -

- Various network faults were found which would have influenced the customer's service. All these problems were corrected by 25 October 1988.
- It is evident by the fault reports from the customers since 24 October 1988 that the system and the network are now operating at an acceptable standard.

The Telecom Victoria regional technical staff expressed strong views as to the validity of the continuing faults claimed by the Victoria COTs and maintained that network services were performing satisfactorily. Two key indicators of these views held by regional technical staff were -

- Telecom Minute from General Manager, Telecom Commercial Vic/Tas to Group General Manager, Consumer and Commercial of 28 October 1993 which advised of serious concerns that the technical experts had in conducting further testing, and their view that extensive testing has already been performed and that all indicators other than the customers own comments are that the telephone services are performing satisfactorily.

- Telecom Minute from National Manager, Planning and Development to Managing Director Commercial of 26 November 1992 which advised that (for Golden Messenger) there are no outstanding technical issues with this customer excluding those associated with the installation of his new AT&T PABX.

The record of conversation, prepared by D Campbell, of the meeting of 15 September 1992 between himself and G. Schorer reveals that -

- Regional Telecom people appear convinced that there were no problems beyond normal
- COT customers left no doubt that they viewed the situation quite differently and in some cases found the service totally unsatisfactory
- D Campbell recommended further testing, including the placement of Telecom staff in COT customer premises, to get a more accurate perception of the customer's problems and undertake monitoring to positively identify the extent and type of problems
- G. Schorer was of the view that it was important to fix the problem even if it meant "bypassing the problem" and suggested that Telecom should try unique solutions and indicated that all COT customers should be moved to other exchanges
- G. Schorer stated that if Telecom would put his new number in the next Yellow Pages he would waive any claims to loss of business due to number change and he would not want Telecom to pay for any special advertising other than an RVA on his old number
- D. Campbell reminded G. Schorer that until the cause of the problems was known there was no certainty that service would improve by relocating to another exchange

Telecom appear to have considered the request for relocating to new exchanges and D. Campbell's letter to G Schorer of 16 September 1992 sets out the following three key items as outcomes of their meeting of 15 September 1992 -

- Telecom to move quickly to finalize their understanding of the problems
- COTs to advise of possibility of Telecom providing people to work with COT members in their businesses to obtain first hand exposure to the problems on a continuous basis
- G. Schorer to discuss with (COT) members willingness to consider being reassigned to another exchange - which might

involve a number change in an attempt to quickly improve the quality of service and whilst this in itself does not necessarily mean an improved performance it would be an action different from that undertaken to date. Telecom to assist financially with advertising as well as with recorded voice announcement to old number

COT expressed the view that their service problems were due to two factors -

- network congestion
- the age of the exchanges to which they were connected

Letter of 22 September 1993 from G. Schorer to D. Campbell advises that COT have no objections to further testing, but request immediate connection to AXE exchanges in the same charging zone. Letter also states that COT cannot accept that Telecom need to do further testing to be satisfied that problems have been experienced.

Letter of 23 September 1993 from D. Campbell to G. Schorer incorporated the following statements -

- The key problem is that discussion on possible settlement cannot proceed until the reported faults are positively identified and the performance of your member's services is agreed to be normal
- ..... we cannot move to settlement discussions or arbitration while we are unable to identify faults which are affecting these services. At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards
- the proposed testing regime is also a necessary prelude to the suggestion that your members be moved to different exchanges

The approach stated by D. Campbell in the aforementioned letter was subsequently reaffirmed on the following occasions -

- Telecom letter of 14 October 1992 from D. Campbell to G. Schorer
- Telecom letter of 21 October 1992 from D. Campbell to G. Schorer
- Telecom letter of 6 January 1993 from D. Campbell to G. Schorer which advised that as a suitable process of comprehensive testing was not agreed the offer of arbitration was withdrawn and stated that he did not feel

that further talking would be beneficial, suggested that COT's recourse is further negotiations or the courts.

77

Reaction of COTs to the above approach was that COT members did not accept precondition of testing prior to moving to more modern and different exchange equipment. COTs were prepared to allow Telecom to do as much testing as it needs to in order to try and locate exchange faults, but their business operations should not be jeopardised. These views were contained in the letter of 23 December 1992 from G. Schorer to D. Campbell.

Record of conversation of 13 January 1993 between R. Davey (AUSTEL) and Blount (AOTC) reveals -

- Blount indicated that AOTC wanted to make tests and that the complainants did not want them to do that. As a result of this there was no substantial material upon which AOTC might resolve the difficulties

Davey advised of comments received from Garms and Gillan that their call rates had increased between 300% to 500% since moving to a new exchange

*I was re-emp'd.  
with Garms not  
long after this  
claim!*

No information was available on Telecom files or correspondence received from G. Schorer on the specific makeup of the further testing proposed by D. Campbell.

D. Campbell did not appear to indicate how his proposed testing would differ from previous testing. This is a particularly important issue as Golden Messenger has continued to report a wide range of problems since 1987 and it would appear that existing testing has not resolved the problems. Whilst D Campbell's purpose for the further testing was clearly outlined in his minute of 26 October 1993 to Holmes - "to try and break the deadlock between our Commercial staffs views that there were no problems outside normal network failures and the COT members views that performance was much worse", his proposed methodology was not contained in any documentation or record of discussions. The effectiveness of the proposed testing was questioned by Telecom's own technical experts.

No evidence was found of a structured and co-ordinated approach to demonstrate how this proposed further testing would specifically address the problems claimed by Golden Messenger (and the other COTs). In view of

- the strong views of Telecom regional technical experts that the network was operating satisfactorily
- the absence of any specific methodology to be followed for the proposed further testing thereby creating a situation where these same experts would conduct the same testing procedures that led

them to forming the view that the system was operating satisfactorily

78

it is doubtful that the proposed further testing would identify the causes of claimed faults that have not been able to be identified since 1987.

In his letter of 23 September 1992 Mr Campbell states that

"at this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards"

yet there is no documentation to show that the re-opened investigation into G. Schorer's claim of losing 50 calls per day, had been finalised. It should be noted that on 11 September 1992, one day after receiving a technical report (referred to earlier) the General Manager, Telecom Commercial Vic/Tas advised the authors of the technical report that -

"Mr Graeme Schorer of Golden Messenger is reported to have told a Telecom Representative that he is still losing 50 calls per day and that there was some improvement in May 1992, coincident with a change in dial tone. This is the sort of claim we normally treat seriously. It is the first I heard of it. Could you please re-open your investigation and even instigate some additional testing if necessary".

The General Manager, Telecom Commercial Vic/Tas advised D. Campbell on 14 September 1992 that the investigation was re-opened and that the claimed loss of 50 calls per day had staggered them.

Whilst the Telecom Regional technical experts had reported that there were no outstanding technical problems with Golden Messenger and that the network was performing satisfactorily, Golden Messenger was regularly reporting faults as confirmed by monitoring information provided by Telecom. A summary of reported faults for the period 29 July 1992 to 8 September 1993 is located on the Golden Messenger monitoring file. Internal Telecom documentation reveals that considerable testing has been conducted since November 1989 and that these tests indicated the network was performing satisfactorily. Missing in any of the documentation within the Telecom files is how the testing was structured to address the problems reported, and in particular, the claims that these problems were being caused by network congestion and having a network comprising differing technologies and computer systems. This appears to be the core of the differing views put forward by the Telecom technical experts and the COT customers.

D. Campbell appeared to be willing to consider the request put forward by G. Schorer on 15 September 1992 to move COT customers to different exchanges. In his letter of 16 September 1992 D. Campbell requested G. Schorer to discuss with COT members their willingness to be reassigned to another exchange in an attempt to quickly improve service, and stated that whilst this in itself does not

necessarily mean an improved performance it would be an action different from that undertaken to date.

This willingness to consider a different approach ceased when D. Campbell advised G. Schorer on 23 September 1992 that the proposed testing regime is also a necessary prelude to the suggestion that your members be moved to different exchanges. It should be noted that in the cases of [redacted] and [redacted], each was subsequently moved to another exchange with AXE technology in late November 1992, and that R. Davey advised D. Campbell on 13 January 1993 that both customers claimed to have experienced an increase in calls from from 300% to 500%.

In view of the above information, the validity of the insistence of further testing as a precondition to moving to a new exchanges is questioned.

Information contained within the Performance Report of Selected Exchanges (based on TROB dated from 1 January 1991 to 30 September 1992) revealed the following for the North Melbourne "329" exchange -

- 67.4% calls were effective for the 329 -0 number range
- 39.4% calls were effective for the 329 -7 number range

This indicates that all of the Golden Messenger auxiliary lines are located in high traffic ranges. In view of this information Telecom's reluctance to move Golden Messenger to an AXE exchange, even if only to try a new approach as suggested by G. Schorer, is not understood. Moving Golden Messenger to a more modern exchange would have not only enabled the spread of auxiliary numbers throughout the entire exchange number range to minimise exposure to congestion at the exchange, thereby overcoming one of the major problems with the existing ARE exchange, but also could have relieved congestion on that exchange for other customers.



7.9 For three of the four *COT Cases* for which simultaneous exchange end/customer end monitoring data was successfully obtained (Mr Schorer, Mrs Garms and Mr Dawson at his Maidstone exchange) the results indicated that -

- incoming calls arriving on their lines gave rise to a ringing condition at their premises
- about 98% of these calls were answered
- of those calls that rang unanswered, the majority had a ringing duration of less than 10 seconds, indicating a possibility of either -
  - the caller hanging up before answer
  - calls being artificially released before answer, as a consequence of a network fault.

7.10 The conclusion may be drawn from the above monitoring that while there was a possibility of a network fault, the monitoring indicated a reliable service between the customer's terminating exchange and the customer's premises. That conclusion does not, however, extend to performance of the network delivering calls to the *COT Cases'* exchanges - that is assessed by reference to the test calls undertaken by Telecom and Bell Canada International and canvassed below. The conclusion needs to be further qualified in relation to Mr Schorer's service because the monitoring results show a discrepancy between the number of incoming calls recorded at the exchange and the number of incoming calls recorded at his premises.

7.11 The fourth service for which simultaneous exchange end/customer end monitoring was obtained was that of Mr Wiegmann of Jindabyne. His service utilises a relatively long customer access network path of about 12 km, the line part of which has been conditioned to ensure that it is within acceptable operational criteria.

7.12 While the monitoring of Mr Wiegmann's line revealed that his service was subject to interference from an electric fence which made reconciliation of exchange and customer premises outgoing call records difficult, the records of incoming calls were able to be reconciled. The results suggested that about 12% of his incoming calls rang without being answered and that the majority of these unanswered calls rang for more than 10 seconds. Mr Wiegmann has informed AUSTEL that he has an answering machine which is functional at all times.

GS 454

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

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

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



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*  
Graham Schorer

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

*455*



**WITHOUT PREJUDICE**

**APPENDIX.**

**Point 1.**

➤ It is my understanding that Mr Crofts considers the GOLDEN claim is worth between \$ .6M to \$1.2Million.

Just prior to the 1996 Federal Election, based upon the information I received from Mr Steve Black, Telstra were prepared to settle my claim before the Arbitrator for a figure between \$.75M to \$1.2Million.

My claim before the Arbitrator did not include my claim against Telstra re FOI, ISDN, legal costs, previous Court cost incurred to be taxed, a quantum for injury and loss of health, and Integrated Transport Services.

Using broad brush figures, on the following headings:-

FOI	\$431,000.00
Legal not associated with FOI	60,000.00
Court costs (taxed)	<u>80,000.00</u>
TOTAL	\$571,000.00

➤ In my opinion, the amounts being considered by Mr Peter Crofts are far less than what was alleged to be on offer in 1996.

**Point 2.**

GOLDEN's basic losses \$ 8,333,000.00

When these losses are discounted by 53.85% = \$3.846Million.

**Point 3.**

Loss of jobs (see Schedule)	\$ 5,003,000.00
Loss of Goodwill (see Schedule)	1,198,000.00
Interest Foregoing (see Schedule)	<u>2,132,000.00</u>
Total GOLDEN	\$ 8,333,000.00
Total - Integrated Transport Services	<u>2,777,000.00</u>
TOTAL	\$11,110,000.00

Legal costs (not being FOI)	\$ 60,000.00
FOI	431,000.00
Court costs (\$200,000.00 taxed)	80,000.00
G Schorer - injury, loss of health, etc.	<u>1,000,000.00 plus</u>
GRAND TOTAL	\$12,681,000.00

When the Grand Total is discounted by more than 69.66% = \$3.846Million.

455

- 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.

455

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

G5 456

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.

456

Our Ref: 3825.doc

10 June, 1998

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

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.

*Then copy*  
*Received*  
*19/6/98*



TELEPHONE (03) 9287 7099

FAX (03) 9287 7001

493-496 QUEENSBERRY STREET  
NORTH MELBOURNE VICTORIA 3051  
PO. BOX 313 NORTH MELBOURNE 3051



Mr Davey—I have got the general manager of the consumer affairs branch and one of his people, John MacMahon and Bruce Matthews are working almost full time on this.

Senator BOSWELL—What about all these other people that are coming in?

Mr Davey—The other complainants?

Senator BOSWELL—Yes.

Mr Davey—What we are trying to do is reasonably well set out in the directions we have given Telecom. We are trying to analyse the documentation that Telecom is being asked to produce in that direction. If I could take you to that direction, it is the letter dated 12 August—

Senator BOSWELL—We have got that—we are multiplying paper here.

Mr Davey—It is the letter of 12 August to Homes. If you go over to page 3, paragraph 14, we have asked for a series of documents to be produced by Telecom and we will be pursuing those documents in any areas that might lead out of there. One of the allegations that has been made and made by a number of people in this series of cases is that Telecom tells them, 'You are the only one in the district that has this complaint, you are unique—'

Senator BOSWELL—That has been told to me by at least eight or nine people, that Telecom seems to have a standard reply: you are the only one, you are unique; you do not know how to use the phone; it is your commander system and you need a new system. It seems just to go on as though they have been given a sales memo to recite.

Senator ALSTON—Are you able to identify whether that is the case?

Mr Davey—This documentation we have sought should give us hard information to determine that issue. What we are looking for is the hard information upon which we can prepare a report which we will publish, to the extent that privacy and commercial-in-confidence issues allow, and people can test that. Telecom will be given the opportunity to comment on that report before it is put into the public arena. People who are affected by

that report will be given the opportunity to comment.

Senator ALSTON—What ultimate sanctions are there for either unethical practice or, as you said in that earlier letter, misleading and deceptive conduct?

Mr Davey—That raises a very interesting question. In terms of the Austel powers to investigate either anti-competitive practices or consumer protection issues, the way the act is structured we are given the investigation power and it is made very clear in the course of that that we refer appropriate matters to the Trade Practices Commission or to the ombudsman, depending on which way it is appropriate. We have certain powers of direction; we have sought advice on our powers of direction.

I do not have a copy of the legal advice that we have received on it, but there are certain courses open. If misleading and deceptive conduct as distinct from sheer incompetence is shown, then we may be able to move down some tracks. We cannot order Telecom to pay a certain amount of compensation, or we would be usurping the power of the courts. But we have received advice to the effect that we can direct them to engage in an assessment process. At the end of the day, as I said, I do not want to prejudge the outcome of any findings that we might make. All I am outlining is a possible course of action.

Senator ALSTON—But take that case where the regional manager says that under the act they are not liable which, on the face of it, would seem to be clearly untrue. Is that something that could lead to a prosecution of Telecom?

Mr Davey—I am not sure on what grounds in a prosecution it is a misleading or deceptive conduct. I do not see how it would fit under the criminal provisions of the Trade Practices Act. The letter is written without prejudice to any action that might be taken. It is put in now as, 'Put your hand up. Stop doing that sort of thing'. Then, before I decided, I would want to hear Telecom's side of the story. That is only one side of the story.

Senator ALSTON—Indeed, and obviously you cannot make the next decisions. But what options do you have? Can you refer it to the TPC, and are they able to take action?

Mr Davey—I have had a preliminary discussion with the TPC about the matter. That has only been a oral discussion. Again, when we get Telecom's side of the story, we may—

Senator ALSTON—Let us be theoretical for a moment. Just take a situation where an untrue statement is made by Telecom to a customer. Is that then able to be dealt with by way of prosecution or not?

Mr Davey—Possibly a prosecution under the Trade Practices Act. But it would have to fit one of the categories of the conduct that is prohibited under the Trade Practices Act. In terms of the Telecommunications Act which Austel administers, it probably is not able to be prosecuted, unless it is deemed to be in some way a breach of one of the licence conditions.

Senator BOSWELL—Mr Davey, did you refer Mrs Garm's case to the Trade Practices Commission, or did she take it there herself?

Mr Davey—My recollection is that she approached the Trade Practices Commission herself. The COT cases approached the Trade Practices Commission in a group and my recollection is that the chairman indicated to them that he would probably be unable to help their particular case; he saw it not so much as misleading and deceptive conduct but more maladministration or incompetence.

Senator Collins—In view of information that has been provided already by Mr Davey and the fact that I will ask Mr Beddall to take this matter up directly with the chairman of the board tomorrow, I wonder if we can take it much further tonight.

Senator ALSTON—Can I just deal with another matter. When does Mr Tuckwell take up his duty?

Mr Hutchinson—Sorry, I was just checking. The fact is that Mr Tuckwell's appointment has in fact been made and therefore we can discuss the matter. Mr Tuckwell will take up his appointment on 8 November.

Senator ALSTON—How long will that be since Mr Arena left?

Mr Hutchinson—February 5.

Senator ALSTON—And when does Ms Plante leave?

Mr Davey—24 September.

Senator ALSTON—And is Mr Horton already designated as an acting member to replace her?

Mr Davey—If your concern is the loans, I do have associate members that I can call on to tide us over in the interim.

Senator ALSTON—Minister, can you provide—

Senator Collins—I can. The matter is in fact being progressed now, but it has not actually gone to the Governor-General. It is in the process of doing so.

Senator ALSTON—A replacement for Ms Plante?

Senator Collins—Yes.

Senator ALSTON—A full-time replacement?

Senator Collins—Yes that is correct. I was just checking whether it actually had been signed off. It has not yet been.

Senator ALSTON—Can you provide any satisfactory explanation for that six-month gap? Surely, it is an unsatisfactory situation. As I recall Mr Beddall's ATUG speech in May, he said it would be an act of the highest priority, so it is going to be six months after that date before the actual replacement becomes a reality.

Senator Collins—That is true. It is just hard to find good help these days.

Senator ALSTON—Are you not offering enough? I understand your situation.

Senator Collins—No, that is the reason. I have to say that it is often a difficult problem, not just with respect to this appointment but in many others, to actually find the people that you are really looking in terms of their skills for these positions. I think that that is literally the case here.

Senator ALSTON—But you are just telling me that, within a matter of days of Ms Plante's foreshadowed departure, you are off



to the Governor-General to replace her and yet it takes six months or more to replace Mr Arena.

**Senator Collins**—Just before Mr Hutchinson responds to that, I just want to say that that is not unusual in terms of the sort of different mix of skills that you are looking for. I must also say that quite often what happens in my experience in this portfolio is that you approach a large number of people and find that, because of other obligations, they are not available.

Just in passing, I noted a senior executive from one of our major companies on the ABC the other day making this point, and it certainly has been my experience in the case of women particularly, I guess because of the lower numbers involved, that it is particularly difficult because the ones that are of obvious note and skills get so many requests. I actually heard this fellow say the other day that a lot of the senior corporate women executives are approached on an average of once a week to fill directorships and so on on boards. The reason I am saying that is that quite often you can fill one particular appointment very quickly, because the first person that you go to says, 'Yes, I can do that', and in other cases on other boards it can take months, because you approach a whole series of people and they then have to think about it eventually come back to you and say, 'No, I cannot do it because I have got too much on my plate at the moment'.

**Mr Hutchinson**—In the case of Mr Tuckwell's appointment to Austel, I would not want the conversation in any way to be interpreted as that somehow being a last resort. As the minister has effectively said, good people are very difficult to find and sometimes you have to wait until they are available. Neil Tuckwell has a contract with Clear Communications and it was a condition that he imposed on accepting the position that he would fulfil his contractual obligations to Clear. Given that he had the attributes that the minister was seeking for this appointment, the government decided to wait to make the appointment until Neil Tuckwell was available, and that is why it is taking so long for him to take up duty.

**Senator BOSWELL**—Mr Davey, would you agree with the previous officer that was at the table when he said that the payments made to the COT cases were goodwill, or would you say they were compensation?

**Mr Davey**—My understanding of them was that they were paid by way of compensation. I have seen a cheque butt or a cheque slip that so described the payment, as a compensation or out of a compensation account.

**Senator BOSWELL**—So you disagree with the previous gentleman. How long have the COT cases been going on?

**Mr Davey**—They first came to Austel's attention, as is set out in the letter dated 12 August, in August last year. At that time we were trying to facilitate those settlements that have been referred to. Some of them took place sooner and some took longer. What has happened since those settlements is that the faults have continued, or they are said to continue, and that is possibly one of the more disturbing aspects of the thing, that the payments have been made but the faults continue.

**Senator ALSTON**—And in some instances payments were made on the basis that there would not be any future problem.

**Mr Davey**—Austel has not been privy to the actual terms of settlement, but that is what has been conveyed to me.

**Senator BOSWELL**—Does Austel, in your view, have any power to resolve the difficulties? Are you happy with the power that you have under the legislation, or do you feel frustrated that you are not able to accommodate these people?

**Mr Davey**—Depending on what the findings are, I think we can see a way forward. We do not have the power to order a monetary sum settlement and I think you would understand that, as I said before, that would be usurping the power of the courts.

**Senator Collins**—The only people that really can fix it, Senator, and I am sure you agree, at the end of the day are Telecom.

**Senator BOSWELL**—Yes, I know that in a perfect world that would be the way it would happen, but we do not live in a perfect world and any small business that wants to

take the might of Telecom on is not going to stay the distance very long. There has been one that tried and it cost him a lot of money. They just wait you out. So we do not live in a perfect world. We have not got the choice of taking our telephone business to another provider of service; Telecom is the only one that provides a domestic service. So what I am suggesting to you, Mr Davey, if you have not got the power to act as the watchman and provide some justice, is that perhaps you ought to make an appointment to see Senator Collins and point out to him that you need to have an adequate act to provide the—

**Senator Collins**—I do not think that is correct at all, Senator, as Mr Davey's letter makes very explicitly clear in terms of remedies that are available.

**Senator BOSWELL**—If Mr Davey cannot give a payment commensurate with the loss, and the only alternative is to go to the court to get that payment, then justice is not going to be—

**Senator Collins**—With the greatest respect, I disagree. That is the situation at the end of the day that we are in in most situations. At the end of the day the courts—

**Senator BOSWELL**—No, that is nonsense. If I do not want to deal—

**Senator Collins**—I mean in terms of getting money. Mr Davey can answer the question, but just as a general proposition—

**Senator BOSWELL**—I can tell you where your proposition falls down. If I go to a provider of a service and he does not give an adequate service, I can then leave him and go somewhere else. But in the case of Telecom I am stuck; I cannot get any other service.

**Senator Collins**—Mr Davey can certainly answer. I was responding to your particular concern that you raised a minute ago about getting legal redress. I just pointed out that the change that was made to the act in 1991 in that respect was very deliberately done, and it is referred to in the Austel letter.

**Mr Davey**—We have legal advice which I am quite prepared to make available to you, Senator—I apologise that I have not got a copy with me at the moment—to the effect that, if we were to find misleading and decep-

tive conduct, as distinct from sheer incompetence, then we could direct Telecom to engage in an assessment process to assess the quantum. Having assessed the quantum, we do not have the power to enforce the quantum, but I am sure that at that point that would not be necessary. I think there would be such a moral persuasion at that point—

**Senator ALSTON**—It might be aided if you actually make public your finding in the first instance.

**Mr Davey**—As I indicated before, we intend to make public, after having given the relevant people the opportunity to be heard—

**Senator Collins**—Madam Chair, I know the hour is late but in fact Mr Davey has provided all that information previously.

**Mr Hutchinson**—Senator, can I perhaps add to that answer by drawing attention to sections 121 and 122 of the Telecommunications Act. Section 122 provides for there to be a limit on the amount of damages that a telecommunications customer can seek from the telecommunications company. That limit is imposed by a determination made by Austel. Austel has in fact made no such determination. Therefore, by not making such a determination, Austel has provided scope for people with cause of action against Telecom to use their rights under the act to sue. I am no lawyer but the word here seems to be tort. So there is a link there between Austel's powers and the amount that is recoverable in an action.

**Senator BOSWELL**—If you were BHP or one of the big companies, you may be able to afford to take that response in court. But what we are talking about here is small business that unfortunately in real terms cannot do that.

**Senator Collins**—If he was BHP he would not be here.

**Senator BOSWELL**—No, if he was BHP, he would not be here. Do you believe that the cash payments made to the COT case members realistically reflect the business losses, assuming at the moment that these losses were as a result of an adequate phone service?

**Mr Davey**—I personally do not have knowledge of the amounts paid to the COT victims. I know of one amount. It has been

resolution by mediation or negotiation. In several cases settlements had already occurred in the past with some of the CoT claimants, but had not achieved finality. The second benefit was the confidentiality of the process as opposed to, for instance, litigation in open court. The experience has shown that not all of these benefits have emerged or materialised.

In my view, there was one potential difficulty that should have been obvious from the outset. I do not make any apology for coming along to this committee and saying that outright, because it should have been obvious, in my view, to the parties and everyone involved from the beginning. This deficiency revolves around the vexed question of how the claimants were to obtain, and the best method of obtaining, documents from Telstra which were to assist them in the process. In the process leading up to the development of the arbitration procedures—and I was not a party to that, but I know enough about it to be able to say this—the claimants were told clearly that documents were to be made available to them under the FOI Act. The Commonwealth Ombudsman has already reported on the problems encountered by the claimants in that process, and I do not propose to reiterate her findings.

**Senator SCHACHT**—Do you disagree with her findings?

**Mr Pinnock**—No. For present purposes, though, it is enough to say that the process was always going to be problematic, chiefly for three reasons. Firstly, and perhaps most significantly, the arbitrator had no control over that process, because it was a process conducted entirely outside the ambit of the arbitration procedures. Secondly, in providing documents Telstra was entitled to rely on whatever exemptions it might be entitled to under the FOI Act, and this often resulted in claimants receiving documents, the flow of which made them very difficult to understand. In some cases, there were obviously excisions of information. In contrast to this, the claimants could have sought access to documents on a regular basis under the arbitration procedures. Provided that those documents were relevant, the arbitrator could have directed Telstra to produce those documents without any deletions. If there was any argument as to the relevance of documents, the arbitrator would have had the power to require their production and inspection by him to make that determination in the first place. Thirdly, we know that the FOI process as administered was extremely slow, and this contributed to much, but certainly not all, of the delay which the claimants encountered in prosecuting their claims through the arbitration procedures.

With the benefit of hindsight, I will turn now to the lessons that are learnt from experience of the process. Firstly, arbitration is inherently a legalistic or quasi-legalistic procedure. It does not really matter how you might finetune any particular arbitration. It has the normal attributes of a quasi-legal procedure, where you have parties opposing each other with someone in the middle having to make a determination. Even having said that, I am on record as saying that Telstra's approach to the arbitrations was clearly one which was excessively legalistic. For instance, in many instances it made voluminous requests for

IN THE MATTER OF

AN ARBITRATION

B E T W E E N :

GRAHAM JOHN SCHORER AND OTHERS

Claimants

- and -

TELSTRA CORPORATION LIMITED  
( "Telecom Australia" )

Respondent

STATEMENT OF CLAIM

1. The names of the Claimants are set out in Schedule "A" hereto. The corporate Claimants are and at all material times have been companies incorporated under the laws of the State of Victoria.
2. The Respondent is a party to the Fast Track Arbitration Procedure dated 21st April, 1994 and is and was at all material times -
  - (a) a corporation duly incorporated pursuant to the laws of Australia;
  - (b) dealing in the supply and delivery of telephone services;
  - (c) dealing in the supply and delivery of telephone landline services.
3. The Claimants commenced operations in the business of "on demand" courier and light truck services to the Melbourne metropolitan and surrounding districts on 1st February, 1973 trading as Golden Messenger.
4. Between 1st February, 1973 and mid-1976 the Claimants

458

operated the business out of premises located at 31 Cobden Street, North Melbourne in the State of Victoria. Between mid-1976 and March, 1978 the Claimants operated the business out of premises located at 4 Templestowe Road, Bulleen in the said State. In or about March, 1978 the Claimants commenced to operate the business out of premises located at 493-495 Queensberry Street, North Melbourne in the said State.

5. Since in or about March, 1986 GM (Melbourne) Holdings Pty. Ltd. has carried on the business from 493-495 Queensberry Street, North Melbourne by conducting, on a commission basis, a telephone answering service for a group of independent couriers and also operating a two-way radio service to relate orders taken by it from persons seeking to have courier work done. It uses the business names "Golden Messenger" and "Go Golden". GM (North Melbourne) Holdings Pty. Ltd. owns the business names "Golden Messenger" and "Go Golden" and has licensed their use by GM (Melbourne) Holdings Pty. Ltd. Since in or about March, 1986 its principal business has been that of facilitating payments to couriers by factoring the debts due to them for courier work done by them obtained by them through the services provided by GM (Melbourne) Holdings Pty. Ltd. GM (North Melbourne) Holdings Pty. Ltd. has earned income from such factoring.
6. The other Claimants derive income and benefits from GM (Melbourne) Holdings Pty. Ltd. and GM (North Melbourne) Holdings Pty. Ltd.
7. Between mid-1976 and mid-1977 the Claimants experienced

extensive telephone service difficulties, problems and faults including, but not limited to

- (a) makers of incoming calls receiving false busy signals which Claimants' lines were free;
- (b) makers of incoming calls receiving ring tone with no registration of the calls on equipment at the Claimants' premises;
- (c) disconnection of landlines by service provider Telecom Australia at different exchanges between Bulleen and Malvern Town Hall and between Bulleen and Heidelberg.

8. In mid-1977 the Claimants sought from Telecom Australia a permanent solution to these problems which were causing business interruption, disruption and loss. Telecom provided advice to the Claimants to the effect that the only permanent solution to these problems was for the Claimants to relocate in a different geographical location in order to connect to a major commercial exchange.

9. In reliance upon the advice referred to in paragraph 8 above, the Claimants relocated at 493-495 Queensberry Street, North Melbourne in order to connect to the North Melbourne telephone exchange which Telecom Australia advised was a major commercial exchange through which a satisfactory service would be obtained and one which would provide safety from disruption to the Claimants' business due to the service difficulties, problems and faults previously experienced by the Claimants. Upon relocation to the new premises advice was sought by the Claimants from Telecom Australia and given by it

about a telephone system and equipment to be utilised in the operation of the business. Such advice was accepted in good faith by the Claimants and Telecom Australia was contracted to instal and provide rental service of the Telecom Multi-phone Key System from March, 1978.

10. At all times the Multi-phone Key System was maintained and serviced by Telecom Australia.
11. The Claimants' premises are connected by telephone landlines to remotely located two-way radio based station equipment which transmits to two-way radios in the carrier's vehicles.
12. Between 1980 and 1992 the Claimants experienced extensive telephone landline problems including, but not limited to, loss of communications to and from the Claimants' premises and the carrier's vehicles.
13. In 1981 to 1982 the Claimants experienced extensive telephone service difficulties, problems and faults. Telecom recognised two such difficulties, problems and faults and gave misleading and deceptive advice to the Claimants, causing the Claimants to increase the number of lines and rent additional Multi-phone Key System telephones servicing the business operations. The Claimants accepted the advice in good faith on the belief that such increase would eliminate the telephone service difficulties, problems and faults.
14. In mid-1985 the Claimants experienced further telephone service difficulties, problems and faults including, but not limited to -
  - (i) makers of incoming calls receiving false busy

- signals when the Claimants' lines were free;
- (ii) makers of incoming calls receiving ring tone with no registration of the calls on equipment at Claimants' premises;
  - (iii) incoming calls disconnecting on answer;
  - (iv) incoming calls disconnecting during conversation.
15. In mid-1986 the 1985 faults grew in intensity with the addition of makers of incoming calls receiving recorded voice announcements.
16. In January and February, 1987 the Claimants sought and received advice from Telecom Australia in good faith which subsequently led to the Claimants agreeing to purchase from Telecom Australia new telephone equipment, namely a Flexitel Key System. The installation of this equipment was performed by Telecom Australia at the Claimants' business premises on or about 18th July, 1987. At all material times this system was maintained and serviced by Telecom Australia.
17. In or about April, 1988 Telecom Australia retrieved most of the telephone system described in paragraph 16 above and installed new, different and highly modified components of the Flexitel System in order to eliminate the claimants' telephone service difficulties, problems and faults.
18. Telecom Australia had recommended to the Claimants that they connect to the Telecom ISDN network to circumvent the telephone service difficulties,

problems and faults associated with the Telecom PSTN network. Telecom Australia offered a no cost inducement to the Claimants to do so. That offer was for Telecom to provide automatic diversion of incoming calls to the Claimants ISDN numbers to the Claimants PSTN numbers in the event of the Claimants local ISDN exchange or line bearer experiencing failure, when the Claimants PSTN numbers were connected to a local AXE exchange. Claimants accepted the inducement from Telecom Australia in good faith about the connection of the ISDN network to the Claimant's business premises. This advice was accepted because of the continuous telephone service difficulties, problems and faults with the Telecom PSTN network.

19. During September/October, 1992 the Claimants purchased from Honeywell Australia and had installed at their business premises an AT&T Definity Computerised Telephone and Call Centre Management System for the purpose of allowing the Claimants to be connected to the Telecom Australia ISDN Network. In that period, Telecom Australia denied the inducement given to the Claimants and refused to provide the promised no cost automatic incoming call diversion in the event of the Claimants local ISDN exchange or line bearer failure.



20. In December, 1993 the Claimants' business was connected to Telecom Australia ISDN Network by Telecom Australia after its Senior Management again agreed in October/November 1993 to provide the promised no cost automated incoming-call diversion from the Claimants ISDN numbers to their new to be supplied PSTN numbers connected to the local AXE exchange. Telecom Australia failed to provide the promised automated income call diversion, and service difficulties, problems and faults previously experienced on the PSTN network continued as before on both the PSTN and the ISDN incoming calls.

21. The Claimants at all material times -

- (i) made known to Telecom Australia that the operation of their business depended upon the telephone service and relied totally upon the successful receipt of incoming calls to maintain their business;
- (ii) made known to Telecom Australia that the operation of their business depended upon telephone landlines for communications to and from the Claimants' premises and the carriers' vehicles;
- (iii) accepted in good faith the ability of Telecom Australia to provide and deliver the telephone service including landlines stated and guaranteed.

22. Telecom Australia was at all material times -

- (i) the sole provider of telephone services including

- landlines to the Claimants' business operations;
- (ii) an organisation charged with the responsibility by legislative charter to provide telephone services for Australia;
  - (iii) an organisation that held itself out as having the skill, judgment, capacity, expertise and ability to advise, instal, connect, maintain, operate and supply an efficient and reliable telephone service including landlines fit for customer requirement;
  - (iv) an organisation that by itself, its servants and agents was solely responsible for maintaining and supplying the telephone service, including landlines, to the Claimants' business operations;
  - (v) an organisation that by itself, its servants and agents operated and maintained the equipment in the North Melbourne telephone exchanges and Bulleen telephone exchange;
  - (vi) an organisation that by itself, its servants and agents was responsible for the operation and maintenance of its own telephone network system including, but not limited to, the customer access network commonly known as "the CAN".
23. Telecom Australia, prior to 1st July, 1989, was in control of and responsible for determining all the specifications, standards and performance criteria of all equipment within and/or connected to its own telephone network system.
24. At all material times Telecom Australia was under a

duty -

- (i) pursuant to an express or implied obligation, undertaking and guarantee arising under contract;
- (ii) pursuant to statute;
- (iii) pursuant to a general duty at law
  - (a) to advise and inform the Claimants, if for any reason, it would be unable to provide a telephone service including landlines to meet ~~the~~ expressed or reasonable needs of the Claimants' business operations;
  - (b) to provide, supply and maintain an efficient and reliable telephone service including landlines to meet the expressed and reasonable needs of the Claimants' business operations;
  - (c) to investigate and rectify the telephone service difficulties, problems and faults in the Claimants' telephone service including landlines.

25. In breach of its duty Telecom Australia -

- (i) failed to inform the Claimants at any time that it was unable to provide a telephone service that would reasonably, efficiently and reliably service the needs of the Claimants' business operations when it well knew or ought to have known because of information supplied by the Claimants ~~and~~ the occurrence of technical or other difficulties that it was unable to do so;
- (ii) failed to provide a telephone service that met the expressed and reasonable needs of the Claimants' business operations, particulars of which are

as follows -

- (a) on numerous occasions the telephone service signalled that all lines were engaged when they were not, a condition known as "false busy signal when not";
- (b) on numerous occasions the telephone service was practically inaccessible to outside and incoming calls due to the condition known as NRR;
- (c) on numerous occasions incoming calls "dropped out" on answer and were irrecoverable;
- (d) on numerous occasions incoming calls "dropped out" during conversation and at times were irrecoverable;
- (e) on numerous occasions the telephone rang but it was not possible to locate and accept any incoming call, a condition known as "short ring";
- (f) on numerous occasions incoming calls placed on hold could not be recovered;
- (g) on numerous occasions incoming calls could not be transferred from one extension to another available extension or were lost during transfer;
- (h) on numerous occasions persons attempting to telephone were informed by Telecom that the Claimants' telephone service was not connected or had been temporarily disconnected due to non-payment of account;
- (i) on numerous occasions callers to the telephone

- service would receive a short burst of ring tone, then silence, then engaged signal;
- (j) on numerous occasions incoming calls were answered and then suddenly cut off and the line was overtaken with a loud screeching sound followed by an engaged signal, resulting in calls being irrecoverable;
  - (k) on numerous occasions incoming calls were answered and then suddenly the line was overtaken with a loud screeching sound followed by normal conversation or client call termination due to noise;
  - (l) on numerous occasions incoming calls received ~~silence on~~ completion of dialling;
  - (iii) failed to provide an efficient and reliable technical system;
  - (iv) failed to undertake investigations, monitoring and testing that would have had the potential to identify telephone service difficulties, problems and faults including levels of difficulties, problems and faults;
  - (v) failed to undertake investigations, monitoring and testing to identify the nature of telephone service difficulties, problems and faults;
  - (vi) failed to rectify the problem in any way or in any way that adequately provided an efficient, proficient and reliable service when Telecom Australia had stated they had the technical ability to do so;
  - (vii) advised, recommended, placed and allowed to remain

- in place equipment and systems that were inadequate and insufficient to perform the task of providing the service;
- (viii) misled the Claimants through denials, statements and deceptive statements concerning telephone service difficulties, problems and faults;
- (ix) failed to provide or put in place investigation procedures that could have established, recognised, identified and rectified the telephone service difficulties, problems and faults which resulted in a complete failure to be able to establish, recognise, identify and subsequently rectify the telephone service difficulties, problems and faults;
- (x) failed to provide and knowingly withheld information from the Claimants and thereby prevented and wrongfully denied to the Claimants all information needed by them to take the required remedial action upon receipt of it;
- (xi) failed to provide and knowingly withheld information after receiving legal advice from two separate sources that Telecom Australia should not and could not by law withhold information from the Claimants thereby preventing and wrongfully denying to the Claimants the opportunity of taking remedial action which they would have done if such information had not been withheld;
- (xii) wrongfully without authority listened to and taped numerous telephone conversations between the Claimants and various others without the

Claimants' knowledge or consent.

PARTICULARS

The Claimants require discovery and inspection of documents in order to provide particulars of the matters referred to in the above paragraph. It is necessary for the Claimants to have such discovery and inspection in order to enable experts consulted by the Claimants to prepare reports to be submitted to the Arbitrator. Experts consulted by the Claimants have been unable to date to prepare reports for the purposes of this Arbitration owing to the refusal and failure of the Respondent to make disclosure of most relevant documents and information sought by the Claimants. Directions for such discovery and inspection of documents will be sought by the Claimants.

26. The Claimants by themselves, their servants and agents consistently brought to Telecom's attention the types and nature of the telephone service difficulties, problems and faults.
27. The Claimants by themselves, their servants and agents at all material times manned and operated the business operations telephone system in a correct and proper manner and the Claimants were not in any way responsible for the telephone service difficulties, problems and faults.
28. The Claimants entered into agreements with Telecom Australia having been induced by Telecom Australia's representations

and warranties and having relied upon the truth of them.

29. The making of the representations as aforesaid by Telecom Australia constituted conduct in trade or commerce which was -

(a) misleading and deceptive or likely to mislead or deceive in contravention of Section 52(1) of the Trade Practices Act 1974 and Section 11 of the Fair Trading Act 1985; and

(b) in contravention of Sections 53(a) and (c) of the Trade Practices Act 1974 and Sections 12(a), (d) and (i) of the Fair Trading Act 1985.

30. Further or in the alternative, Telecom Australia made the aforesaid representations negligently in -

(a) failing to exercise proper care in ascertaining whether the representations were true;

(b) failing to exercise proper care in ascertaining whether facts existed which would have made the representations true; and

(c) failing to examine properly the facts on which the representations were based.

31. The Claimants have suffered loss and damage and continue to suffer loss and damage as a consequence of the said breach of duty including failure to remedy by Telecom Australia.

32. The losses are, but not limited to -

Loss of income telephone calls and

(i) Loss of jobs from clients;

(ii) Loss of Claimants' clients;



- (iii) Loss of Claimants' professionally experienced carriers;
- (iv) Loss of Claimants' operating margin;
- (v) Loss of Claimants' ability to service clients;
- (vi) Loss of Claimants' market strength and market share;
- (vii) Loss of Claimants' professionally experienced operational staff;
- (viii) Loss of Claimants' ability to afford, purchase and instal new industry technology;
- (ix) Loss of Claimants' ability to purchase and relocate to new upgraded premises which would support a distribution centre;
- (x) Loss of Claimants' financial resources;
- (xi) Loss of Claimants' staff resources;
- (xii) Loss of Claimants' goodwill;
- (xiii) Losses and ongoing losses of increased liability to Telecom;
- (xiv) Loss caused by additional costs incurred in preparation of submissions, reports, compiling data of facts, statistics, actual figures and computations thereof for substantiating losses and future losses to enable the Claimants' correct participation and compliance with the Fast Track Arbitration Procedure that includes the Fast Track Settlement Proposal;
- (xv) Loss of interest on Claimants' loss;
- (xvi) Loss of Claimants' lost capital investment opportunity; and loss of business opportunity generally.

(xvii) Loss of health of the firstnamed Claimant.

33. The pecuniary loss sustained by GM (Melbourne) Holdings Pty. Ltd. has been calculated as set out on the first sheet of Schedule B hereto. The way in which such loss has been calculated and arrived at is set out on the following sheets.

34. The pecuniary loss sustained by GM (North Melbourne) Holdings Pty. Ltd. arises from its loss of income from factoring transactions of which it has been deprived as a result of the business lost by GM (Melbourne) Holdings Pty. Ltd. and the couriers. A calculation of this loss and the manner in which it is arrived at is in the course of preparation.

DATED the

30<sup>th</sup>

day of

September

1996.



for and on behalf of  
all claimants

458