

**CAV
CHRONOLOGY
LGE**

Exhibit 421 to 469

*David,
Telecom correspondence
re discussed yesterday/this day.
Simon.*

telecom
AUSTRALIA

23 February 1994

COMMERCIAL AND CONSUMER
CUSTOMER AFFAIRS

37/242 EXHIBITION STREET
MELBOURNE
VICTORIA 3000
Australia

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

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

Dear Mr Hughes

"Fast Track" Arbitration Procedure

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

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

Clause 6

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

Clause 8

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

000168

421

Telstra Corporation Limited
ACN 051 775 356

Clauses 16 and 17

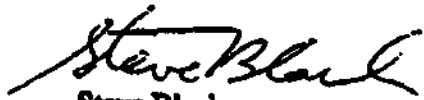
I note that the objection to Clause 16 has been withdrawn and no side agreement with Mr Bartlett or the arbitrator is proposed. Confidentiality is an essential requirement of the arbitrations. In order to ensure confidentiality is maintained, Telecom requires the following amendments to be made:

- (a) The words ", existence or subject matter" added after the word "conduct" in line 2 of Clause 16; and
- (b) The words "and any other documents provided in, or oral evidence given in, the arbitrations by either party" added after the word "Documents" in line 3 of Clause 17.

Clause 24

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

Yours sincerely



Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

5

000170

421

29-MAY-95 MON 18:23 ANN GARMS & ASSOC.

61 7 27 300

P.02

Dwyer, Kevin

From: Dwyer, Kevin
 To: Gamble, Peter
 Cc: Humrich, Alan
 Subject: RE: Software query
 Date: Thursday, 24 February 1994 11:07AM

Peter,

You are quite correct in your thought that the anecdotal reference applies more to AXE than ARE-11.
 'Lockups' are generally well-known as a problem in AXE exchanges, not only in Australia but in overseas countries as well. A number of upgrades have included software which would reduce the incidence of lockups.

There is nothing to add to my previous notes on ARE-11 exchanges concerning claims of 'incompatibility' problems.

Regarding the problems in AXE:

In the NASM database (which has a record of faults reported from AXE exchanges, dating from 1958 when it was introduced, although it was not in widespread use till 1992/3) there are 105 reports of Lockups affecting customers. Two of these reports refer to PBX services, but there are no reports referring specifically to 'Commander' services.

The TR database (Trouble Report system controlled by TNE to monitor problems reported, passed to Ericsson, and fixed by Ericsson) which was used prior to NASM for all records of faults does show lockups on AXE equipment which would have affected customers and PBX functions, but does not provide any realistic count of problem occurrences. It does not record any lockups specifically related to 'Commander' systems.

As a general comment, if the first line was locked up and calls allowed to flow on to the other lines, then no calls would be lost until all lines were busy, so I fail to see how an estimate that "call loss could be up to 15%" could be made or repeated with any degree of integrity.

There is also another NSIS database which would contain records of AXE faults which I have not checked yet but which I believe has records of large numbers of lockup instances affecting individual customers lines. I am reluctant to initiate a search of the NSIS database at present as the faults recorded therein would have no bearing on the CoT services in question, unless the fault occurred on their individual line.

Kevin.

From: Gamble, Peter
 To: Humrich, Alan; Dwyer, Kevin
 Cc: Wagland, Fran
 Subject: Software query
 Date: Thursday, 17 February 1994 7:04PM

Fran, I am not sure where Alan is - please pass to him if he is on the 24th floor.

Kevin, Alan

Kevin, I did not use your comments on software (COMPATBL) at this time as they didn't seem relevant to the additional information that Austel have provided. John MacMahon writes as follows:

"I have references to Ericsson's having considered a lock up fault which was occurring where the first line would be locked out and this would allow calls to flow to the other lines. It was said to arise through the

422

A1398U

FROM : TIVOLI CABARET AND BAR

PHONE NO. : 07 32571583

Jan. 13 1998 01:02PM F3

29-MAY-95 MON 10:23 AM GAMS & ASSOC.

61 7 2798341

P.02

incompatibility of exchange software and Telecom's equipment. Ericsson apparently provided a solution and advised that particular Commander systems were most vulnerable. Ericsson are said to have suggested that call loss could be up to 15%." ↑ ↖

Any thoughts on this new line? It sounds a bit like AXE rather than ARE to me!

Peter.

422

A13981

Tom. ~~11/3~~ 11/3
Dona } for info o file pls

Size of the complaints problems

I raised the ^{telephone} business survey Rob Davey referred to in Hansard (Senate Estimates Committee 25/2/4) with John MacMahon (AUSTEL)

- it was apparently run by (T) at AUSTEL's request in an attempt to see how wide ^{spread} the problems are
- (T) provided the results to AUSTEL as 'commercial - in Confidence'
- They will be covered in AUSTEL's report.
- 10% of those surveyed said they had experienced the same sorts of problems (as the 107 people)
- 4% (I'm not sure if this is of the total or of the 10%) said they had been affected seriously or very seriously

~~John MacMahon~~

This is the basis for AUSTEL's view that the size of the problem is significantly greater than (B)'s claim of 50.

J J Martin
10/3/4

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Paul Rumble - 4844
 cc: Jim Campbell - 43876
 Jim Holmes - 23215
 Steve Beck - 23241
 Anne Krainovich - 42858
 CEO Sydney Office

COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

Prudential Building, cnr London Circuit & University Avenue, Canberra City
 GPO Box 442, Canberra, A.C.T. 2601, Australia
 Tel: (06) 276 0111; Fax: (06) 249 7829; Int. Fax: + 61 6 249 7829

25 March 1994

C94/195.C/94/225

Mr F Blount
 Chief Executive Officer
 Telstra Corporation Ltd.
 38th Floor, 242 Exhibition Street
 MELBOURNE VIC 3000

CEO
 melb. Office

28/3/94

Dear Mr Blount

On 20 January 1994 I notified Mr Holmes that I had received complaints from three of the 'COT Cases'. Mr Graham Schorer, Mr Alan Smith and Ms Ann Garms, concerning TELECOM's handling of their applications under the Freedom of Information Act (FOI Act) of 24 November 1993 and 21 December 1993 respectively.

I informed Mr Holmes that it is my opinion that Telecom should release to the participants of the Fast Track Settlement Proposal (FTSP), free of charge, the information required by them in connection with presentation of their cases to the assessor and that such release should be outside the provisions of the FOI Act. I also suggested that Telecom should waive the application fees payable by those participants who had applied for information under the FOI Act and also waive that part of the charges which relates to the information requested which is required to enable the applicants to present their cases under the FTSP. Mr Black replied on 9 February 1994 agreeing to provide certain information to the participants, without conditions. I have enclosed copies of the correspondence for your convenience.

On 15 February 1994, I received a complaint from Ms Maureen Gillan alleging that Telecom had not responded to an FOI application she had lodged with Telecom on 7 December 1994. Your officers informed us that Telecom has no record of Ms Gillan's FOI request, but that Telecom extends to Ms Gillan the same offer made to Mrs Garms, Mr Schorer and Mr Smith as detailed in Telecom's letter to me on 9 February 1994. I understand that a copy of Ms Gillan's FOI request was sent to Telecom on 16 March 1994.

My officers received a number of assurances that documents were being sent to the four applicants from mid February 1994, but I understand that there still are many documents which are being withheld by Telecom. Mr Alan Smith has advised that he still awaits many documents, Mrs Garms advised that she has received only about 7000 of the 15500 documents identified by Telecom as falling within her FOI request and Ms Gillan and Mr Schorer advised that they have not received any documents since the offer of 9 February 1994.

D03716

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In view of the lack of progress by Telecom in providing the documents and complaints by Mr Smith that Telecom was improperly claiming exemptions for information without giving adequate explanation, one of my officers, Mr Wynack, visited your officers in Melbourne to obtain an update of the progress in providing information and to examine some of the FOI decisions.

Your officers informed Mr Wynack that the status of the exercise of providing information to the four applicants was :

- Mr Schorer - There was no valid FOI application until he either paid the application fee or agrees to participate in the arbitration process
- Mr Smith - He has a valid application and he has been granted access to most of the documents offered free. He has not paid the deposit for the other documents included in his FOI request. Your officers informed Mr Wynack, on 10 March 1994, that Telecom will not release the remaining free documents until Mr Smith signs an agreement related to the FTSP (the Agreement), which was then being developed.
- Ms Gillan - Telecom did not then have an FOI application from Ms Gillan. Your officers informed Mr Wynack that Telecom is ready to release certain documents to Ms Gillan, free of charge, on the same basis as the offer to the other three participants.
- Mrs Garms - She has a valid FOI application. Your officers informed Mr Wynack that a substantial number of documents have been released and there are a number of other documents being considered for release.

During discussions on 10 March 1994, your officers informed Mr Wynack that there is a delay in sending the remaining documents because of their concern that information might be released by the applicants which might result in comment in the media which is adverse to Telecom. Your officers also advised that the Agreement, which was almost finalised, contained clauses which required that all FTSP participants keep all information confidential. Your officers informed Mr Wynack that they expected that the Agreement would be presented to the participants on 15 or 16 March 1994.

Your officers assured Mr Wynack, however, that Telecom was not delaying the release to Mrs Garms of the documents she requested under the FOI Act. They said that they were concerned at the publicity and significant diversion of Telecom resources caused by the recent release of certain information by Mr Smith and that the delay in release of documents was due to the need for Telecom to check all documents prior to release so that Telecom is alert to the possible use/misuse of sensitive information. Your officers also informed Mr Wynack that they expected the vetting of the documents would take only a couple of days.

On 31 January 1994 Mr Black released a number of documents to Mr Smith and stated in a letter of that date that some other documents were being collated, copied and reviewed and would be provided to him shortly. Mr Smith informed my officers recently that Mr Black told him recently that no further documents will be released. This decision by Mr Black was made soon after a media report based on information released by Mr Smith and Mr Black's decision appears to have been a reaction to inconvenience caused to Telecom by that media report. Please advise whether

D03710

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Telecom has formally decided not to release the remaining documents it had promised to provide to Mr Smith free of charge.

In the expectation that the documents would be released within a couple of days after Mr Wynack's visit to your office on 10 March 1994, I took no further action on the complaints. It now appears that Telecom does not intend releasing the documents until the participants agree not to release any information in the documents.

I made some inquiries as to whether it is Telecom, or the other participants, who have been delaying the finalisation of the Agreement. Mr Warwick Smith and Mr Bartlett informed me that the delay is with Telecom. I understand that Mr Bartlett sent a draft Agreement to Telecom on 2 March 1994 and that Telecom sent final information to Mr Bartlett late on 17 March 1994.

As little progress has been made by Telecom in processing the FOI applications, I have decided to give a higher priority to investigating the complaints. As a first step, I should like to apprise you of my preliminary views on that part of the complaints which relate to delays in providing documents.

Decisions under the FOI Act

Insofar as Telecom's actions relate to decisions on the valid FOI applications - Mr Smith's and Mrs Garms' - it is my view that delaying release of the documents to Mr Smith and Mrs Garms is unreasonable in terms of section 15 of the Ombudsman Act 1976.

The statutory time limits within which FOI applications must be processed have not been met and no explanations for the delays have been provided to Mrs Garms or Mr Smith. I should mention that there is no provision in the FOI Act which enables Telecom to delay granting access to information while Telecom vets the information in anticipation of the use to which the applicants might put the information. Indeed, section 11 (2) of the FOI Act states:

"Subject to this Act, a person's right of access is not affected by:

- (a) any reasons the person gives for seeking access; or
- (b) the agency's or Minister's belief as to what are his or her reasons for seeking access."

Nor is the delay in granting access to the information within the spirit of Telecom's undertaking, given in response to my letter of 20 January 1994, to release certain information outside the provisions of the FOI Act.

I should be grateful if you would inform me, within seven days, of the reasons why the authorised Telecom officer has not made decisions on the FOI applications made by Mrs Garms and Mr Smith.

I should be grateful also if you would inform me whether there is any impediment to Telecom immediately releasing those documents for which exemptions have not been claimed. In this context, I understand that all documents have been gathered and decisions on access have been made.

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003720

Mr Alan Smith also informed my officers that Mr Black informed him that Telecom has lost, or destroyed, a number of files relating to his contacts prior to June 1991 and also some personal files given to Telecom in 1992. Please inform me of the steps Telecom has taken to locate the files or to confirm that they were destroyed.

Imposition of conditions on release of documents.

Telecom's undertaking in response to my letter of 20 January 1994 is unconditional and it was given in the knowledge that the Cot Case people had signed agreements to participate in the FTSP. It was unreasonable for Telecom to require the participants to make further assurances while Telecom was considering the Agreement and thereby denying the participants the opportunity to consider the rules that Telecom wished to have included in the Agreement.

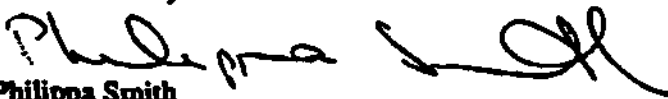
There is no provision in the FOI Act which would permit Telecom to impose such conditions on applicants prior to granting access to documents - access under the FOI Act is public access. Notwithstanding that Telecom's undertaking to me may have been to provide access outside the FOI Act, it was made in the context of complaints to me about Telecom's processing of applications under the FOI Act. Accordingly, it is my view that it was unreasonable for Telecom to impose the condition.

I do not accept that the action by Mr Alan Smith in disclosing to the media, and to the AFP, some information released by Telecom pursuant to its undertaking to grant free access, provides justification for the imposition of a condition that the participants must sign the Agreement before access to documents will be effected.

Please inform me whether Telecom intends releasing information to Mr Smith, Mrs Garms, Mr Schorer and Ms Gillan in accordance with the undertaking in Mr Black's letter to Mr Schorer dated 27 January 1994 (copy attached) and subsequently confirmed in communications to my officers by Mr Black and Mr Rumble.

I will write to you separately to inform you of my findings on other aspects of the complaints, when I have concluded my investigation. The other matters include the basis for some exemptions claimed, the adequacy and method of providing reasons given for exempting documents, the estimates of charges for access under the FOI Act.

Yours sincerely


 Philippa Smith
 Commonwealth Ombudsman.

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D03721



AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

14 April 1994

Mrs Ann Garms
65 King Arthur Terrace
TERRYSON QLD 4105

FAX: 07 802 3739

Dear Mrs. Garms

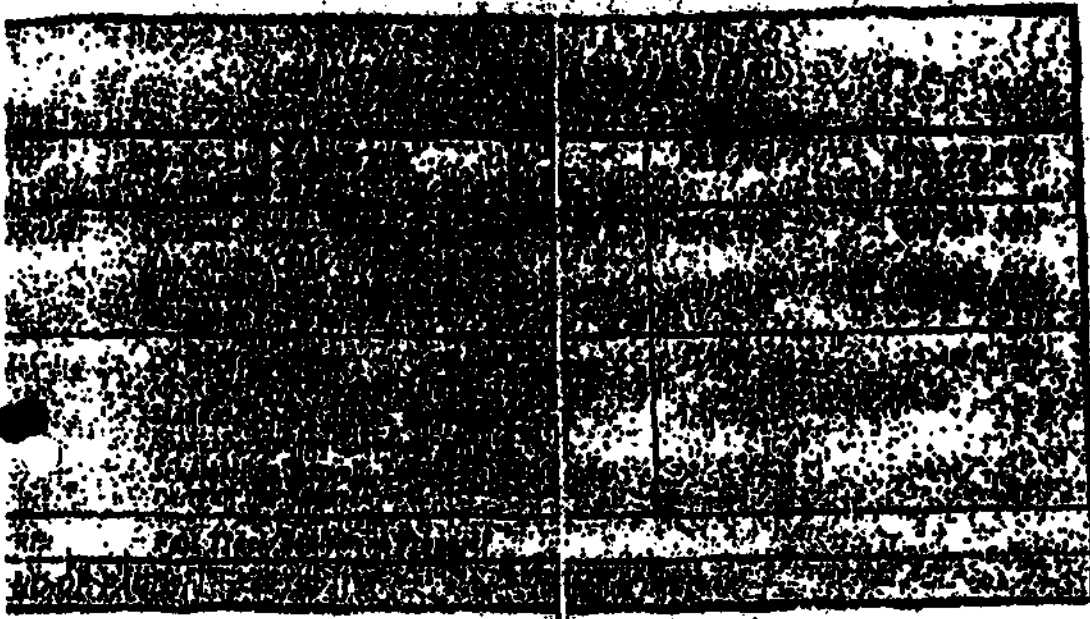
This letter is to confirm that the Fast Track Settlement Proposal drafted by AUSTEL and signed by Telecom on 18 November 1993 and by you on 23 March 1993, refers to an "assessment" process and an "assessor" and makes no reference to "arbitration" or to an "arbitrator."

Yours sincerely

John MacMahon
General Manager
Consumer Affairs

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QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 744, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 828 7300 FACSIMILE: (03) 820 3021



Dear Mr Smith

Re: Fast Track Settlement Proposal and the Assessment of COT in Relation to that Proposal

We are all in agreement that we wish to be assessed by Dr Gordon Hughes under the Fast Track Settlement Proposal authored by AUSTEL and signed by Mr Jim Holmes, Corporate Secretary of Telecom, on 18 November 1993, and by COT members on 23 November 1993.

We acknowledge the confirmation by AUSTEL, on 14 April 1994, that the Fast Track Settlement Proposal confirms the assessment process for COT members. (Copy enclosed.)

Thanking you,

Yours sincerely

Graham Scherer

Alan Garms OAM

Alan Smith

[Handwritten signatures]

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(10)



Telecommunications
Industry
Ombudsman

Warwick L. Smith LLB
Ombudsman

April 14, 1994

STRICTLY CONFIDENTIAL

Mrs. Ann Garma
65 King Arthur Terrace
TENNYSON QLD. 4105

By Facsimile: (07) 892 3739

Dear Mrs. Garma,

Thank you for your fax of today. Apart from my briefing yesterday from Rob Davey, I have not spoken to him about the matter you raised on the Procedure. Gordon Hughes is in Port Moresby. I hope to see Peter Bartlett tonight if he is available.

I am not sure where Alan Smith or Graham Schorer are with regard to proceeding. They have been in regular contact with Peter Bartlett, but I still hope the matter can proceed and am of the view the Procedure endorses the "Fast Track" Agreement and is important for the arbitrator in his role. Let me come back to you as I take it from your letter that you are not now proceeding at present.

Yours sincerely,

Warwick L. Smith
Ombudsman

c.c. Peter Bartlett

"... providing independent, just, informal, speed...tion of complaints."

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1000
1000
1000
1000

Box 18000
Connaught Street East
Melbourne 3000

Telephone (03) 277 8277
Facsimile (03) 277 8787
Mobile 018 561 206

Mar 10 1998 12:48PM PS

PHONE NO. : 07 32571583

FROM : TUDLI CABRET AND BDR



Telecommunications
Industry
Ombudsman

Warwick L Smith LLB
Ombudsman

April 15, 1994

STRICTLY CONFIDENTIAL

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

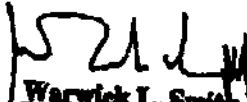
By Facsimile: (03) 287 7001

Dear Graham,

I met with Mr. Bartlett last evening. He will arrange a meeting with Dr. Hughes on his return to seek his position on what I understand to be the desire of 'COTS' on the Procedure and "Fast Track Settlement". There are apparently several.

Mr. Bartlett will arrange a time on Tuesday for me to meet with him and Mr. Schorer spokesman for 'COT' to review the current position.

Yours sincerely,


Warwick L. Smith
Ombudsman

cc. Mr. Peter Bartlett
Dr. Gordon Hughes

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



Hunt & Hunt

LAWYERS

FACSIMILE TRANSMISSION

Our Ref: GLH

Matter No:

Date: 19 April 1994

To: MR GOLDBERG

Fax No: 670 8389

From: CAROLINE FRIEND

Subject: TIO ARBITRATION

Partners
 Edward S. Boyce
 James G.F. Harrowell
 Christine A. Galley
 Gordon L. Hughes
 Mark T. Krupman
 Ian S. Craig
 Peter J. Evin
 Wayne B. Cahill
 Neville G.H. Debnay
 Grant D. Sifton
 Charles Vaegen
 Andrew Logedonis

Consultants
 Kenneth M. Martin
 Richard J. Kellway

Associates
 Peter A. Cornish
 Shane G. Hird
 John S. Mohr
 Melissa A. Henderson
 Francis V. Galichio
 Roy Salt
 Randall P. Williams

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

Yours faithfully
Hunt & Hunt
HUNT & HUNT

Att.

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

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- _____ Adelaide
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11254454_LAGZ/CF
 Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 8711.
 Facsimile: (61-3) 614 8730. G.P.O. Box 1333N, Melbourne 3001. DX 282, Melbourne.

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

by being delivered by hand or sent by prepaid mail.

Liability of Administrator and Arbitrator

24. Neither the Administrator nor the Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules save that the Arbitrator (but not the Administrator) shall be liable for any conscious or deliberate wrongdoing on the Arbitrator's own part.
25. The liability of Ferrier Hodgson and the partners and employees of Ferrier Hodgson for any act or omission in connection with any arbitration conducted under these rules (other than in relation to a breach of their confidentiality obligations) shall be limited to \$250,000 jointly.
26. The liability of DMR Group Australia Pty Ltd and the directors and employees of DMR Group Australia Pty Ltd for any act or omission in connection with any arbitration conducted under these rules (other than in relation to a breach of their confidentiality obligations) shall be limited to \$250,000 jointly.

Return of Documents after Arbitration

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

429



Hunt & Hunt LAWYERS

Partners
 Edward S Boyce
 James G.F. Harrowell
 Christine A. Gately
 Gordon L. Hughes
 Mark T. Knapman
 Ian S. Craig
 Peter J. Ervin
 Wayne B. Cahill
 Neville G.H. Debonay
 Grant D. Sefton
 Charles Venners
 Andrew Logie-Smith

Consultants
 Kenneth M. Martin
 Richard J. Kellaway

Associates
 Peter A. Cornish
 Shane C. Hind
 John S. Molnar
 Melissa A. Henderson
 Francis V. Galichin
 Roy Seit
 Randall P. Williams

FACSIMILE TRANSMISSION

Our Ref: GLH
 Matter No: 5122795

Date: 19 April 1994
To: MR. WILLIAM HUNT
Fax No: 670 6598
From: CAROLINE FRIEND
Subject: TIO ARBITRATION PROCEEDURE

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

*File
 Golden re
 COT Cases*

Yours faithfully,
Hunt & Hunt
 HUNT & HUNT

Att.

melbourne
 sydney
 sydney west
 brisbane
 canberra
 newcastle
 represented in
 adelaide
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Facsimile: (61-3) 614 8730. G.P.O. Box 1593N, Melbourne 3001. DX 252, Melbourne.

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

by being delivered by hand or sent by prepaid mail.

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Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

19 October, 1999

Mr Alan Smith
Cape Bridgewater Holiday Camp
Blowholes Road RMB 4408
PORTLAND 3305

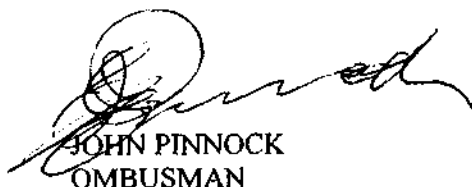
Dear Mr Smith

I refer to your letters of 21 September 1999 (Letter One and Letter Two).

The first of these letters is clearly defamatory of the former Telecommunications Industry Ombudsman, Mr Warwick Smith. The assertion that he 'was prepared to go to enormous lengths to disadvantage [you]' is outrageous.

I have reviewed the resources which the TIO has devoted to dealing with your extra ordinary number of complaints and letters over the past four years and advise you that I do not propose to take any further action in relation to these matters.

Yours sincerely



JOHN PINNOCK
OMBUSMAN

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

Cott/1255

Telecommunications Industry Ombudsman Ltd

ACN 057 634 787

Website: www.tio.com.au
Email: tio@tio.com.au
National Headquarters
Level 15/114 William Street Melbourne Victoria 3000

PO Box 276
Collins Street West
Melbourne
Victoria 8007

Telephone (03) 8600 8700
Facsimile (03) 8600 8797
Tel. Freecall 1800 062 058
Fax Freecall 1800 630 614
TTY Freecall 1800 675 692

THE OCCASIONAL OFFICE

INFORMATION RE PHONE MESSAGE RECEIVED 24/10/99

When I checked my answering machine on the morning of Sunday 24th October there was one message from Alan Smith. This message was recorded as arriving in the early hours of the morning (I think it was about 5.30 am but I didn't pay attention since the actual time was not important to me). The message was quite clear and finally Alan said goodbye and the machine recorded a click which I assume was Alan hanging up the receiver at his end.

Immediately following this there were two short, muted rings on the answering tape, as if the phone was ringing at Alan's end, followed by Alan's voice saying something like 'Cape Bridgewater Holiday Camp, good morning.'

There was another click as if he had hung up again, followed by two more short, muted rings before my answering machine recorded an end-of-message tone.

Unfortunately I didn't keep the machine tape.

I, CATHERINE JOAN EZARD

of RMB 4408, PORTLAND

in the State of Victoria

do solemnly and

sincerely declare

THAT On Sunday morning, 24th October 1999, at approximately 5.30am. Alan Smith rang his secretarial service (The Occasional Office).

After leaving a message on the answering machine then he hung up. Just a fraction of a second after the phone was replaced in the cradle the phone rang again, giving 2 1/2 times the normal ring. Alan answered the call saying "Cape Brédgewater Holiday Camp - Good Morning". The Line was dead. As he got, ~~no response~~..... ~~no response~~ he again placed the phone back into the cradle and a short ting was heard then silence.

This type of situation continues to plague our business. Not only on our home phone as the above incident but also on the office phone.

Mr John Pinnock (Telecommunications Industry Ombudsman) has refused to address a number of Alan's complaints.

Living with this type of no win situation has left both Alan + I exhausted and unsure if we can trust our business future.

After a lot of soul searching and due to constant worry and stress Alan has finally made the decision to sell the business.

The papers are to be signed with the selling agent on Wednesday 24th Oct 1999.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

DECLARED at Portland in the State of Victoria this 26th day of October. One thousand nine hundred 99

C. Ezard

Before me

[Signature]
OK 29143

PORTLAND POLICE STATION

Robert C. Nix

433

1286794

24/09/2002
Closed/Resolved (Closed on : 28/10/2002)
[Redacted]
FIN

Issue Description Date Received 18/10/2002
 : Open/ARR
 : TIO TIO Type :Level 1
 Ref # : 02/101638-1 Due Date 01/11/2002
 Ser : c792194 Date Create 18/10/2002
 : TIO Level 1 Complaint. 02/101638-1.
 The TIO have now raised a Level 1 complaint on behalf of
 Mr. & Mrs. Lewis. The TIO have specifically mentioned in
 their correspondence that the TIO have previously
 investigated a number of complaints raised by [Redacted]
 [Redacted] the previous account holder for this service, in
 which similar issues were raised.
 [Redacted] TIO Liaison. (03) 9634 [Redacted]
 Resolution Details Date Received
 : CRU Closed
 TIO Type :
 Ref # : 02/101638-1 Due Date 01/11/2002
 Ser : c792194 Date Create 18/10/2002
 : Transferred to Region for contact with customer by the due
 date of 01/11/02

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CHAIR—What I am saying is that you said that you were told to do your best. The implication could be to do better, to show that these people who were making a claim and they had a legitimate claim, but 'Let's try and find our way around it.' I think you clearly said that that was not the case but I just want to make sure, because this is vital and a very important fact. My opinion is that, if a public company is charging me for telephone bills and all those bills add to the CPI and the cost of everything in Australia, you just cannot have people making illegitimate claims. What the company would be doing is saying, 'We want you to make sure that these are legitimate claims, and we want you to do your very best to make sure that the claim is a genuine claim.' Is that what you were being asked to do?

Mr White—I was being asked to interpret the data available and explain it in the best possible way, accurately. That is the best way I can—

CHAIR—Not just to the advantage of Telstra, but the best possible way you could, irrespective of what the outcome was?

Mr White—As a member of Telecom at the time, I believe it was in my interest to interpret the data as accurately as possible to represent Telecom in the best possible light.

CHAIR—But never were you asked to interpret it in any way that would disadvantage the client by your saying something that was stretching the truth?

Mr White—No. For example, Mr Schorer's flexitel system was prone to having power problems, overloads. I would have spoken to probably every service technician that ever went there, and asked why it happened. Some of them said that the place was dirty; some of them said there were things stacked on top of the unit which caused an overheating problem. The fact is that there were consistent problems.

Senator SCHACHT—Mr White, you said earlier, in an answer to Senator O'Chee about some sort of induction thing when you joined the unit, that you were given an outline that these five cases, if they were not dealt with and so on, could lead to a lot more claims against Telstra. I presume you were, in a sense, paraphrasing that process of induction, or was it specifically put in front of you that your job was, 'Get these cases dealt with as quickly as possible and out of the way, so that we get no more in the future'? Is that the impression you were left with?

↙ **Mr White**—There was never any reference to time, 'as quickly as possible', but the induction process was, as I said before, that the first five had to be stopped at all costs.

Senator SCHACHT—'Stopped at all costs'—that was the phrase. Can you tell me who, at that induction briefing, said 'stopped at all costs'?

↙ **Mr White**—Mr Peter Gamble, Peter Riddle.

GEN
MAIL. Office
19/5/89

COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

Prudential Building, cnr London Circuit & University Avenue, Canberra City
GPO Box 442, Canberra, A.C.T. 2601, Australia
Tel: (06) 276 0111; Fax: (06) 249 7829; Inc. Fax: + 61 & 249 7829

6 May 1994

C/94/195:JW

Mr F Blount
Chief Executive Officer
Telstra Corporation Ltd.
38th Floor, 242 Exhibition Street
MELBOURNE VIC 3000

cc: Steve Black.
Aue Kasnakeri
Jan Campbell
Syo. Coor. Ofc
(2 pages)

Dear Mr Blount

I refer to previous correspondence concerning complaints I received from Messrs Schorer and Smith and Ms Garms and Ms Gillan about Telecom's handling of their requests under the Freedom of Information Act (FOI Act).

In my most recent letter, dated 25 March 1994, I apprised you of my preliminary views on that part of the complaints that related to delays in providing documents, and invited your comments on several matters.

Mr Black replied on your behalf on 31 March 1994, but his letter addressed only some of the matters I raised. Mr Black stated that Mr Rumble '..would give Mr Wynack a full update on the current status of all applications next Tuesday. A further written response will be provided at this time based on a total status review.' I have not yet received the promised written response.

* I should be grateful if you would now respond to the outstanding matters raised in my letter of 25 March 1994 ie

1. Comment on my views that:

- it was unreasonable for Telecom to impose a condition for release of certain documents that the participants make further assurances that they will participate in the FTSP; and
- it was unreasonable for Telecom to require the participants to make the assurances while Telecom was considering the agreement related to the FTSP (the Agreement) and thereby denying the participants the

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opportunity to consider the rules that Telecom wished to have included in the Agreement. ↙


- * 2. Provide information about the steps Telecom has taken to locate files containing information relating to Mr Smith's contacts prior to June 1991 and the personal files which allegedly were destroyed.

I have decided to prepare separate formal reports pursuant to section 15 of the Ombudsman Act 1976 on each of the complaints I received from Ms Garms, Ms Gillan and Messrs Schorer and Smith. As I have commenced preparing the reports, I should be grateful if you would provide a substantive response to my letter of 25 March 1994 by 13 May 1994.

My reports will contain opinions critical of certain Telecom actions and, in accordance with section 8(5) of the Ombudsman Act 1976, I will give you an opportunity to make submissions in relation to those actions.

I should also inform you that, in compliance with section 8(7A)(b) of the Ombudsman Act 1976, I have informed the Minister that I am investigating the complaints.

Yours sincerely


Philippa Smith
Commonwealth Ombudsman

- ① Outing & para. 11.1 ...
 - ② Infracted
 - ③ ... & prepare report. (Not
 - ④ Appreciation of reasons...
 - ⑤ Not big stick
 - ⑥ Reference to new unit in response
- Acknowledged

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A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 048

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

To: Dr. Gordon Hughes
Company: The Arbitrator for
Telecom / COT Cases
"FAST-TRACK" arbitration procedure
incorporating the FAST-TRACK
SETTLEMENT PROPOSAL.

Date: 25 May 1994
Fax No: 03 614.8730

From: Graham Schorer
Total Pages (incl. Header) 2

MAILED: YES (X) NO ()

Dear Dr. Hughes,

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

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

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

The reason for the request are as follows:-

1. A substantial burglary in Golden's premises on the 4 March, 1994 and the theft of vital equipment and records.
2. The inability of suppliers to replace the equipment until 17 April, 1994.
3. The consequent difficulties in conducting any business accentuated by external auditors commencing part of their annual audit from 9 May last.
4. The requirement commencing from 2 May, 1994 to devote the entire staff as fully as possible to maintain a substantial part of its business with Westpac Bank and add A.N.Z.'s business. Competitive quotations had been called for by the A.N.Z. Bank.

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

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

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

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

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

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

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

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

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

The equipment stolen on 4 March comprised:-

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

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

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

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

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

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

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

Yours sincerely,



Graham Schorer

437

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

493-495 Queensberry Street, NORTH MELBOURNE VIC. 3051

03-05-1999 13:04

FROM CAPE BRIDGE HDAY CAMP

TO

0392877001

P.01



11 July 1994

COMMERCIAL AND CONSUMER
CUSTOMER AFFAIRS

37/242 EXHIBITION STREET
MELBOURNE
VICTORIA 3000
Australia

Telephone (03) 632 771
Facsimile (03) 632 321

F A X E D
...1..7...1...96

Mr Warwick Smith
Telecommunications Industry Ombudsman

Facsimile No. 277 8797

Dear Mr Smith

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

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

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

Yours faithfully


Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

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**PART II—APPOINTMENT OF ARBITRATORS AND
UMPIRES**

6. *Presumption of single arbitrator*

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

- (a) the agreement otherwise provides; or
- (b) the parties otherwise agree in writing.

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

7. *Presumption as to joint appointment of arbitrator*

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

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

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

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

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

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

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

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

Faxed details to Vic/Tas Region



Telecommunications Industry Ombudsman

Warwick L Smith LLB Ombudsman

February 9, 1994

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

Dear Fiona,

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

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

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

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

Yours sincerely,

Warwick L Smith
Warwick L. Smith
Ombudsman

M34361

Per:

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

Attachment 3

Monro, Steve

FRE

From: Farrell, Bernadette
 To: Campbell, Grant; Monro, Steve
 Cc: Cousins, Suzanne
 Subject: FW: Urgent!!!! 1800 Customer Dispute
 Date: Friday, 17 February 1995 11:15AM
 Priority: High

Grant

As confirmed by C&C Marketing the 1800 introduction to customers was launched by a letter sent out dated 22 September 93.

In summary of the mail below the majority of exchanges were conditioned for 1800 by 20/9/93. We cannot easily obtain exact records of the exchanges which were conditioned after the 20/9/93 but this was only for ARK's which service a very small number of customers and was completed by six weeks after the launch.

Regards
Bernadette

From: Benham, Daryl J
 To: Farrell, Bernadette
 Subject: FW: Urgent!!!! 1800 Customer Dispute
 Date: Thursday, 18 February 1995 5:39PM
 Priority: High

Bernadette,

With regards to the network conditioning for code 1800, the network was due to be conditioned for the "business" 1800 codes by 1 November 1993. Due to a commitment for Homalink (then known as "Project Bach") to be available by 20 September 1993, it was decided to introduce the "Business" component of 1800 at the same time (along with the Optix component). As a result it should be disputed that network conditioning should have been completed by 1 September 1993. (A small percentage of the network would have been completed by 1 September 1993.)

A large percentage of the network was completed by 20 September 1993, with access to 1800 being available to most metropolitan customers. There were however areas where access was not available from. For instance, due to a data error in an ARF type exchange customers in Country NSW who were connected to ARKs (small rural exchanges) and were STD barred did not get access to 1800 until early (6th) November 1993.

There are also a number of other instances where a small country exchange did not have access (either incorrect strapping or data not loaded). When customers contacted Telecom Fruits (1100), access to 1800 from these exchanges was promptly fixed. Within about 4-6 weeks after 20 September there were no further network faults being reported.

The other source of customers not being able to access the 1800 code was from PARXs. Unfortunately these faults could not be rectified by Telecom (unless the customer had a service contract).

This provides you with some background as to the status of the network at the launch of 1800 (which was very soon after 20 September 1993).

If you have any further queries then please do not hesitate to contact me on 632 1108.

Regards,

Daryl Benham.

632 1108

From: Skypson, Greens
 To: Benham, Daryl J
 Cc: Bentley, Izz
 Subject: FW: Urgent!!!! 1800 Customer Dispute
 Date: Thursday, 18 February 1995 9:20AM
 Priority: High

Daryl

439B



Internal Memo

To Gerry Moriarty
 Managing Director, Network Products

From Steve Monro
 Manager

Subject Customer Complaint

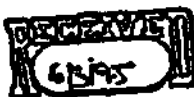
Commercial & Consumer
 Customer Response Unit
 2/242 Exhibition Street
 Melbourne, Vic 3000

Australia
 Telephone 03 632 3224
 Facsimile 03 634 8728

Date 3 March 1995

Pager 016 376429

File



Attention

CC D Campbell
 T Benjamin
 S Black
 G Campbell

Prud
 (2)

This memo needs your personal attention to a customer complaint that has the potential to become a significant corporate issue.

On 19 January, 1995 a complaint was referred to this office through the Telecommunications Industry Ombudsman's Office. The complaint concerned a customer who claimed that his 1800 number was not connected until 7 months after the service was launched and 7 months after he started advertising it.

(3)

A copy of the original complaint is at Attachment 1. The result of our investigations was an assurance that there could not have been a failure of the magnitude claimed on the customer's 1800 service. See Attachment 2. Additionally, a check of his 1800 account demonstrates a significant increase in call traffic that is assumedly associated with the commencement of a promotional campaign featuring 1800 number only.

(4)
 (5)

However, during the investigation of the issues raised by the customer, other factors were uncovered that have a direct bearing on the complaint and have undermined my confidence in the initial advice.

Following up on a report that there may have been delays in conditioning some exchanges, I was informed that ~~most~~ metropolitan customers had access to 1800 by 20 September 1993. Further, while there were some acknowledged implementation problems in country NSW, it is assumed that all exchanges were conditioned within 4-6 weeks after 20 September (as) there were no further network faults being reported. Apparently, fault reporting was used to identify country exchanges that had not been conditioned. See Attachment 3.

(6)

The reported failure to provide universal exchange conditioning by the 1800 Service launch date was compounded by file copies of E-Mails that suggest even wider problems with access to 1800 at launch. At least one 10,000 number range was missed in Perth, and 1,000 number

439c H36279

blocks were missed elsewhere, although we had no working services on these ranges. See Attachment 4.

(7) The most disturbing feature was the report that the 747 and 767 number ranges were missed. After being assured that all numbers were conditioned in blocks of 10,000 it is confusing that two 1,000 number ranges were missed. There is no indication that the complainants service was adversely effected, by these missed number ranges. However, the complainants number 1800 777 592 is perilously close.

(8) I need to be absolutely certain of the facts in my reply to the TIO. Unfortunately, I have lost confidence in the reliability or completeness of the advice I am receiving.

(9) I am therefore seeking your personal intervention to confirm:

1. The date on which all exchanges were confirmed as conditioned to switch Free call number 1800 777 592.
2. If this date is not the 20 September 1993, what percentage of customers did not have access to 1800 777 592 up to that date.

(10) This particular customer's behaviour has been particularly rude. See Attachment 5. He is also threatening. He has allegedly been described as a vexatious litigant and is undoubtedly the most foul mouthed customer with whom I have had dealings. There is a strong likelihood that he will continue action against Telecom through all means available. An FOI request could obviously be very embarrassing without a clear, consistent picture of exchange conditioning.

(11) The deadline to resolve this issue with the TIO has expired. We are currently preparing an interim reply. However, we also have an outstanding billing dispute as the customer is refusing to pay bills when he has an outstanding compensation claim. Unfortunately, normal credit management practices would expand the compensation claim if a link can be established between failure of calls on 1800, loss of business and a consequential inability to pay Telstra bills.

(12) I therefore urgently seek your assistance in obtaining a quick response to the above questions.

Steve Monroe

Steve Monroe
Manager
Customer Response Unit

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H36280

Facsimile Cover Sheet

To: Stephen Mead
Company: Group General Counsel
Phone:
Fax: 07 832 4173

From: Grant Campbell
Company:
Phone:
Fax: 03 634 8728

Date: 16/3/95

Pages including this
cover page: 7

where is
other 6 pages

Comments: Legally Privileged and Confidential

Stephen

I am sending you a copy of the interim reply sent to the TIO on 3 March in response to the complaint by Mr Ken Ivory. The report attached to the letter is essentially the reply I had prepared to TIO. We were (and still are) waiting on a full technical report from the network group about the implementation of the 1-800 Freecall service. You will note I have included a paragraph at the bottom of Page 2 of the report saying you refute Mr Ivory's version of his discussions with you and your offer to speak with the Ombudsman about that matter.

The 1-800 issue will be addressed in the final response to the TIO. Our concern is not primarily with the impact any problems may have had on Mr Ivory's service. This would be minimal given the low call traffic on that service. Our main concern is first to get to the facts of the matter. We have been advised that some number ranges were not conditioned in some exchanges until around the end of the first week in November 1993. Two number ranges were very close to the 777 range which includes Mr Ivory's Freecall service (777592).

The matter has been raised at senior levels in the Network area to ensure it is pursued rigorously. Warren Jackson indicated there were some 15000 Freecall customers in September 1993. This is a large pool of potential claimants if our investigations find there were problems that prevented customers receiving calls via 1-800 prefix numbers. As against that, the window of exposure to any problems is 4-6 weeks. Double trunking of 006 and 1-800 calls should ameliorate potential claims also. The matter is being kept confidential given the difficult external environment facing the Company at the present time. I will keep you informed.

Regards

Grant Campbell

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439D



Hunt & Hunt LAWYERS

COPY

Partners
Edward S. Boyce
James G.F. Harrowell
Christine A. Gailley
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Ewin
Wayne B. Cahill
Neville G.H. Debnay
Grant D. Sifton
Charles Veevers
Andrew Logie-Smith
William P. O'Shea

Consultants
Kenneth M. Martin
Richard J. Krollaway

Associates
Share G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Gallichio
Roy Seit

16 August 1994

Our Ref: GLH

Matter No:

Your Ref:

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

Dear Mr Rumble

ARBITRATIONS - GARMS, SCHORER, GILLAN, SMITH

I enclose copy facsimile from George Close & Associates Pty Ltd, undated but received 12 August 1994.

You will note Mr Close is seeking information to which he has apparently not yet had access. Presumably this may lead to a formal application by one or more of the Claimants pursuant to clause 7.5 of the "Fast-Track" Arbitration Procedure.

Before I give consideration as to what course to follow, do you wish to provide an initial response to the matters raised in Mr Close's letter?

Yours sincerely

GORDON HUGHES

Encl

CC A Garms, G, Schorer, A Smith, A Davis, G Close, P Bartlett,
W Smith, J Rundell
✓

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin

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11303459_GLH/RS

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 6711.

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

GEORGE CLOSE & ASSOCIATES PTY LTD

Data - Telecommunications Consultants

Dr Gordon Hughes
Hunt and Hunt
Lawyers
Level 21
459 Collins Street
MELBOURNE QLD 3000.

Suite 202,
83 Mount Street,
NORTH SYDNEY N.S.W. 2060
Phone: (02) 922 4888
Facsimile: (02) 957 3627

Dear Dr Hughes

Together with my colleagues, I have studied and assessed the Bell Canada International Report to Telecom Australia.

There is a significant lack of reference material, essential to give credibility to their conclusions, which in the light of emergent hard evidence produced in the last few months is not simply dubious, but by Telecom's admission, incorporeal.

Accordingly, we are requesting the raw data, documentation, calculations, minutes, inter-Telecom correspondence and Telecom internal reports associated with the Tivoli Restaurant and Theatre, Golden Messenger Service, Cape Bridgewater Holiday Camp, and Japanese Spare Parts. It should naturally include all test procedures, time scales, dates, length of test, phone numbers and point to point of tests.

Without this information, essential to substantiate the percentage claims so readily displayed but not supported by basic data, their claims and Telecom's employment of them, be it ever decreasing, are unacceptable.

If it is preferable for this information to be included in the individual COT Case documentation under Clause 7.5 of the Fast Track Arbitration Procedure, please advise and we will comply.

Yours sincerely



GEORGE CLOSE

440 M34000

THIS CORRESPONDENCE TO BE ATTACHED AND FORM PART OF MY REPORT
ON THE TIVOLI RESTAURANT AND THEATRE

See response 25.8.94.

(File)

Rumble
Black
Geary
Chalmers
Freehills



Hunt & Hunt

LAWYERS

Partners
Edward S Boyce
James C.F. Harrowell
Christine A. Gailley
Gordon I. Hughes
Mark T. Knappman
Ian S. Craig
Peter J. Ewin
Wayne B. Cahill
Neville G.H. Debnay
Grant D. Selson
Charles Veevers
Andrew Looie-Smith
William P. O'Shea

Consultants
Kenneth M. Martin
Richard J. Kellaway

Associates
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Galichio
Roy Seit

16 August 1994

Our Ref: GLH

Matter No:

Your Ref:

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

Dear Mr Rumble

ARBITRATION - SMITH

I enclose copy facsimiles received from Mr Smith dated 12 August and 15 August 1994.

In his facsimile of 12 August, Mr Smith foreshadows the submission of his completed claim by 17 August 1994. In his later fax, he indicates that the submission will be delayed until 18 August 1994.

Although Mr Smith states no further submissions will be made after 18 August, I note he is simultaneously asking for a direction from me in relation to the production of certain raw data. This is consistent with the matters foreshadowed in the letter from George Close & Associates of 12 August which I have forwarded to you today by a separate facsimile. I will be asking Mr Smith to clarify whether he seeks to include the raw data or any analysis of the raw data as part of his submission.

If Mr Smith does seek to rely upon the raw data or the results of any analysis of the raw data, and if such information is to be made available to him, then I could not accept his submission as being "complete" as at 18 August 1994.

As requested in my covering facsimile enclosing a copy of Mr Close's letter, I would be grateful if you would provide me with your initial reaction to the request so that I can consider appropriate directions on the matter.

Mr Smith also makes a second request, that is, for me, the Resource Unit and certain claimants to view privileged information in the possession of Telecom. I am seeking further clarification of this request from Mr Smith but my inclination is to disallow it.

11303523_GLH/KS

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

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

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melbourne
sydney
sydney west
brisbane
canberra
newcastle
perth
adelaide
darwin

M34001

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see response
25.8.94
see Telecom's further
letter 13.9.94



COMMERCIAL AND CONSUMER
CUSTOMER RESPONSE UNIT
8/242 EXHIBITION STREET
MELBOURNE VICTORIA 3000

Telephone (03) 634 5736
Facsimile (03) 634 8441

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25 August 1994

Dr Gordon Hughes
Hunt & Hunt

Facsimile No. (03) 614 8730

Dear Sir

Fast Track Arbitration - Smith

I refer to your letter of 16 August 1994, concerning Mr Smith's request for further documentation.

1. Mr Smith has requested "*all raw data associated with the Bell Canada testing*".

Bell Canada International conducted three separate sets of tests into Telecom's network, and consequently produced the following three separate reports in relation to those tests:

- Bell Canada International Report to Telecom Australia, dated October 1993;
- Inter-Exchange Network Test Results Western Suburban Exchanges Melbourne, dated November 1993; and
- Bell Canada International Telecom Australia Rotary Group Hunting Study, dated November 1993.

I understand that Mr Smith's request covers raw data in relation to each of the above reports ("the Reports"), and is therefore wider than Mr Close's request

I have obtained files containing some test results and working documents belonging to Bell Canada International which they created while preparing their Reports, and subsequently left with Telecom. I have been informed by Bell Canada International that they have not retained any other files containing such documents. These files consist of approximately 700 pages plus six disks of data.

These files contain some information specifically relating to various Telecom customers other than the claimants, which Telecom submits should not be disclosed to Mr Smith for reasons of privacy, and because information specifically relating to them is not directly relevant to the claimants' claims.

Other than that, Telecom has no objection to providing copies of these files to Mr Smith in accordance with a direction from you under the arbitration procedure.

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M33989

2. Mr Smith also appears to be requesting documents which Telecom has exempted from release to him on the ground that they are subject to legal professional privilege.

I note that Mr Smith's reason in support of his request is that Telecom has provided him with a network investigation working document which is marked "*Legal Professional Privilege*". Telecom assessed the documents which were exempted from release to Mr Smith on grounds of privilege on a case by case basis, and did not simply rely upon headings in documents which note privilege. This is evidenced by the fact that Telecom did not claim legal professional privilege in relation to the document Mr Smith has referred to.

Clause 7.5 of the rules of arbitration provides that "*the arbitrator may not require the production of documents protected by legal professional privilege*".

Telecom objects to providing copies of documents to which legal professional privilege applies.

Yours sincerely



Paul Rumble
GROUP MANAGER
CUSTOMER RESPONSE UNIT

M33990

442

3. Unfortunately the Legal advice and expertise that Telecom has sought from its internal legal group has also been sadly lacking in ethical direction. In the management of major customer disputes the legal area has sought to hide and skirt around the truth. ~~Telecom's internal legal group has responded to external statutory authorities with only half of the information required fully aware of not providing all information. Their general position has been to sit behind the legal word and its many interpretations in so doing avoiding full disclosure of information. [redacted] where the legal group have sought to avoid full disclosure of information to external authorities, in so doing, to the detriment of producing the virtues of natural justice.~~

Not sure if context of it could be for it talkman about A's COT in a HQ of 12 months

4. There are three main areas which Steve Black and his senior executives have sought to influence and manipulate:

1. Remove or change clear information on the position of liability.
2. Diminish the level of compensation payable to COT customers.
3. Dismissive of breaches in relation to matters regarding customer Privacy.

In relation to the Robert Bray case Steve Black has sought to cover up the true facts of disclosure of customer information. Particularly he has sought to cover up "broadcasting" of the customers private information.

(Gibnick Sr has been de associated this issue

As you can see from what I have mentioned to you something needs to done. As you can appreciate we are not in a position to go any deeper that what has already been outlined . As to where next that lies in your hands. We have done what is unfortunately our only form of address to the situation.

443



OFFICE OF HON MICHAEL LEE MP

Rep by Min Information
 Rep by SA Action
 Rep by Dept Advice

Copy held for min to 300

Final writ:

0269-05
22

Parliament House
Canberra ACT 2600

Bonnie
fji. Can w
discuss.
12/10

Circumstances and past actions of senior staff within Telecom have made it necessary to bring to your attention some very concerning activity that my colleagues and I can no longer be ignored or dismissed.

We hesitate to bring the following instances to your attention but decided it was necessary as this situation is far too serious to be allowed to continue, and attempts we have made within the organisation to bring our concerns to light have fallen unheard. In bringing this matter to your attention we do not wish to paint the picture that all staff are involved in certain activities, we strenuously would like to make the point here, there are staff within the whole framework of the staff of Mr Steven Black who have and are continuing to work towards the recommendations of the Cooper and Librand and Austel report toward addressing customer issues fairly and ethically.

Concerns and Issues.

Mr Steven Black Group General Manager of Customer Affairs who has the charter to work to address and compensate Telecom's "COT" customers as well as the management of other customer issues related to Telecom has involved in and initiates conduct and work practices that are totally unethical and he has managed to achieve certain results in relation to major cases due to the assistance of key senior executives, past colleagues and friends with whom key strategic activities have been assigned. These individuals have the skills or expertise required for the job and has jeopardised Telecom's position in attaining positive beneficial results for customers as the following instances will highlight.

1. Implementation of a complaint handling procedure throughout Telecom though outwardly giving the appearance of acceptance and uniformity of work practices, ~~is nothing more than outward deception to external regulating parties.~~ Mr David Fickling in association with Mr Steven Monro have deceived AUSTEL as to the implementation of core initiatives.

Existing within Telecom nationally is different Regional offices operating in various ways to address customer complaints. This situation is attributable to a lack of:

- comprehensive documentation to staff at time of training
- comprehensive training by competent individuals to all manner of staff
- a incomplete database unable to capture and store required criteria for most purposes specifically reporting
- continued failed deadlines in major initiatives resulting in blatant short cuts being needed.

To meet certain commitments to AUSTEL made by Mr Black and Mr Fickling a incomplete complaints handling process has been forced down staffs throats, resulting in much resentment and confusion whereby key initiatives are not in place.

2. The management of COT customers by Mr Rod Pollock is nothing more than a unprofessional, adversarial approach towards customers. Mr Pollocks approach to these customers has been one of manipulation and deception as in his dealings with the top four COT customers and subsequent eleven customers Mr Pollock has lied and deceived these customers.

Damaging evidence against Telecom has been conveniently removed or altered to suit the case. Junior staff or temporary agency staff have been requested not to place pertinent information on customer files so as no to weaken Telecom's case further. COT customers that may prove to be a threat to Telecom have been expertly manipulated and paid settlements. // evidence?

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from
10/10
maybe
not a
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by intern
issues -
was not
complete

Order's top
with procedure
arranging to Fickling
+ Brisbane office
Fickling reported that they initially provided too much documentation in training - ad, tested, downsized

Warrick Smith has been critical of Pollock a some issues.

443



Hunt & Hunt LAWYERS

Partners
 Edward S. Byrne
 James P.K. Hayward
 Christine A. Gable
 Gordon L. Hubert
 Mark T. Koppman
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 Peter J. Stein
 Wayne S. Cull
 Neville G. Galloway
 Grant D. Selton
 Charles Veivers
 Andrew Lodge Smith
 Wilson P. O'Hara

Consultants
 Kenneth M. Blain
 Richard J. Kellway

Associates
 Shane G. Hill
 John S. Molloy
 Melissa A. Henderson
 Pamela V. Calchin
 Roy Set

10 November 1994

Our Ref: GLH

Matter No:

Your Ref:

BY FAX: 287 7001

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

Dear Sir

ARBITRATION - TELECOM

I am enclosing a submission from Telecom dated 26 October 1994 in response to your letter of 17 October 1994.

In response to the three questions raised in your letter of 17 October 1994, I advise as follows:

- (a) I have power under Clause 7.5 of the Fast-Track Arbitration Procedure to direct the production of relevant documents, excluding those protected by legal professional privilege. I am unable to make such a direction at this stage as I have still not been formally advised as to the nature and parameters of the claim. Once your claim has been submitted and once I have received Telecom's defence, I will be sufficiently informed as to the issues to make any appropriate orders regarding the production of further documents;
- (b) I can effectively compel an explanation by Telecom of its raw data and other statistical documentation by requiring a suitably informed representative to attend a hearing. I can enlist the assistance of DMR, a member of the Resource Unit, in this regard. Again, I consider it premature to embark upon such a course of action. I must be convinced that the exercise is relevant to your claim. I cannot determine what is relevant to your claim until you have submitted formal claim documentation;
- (c) You have inquired whether the current Fast-Track arbitration Procedure incorporates or excludes loss and damage arising out of alleged unauthorised telephone tapping.

melbourne
 sydney
 sydney west
 Brisbane
 Canberra
 Newcastle
 represented by
 Adelaide
 Darwin

11554754_GLM/RS

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The scope of the arbitration is determined by reference to the arbitration agreement (that is, the Fast-Track Arbitration Procedure) unless the parties have subsequently agreed to vary the scope. Clause 1 of the Fast-Track Arbitration Procedure states that the purpose of the procedure is to resolve the disputes listed in Schedule A. Schedule A states that the scope of this arbitration is to determine:

"the liability of Telecom to the Claimant in respect of alleged service difficulties, problems and faults in the provision to the Claimant of telecommunication services".

Telecom has indicated in its letter of 26 October 1994 that it is "keen to have all issues in dispute" dealt with in the arbitration process. It is, therefore, prepared to classify the allegations of unauthorised telephone tapping as falling within the description of "alleged service difficulties, problems and faults".

You have inquired "how and when these matters were introduced into the Fast-Track Arbitration Procedure". I am not clear whether this means you are objecting to their introduction. In any event, I am not aware that they have been "introduced" to the procedure. As indicated above, I cannot form a view as to what specific matters are in dispute until you have formally submitted your claim.

If you submit a claim which makes no reference to the allegations of unauthorised telephone tapping, and if Telecom makes no comment about the exclusion of such allegations, then they will fall outside the scope of this arbitration.

If your claim documentation includes a claim for compensation in relation to unauthorised telephone tapping, and if Telecom makes no objection to its inclusion, then it will fall within the scope of the arbitration.

If Telecom contends, at the time of submission of your claim, that certain matters have been incorrectly included or excluded, I will invite formal submissions from both parties as to their understanding of Schedule A of the Fast-Track Arbitration Procedure and I shall then issue such directions as I consider appropriate.

It should be clear from my comments above that I am unable to play a constructive role in these proceedings until your claim documentation has been lodged. I am unable to compel you to lodge a claim. I can, however, set deadlines and if you are unable or unwilling to comply with them, Telecom may choose to make a submission as to the future of this arbitration. Alternatively, regardless of any submission by either party, I may conclude at some point that any attempt to arbitrate the dispute is futile, in which event I might elect to withdraw. I do not consider this scenario would be in the interests of either party and I am therefore

3

hopeful (and I have to date been prepared to give every possible indulgence to ensure) that this claim can be processed in accordance with the agreed Fast-Track Arbitration Procedure.

I now direct that your claim documentation be submitted on or before Monday 12 December 1994.

In submitting your claim, you should bear in mind that it is not necessary for all relevant or potentially relevant documentation to be appended or even referenced. The function of the claim documentation is to present me, and Telecom, with an adequate explanation of the basis upon which you consider you are entitled to compensation or, more specifically, the "alleged service difficulties, problems and faults" in the provision by Telecom to you and related entities of telecommunication services.

Yours sincerely



GORDON HUGHES

Encl

CC E Benjamin, W Smith, P Bartlett, J Rundell

11354754_GLH/RS

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Partners
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Edward S. Boyce
James G.F. Harrowell
Christine A. Gailley
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Ewin
Wayne B. Cahill
Neville G.H. Debney
Grant D. Sefton
Charles Veevers
Andrew Logie-Smith
William P. O'Shea

Consultants
Kenneth M. Martin
Richard J. Kellaway

Associates
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Galichio

21 February 1995

Our Ref: GLH

Matter No:

Your Ref:

BY FACSIMILE: 629 8361

Mr John Rundell
Ferrier Hodgson Corporate Advisory
Level 25
140 William Street
Melbourne VIC 3000

Dear Mr Rundell

ARBITRATION - SMITH

As you are aware, I have now been provided with all relevant pleadings in this matter. I have completed a preliminary review of the material.

I wish to engage the assistance of the Resource Unit, pursuant to clause 8.2 of the Fast-Track Arbitration Procedure, to carry out certain enquiries and research.

The enquiries and research which I wish the Resource Unit to conduct, and which I have loosely categorised as either "business" or "technical", are as set out below.

Business Enquiries

- (a) Please identify and evaluate the assumptions adopted by each party in estimating the financial impact of the alleged service deficiencies. Specifically, please provide me with your opinion as to whether you consider:
- (i) any of these assumptions are invalid;
 - (ii) in the case of competing valid assumptions, one assumption is more credible than the other; and
 - (iii) in any instance, there is a more credible assumption which neither party has relied upon;
- (b) analyse the key business and financial data contained in the pleadings with a view to determining whether:

melbourne

sydney

sydney wes

brisbane

canberra

newcastle

represented in

adelaide

darwin

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445

- (i) any of this data is inaccurate or unreliable;
 - (ii) in any instance, the data relied upon by either party is inappropriate; and
 - (iii) in any instance, additional data is required;
- (c) I would appreciate your opinion as to whether you consider any further financial or business documentation or other information (written or verbal) should be supplied by either party in order to facilitate my evaluation of the impact of the alleged service deficiencies;
- (d) for reasons of expediency, you should assume, in carrying out this evaluation, that the alleged faults existed. I believe it would be impractical to defer these enquiries until the technical evaluation is complete. If this makes it impossible or impractical in any instance to carry out the business and financial evaluation described above, I would appreciate an explanation to this effect;
- (e) if you consider the above enquiries necessitate a site inspection, this should be undertaken. You should notify me in advance, however, so that I can determine (after receiving submissions) whether it is appropriate for the claimant to be present and, if so, whether Telecom should also be provided with an opportunity to have a representative present;
- (f) I would appreciate an estimate of the date by which you believe these enquiries can be completed.

Technical Enquiries

- (a) Please advise me as to the availability of an appropriate expert to carry out enquiries and research of a technical nature. In particular, I require technical assistance in relation to:
- (i) reviewing, identifying and assessing the respective merits of contradictory submissions by the respective parties as to the existence, nature and effect of service deficiencies;
 - (ii) determining what further information, if any, should be sought by me before completing my evaluation of the submitted material; and
 - (iii) interpreting data submitted in the course of any oral hearing called to deal with technical issues;
- (b) if the technical expert referred to in paragraph (a) considers a site visit to be necessary, this should be undertaken. You should notify me in advance, however, so that I can determine (after receiving

submissions) whether it is appropriate for one or both parties to be present;

- (c) before any major expenditure is incurred by or on behalf of your technical assistants, I require an estimate of the anticipated time, timeframe and expense involved. This will enable me to determine whether I consider the proposed enquiries are justified in all the circumstances. It will also enable me to give consideration to the extent to which enquiries in this matter can be co-ordinated with enquiries relevant to other arbitrations.

Yours sincerely

GORDON HUGHES

cc E Benjamin, A Smith, W Smith, P Bartlett



Hunt & Hunt LAWYERS

COPY

Partners
 David M. Scarlett
 Edward S. Boyce
 James G.F. Harrowell
 Christine A. Gaffey
 Gordon L. Hughes
 Mark T. Knapman
 Ian S. Craig
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 Richard J. Kelleway

Associates
 Shane G. Hird
 John S. Molnar
 Melissa A. Henderson
 Francis V. Galichio

21 February 1995

Our Ref: GLH

Matter No:

Your Ref:

BY FACSIMILE: 629 8361

Mr John Rundell
 Ferrier Hodgson Corporate Advisory
 Level 25
 140 William Street
 Melbourne VIC 3000

Dear Mr Rundell

ARBITRATION - VALKOBI PTY LTD

As you are aware, I have now been provided with all relevant pleadings in this matter. I have completed a preliminary review of the material.

I wish to engage the assistance of the Resource Unit, pursuant to clause 8.2 of the Fast-Track Arbitration Procedure, to carry out certain enquiries and research.

The enquiries and research which I wish the Resource Unit to conduct, and which I have loosely categorised as either "business" or "technical", are as set out below.

Business Enquiries

(a) Please identify and evaluate the assumptions adopted by each party in estimating the financial impact of the alleged service deficiencies. Specifically, please provide me with your opinion as to whether you consider:

- (i) any of these assumptions are invalid;
- (ii) in the case of competing valid assumptions, one assumption is more credible than the other; and
- (iii) in any instance, there is a more credible assumption which neither party has relied upon;

(b) analyse the key business and financial data contained in the pleadings with a view to determining whether:

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Sydney West
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446

- (i) any of this data is inaccurate or unreliable;
 - (ii) in any instance, the data relied upon by either party is inappropriate; and
 - (iii) in any instance, additional data is required;
- (c) I would appreciate your opinion as to whether you consider any further financial or business documentation or other information (written or verbal) should be supplied by either party in order to facilitate my evaluation of the impact of the alleged service deficiencies;
- (d) for reasons of expediency, you should assume, in carrying out this evaluation, that the alleged faults existed. I believe it would be impractical to defer these enquiries until the technical evaluation is complete. If this makes it impossible or impractical in any instance to carry out the business and financial evaluation described above, I would appreciate an explanation to this effect;
- (e) if you consider the above enquiries necessitate a site inspection, this should be undertaken. You should notify me in advance, however, so that I can determine (after receiving submissions) whether it is appropriate for the claimant to be present and, if so, whether Telecom should also be provided with an opportunity to have a representative present;
- (f) I would appreciate an estimate of the date by which you believe these enquiries can be completed.

Technical Enquiries

- (a) Please advise me as to the availability of an appropriate expert to carry out enquiries and research of a technical nature. In particular, I require technical assistance in relation to:
- (i) reviewing, identifying and assessing the respective merits of contradictory submissions by the respective parties as to the existence, nature and effect of service deficiencies;
 - (ii) determining what further information, if any, should be sought by me before completing my evaluation of the submitted material; and
 - (iii) interpreting data submitted in the course of any oral hearing called to deal with technical issues;
- (b) if the technical expert referred to in paragraph (a) considers a site visit to be necessary, this should be undertaken. You should notify me in advance, however, so that I can determine (after receiving

submissions) whether it is appropriate for one or both parties to be present;

- (c) before any major expenditure is incurred by or on behalf of your technical assistants, I require an estimate of the anticipated time, timeframe and expense involved. This will enable me to determine whether I consider the proposed enquiries are justified in all the circumstances. It will also enable me to give consideration to the extent to which enquiries in this matter can be co-ordinated with enquiries relevant to other arbitrations.

Yours sincerely

GORDON HUGHES

cc E Benjamin, [REDACTED] Bartlett, A Davis, M Gillan, R Huch

- (d) in granting extensions of time and permitting amendments and the late submission of supplementary material, I have taken account of a variety of considerations including the fact that:
- the claimant is not legally represented;
 - the claimant was for some time during the course of these proceedings pursuing under FOI material allegedly in the possession of Telecom which he considered to be of relevance to the arbitration; and
 - neither party appeared to be prejudiced by the extensions;
 - I considered it essential that both parties had the opportunity to place all relevant material before me, regardless of the time frame set out in the arbitration agreement;
- (e) a further source of delay was a request for further particulars and a request for production of documents by Telecom following the initial submission of the claim. Given the amount being claimed, coupled with the fact that the claim documentation had not been prepared with legal assistance, I considered this request to be justified;
- (f) because of difficulties experienced by the claimant in complying fully with the request for further particulars and the request for production of documents, a hearing was convened at my office on 11 October 1994 in order to clarify the information being sought and to establish a time frame for its production;
- (g) the defence documentation was submitted on [date] and was subsequently supplemented by additional material;
- (h) on 24 January 1995 I received material comprising the claimant's reply to Telecom's defence. This material was the subject of subsequent amendment;
- (i) pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit", comprising Ferrier Hodgson, Chartered Accountants, and DMR Group Australia Pty Ltd, to conduct such inquiries or research as I saw fit;
- (j) on 21 February 1995, by which time I was satisfied that the submission of all relevant material by both parties was complete, I instructed Ferrier Hodgson (and, through them, DMR) to conduct certain inquiries on my behalf;
- (k) on 1 May 1995, I received a technical report and on 3 May 1995 a commercial report from the Resource Unit, each of which assisted me



**Telecommunications
Industry
Ombudsman**

**Warwick L. Smith LLB
Ombudsman**

March 9, 1995

Mr. Alan Smith
Cape Bridgewater Holiday Camp
Blowholes Road
RMB 4408
CAPE BRIDGEWATER VIC. 3306

By facsimile: (055) 267 230

Dear *Alan*,


Re: Resource Unit - Technical Support

As the executive of DMR Group Australia Pty. Ltd. is unavailable to provide locally based technical assistance, I propose to utilise the services of Mr. David Read and Mr. Chris Soutter of Lane Telecommunications (based in Adelaide) who are suitably qualified and independent.

Messrs. Read and Soutter will assist Mr. Paul Howell of DMR Group Inc. (Canada) in the technical assessment under the Fast Track Arbitration Procedure. Mr. Howell the principal technical advisor to the Resource Unit will be in Australia within two weeks. The technical enquiries will commence on Thursday 16th March, 1995.

Could you please confirm with me in writing that you have no objection to this appointment so the matter can proceed forthwith.

Yours faithfully,


Warwick L. Smith
Ombudsman

448

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FINAL
AWARD

- (b) I have acquiesced in a number of requests for extensions of time for compliance with these deadlines;
- (c) the claim documentation was initially submitted on 15 June 1994 and was subsequently supplemented by additional material;
- (d) in granting extensions of time and permitting amendments and the late submission of supplementary material, I have taken account of a variety of considerations including the fact that:
 - the claimant is not legally represented;
 - the claimant was for some time during the course of these proceedings pursuing under FOI material allegedly in the possession of Telecom which he considered to be of relevance to the arbitration;
 - neither party appeared to be prejudiced by the extensions; and
 - I considered it essential that both parties had every reasonable opportunity to place relevant material before me, regardless of the time frame set out in the arbitration agreement;
- (e) a further source of delay was a request for further particulars and a request for production of documents by Telecom following the initial submission of the claim. Given the amount being claimed, coupled with the fact that the claim documentation had not been prepared with legal assistance, I considered this request to be justified;
- (f) because of difficulties experienced by the claimant in complying fully with the request for further particulars and the request for production of documents, a hearing was convened at my office on 11 October 1994 in order to clarify the information being sought and to establish a time frame for its production;
- (g) the defence documentation was submitted on 13 December 1994 and was subsequently supplemented by additional material;
- (h) on 24 January 1995 I received material comprising the claimant's reply to Telecom's defence. This material was the subject of subsequent amendment;
- (i) pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit", comprising Ferrier Hodgson, Chartered Accountants, and DMR Group Australia Pty Ltd, to conduct such inquiries or research as I saw fit. By consent of the parties, the role of DMR Group Australia Pty Ltd was subsequently performed jointly by DMR Group Inc. and Lane Telecommunications Pty Ltd;

- (j) on 21 February 1995, by which time I was satisfied that the submission of all relevant material by both parties was complete, I instructed the Resource Unit to conduct certain inquiries on my behalf;
- (k) on 30 April 1995, I received a technical report and on 3 May 1995 a financial report from the Resource Unit, each of which furthered my understanding of the issues in dispute;
- (l) both parties were provided with an opportunity to comment on the contents of the reports I received from the Resource Unit and both availed themselves of that opportunity.

2.2 In all, I have read in excess of 6,000 pages of documentary evidence submitted by the parties.

3. Overview

3.1 I do not intend summarising all the evidence submitted in connection with this claim. Any omission of a reference to any facts or evidence should not be interpreted as a failure on my part to take those facts or that evidence into account. This part sets out an overview of the dispute only.

3.2 *Overview of Claim*

- (a) The claimant alleges that defective telecommunications services provided by Telecom have damaged his business and caused his health to suffer.
- (b) The claimant is a chef by occupation and is now 51 years of age. In December 1987 he purchased as a going concern the Cape Bridgewater Holiday Camp, commencing occupancy in February 1988. The camp included a homestead, an old church and a number of cabins which had a combined capacity to sleep in excess of 100 people.
- (c) Cape Bridgewater is 20 kilometres from Portland. The claimant regarded the area as a significant tourist attraction and says there was no documented evidence of any decline or predicted decline in tourism at the time of the purchase.
- (d) The former owner of the business now lives in India and has not provided evidence on behalf of either party in these proceedings. I know relatively little about the state of the business or the state of the telephone system used by the business as at the time of the purchase or beforehand. In any event, the claimant says he contemplated improving the existing facilities and hence the mix of clientele, thereby increasing revenue and profits.
- (e) The claimant asserts that the ongoing viability of the business was to a significant extent dependent upon his ability to take telephone bookings. He states that he first became aware of a problem with his



FERRIER HODGSON CORPORATE ADVISORY

STRICTLY PRIVATE & CONFIDENTIAL

BY COURIER

18 April 1995

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

Pia
14/4/95
We to discuss

Dear Sir,

RE : Fast Track Arbitration Procedure - Resource Unit
Arbitrations: Smith, Garms, Gillan/Valkobi

I acknowledge receipt of your letter of 23 March 1995. The matters raised in your letter were discussed at a meeting with Sue Hodgkinson and me on Tuesday, 4 April 1995. I now formally reply to your letter and update you on further developments since our meeting.

I note from the tone of your letter that you are somewhat concerned as to the apparent time frames within which you, as Administrator of the Fast Track Arbitrations, can expect finalisation of the above named arbitrations.

You have requested advice as to when, in terms of weeks, the Resource Unit envisages being in a position to provide its integrated financial and technical assessments to the Arbitrator for the above arbitrations. I now respond accordingly in relation to each:

Smith

The Resource Units role is almost complete, but more work is to be done to tidy our reports (both technical and financial) to a form suitable for submission to the parties by the end of April 1995.

The Resource Unit has completed a preliminary review of the financial material contained in the claim, defence and reply. The interim report has been drafted based on the assumption that technical faults did occur.

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD

A.C.N. 052 403 040

EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SELAK

LEVEL 25 140 WILLIAM STREET MELBOURNE VICTORIA 3000

TELEPHONE 03 629 8855 FACSIMILE 03 629 8361

LICENSED INVESTMENT ADVISER

450



No further questions are anticipated from the Arbitrator. An important meeting took place between the Resource Unit and the Arbitrator on 10 April 1995 over the need to manage the issuance of Resource Unit reports.

Lane Telecommunications have commenced their detailed review in mid March and now have completed their draft interim report (on 6 April 1995). This report is subject to review and amendment by Paul Howell of DMR Inc prior to issuance.

Garms

The Resource Unit has commenced its review of the financial issues. A preliminary report is envisaged to be finalised within three weeks. Lane Telecommunications have commenced their review and, at this stage, they estimate that their preliminary review will be completed within one month (mid to late May) for review by Paul Howell of DMR Inc.

Gillan/Valkobi

The Resource Unit has commenced its review of the financial issues. We envisage that our preliminary report will be finalised within three weeks. Lane Telecommunications have commenced their review and, at this stage, they likewise expect their preliminary review will be completed within one month for review by Paul Howell of DMR Inc.

Resource Unit (including Technical Support)

I note your comment that the Resource Unit reports issued to the Arbitrator must also be provided to the claimant and Telecom for their comment. We agree that this may prolong the process further, but the fact is that this is a requirement of the fast track arbitration. The Smith report will be available imminently and subsequent reports can, with the benefit of experience be expected to proceed more expeditiously.

I also advise that Mr Paul Howell, Director of DMR Inc Canada arrived in Australia on 13 April 1995 and worked over the Easter Holiday period, particularly on the Smith claim. Any technical report prepared in draft by Lanes will be signed off and appear on the letterhead of DMR Inc. Paul Howell anticipates completing the Smith technical report by the end of April. H W/L

Further, I advise that additional resources have been applied to the assignments and work on each has been undertaken contemporaneously. We have technical staff and financial support staff working on Garms and Gillan (in parallel) and visits to Brisbane are anticipated by the end of April 1995.



Arbitration

I understand that Dr Hughes will contact you directly (in your capacity as Administrator of the Fast Track Arbitration Procedures) on any legal procedural issues associated with the progress of the Arbitrations.

Conclusion

In conjunction with Dr Gordon Hughes, we are fast tracking the procedure with the aim of achieving a decision that has regard for due process and investigation.

In closing, I hope that it is possible for you (in your capacity as Administrator for the above referred Fast Track Arbitrations) to continue in that position until we can resolve these claims.

It is unfortunate that there have been forces at work collectively beyond our reasonable control that have delayed us in undertaking our work. It is only now, following the review and acceptance of our Resource Unit (including acceptance of Lane Telecommunications by the COT claimants), that we are in a position to analyse the merits (including technical aspects) of each claim.

Do not hesitate to contact the writer directly on (03) 629 8855.

Yours faithfully,
FERRIER HODGSON CORPORATE ADVISORY

JOHN RUNDELL
Project Manager - Resource Unit
Associate Director

Encl.

c.c. Mr Peter Bartlett, Partner, Minter Ellison Morris Fletcher.
Dr Gordon Hughes, Arbitrator, Managing Partner, Hunt & Hunt.



FERRIER HODGSON CORPORATE ADVISORY

BY COURIER

Our Ref: A1.4

15 November 1995

Mr John Pinnock
Telecommunications Industry Ombudsman
TIO Limited
321 Exhibition St
MELBOURNE VIC 3000

Dear Sir,

RE : Telecommunications Industry Ombudsman - Resource Unit
Fast Track Arbitration - Alan Smith

We refer to your letter dated 9 November 1995 with the attached facsimile from Mr Alan Smith dated 8 November 1995, and your recent conversations with Ms Susan Hodgkinson of this office concerning the above completed arbitration.

You have asked us to provide clarification of the issue raised by Mr Smith relating to the deletion of references to a potential addendum on possible discrepancies in Smith's Telecom bills in the final Technical Evaluation Report. We have spoken to Lane Telecommunications Pty Ltd ("Lanes"), who acted as Technical Consultants to the Resource Unit in the above Arbitration, and they have provided the following comments in relation to the issue raised by Mr Smith:

"At a late stage of the Arbitration process, at the time of preparation of the Technical Evaluation Report, there was discussion about billing issues which had been raised by Mr Smith. A draft of the Technical Evaluation Report therefore included reference to the billing matters, which it was thought might require further work beyond the time of issue of the Report.

The primary matter concerned Mr Smith's bills for outgoing calls from Cape Bridgewater. Mr Smith had observed that there was a discrepancy between the call durations of STD calls on his bills and the durations shown by Telecom's call recording equipment connected to Mr Smith's line (in the Customer Access Network).

Discussions were held with Telecom (Mr Peter Gamble) in Mr Smith's presence during the visit to Cape Bridgewater in April 1995, which provided the following information:

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD
A.C.N. 052 403 040

EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SELAK

LEVEL 25 140 WILLIAM STREET MELBOURNE VICTORIA 3000
TELEPHONE 03 629 8855 FACSIMILE 03 629 8361

LICENSED INVESTMENT ADVISER

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- For outgoing calls on a normal customer exchange line, the caller notes the answer of the called party by cessation of the ring tone and the answering voice. However, there is no corresponding physical (electrical) signal on the caller's line (CAN side of the exchange) for the call recording equipment to register that an answer has occurred. Consequently, timing of the call recording equipment is configured to allow a fixed time to answer (say 30 seconds) from the time the caller lifts the handset, or from the completion of dialling, until it assumes that answer has taken place. Thus the overall measured duration of the call from lifting to replacement of the handset is reduced by this fixed amount to give the (assumed) nominal conversation time.
- Billing on the other hand is based on signals recorded at the caller's exchange, including a physical signal to indicate called party answer. Thus the billing duration is precise.
- At an individual call level, there will therefore be discrepancies between the two sets of call duration records except where the actual and assumed times to answer are the same.
- Lanes considered and accepted this technical explanation from Telecom as plausible, and believe Mr Smith also understood and accepted it. Consequently, as the discussion appeared to have resolved this matter, it was not included in the formal Technical Evaluation Report.

A second matter involved 008 calls. Again, this matter was current at a late stage (April 1995) of the Arbitration process. This matter concerned possible overlap in the records of 008 calls made to Mr Smith, and for which he was billed. However, Lanes and DMR Group Inc concluded that the level of disruption to Mr Smith's overall service was not clear, and that it was unlikely that further work would clarify the matter to the extent that it would have a measurable effect on the Arbitrator's determination. The matter was discussed in Section 2.23 of the Technical Evaluation Report, and an assessment of "Indeterminate" was reached.

As no further progress was likely to be made on these matters, the formal version of the Technical Evaluation Report did not leave the billing issue open."

I trust that the above advice from Lane Telecommunications clarifies the issue raised by Mr Smith regarding the Resource Unit's Technical Evaluation Report.



If you have any further queries please do not hesitate to contact the writer or Ms Susan Hodgkinson on (03) 629 8855.

Yours faithfully,
FERRIER HODGSON CORPORATE ADVISORY

A handwritten signature in black ink, appearing to read 'John Rundell', written in a cursive style.

JOHN RUNDELL
Project Manager
Associate Director

cc Dr Gordon Hughes, Hunt & Hunt
Mr Andrew Crouch, Lane Telecommunications Pty Ltd
Mr Paul Howell, DMR Group Inc

Sources of Information

↓ ↓
 The information provided in this report has been derived and interpreted from the following documents:

- Smith - Letter of Claim (SM1)
- Smith - George Close Report dated 5/7/94 (SM8)
- Smith - George Close Report dated August 1994 (SM9)
- Smith - Telecom Defence Witness Statements
- Smith - Telecom Defence B004 Service History
- Smith - Telecom Defence B004 Appendix File 1
- Smith - Telecom Defence B004 Appendix File 2
- Smith - Telecom Defence B004 Appendix File 3
- Smith - Telecom Defence B004 Appendix File 4
- Smith - Telecom Defence B004 Appendix File 5
- Smith - Telecom Australia - Ref 1 Statutory Declaration of Ross Marshall. Ref 2 An Introduction to Telecommunications in Australia. Ref 3 Telecom Australia's Network Philosophy. Ref 4 Glossary of Terms
- Smith - FOI Material 19 December 1994 (SM44)
- Smith - George Close & Associates Report 20 January 1995 - Reply to Telecom's Defence (SM50)
- Smith - Samples of FOI Telecom Documents (SM49)
- Smith - Appendix C Additional evidence (SM48)
- Smith - Summary of TF200 Report (SM47)
- Smith - Bell Canada International Inc. Further information (SM46)
- Smith - Additional information (SM45)

A site visit was conducted on Wednesday 4th April 1995 covering:

- inspection of the Cape Bridgewater RCM exchange
- inspection of the CPE at the Cape Bridgewater Holiday Camp
- inspection of the exchange equipment at Portland (RCM, AXE 104, ARF)
- discussions with Mr Alan Smith, accompanied by Mr Peter Gamble of Telecom Australia.

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Sources of Information

The information provided in this report has been derived and interpreted from the following documents:

- Smith - Letter of Claim (SM1)
- Smith - George Close Report dated 5/7/94 (SM8)
- Smith - George Close Report dated August 1994 (SM9)
- Smith - FOI Material 1994 (SM44)
- Smith - George Close & Associates Report 20 January 1995 - Reply to Telecom's Defence (SM50)
- Smith - Samples of FOI Telecom Documents (SM49)
- Smith - Appendix C Additional evidence (SM48)
- Smith - Summary of TF200 Report (SM47)
- Smith - Bell Canada International Inc. Further information (SM46)
- Smith - Assessment Submission (SM2)
 - 1-200
 - 200 - 400
 - 400 - 600
 - 600 - 800
 - 800 - 1,000
 - 1,000 - 1,289
 - 2,001 - 2,158
- Smith - Reply 18 January 1995 (SM53)
- Smith - Reply - Brief Summary January 1995
- Smith - Further Examples of Additional Evidence Two Volumes (SM16)
- Smith - Further FOI Material (SM17)
- Smith - Cape Bridgewater Par 1 & 2 (SM 20 & 21)
- Smith - Additional information (SM45)
- Smith - Telecom Defence Witness Statements
- Smith - Telecom Defence B004 Service History
- Smith - Telecom Defence B004 Appendix File 1
- Smith - Telecom Defence B004 Appendix File 2
- Smith - Telecom Defence B004 Appendix File 3
- Smith - Telecom Defence B004 Appendix File 4
- Smith - Telecom Defence B004 Appendix File 5
- Smith - Telecom Australia - Ref 1 Statutory Declaration of Ross Marshall. Ref 2 An Introduction to Telecommunications in Australia. Ref 3 Telecom Australia's Network Philosophy. Ref 4 Glossary of Terms
- Smith - Telecom Defence Principal Submission
- Smith - Telecom Defence Legal Submission
- Smith - Telecom Supplement to Defence Documents

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HUGHES - COPY

RESOURCE UNIT TECHNICAL EVALUATION REPORT

Mr. Alan Smith of Cape Bridgewater Holiday Camp

30 April 1995

Introduction

This document is DMR Group Inc.'s (Montreal, Canada) and Lane Telecommunications Pty Ltd's (Dulwich, South Australia) Technical Report on the Cape Bridgewater Holiday Camp COT case.

It is complete and final as it is. There is, however, an addendum which we may find it necessary to add during the next few weeks on billing, i.e. possible discrepancies in Smith's Telecom bills.

To establish the context for our technical evaluation, we preface it with our positions on three specific details in Telecom's Service History. This is followed by a statement about other documentation which has been provided by both parties. And we provide a characterisation of the level of service such a customer as Mr Smith could reasonably have expected.

Sections 1 and 2 itemise problems with Telecom's service to the Cape Bridgewater Holiday Camp in the period from February 1988 to October 1994. There were several different problems, sometimes more than one at a time, with several different causes. These are summarised in the Timeline at the end of the Introduction. They include:

- congestion
- low capacity
- exchange fault
- transmission equipment (RCM) faults
- calls wrongly directed to RVA (Recorded Voice Announcement)
- sundry reports with "no fault found" at the time
- Telecom testing
- programming error
- uncompleted 008 calls
- others.

Section 3 addresses the issue of problems with CPE (Customer Premises Equipment). It is not always clear to the customer where to draw the line between CPE and proper Telecom responsibilities, and Telecom did not succeed in making it clear to Mr Smith.

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

Cape Bridgewater Documentation

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

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

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

Otherwise, the Technical Report on Cape Bridgewater is complete.

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

"Bogus" Complaints

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

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RESOURCE UNIT TECHNICAL EVALUATION REPORT

Mr. Alan Smith of Cape Bridgewater Holiday Camp

30 April 1995

Introduction

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It is complete and final as it is.

To establish the context for our technical evaluation, we preface it with our positions on three specific details in Telecom's Service History. This is followed by a statement about other documentation which has been provided by both parties. And we provide a characterisation of the level of service which a customer such as Mr Smith could reasonably have expected.

Sections 1 and 2 itemise problems with Telecom's service to the Cape Bridgewater Holiday Camp in the period from February 1988 to October 1994. There were several different problems, sometimes more than one at a time, with several different causes. These are summarised in the Timeline at the end of the Introduction. They include:

- congestion
- low capacity
- exchange fault
- transmission equipment (RCM) faults
- calls wrongly directed to RVA (Recorded Voice Announcement)
- sundry reports with "no fault found" at the time
- Telecom testing
- programming error
- uncompleted 008 calls
- others.

Section 3 addresses the issue of problems with CPE (Customer Premises Equipment). It is not always clear to the customer where to draw the line between CPE and proper Telecom responsibilities, and Telecom did not succeed in making it clear to Mr Smith.

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None of the faults covered in our Technical Report and attributed to Telecom is either "bogus" or CPE. We concur with Telecom that there were CPE faults, as discussed in Section 3 of the Technical Report.

Professional Service

Second, Telecom asserts that its employees always provided "professional" service "in good faith." While we do not find deliberate malfeasance on the part of the Telecom employees who serviced the Cape Bridgewater facilities, we do find Telecom's approach to fault reporting novel but less than adequate. Before December 1992, Telecom says it "tailored" fault reporting [Ref B004, p33 "Telecom treated complaints from Smith professionally by responding with a reporting processes [sic] tailored to meet his complaints."] After December 1992, Telecom says (p78) that "Smith's complaint reporting arrangements were upgraded." Considering that it took Telecom too long to diagnose and correct certain network faults (as indicated in the Technical Report), we find that Telecom's performance was not always adequate.

A well-disciplined maintenance team would retain customer complaints until they were resolved and clearly distinguish them from all other discussions with the customer, and Telecom did not always do this. Because they found certain faults difficult to replicate or to find, Telecom cleared them as non-existent with "No Fault Found." Telecom's approach at Cape Bridgewater, though well-meaning, if sometimes also condescending, was often more casual than professional. Telecom's actions in Cape Bridgewater appear to be aimed at level of effort more than level of service.

Care In Service Provision

Third, Telecom does not cite any examples of Telecom carelessness, but we find this to be a matter of interpretation in the instances of Telecom wrongly directing calls to Recorded Voice Announcement (2.3), testing causing lost calls (2.5), software faults (2.6), programming errors (2.12), and possibly others.

Service Level

At issue is whether or not the level of service provided to Mr Smith of Cape Bridgewater Holiday Camp by Telstra (Telecom) was the level the customer could reasonably have expected.

To make that determination, we first pose the question: What should the level of service have been, i.e., what could a Telecom customer expect in such a country area during the period covered by Mr Smith's claim?

Our Technical Report covers time periods as follows:

1. February, 1988 to 21 August 1991
2. After 21 August 1991 (to October 1994).

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2.22 All services for CBHC were lost for 3 hours due to an exchange data programming error. Such major impact due to an operational error is deemed a less than reasonable level of service.

ASSESSMENT - Service was less than reasonable.

2.23 Continued reports of 008 faults up to the present. As the level of disruption to overall CBHC service is not clear, and fault causes have not been diagnosed, a reasonable expectation is that these faults would remain "open".

ASSESSMENT - Indeterminate.

3. About 200 fault reports were made over December 1992 to October 1994. Specific assessment of these reports other than where covered above, has not been attempted.

5 Summary

CBHC telephone services have suffered considerable technical difficulties during the period in question. Telecom, certainly initially fully concentrated on the CAN/CPE elements, and if they were 'intact', faults would be treated as NFF (No Fault Found). As can be seen from the above, faults did exist that affected the CBHC services, causing service to fall below a reasonable level and apart from CPE problems, most of these faults or problems were in the Inter Exchange Network.

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2.17 The Resource Unit concludes that there may have been some peak period congestion over a period of up to 12 months (30 March 1993 to April 1994) between Warmambool and Portland. The Resource Unit concludes on page 36 of the Technical Report that the extent of the congestion is unknown. It is submitted that any impact on the Claimant's service would have been minimal and then only during periods of peak traffic (see page 61 of the B004 Report and the letter dated 27 April 1995 to the Arbitrator from Ted Benjamin).

2.19 The Resource Unit refers to complaints of call problems between June 1993 and March 1994 for which no faults were found. There is, however, no evidence of "real faults" that may have had an impact on the Claimant's telephone service.

2.20 The Resource Unit refers to complaints of a single caller which were investigated. No fault was found and there is no evidence of any fault that may have had an impact on the Claimant's telephone service.

2.23 The Resource Unit refers to complaints relating to the Claimant's 008 service. Although the Resource Unit would have preferred such complaints to have been left "open", there is no evidence of any "real fault" which may have had an impact on the Claimant's telephone service. *

2.24 The Resource Unit notes the number of complaints between December 1992 and October 1994 and states that there were "problems quite evidently caused by mis-operation or misunderstanding of the CPE". Such misoperation or misunderstanding is evidence of an effect on the Claimant's telephone service for which, the Resource Unit recognises, Telecom is not responsible.

A reasonable level of service was provided

2.21 The Resource Unit refers to an intermittent problem with the Claimant's Goldphone for 11 days in March 1994. This would only have had a minimal effect on the Claimant's telephone service and could not have affected his business.

Other

2.11 The Resource Unit refers to cordless telephone difficulties which were outside Telecom's area of responsibility.

L69065

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DEPARTMENT OF
COMMUNICATIONS
AND THE ARTS

Our Reference

FACSIMILE

To: Mr John Pinnock
Telecommunications Industry Ombudsman
Phone number: 1800-062-058
Facsimile number: 1800-630-614

From: Toni Ahkin
Phone number: (02) 6271 1509
Facsimile number: (02) 6271 1850
Date: 22 January 1998
Number of pages: Cover + 4

GPO Box 2154 Canberra ACT 2601 Australia. Telephone (02) 6271 1000 Facsimile (02) 6271 1901 Email dea@dea.gov.au

Mr Pinnock

Further to our recent phone conversation I am forwarding Telstra's transcript of its meeting with Alan Smith, held on 14 January 1998 concerning his claim of overcharging on his 1800 number.

Mr Smith has undertaken to provide further documentation to Telstra.

Wally,
Please see * over page.
Do you know anything about that?

JA
22/1

John I spoke to Lynn Chesidorn. The meeting was at Schone's, not TRO. (Friedman?). He will tell Harry.
Wally 24/1

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OFFICE OF THE TREASURER

- 3 DEC 1997

Mr David Quilty
Chief of Staff
Office of Senator the Hon. Richard Alston
Minister for Communications, Information Economy and the Arts
MG 70
Parliament House
CANBERRA ACT 2600

RECEIVED
- 4 DEC 1997

Dear David

Attached please find correspondence from Mr Alan Smith in relation to his claims as a Casualty of Telstra member.

As this matter falls within the portfolio responsibility of your Minister I would be grateful if you would respond to Mr Smith directly as appropriate.

I have also copied this material to the Minister for Justice, Senator the Hon. Amanda Vanstone.

Yours sincerely

Philip Gaetjens
Principal Adviser

RECEIVED ON
3 DEC 1997
M. S.

Minister	_____
Chief of Staff	_____
Adviser	_____
Department	_____
Immediate Action	_____
Other	_____

Requested for:

Urgent by _____

Acknowledged by _____

Reply by _____

Minister

Chief of Staff

Adviser

Department

Immediate Action

Other

Co: _____ P/G

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Hunt & Hunt LAWYERS

Partners
 David M. Scarlett
 Edward S. Boyce
 James G.F. Harrowell
 Christine A. Gailley
 Gordon L. Hughes
 Mark T. Knapman
 Ian S. Craig
 Peter J. Ewin
 Wayne B. Cahill
 Neville G.H. Debney
 Grant D. Sefton
 Charles Veevers
 Andrew Logie-Smith
 William P. O'Shea

Consultants
 Kenneth M. Martin
 Richard J. Kelloway
 Andrew Jenkins

Associates
 Shane G. Hird
 John S. Molnar
 Melissa A. Henderson
 Francis V. Gallichio
 John D.F. Morris

12 May 1995

Our Ref: GLH

Matter No: 5126900

Your Ref:

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

Dear Mr Schorer

ARBITRATION - TELECOM

I note I have not heard from you for some time.

I am departing today for two weeks leave. When I return, I intend convening a directions hearing in order to determine whether the parties wish this arbitration to proceed.

I would be interested to receive any written comments from you (or Telecom) in the meantime.

Yours sincerely



GORDON HUGHES

cc E Benjamin, W Smith, P Bartlett, J Rundell

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin



11464044_ACZF/CF

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

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6 September 1994

Telecom
AUSTRALIA

Central Area
Network Operations
6/171 Roma Street
Brisbane
Australia

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

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

Gerry,

N00005

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

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

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

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

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

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

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

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File CoT 461

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FOI RECEIVED
26/5/95

- As Mr G. Kenley and Mr R. Bakis intended to travel to Portland exchange (via Warrnambool exchange) on Friday afternoon 3/11/93, they ensured that a TRT run from Richmond had finished and that a run from the South Yarra TRT had commenced satisfactorily before they left Melbourne at approximately 12.45 that day. They also arranged for test calls to begin from Bendigo exchange that afternoon, and made a call from Warrnambool exchange to South Yarra exchange late in the afternoon to ensure the South Yarra TRT had completed its test run program and stopped.
- No staff recalls or attendances were recorded or required at either South Yarra or Richmond exchange to attend to TRT's on Friday 3/11/93 or the weekend 6/11/93 & 7/11/93.

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

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

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

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

N00006

Alan Hennrich
GENERAL MANAGER
CENTRAL AREA

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TOTAL P. 12

✓ file

5th June, 1995

RE: SCHORER & COT CASES

Re Schorer & Cot Cases. Pursue Schorer & Thorpe to get authority to write to the Commonwealth Ombudsman about the inability or refusal to provide us with the tests that were conducted for purposes of both Schorer and for Smith. In particular I am to concern myself that the material has not been made available for inspection and it should be because it belongs to Telecom not to Bell Canada. I am also to make an issue that the material is being delayed in being produced and that it is being sent in Smith's case very late in the piece too late for him to use for his purposes of his arbitration and in particular some of it came after the arbitration had been decided.

WRH

462



5 Queens Road
Melbourne
Victoria 3004
Tel: (03) 9828 7300
Fax: (03) 9820 3021
Free Call: 1800 335 526
TTY: (03) 9828 7490

10 November 1995

The Hon Michael Lee MP
Minister for Communications and the Arts
Parliament House
Canberra ACT 2600

Dear Minister Lee

**QUARTERLY REPORT ON PROGRESS OF TELSTRA'S
IMPLEMENTATION OF RECOMMENDATIONS OF AUSTEL'S COT
CASES REPORT**

I am pleased to provide AUSTEL's fifth quarterly report on Telstra's progress in implementing the recommendations of AUSTEL's *COT Cases Report*.

This quarterly report consists of two parts: a summary of significant developments to date; and a more detailed commentary on the status of implementation of outstanding recommendations.

AUSTEL considers that Telstra is continuing to demonstrate its commitment to implementation of the recommendations of AUSTEL's *COT Cases Report*. Of that report's forty-one recommendations, twenty-five are finalised. Recommendations 6, 7, 8, 10, 25 & 26 have been finalised since the last quarterly report was submitted. Recommendations 6, 7, 8, & 10 relate to Telstra's representation of its liability, and recommendations 25 & 26 concern resolution of difficult network faults. The substantive action required to progress implementation of the outstanding recommendations is being undertaken by Telstra.

Telstra is no longer required to report against recommendations 1, 4, 5, 6, 7, 8, 10, 11, 12, 16, 17, 19, 21, 23, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35 & 36, as these have either been fully implemented or the necessary action has been taken to achieve implementation. While these recommendations are regarded as being exempt from further routine reporting, AUSTEL may provide additional comment should any significant issues arise or milestones occur which concern any of these recommendations.

Yours sincerely

Cliff Mathieson
General Manager
Carrier Monitoring Unit

CMT/MS/DK

Postal Address: P O Box 7443 St Kilda Road Melbourne Victoria 3004

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Progress of COT Arbitrations

As discussed in previous COT Status Reports, an arbitration procedure was developed by the TIO, Telstra and four complainants described in AUSTEL's 1994 COT Cases Report as the *original* COT Cases, for these four complainants. The TIO has advised AUSTEL that the first of these arbitrations was finalised in May of this year, with the delivery of the arbitrator's award. The second and third arbitrations are expected to be completed by the end of the year. The claimant in the fourth arbitration has not yet submitted a claim.

A further Special Arbitration Procedure was developed by the TIO in mid 1994. This procedure was designed to cater for 12 further Telstra customers identified by AUSTEL as warranting special consideration and having problems similar to the original COT Cases. The TIO has advised AUSTEL that one of these customers subsequently reached a direct settlement with the carrier, and another elected not to pursue the matter further. The remaining 10 customers are involved in arbitrations, and are currently at different stages in the process of the submission of Claim, Defence and Reply Documents. Six of these arbitrations are expected to be completed early in 1996. As at November 1995 the remaining four customers had not yet submitted their claims to the Arbitrator.

The TIO has observed that the progress of arbitration for both the original four complainants and the other group involved in the Special Arbitration Procedure has been significantly hampered. The TIO attributes this to -

- delays in the provision of documentation and information by Telstra to the various customers under Freedom of Information entitlements;
- delays on the part of claimants in advancing their claims; and
- the legalistic approach adopted by Telstra in its defence against these claims.

In addition, the TIO has advised AUSTEL that there is a high degree of distrust between the parties who have rarely shifted from mutually entrenched positions, and that these factors have also had an adverse impact on the progress of the arbitrations. Further comment is provided on arbitrations under recommendations 3 and 9.

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93/94 WRH:MYC

24th November, 1995

Dr Gordon Hughes
c/- Messrs Hunt & Hunt
Lawyers
Level 21
459 Collins Street
MELBOURNE VIC 3000

Dear Dr. Hughes,

RE: Arbitration - Golden Messengers and Telstra

We refer to your letter of 6th November last to our client and subsequent correspondence.

Our client advises that it is not in any position to advise with certainty whether or not it anticipates "a delay of considerable or indeterminate length".

The arbitration proceedings were entered into on a clearly accepted basis that Telstra would supply required documentation under FOI provisions. Our client cannot proceed without the relevant information being made available.

Without being critical of Telstra at this stage, the fact is that the material is being provided extremely slowly. The last delivery of documentation was received only this month. We are instructed that material which is well known to have existed (and presumably has not since been lost or destroyed) is still awaited.

Our client is aware of the disastrous state of affairs as to the supply of FOI documents in the recent Smith arbitration wherein documentation was supplied shortly before and after you made your decision; it does not want to be similarly disadvantaged in its own proceedings.

Your advice that you will give consideration to the question of whether the arbitration should be abandoned is noted. Our client, as we are at present advised, would not be agreeable to any such proposal.

However, if you personally find the present situation tedious and simply wish to resign as arbitrator for that or for any other reason, our client would not object, nor would it consider it would be entitled to offer objections.

Yours truly,

HUNTS'

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COPY



27 February, 1996

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

Mr L E James
President
Institute of Arbitrators Australia
Level 1, 22 William Street
MELBOURNE 3000

Dear Mr James

Complaint By Mr Alan Smith against Dr Gordon Hughes

Mr Smith has copied to me his letters to you of 15 and 18 January 1996, and your response to him of 16 January 1996, as well as his letter to you of 9 February 1996. Dr Hughes has also copied to me his letter to you of 16 February 1996.

As Administrator of the Fast Track Arbitration Procedure, I wish to comment on the allegations put to you by Mr Smith, subject to certain constraints due to the confidential nature of the arbitration procedure.

At the outset, I advise that Mr Smith's allegations concerning Dr Hughes' conduct of the Arbitration are unwarranted.

Mr Smith is one of the so-called 'COT Cases' (formerly 'Casualties of Telecom', now 'Casualties of Telstra') for whom a unique arbitration procedure was established in April 1994. This arbitration procedure was negotiated between the four original COT Claimants (which included Mr Smith), Telecom (now Telstra), AUSTEL and the TIO. The TIO is the Administrator of the arbitration procedure, responsible for administrative arrangements the arbitrators require. The procedure provides for an independent expert Resource Unit, comprising telecommunications and financial arms, to assist the Arbitrator by conducting its own independent investigation and analysis of the evidence and submissions presented by the parties.

Dr Hughes was appointed to arbitrate the four separate claims, as all the parties involved (that is each claimant and Telstra) agreed he had the necessary integrity and expertise that the task required. I enclose for your information a copy of a letter from Mr Smith and another COT Claimant, [name deleted], to the TIO dated 3 August 1994, in which they both confirm their confidence in the integrity of Dr Hughes.

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However, since receiving Dr Hughes' Award in May 1995, Mr Smith has made a series of surprising allegations concerning the conduct of the Arbitrator, the Arbitrator's Resource Unit (Ferrier Hodgson Corporate Advisory and Lane Telecommunications), and the TIO. These allegations have ranged from assertions of incompetence and conflict of interest, to bias and outright corruption and collusion; on one occasion Mr Smith alleged that the TIO was "as bad as the rest of these swines who conducted this Fast-Track Arbitration Procedure". Despite Mr Smith's claims that he has proof to substantiate the allegations, any such 'proof' which he has so far provided to me is in fact nothing of the sort.

The arbitration procedure was designed to be informal and flexible, and it explicitly lowered the standard of proof required from claimants. It has been very disappointing that this informality and flexibility may have contributed to Mr Smith's sense that the arbitration procedure and those involved in it were less professional or deserving of his respect and confidence than the Supreme Court.

Over the last 9 months I have received many letters of complaint from Mr Smith (on average over that period two to three letters per week; in one month over 25 letters). Mr Smith has also written directly to Dr Hughes on a number of occasions. These letters have largely consisted of expressions of great discontent with the outcome of the arbitration.

This discontent seems to have had an adverse impact on the high regard which Mr Smith had previously held for Dr Hughes, with the consequence that his allegations began to also be directed towards Dr Hughes' integrity.

In a circular fashion, Mr Smith has then attempted to substantiate his allegations that Dr Hughes lacked integrity and independence, and that he had been denied natural justice by Dr Hughes, with examples of instances in which he believed Dr Hughes erred in his assessment of the evidence and submissions presented by the parties during the course of his arbitration.

Mr Smith continues, effectively, to seek a review, by all and sundry, including the TIO, of Dr Hughes' Award by impugning his character, integrity and independence. This is not a legitimate means of appealing the Arbitrator's Award, and I have written to Mr Smith on numerous occasions advising him that I am not in a position to investigate the manner in which Dr Hughes reached his decision, and that he should seek legal advice if he feels the circumstances warrant an appeal to the Supreme Court.

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Mr Smith has admitted to me in writing that late last year he rang Dr Hughes' home phone number (apparently in the middle of the night, at approximately 2.00am) and spoke to Dr Hughes' wife, impersonating a member of the Resource Unit. Mr Smith gave me the following explanation of this incident:

"Once I had made sure that it was Dr Hughes' residence I felt that I might upset Mrs Hughes if I told her who I was and so I said "No worries, I'll contact Gordon when he gets back." I gave her [name deleted]'s name instead of my own - it seemed more appropriate at the time."


This explanation does not convince me that his behaviour was at all appropriate.

In his letter to you of 9 February 1996 Mr Smith refers to a letter I sent to him in November 1995. For your information I enclose a copy of that letter. You will see that I do not make any statement in that letter remotely resembling that which he has attributed to me. Mr Smith has a tendency to purport to refer specifically to correspondence, when recourse to the correspondence itself proves that his memory deceives him.

No evidence produced to me by any claimant, but particularly by Mr Smith, has affected my utmost confidence in Dr Hughes' integrity and independence.

Mr Smith does not seem capable of accepting the decision of the independent arbitrator, or alternatively, pursuing a challenge of that decision through the proper channels. Undeniably, he has undergone a difficult experience in his prolonged dispute with Telstra. However, in my view, Mr Smith cannot or will not put this episode behind him, and is desperately clutching at straws. He is now widely circulating serious allegations which are completely without foundation.

Yours sincerely


John Pinnock
 Ombudsman

cc Dr Gordon Hughes.

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Office
Use

Itemised Call Details *continued*

STD calls *continued*

	Date	Time	Place	Number	Rate	Min:Sec	\$
	Telephone Service 055-26 7230 <i>continued</i>						
117-9	28 Nov	03:19 pm	Sydney	0299652913	Day	0:14	0.23
117-10	28 Nov	03:48 pm	Melbourne	0396022266	Day	12:08	4.32
117-11	28 Nov	04:10 pm	Melbourne	0396903322	Day	1:59	0.81
117-12	28 Nov	04:26 pm	Canberra	062822051	Day	9:14	4.52
117-13	28 Nov	04:37 pm	Melbourne	0392778779	Day	1:00	0.47
118-1	28 Nov	05:25 pm	Sydney	0299652919	Day	1:18	0.74
118-2	28 Nov	05:44 pm	Melbourne	0392778777	Day	3:30	1.33
118-3	28 Nov	05:49 pm	Brisbane	0732780341	Day	0:52	0.53
118-4	28 Nov	07:06 pm	Brisbane	0732780341	Night	2:30	0.95
118-5	28 Nov	08:02 pm	Melbourne	0395722836	Night	0:28	0.23
118-6	29 Nov	08:37 am	Brisbane	0732780341	Day	11:25	5.55
118-7	29 Nov	09:22 am	Melbourne	0396298361	Day	0:47	0.39
118-8	29 Nov	10:03 am	Melbourne	0398761254	Day	1:23	0.60
118-9	29 Nov	10:12 am	Canberra	062773614	Day	1:34	0.87
118-10	29 Nov	10:14 am	Canberra	062773177	Day	1:41	0.92
118-11	29 Nov	10:16 am	Canberra	062778464	Day	1:34	0.87
118-12	29 Nov	10:19 am	Canberra	062497829	Day	1:30	0.87
118-13	29 Nov	10:22 am	Brisbane	0732780341	Day	1:21	0.76
119-1	29 Nov	11:47 am	Melbourne	0392778797	Day	1:06	0.50
119-2	29 Nov	11:53 am	Canberra	062773308	Day	1:33	0.86

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DRAFT

↓
28 April 1995

Dr Gordon Hughes
Hunt & Hunt
Solicitors
GPO Box 1533N
MELBOURNE VIC 3000

By Facsimile: 614 8730

Dear Gordon

Fast Track Arbitration - Smith

I am becoming increasingly concerned at the delays in the finalisation of this matter.

The Resource Unit tells me that it expects its technical and financial reports to the Arbitrator will be released today to the parties. The parties will then of course have the right to a reasonable period within which to comment on these reports. The extent of this period would of course be in your discretion.

However, I understand you are to present a paper in Greece in mid May.

I would expect the Award would be delivered prior to your departure.

It would be unacceptable to contemplate the delivery of the Award being delayed until after your return.

Could you please contact me to discuss.

Yours sincerely

Warwick L Smith
Ombudsman

DRAFT

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16 July 1997

**Telecommunications
Industry
Ombudsman**

Mr W Hunt
Solicitors and Consultants
Hunts'
358 Lonsdale Street
MELBOURNE 3051

John Pinnock
Ombudsman

**CONFIRMATION
OF FAX**

Facsimile 03 9670 6598

Dear Mr Hunt

Status of Lane Telecommunications ('Lane')

On 7 May 1997 Lane's business was purchased from Pacific Star by Ericsson Australia ('Ericsson'). Lane is now 100% owned by Ericsson and forms part of Ericsson's Services Corporate Business Unit as an independent telecommunications consultancy.

Lane is the Technical Advisor to the Resource Unit in various arbitrations administered by the Telecommunications Industry Ombudsman ('Administrator'). Lane is appointed by Ferrier Hodgson Corporate Advisory, the Financial Advisor to the Resource Unit, with the approval of the Administrator. The Resource Unit is appointed to assist the Arbitrator and the Arbitrator may request the Resource Unit to examine documents, inspect premises or systems, or carry out other enquiries or research.

↘ Lane is presently involved in arbitrations between Telstra and Bova, Dawson, Plowman and Schorer. The change of ownership of Lane is of concern in relation to Lane's ongoing role in these arbitrations.

↘ The first area of concern is that some of the equipment under examination in the arbitrations is provided by Ericsson. For example, the commander system and the exchange which are of primary concern in the Dawson complaint, are provided by Ericsson.

↘ The second area of concern is that Ericsson has a pecuniary interest in Telstra. Ericsson makes a large percentage of its equipment sales to Telstra which is one of its major clients.

↘ It is my view that Ericsson's ownership of Lane puts Lane in a position of potential conflict of interest should it continue to act as Technical Advisor to the Resource Uni'

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M_MATTER314955_1 Telecommunications Industry Ombudsman Ltd ACN 057 634 787

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The potential conflict of interest clearly arises from the date on which Lane Management was advised that Ericsson had been chosen by Pacific Star as the preferred purchaser of Lane - 15 April 1997. It is arguable that the potential conflict of interest arose at an earlier time, perhaps between 25 February and 3 March 1997.

↘ The effect of a potential conflict of interest is that Lane should cease to act as the Technical Advisor with effect from a date shall be determined. An alternative Technical Advisor will need to be appointed, on terms yet to be decided, but with the agreement of all parties.

I am aware that this process will cause some delay to your arbitration procedure, but have determined that this is the most appropriate cause of action in the present circumstances.

Yours sincerely



John Pinnock
Ombudsman

enclosure

cc Mr G Schorer
Golden Transport Agency
Facsimile 9287 7001

Mr Peter Bartlett, Special Counsel

24 July 1997

CONFIRMATION
OF FAX

BY FACSIMILE 07 3257 1583

Mrs Ann Garms
Tivoli
48-42 Costin Street
FORTITUDE VALLEY QLD 4075

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

Dear Ms Garms

Conflict of Interest: Lane Telecommunications ('Lane') and Ericsson Australia ('Ericsson')

I refer to your letter dated 18 July 1997.

I have a number of comments to make in relation to that letter.

1. By letter dated 14 November 1995 I advised you that I did not have the power to dismiss the Arbitrator or the Resource Unit. I advised that pursuant to the Commercial Arbitration Act 1984 (Vic) the Supreme Court has the power to remove an arbitrator in certain circumstances. Contrary to the assertion in your letter of 18 July 1997, I did not advise you to take the matter to the Supreme Court, but stated that 'if you and your legal adviser believed that the circumstances warrant such an application to the court, it is a matter for you'. I did not force you to take an application to the Supreme Court and indeed, you did not make such an application. Subsequently, you lodged an Appeal concerning the Arbitrator's Award.
2. In November 1995 you had concerns regarding the independence of Lane. By letter dated 6 November 1995, having made considerable enquiries of the relevant parties on this issue of independence, I advised you of my view that your concerns regarding the independence of Lane were unfounded. I stated that 'none of the evidence produced to me has displaced by confidence in the independence of...Lane'.
3. On 8 March 1995 you advised the TIO that Mr David Read of Lane was unacceptable on the basis that he was a former employee of Telecom. However on 13 March 1995 you advised the TIO that 'after meeting with Mr David Read I feel confident that he and his company Lane Telecommunications Pty Ltd possess the necessary integrity, professionalism and expertise to do justice to the assessment of our Claim'.

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4. The present situation in relation to the sale of Lane to Ericsson concerns a potential conflict of interest and is of a completely different nature to the concerns regarding the independence of Lane which you raised in 1995. Your concerns that Lane employees may have formerly worked for Ericsson or Telstra did not create a situation of conflict.
5. You have quoted from a letter of mine to Mr Graham Schorcr, which states that 'The effect of a potential conflict of interest is that Lane should cease to continue to act as Technical Adviser'. Contrary to the implication in your letter, this does not imply, and I have not stated, that the TIO has the power to dismiss the Resource Unit. The TIO does not have such power. Rather, the Arbitrator has the power to dismiss the Resource Unit.

In relation to previous correspondence concerning material furnished directly by you to the Resource Unit in the course of your Arbitration, I have written to Ferrier Hodgson Corporate Advisory, requesting that material directly to you. I understand that, apart from various exchanges of correspondence in the course of the Arbitration, the Special Counsel holds no documents or material supplied by you which relate to the Arbitration.

If you consider you have been 'mislead' then this is a matter for you to pursue in your Supreme Court appeal.

Yours sincerely



John Pinnock
Ombudsman

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