

Identification of the cause would allow rectifying action to be taken and establishment of incidence would provide a basis for the calculation of any compensation which may be payable.

5.4 If the *original COT Cases'* stance (experiencing) were to be adopted, the first step would simply require Telecom personnel to experience that the claimed faults were indeed presenting problems to the business. The *original COT Cases* took the view that sufficient monitoring and testing of their services had taken place to allow Telecom to be satisfied that the problems were real. Also, given that in some cases the disputes extended for up to 7-8 years without Telecom identifying the cause of the faults, they were unwilling and financially unable to await Telecom's identification of the problem before compensation negotiations commenced. Moreover, they had a concern that if a settlement amount could not be agreed, the matter would be subjected to arbitration rather than a simple assessment of loss which they favoured. Their concern was that an arbitrator might find fault on the part of Telecom but might conclude that the fault was reasonable and therefore might award only a proportion of the losses they had incurred as a result of the service difficulties that they had experienced.

5.5 Telecom also wished to rectify as quickly as possible any faults affecting its service and to be satisfied that, at that point, all parties agreed on the fact that a normal service was being provided.

5.6 Given the extent of testing and monitoring which had taken place and Telecom's failure to identify the cause of the faults over a period of years, AUSTEL supported the *original COT Cases* in their stance.

The internal Telecom loop

5.7 Argument on that general theme continued. By letter dated 23 September 1992, Telecom's Group Managing Director, Commercial and Consumer, informed Mr Schorer as spokesperson for the *original COT Cases* -

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