MATTERS OF PUBLIC INTEREST
Telstra

Senator BOSWELL (Queensland--Leader of the National Party of Australia) (1.08 p.m.)--At the moment there are customers of Telstra who, for many years, have also been casualties of Telstra. For years they have experienced problems with dead lines, lines dropping out, busy signals when it was not busy and many more. They complained, even to the point of not paying their bills and having their phones cut off, which they desperately needed for their business, all in a desperate plea to Telecom to fix their lines.

In one member's case, there was acknowledgment of lines being physically removed, with Telecom officers stating that there was a prima facie case existing for conviction if the offender could be found. These were all once successful business people, with the type of business that relied on a telephone service fit for their purpose: a service they did not receive. Eleven years after their first complaints to Telstra, where are they now? They are acknowledged as the motivators of Telecom's customer complaints reforms. As a direct result, a telecommunications industry ombudsman has been set up and a complaints resolution process established. But, as individuals, they have been beaten both emotionally and financially through an 11-year battle with Telstra. Now their bankers have lost patience with their lengthy dispute settlement and they are going down fast.

Following an investigation of the initial settlement, accepted under duress, Austel, the industry watchdog, came out with a highly critical report of Telecom and the settlement was re-opened. The Austel report concluded that Telecom was less than a model corporate citizen--damning words for our nation's monopoly telecommunications provider which, at that stage, was entering a new period of competition. It recognised Telecom's failure to undertake preventative rather than corrective maintenance on its older analog equipment, some dating back 30 years, as a significant cause of persistent, intermittent faults and that Telecom had clearly put supply side efficiencies ahead of customer concerns.

There is the admission by Telecom to Austel:

> It is of little or no bearing on the case that some of the testing has been purged from the system because we do not require these records to be convinced that this customer has serious concerns with her telephone service.

Backing up the Austel inquiry were critical reports by Coopers and Lybrand, describing Telecom complaints handling as not meeting the minimum requirements of 'adequacy, reasonableness and fairness', and a technical review by Bell (Canada) of Telecom's testing and fault-finding techniques for network faults. Then followed the Federal Police investigation into Telecom's monitoring of COT case services. The Federal Police also found there was a prima facie case to institute proceedings against Telecom but the DPP, in a terse advice, recommended against proceeding.

To this day the parties of the parliament have been denied any access to the Federal Police inquiry or advice from the DPP on the matter--despite persistent demands not only from the coalition but from the Democrats--or matters of the DPP wrongly advising the Federal Police that Telecom was protected by the shield of the Crown and that they could not execute a search warrant against Telecom in their investigations of alleged phone monitoring and tapping.

Once again, the only relief COT members received was to become the catalyst for Telecom to introduce a revised privacy and protection policy. Despite the strong evidence against Telecom, they still received no justice at all. Meanwhile, COT members were still experiencing poor telephone services, their businesses were continuing to suffer and they had been forced to enter the exhausting and expensive process of involvement in all these major inquiries into Telecom.

A Senate inquiry began to be mentioned by senators on this side and the Democrats. In late 1993, Senator Alston and I, at a meeting in Senator Alston's Parliament House offices, were given an assurance by senior Telecom officers that a Senate inquiry would not be necessary--that a fast track, non-legalistic process could be set up, that it would facilitate

FOI access to Telecom's documents and that it would be all over by April 1994. That process was to be overseen by the Telecommunications Industry Ombudsman. FOI documents from Telecom show that Telecom certainly did not want a Senate inquiry when they refer to:

> . . . walking away, but I do not believe this option would suit Telecom's wider strategy in that it would appear to lead directly to a Senate inquiry.
>
> My course therefore is to force Gordon Hughes--

the arbitrator--

> to rule on our preferred rules of arbitration.

A fast track settlement proposal was signed by the four COT members in November 1993 and the fast track arbitration procedure on 24 April 1994, involving a confidentiality clause forbidding COT members any further public comment on Telecom. Even during this period of negotiations on the arbitration rules, FOI was being held up by Telecom. One Commonwealth Ombudsman's report on delays in FOI information condemns Telecom's denial of documents in the following words:

> It was unreasonable for Telecom to require the participants to make further assurances while Telecom was considering the arbitration agreement and thereby denying participants the opportunity to consider the rules that Telecom wished to have included in the agreement.

I ask the Minister representing the Minister for Communications and the Arts (Senator McMullan): is this fair play on the part of Telecom? The report goes on:

> There is no provision in the FOI Act which would permit Telecom to impose such conditions on applicants prior to granting access to documents--access under the FOI Act is public access.

These COT members have been forced to go to the Commonwealth Ombudsman to force Telecom to comply with the law. Not only were they being denied all necessary documents to mount their case against Telecom, causing much delay, but they were denied access to documents that could have influenced them when negotiating the arbitration rules, and even in whether to enter arbitration at all.

This is an arbitration process not only far exceeding the four-month period, but one which has become so legalistic that it has forced members to borrow hundreds of thousands just to take part in it. It has become a process far beyond the one represented when they agreed to enter into it, and one which professionals involved in the arbitration agree can never deliver as intended and never give them justice.

Firstly, it was represented to members that it would be fast. It was called a `fast track arbitration process'. There were many documented assurances given to the COT members on timing and a quick resolution. The assurance was given by Telecom to the deputy Liberal Party Senate leader, Senator Alston, and to me, the leader of the National Party in the Senate, late in 1993 that it would be fast track and non-legalistic and would facilitate FOI documents.

There is the letter from Peter Bartlett, special counsel to the TIO, on 25 February 1994 saying:

> The emphasis is on "fast track" resolution of these claims.

It stated also:

> With this in mind the arbitration is likely to commence this week and will be completed at the shortest possible time frame.

There is the detailed timetable from the TIO scheduling the final report after four months. Then there have been the delays caused by Telecom's FOI documents. The Commonwealth Ombudsman has twice reviewed Telecom FOI delays and has been very critical of, in her words, `Telecom's defective administration'.

There have been further delays, referred to by the ombudsman as `unreasonable', because Telecom sent FOI documents to be vetted by their lawyers before release to members, and delays caused by the destruction of documentation--in the case of the Tivoli Restaurant, all Telecom's raw data on testing from 1989 to July 1993. What this has meant is that the COT members, as Telecom has drip-fed their FOI, have had to resubmit their statements to the arbitrator to include the delayed information.

To give an example of the experience of COT member Ann Garms with FOI documents, she applied to Telecom for FOI in December 1993. In February she received approximately 10,000 documents. In April the arbitration procedure was signed; then in May 20,000 more documents turned up. From May to December 10,000 more documents were drip-fed, continuing till June this year--all for a process promised to be completed within four

months.

This is a situation of the might of a monopoly like Telecom, with all the resources behind it--said to add up already to millions of dollars--which has to be countered by four struggling business people. And now, despite assurances of fast track, which bankers and other supporters were reassured was the guiding principle of the arbitration, 18 months later the four suffering COT members are left with only one COT case settled and Telecom has made the non-legalistic arbitration process so legalistic that it has cost one COT member nearly $300,000 to answer Telecom's protracted process.

There have been many scathing reports of Telecom's defective behaviour by Austel, Coopers and Lybrand, the TIO and the Commonwealth Ombudsman. A second Commonwealth Ombudsman report is due out any day--with the first going so far as recommending compensation from Telecom for any costs unnecessarily incurred because of the defective administration by Telecom, which ironically now involves another costly mediation process for the COT members involved. The TIO, in his annual report, described the whole process as:

> . . . clearly the low water mark of effective customer relations, regulatory agency response and questionable direction from past management.

He continues:

> Regrettable reliance on excessive legalism and failure to meet freedom of information requirements in a timely fashion has led in my view to an unnecessary prolongation of a process which was intended to be speedy.

The expense these COT members have been put to, arising from the so-called fast track arbitration process, has seen several go to the wall.

I regard it as a grave matter that a government instrumentality like Telstra can give assurances to Senate leaders that it will fast track a process and then turn it into an expensive legalistic process, making a farce of the promise given to COT members and the inducement to go into arbitration. The process has failed these people and can never give them justice--a point confirmed by professionals deeply involved in the arbitration process itself and by the TIO's annual report, where conclusion is described as `if that is ever achievable'.

The COT members would never have opted for arbitration had they known it would go on so long at a cost of hundreds of thousands of dollars in legal and other expenses. Here are people who Telecom knows are on their knees, and the system becomes so legalistic that, to answer two Telecom requests for further particulars, it requires an additional $45,000. These people have had their lives ruined by the process that has followed from daring to take on Telecom. It does not stop there. Many people have lent COT members funds to see them through the process based on assurances given by Telecom to Senator Alston and I and written assurances from the TIO that disputes would be settled within months, also risking their houses and businesses because of the outrageous delays.

Telecom has treated the Parliament with contempt. No government monopoly should be allowed to trample over the rights of individual Australians, such as has happened here. It brings me no joy to bring this matter before the Senate. I would rather be here praising Telstra, an Australian icon. But they are not bigger than the Australian people and, through them, the parliament. Telecom has been highly criticised by many government watchdogs all through the process, yet sadly, it is the poor struggling Telstra customers who are having to bear the ultimate burden of financial ruin.

Motion (by Senator Sherry)--by leave--agreed to:

> That the sitting of the Senate be suspended till 2.00 p.m.

Sitting suspended from 1.21 to 2.00 p.m.