



Australian Government

Australian Communications  
and Media Authority

Level 44 Melbourne Central Tower  
360 Elizabeth Street Melbourne VIC

Tel: (03) 9963 6800  
Fax: (03) 9963 6899

PO Box 13112  
Law Courts Melbourne VIC 8010

[www.acma.gov.au](http://www.acma.gov.au)

Our ref: ✓ AD2007/344

19 November 2007

Mr Alan Smith  
Seal Cove Guest House  
1703 Blowholes Road  
Cape Bridgewater  
PORTLAND VIC 3305

Dear Mr Smith

**Your request under the *Freedom of Information Act 1982***

I enclose a copy of the decision on your request for access to documents (your request) under the *Freedom of Information Act 1982* (the Act) dated 17 September 2007.

Please contact me on 03 9963 6728 or via email at [melissa.siah@acma.gov.au](mailto:melissa.siah@acma.gov.au) if you have any questions in this regard.

Yours sincerely

Melissa Siah  
Lawyer

Encs.

**NOTICE OF DECISION**  
**FREEDOM OF INFORMATION ACT 1982**

**Applicant:** Alan Smith

**File reference:** AD2007/344

**Decision-maker:** Paul White  
Executive Manager, Industry Performance Branch

**Type of request:** Request for access to documents

**Decision:** Release in full copies of documents 1-35 in the attached Schedule.  
Refuse access to all documents in the file Y2001/981 under section 24A.

<b>MR ALAN SMITH - Cape Bridgewater Holiday Camp</b> .....	1
General Outline.....	1
Complaint of Service.....	1
Service Technology Characteristics.....	2
Comparative Uniqueness of Cape Bridgewater Holiday Camp Service.....	3
Chronology of Significant Events.....	4
Telecom's response to Mr Smith's complaints.....	11
General Comment.....	11
Lack of co-ordination in responding to complaints.....	12
Adequacy of Response.....	14
Allegation (i) Failure to Honour Settlement.....	16
Telecom's Approach to reaching Settlement.....	16
Assurances provided by Telecom regarding the integrity of the Cape Bridgewater Holiday Camp Service.....	17
Major Fault Analysis performed on Cape Bridgewater Holiday Camp prior to Settlement.....	18
Reports of faults from other Cape Bridgewater Subscribers.....	18
Conclusion.....	21
Allegation (ii) Failure to keep clients advised.....	22
Introductory Comment.....	22
Congestion problem on Cape Bridgewater Holiday Camp service prior to commission of RCM on 21 August 1991.....	23
Failure to advise of other subscribers experiencing NRR in Cape Bridgewater area.....	26
Failure to advise of PCM problem at Cape Bridgewater.....	31
Failure to advise on issues relating to RVA's on Cape Bridgewater Holiday Camp service.....	31
Introductory Comment.....	31
Significance of RVA problem.....	32
Range of possible causes of RVA's on the Cape Bridgewater Holiday Camp service.....	33
Incorrect Dialling of Cape Bridgewater Number.....	34
RVA's originating from Portland region due to 'intermittent digit storage problem' at Portland exchange.....	34
Incorrect programming of Cape Bridgewater number code at Windsor Digital Trunk Exchange (MELU).....	36

RVA Problem for calls made from Public Payphones.....	39
Local technician's perception of existence of RVA problem.....	40
Other Data Coding Problems .....	41
Summary .....	42
Failure to advise of consequences of testing program.....	43
Failure to advise of Answer No Voice problem affecting Cape Bridgewater Holiday Camp Service .....	44
Allegation (iii) Denial of existence of problem or its underestimation.....	46
RCM Faults on the Cape Bridgewater Holiday Camp Service .....	47
Background to identification of RCM fault.....	47
Fault Reports from Cape Bridgewater from late 1992 to early 1993 indicating possible problems with the Cape Bridgewater RCM .....	51
Information provided to Mr Smith concerning problems with the RCM .....	55
Allegation (iv) That Telecom employees suggested problem could be overcome by purchase of new customer equipment when it knew that this was not the problem.....	56
Allegation (v) Representation of problem as unique to the complainant.....	56
Allegation (vi) Withholding of information .....	57
Allegation (vii) Arrogant and bullying behaviour (i.e. unjustifiably long period of disputation over faults, unjustifiably long period taken to reach settlement, harsh conditions of secrecy) .....	57
False claims of statutory immunity from suit .....	58
Reliance on Testing Regime.....	60
Failure to honour settlement conditions.....	61
Allegation (viii) Misleading briefings to review agencies and politicians.....	65

**MR ALAN SMITH - Cape Bridgewater Holiday Camp****General Outline**

Mr Alan Smith is the owner of the Cape Bridgewater Holiday Camp. His business is a holiday camp and convention centre. The camp is located on the Victorian coast about 18 kilometres west of Portland, <sup>1</sup> kilometres west of Melbourne.

**Complaint of Service**

- 2 Mr Smith acquired the camp in February 1988 and claims to have had very significant telephone problems commencing from that time. They have varied in incidence and although the current level of service is said to be much improved, Mr Smith maintains that problems continue to exist.
- 3 The range of problems reported by Mr Smith relate to incoming calls and can be summarised as follows -
  - Not Receiving Ring
  - Recorded Voice Announcement
  - Call Drop Out
  - Busy When Not
  - Single Bursts of Ring (Facsimile Noise)
- 4 The phone problems are claimed to have had a major impact upon the financial viability of the camp because -
  - callers have not been able to make contact with the camp, sometimes for days at a time, because of the Not Receiving Ring problem and accordingly have ceased to attempt to contact the camp: the nature of the business results in callers often making a booking on behalf of 20-30 persons

---

<sup>1</sup>check distance - in Smith advertsi

- the Recorded Voice Announcement advising the number is no longer connected obviously gives the impression that the camp has ceased to function
  - inability to contact the camp is of particular importance because the bulk of its business has involved repeat bookings and thus unless the party makes the booking and gets to the camp, business for future periods is also forfeited
  - a proportion of business has involved schools, special educational facilities and hospital patients who had become wary of using the camp because of the difficulty they had experienced in contacting it and because of the necessity to be contactable themselves when at the camp
- 5 The camp currently has the following telephone services -
- 055 267267 - for incoming calls
  - 055 267230 - used for outgoing calls and facsimile
  - 055 267260 - Goldphone, for use by camp visitors
  - 008 number (008 816522) which translates to the 055 267267 number

#### Service Technology Characteristics

- 6 A Telecom Minute from a regional Manager dated 5 October 1992 provides background to the service changes which have occurred at Cape Bridgewater Holiday Camp:

→ *Mr Smith has had an ongoing complaint about his level of service for some time.....Customer was originally connected to an old RAX exchange, which had limited junctions between Portland and Cape Bridgewater. Thus congestion was a problem for all customers on the Cape B'water exchange. The exchange was upgraded to an RCM and parented back to the Portland AXE 104.<sup>2</sup>*

---

<sup>2</sup> 581 - Mark Ross to Corporate Secretary

- 7 In effect, prior to the upgrade to the RCM (digital remote customer multiplexer), there were only 5 lines from Portland to the Cape Bridgewater area. Thus if all 5 lines were busy callers received congestion tone. The RCM had the effect of increasing the line capacity in the Cape Bridgewater area so that a line was available to each service. Despite the relocation to new digital technology Mr Smith continued to complain of and report problems. This does appear to raise the question of whether new technology was introduced prior to the proper preparation of local staff to support it.
- 8 Telecom's attempts to resolve Mr Smith's problems included the following activities:
- replacement of his customer equipment on a number of occasions
  - rewiring of parts of his premises
  - fitting of an alarm bell on more than one occasion
  - generation of thousands of test calls from various locations to his premises or to his local RCM exchange
  - examination of a range of exchange components involved in providing a service to the Cape Bridgewater Holiday Camp
  - line testing
- 9 During the past five years Mr Smith has received many testimonials from other network users such as community groups, health and welfare agencies, schools and individuals which have advise of continuing difficulties in contacting the camp. These statements support Mr Smith's claims of service problems of Mr Smith.

#### **Comparative Uniqueness of Cape Bridgewater Holiday Camp Service**

- 10 An important point in relation to Mr Smith's service is that he is operating a business service in an area which is predominantly that of

a residential and/or farming community. Therefore both the nature, volume and origin of calls received by Mr Smith in comparison with those of his neighbours would be markedly different. Mr Smith would receive significantly more calls than his neighbours, with a higher percentage of these being STD calls from a wide range of origins and the majority of his calls would be business inquiries concerning the Cape Bridgewater Holiday Camp.

111

- 11 Often calls to the Cape Bridgewater Holiday Camp would be from people previously unknown to Mr Smith, who in comparison to other callers to Cape Bridgewater would be less likely to initiate further contact should they have difficulty in contacting the Camp. In addition, a number of services in the area are provided to holiday homes from which few complaints would be expected to originate. Mr Smith maintains that approximately one third of houses in the area are holiday houses.
- 12 Another factor which distinguishes the Cape Bridgewater Holiday Camp service from other Cape Bridgewater services is that Mr Smith receives a significant number of calls during business hours. Mr Smith maintains that there are only two people in the area who are normally home during the day. It should be noted that service problems may manifest differently during different periods of the day.
- 13 If problems were found with calls made to the Cape Bridgewater area, it is logical that Mr Smith would be the most likely subscriber to experience and report these. Furthermore, if there was a problem in providing calls from the wider network to the Cape Bridgewater region it is possible that Mr Smith may be the only subscriber in the area experiencing significant problems. Any meaningful assessment of Mr Smith's problems and fault statistics from Cape Bridgewater subscribers was required to take these factors into account.

#### **Chronology of Significant Events**

April 1988                      Alan Smith purchases the Cape Bridgewater  
Holiday Camp



- 5 March 1991 As a consequence of complaints of NRR from Mr Smith, Telecom surveys customers in Cape Bridgewater area to see if they are also experiencing the NRR problem. Of the 9 people who respond to the survey 4 say they have experienced the problem - one of those surveyed identifies 2 additional subscribers in the Cape Bridgewater area experiencing NRR.
- May 1991  
(approx) New wiring installed inside and outside office and main kitchen at Cape Bridgewater Holiday Camp. Rented telephone equipment replaced.<sup>3</sup>
- 27 June 1991 Telecom LEOPARD record of complaint from Cape Bridgewater - Intermittently No Progress. Mr Smith is subsequently informed that no LEOPARD fault reports remain in existence prior to this data due to a failure by Telecom to retain these records.
- 28 June 1991 Telecom LEOPARD record of complaint from Cape Bridgewater - No Dial Tone. Fault is "found in old exchange."
- 18 July 1991 Telecom LEOPARD record of complaint from Cape Bridgewater - Not Receiving Ring and no Dial Tone - Repair Details - "Customer phone replaced."<sup>4</sup>
- 5 August 1991 Telecom LEOPARD record of complaint from Cape Bridgewater - Not Receiving Ring - Repair Details - "Right when tested - No fault evident."

<sup>3</sup> Why was this done if congestion was known to be a problem in the area and other people were known to be experiencing NRR?

<sup>4</sup> Again why was this done if NRR was known to be a problem in the area.

- 15 August 1991 Telecom file note. Discusses Mr Smith's complaints of False Busy - the author tells Mr Smith that the problem is probably in the old exchange and that the upcoming service upgrade to an RCM (digital remote customer multiplexer) will solve this problem. The author notes that analysis on 14 August 91 has indicated congestion on Cape Bridgewater lines. "RCM will fix this problem."<sup>5</sup>
- 21 August 1991 Telephone service connected to AXE technology. Connected to RCM off the Portland AXE 104. At time of changeover a faulty final selector was detected in the previous (RAX) exchange.
- 9 October 1991 Telecom LEOPARD record of complaint from Cape Bridgewater - Not Receiving Ring - Repair Details "No fault found in customer equipment."<sup>6</sup>

---

<sup>5</sup> Excessive faith was held in the capacity of the RCM to solve Mr Smith's problems - which is an indication that the knowledge that congestion to this area was well known.

<sup>6</sup> So RCM apparently did not solve NRR problem - numerous LEOPARD reports after this date.

19 March 1992

Following reports of the following RVA "This number is disconnected" from other network users, a fault was identified in the Windsor Digital Trunk Terminal. Telecom documents indicate it was considered the RVA fault was cleared at this time. The fault was that the customer's number was not included in the data base.<sup>7</sup> Telecom documents reveal that this problem would have resulted in the RVA. This fault would have affected approximately 50% of incoming STD calls from Melbourne to Cape Bridgewater.<sup>8</sup>

Telecom maintain that this RVA problem has existed for three weeks prior to this date, however Mr Smith claims that the camp has experienced the RVA for the preceding nine months. Testimonials from other network users support Mr Smith's claim that the camp experienced the RVA problem for a number of months prior to March 1993.<sup>9</sup>

25 March 1992

Caller from Greyhound Terminal at Franklin St Melbourne reports getting RVA 3 out of 4 calls when calling Cape Bridgewater.

2 July 1992

Internal Telecom Minute reveals that local technicians believe that Mr Smith is correct in raising complaints about incoming callers to his number receiving a RVA and believe it is a problem that is occurring in with numbers as more and more customers are connected to AXE.<sup>10</sup>

---

<sup>7</sup> Or correctly programmed in the database - need clarification of this.

<sup>8</sup> 50% of all calls via STD? - 50% of all calls via Melb? - need clarification

<sup>9</sup> need to identify these testimonials before this goes out.

- 4 August 1992 Telecom testing of 31 July 1992 resulted in 1153 congested calls out of a total of 8450 calls. Telecom technicians did not determine the cause at this time but subsequently decided that both routes between Hamilton and Portland became auto blocked during the test calls.
- 21 August 1992 Telecom report from National Network Investigations and Support confirm fault found on 19 March 1992 and advises that origins of RVA complaints since March 1992 have been Sydney, Alice Springs, Melbourne, Hartwell, Violet Town, Portland, Narre Warren and Hallam. The RVA from Melbourne was tested, no fault found, but there has been no indication of results of testing from the other origins
- 1 September 1992 Telecom letter to Mr Smith advising that recent tests indicate that the Cape Bridgewater Holiday Camp service is now functioning to normal network standards. A further detailed study of all elements of the service is to be initiated
- 14 September 1992 Internal Telecom Minute reveals that on 16 April 1992, 30 June 1992 and 22 July 1992 other network users had reported receiving RVA messages and that the Telecom GAPS data base also indicates reports of RVA on 22 July 1992. National Network Investigations and Support would investigate these complaints
- 7 October 1992 Following faults reported by Smith and other local customers of wrong numbers and of RVA Telecom identified and repaired an intermittent fault with an exchange register in the Portland Exchange

---

<sup>10</sup> Document

- 14 October 1992 Telecom letter to COTs addressing that Telecom cannot commence any discussions on whether or not damages have been sustained until the problems being reported are identified and necessary improvements effected
- 19 October 1992 Telecom Minute reveals that other customers in the area were experiencing wrong numbers and RVA's. Subsequent testing indicates an intermittent digit storage problem at the Portland exchange.
- 23 November 1992 Telecom letter to Smith following request for network fault information. Outlines faults found in Windsor and Portland exchanges which were fixed on 19 March 1992 and 7 October 1992. States that repairs, plus rewiring done 18 months previously, installation of loud sounding alarm November 1992 will contribute to greater reliability of his service
- 20 December 1992 008 number begins operation on Cape Bridgewater Holiday Camp.
- 2 February 1993 Smith reporting and persisting with complaints in regard to making contact with Ballarat. Telecom subsequently confirmed problems between Warrnambool and Ballarat, and that only one quarter of calls were getting through.<sup>11</sup>
- 3 February 1993 Telecom advised that the above problem was in the switching system and was an exchange problem
- 4 February 1993 Telecom fault report addresses the following - Re: burst of ring problem reported by Smith. The problem occurs intermittently throughout the network and though it is recognised as a problem there appears to be no one person/group involved in resolving it.

<sup>11</sup> Where is documentation to support this ??

March 1993

Investigation conducted by National Network Investigation and Support in response to customer complaints revealed the following problems with the RCM system -

- presence of 500Hz noise on all customer lines
- cable ducts into the cross cabinets and cable hut were not sealed allowing ingress of moisture
- alarm system on all three RCM systems had not been programmed. This would have prevented any local alarms being extended back to Portland
- problems with installation of enhanced lightning protection modules

The investigation revealed that 45999 degraded minutes had accumulated since the installation of the system in August 1991.

Whilst Network Investigation and Support advised that all faults were rectified, the above faults and record of degraded service minutes indicate a significant network problem from August 1991 to March 1993.

6 March 1993

Letter from Smith to Telecom advising that his acceptance of settlement offer of 11 December 1992 was based on the representation of 18 September 1992 by Telecom that the telephone service could be guaranteed.

Smith further advised that the Telecom guarantee did not result in an acceptable telephone service. In view of this, the representation was false and he felt that Telecom had misled him at time of signing the settlement agreement

27 April 1993

Letter from Smith to Telecom advised that the Goldphone fixed that day. Fault reported on 16 April 1993. Non functioning of Goldphone created problems with visitors from Prahran Secondary College and their teachers and parents

- 1 May 1993 Letter from Smith to Telecom advising of problems with telephone service in general and with the Goldphone in particular. Whilst accommodating children from the Royal Childrens Hospital, the camp experienced major problems with incoming and outgoing calls causing stress to parents, children and the hospital. During one medical emergency had to contact Portland Base Hospital via Smith's Facsimile line
- 5 May 1993 Confirmation from Prahran Secondary College of problems experienced on 27 April 1993
- 12 July 1993 Meeting between AUSTEL, Telecom and Smith. Telecom advised that other customers in the area were not complaining of either the range or volume of problems reported by Smith. Also other people in the area were not reporting NRR. Telecom would soon be in a position to write to Smith and advise that he was receiving service that conformed to network service standards.
- 10 August 1993 Smith reported to Telecom of problems in his customers' receiving "false busy" on previous evening. Telecom fault report confirms problem reported and indicates possibility of problem being due to a software block where calls originate from a step by step origin

### **Telecom's response to Mr Smith's complaints**

#### **General Comment**

- 14 Since commencing operations at the Cape Bridgewater Holiday Camp Mr Smith has made numerous complaints to Telecom of service difficulties and perceived call data discrepancies. AUSTEL has received a number of complaints from Mr Smith of Telecom's handling of these matters during our period of involvement with the COT group.

- 15 Examination of Telecom's file documentation concerning Mr Smith clearly demonstrates that Telecom has invested considerable resources in attending to the various issues raised by him. A number of areas in Telecom have had involvement in addressing these issues. At a meeting held between Telecom and AUSTEL in July 1993 senior Telecom Managers commented to AUSTEL of the onerous resource demands of programs such as the monitoring of calls on the Cape Bridgewater Holiday Camp service and conducting test call programs from a number of locations.<sup>12</sup> This comment was made in the context that these activities had uncovered no problems of significance on the Camp service. AUSTEL also notes that some of the specific complaints raised by Mr. Smith have been disproved.
- 16 Telecom's handling of Mr Smith's complaints demonstrate, however, that the expenditure of resources alone is not necessarily sufficient to uncover a problem. A co-ordinated and comprehensive approach is required. A lack of co-ordination and sufficient scope hampered resolution of Mr Smith's complaint of poor service, despite the resources directed at Mr Smith's complaints.
- 17 A consequence of Telecom's deficient approach was that personnel in the areas performing the same or similar tests on the Cape Bridgewater Holiday Camp service inevitably became less sympathetic to Mr Smith's complaints. In turn, Mr Smith became increasingly frustrated with the inability of Telecom to resolve his complaints and pursued other avenues within Telecom or external to Telecom to have his complaints addressed.

#### **Lack of co-ordination in responding to complaints**

- 18 A continuing theme in Telecom's handling of Mr Smith's complaints is the inability of Telecom to effectively co-ordinate a response to his complaints. Different areas of Telecom were not cognisant of the activities of other areas, and it was unclear at times who had "ownership" of his problems. As noted in other areas of this report,

---

<sup>12</sup>Meeting - 12 July 1993



Telecom procedures in handling ongoing complaints of this nature were deficient.

- 19 A summary of the problems of lack of co-ordination from the Telecom perspective in relation to Mr Smith is provided in the following quote from a Minute dated 9 February 1993 from the Manager, National Network Investigations - Melbourne to his state counterparts and some other Managers, including the General Manager, Telecom Commercial Vic/Tas: --

*The only conclusion to be drawn from this investigation is that the number of customer contacts in such investigations should be kept to an absolute minimum to avoid double handling, response time delay and confusion. It is costly, inefficient and unprofessional. As a result it is recommended that NNI staff establish themselves as the primary contact point for all investigations in future so that this situation is not repeated.<sup>13</sup>*

- 20 This same Minute noted:

*The customers service does not appear to be experiencing any Network problems, nor does the customers terminal equipment appear to be causing technical problems. The customer has not lodged a complaint with any of the contact points nor reported a fault to Telecom service difficulties operators for some time. As a result of this, and given that the extensive testing undertaken failed to indicate a fault condition, this investigation will now be closed.*

- 21 A reply to this Minute was provided by the General Manager, Telecom Commercial Vic/Tas on 15 February 1993. Ironically, the response provided exemplified the very problems with lack of co-ordination stated by the Manager, National Network Investigations - Melbourne. The 15 February Minute stated:

---

<sup>13</sup>516

*Contrary to your advice Mr Smith is claiming to be experiencing on-going problems.<sup>14</sup>*

121

- 22 In fact, Mr Smith had made a number of recent complaints to the Commercial Vic/Tas area, and it appears that the local Portland Telecom staff were also dealing with his complaints at this time. A file note made by a Telecom Commercial Vic/Tas officer on 10 February 1993 states that he has contacted that a local Portland officer then dealing with Mr Smith's complaints who informed him that he believes:

*he has exhausted the full extent of his knowledge with regard to Mr Smith's problem and he would appreciate some assistance from a specialist area.<sup>15</sup>*

- 23 It is difficult to discern exactly who had responsibility for Mr Smith's problems at this time, and how information on his problems was disseminated within Telecom. Information imparted by the Portland officer on 10 February 1993 of suspected problems in the RCM "caused by a lightning (sic) strike to a bearer in late November"<sup>16</sup> led to a specialist examination of the RCM on March 2 1993. Serious problems were identified by this examination. (The RCM issue is discussed in detail under Allegation 3.) A co-ordinated approach to Mr Smith's problems would almost certainly have led to a more rapid discovery of this source of problems on the Cape Bridgewater Holiday Camp service.
- 24 One can sympathise with Alan Smith when he comments on the frustration of dealing with multiple areas of Telecom and often not being sure actually who was dealing with his complaints.<sup>17</sup>

#### **Adequacy of Response**

- 25 It should also be noted that during the period of time covered by this chronology of significant events it is clear that -

---

<sup>14</sup>746

<sup>15</sup>Customer Complaint Form print out - Smith Monitoring folder.

<sup>16</sup>Customer Complaint Form print out - Smith Monitoring folder.

- Telecom had conducted extensive testing
  - Cape Bridgewater Holiday Camp frequently reported problems with the quality of telephone service
  - both the camp and Telecom were receiving confirmation of reported problems from other network users
  - major faults were identified more through persistent reporting of problems by customer than through testing of the network
  - customers in the Cape Bridgewater area were also complaining of similar problems
- 26 The chronology of significant events demonstrates that Telecom conducted extensive testing and Telecom rectified faults without delay when faults were identified. It is clear, however, that -
- Cape Bridgewater Holiday Camp was exposed to significant network problems over an extended period of time
  - Telecom testing did not detect all of the network problems affecting Mr Smith.
- 27 As is discussed under allegation in more detail throughout this document, Telecom's failure to adequately identify Mr Smith's network problems challenges the basis of Senior Telecom Management's approach to the resolution of Mr Smith's complaints and his claims for compensation. Documents which highlight a categorical reliance on testing over customer perception are-
- Telecom Group Managing Director, Commercial and Consumer's letter to the COT spokesperson on 23 September 1992 which advised that "At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards"<sup>17</sup>
  - A Telecom Minute of 28 October 1992 from the General Manager, Telecom Commercial Vic/Tas to the Group Managing Director, Commercial and Consumer which

---

<sup>17</sup> Locate Quote from Smith re number of contacts?????????

<sup>18</sup>179 - Garms

advised of serious concerns that the technical experts had in 123  
conducting further testing, their view that extensive testing  
has already been performed and "that all indications other  
than the customers' own comments are that the telephone  
services are performing satisfactorily."<sup>19</sup>

#### **Allegation (i) Failure to Honour Settlement**

- 28 AUSTEL has not viewed the confidential settlement agreement reached between Mr Smith and Telecom.<sup>20</sup> . Mr Smith first wrote to Telecom on 20 June 1992 requesting compensation as a result of his service difficulties and a settlement was reached on 11 December 1992.

#### **Telecom's Approach to reaching Settlement**

- 29 A fundamental issue underlying Telecom's settlement with Mr Smith was the question of whether Telecom had taken reasonable steps to comprehensively diagnose the standard of Mr Smith's telephone service. This is an important point as settlement took place on the basis that both parties agreed that Mr Smith was receiving an acceptable standard of service at the time of settlement. Mr Smith maintains he was under considerable financial pressure to reach a settlement, leading him to accept Telecom's assurances of the integrity of his service at the time of settlement.
- 30 There were ongoing negotiations between the COT group and Telecom in the months immediately prior to Mr Smith reaching settlement. Telecom's approach of linking an acceptance by the COT members that their current standard of service was adequate to compensation for past experience of problems is exemplified in the following quote from Telecom's Group Managing Director Commercial and Consumer, in a letter dated 23 September 1992, to the COT Spokesperson Mr Schorer:

---

<sup>19</sup>305 - Smith

<sup>20</sup> Any reason why we should not view this? As our draft is being submitted to Telecom prior to being printed they can raise objections to the confidentiality aspects of agreement at this time.

*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.*

**Assurances provided by Telecom regarding the integrity of the Cape Bridgewater Holiday Camp Service**

- 31 Mr Smith maintains that an integral feature of the settlement agreement was an undertaking by Telecom that after settlement he would be provided with a service which performed to the normal network standard. Irrespective of whether this undertaking was specifically stated in the formal agreement document, however, and as is the case with any subscriber, Mr Smith was entitled to believe that a service of normal network standard would subsequently be provided to his business. In addition, Telecom's approach to reaching a settlement with Mr Smith and achievement of this settlement supports Mr Smith's contention of assurances regarding his service standard.
- 32 Telecom's communications with Mr Smith in the months prior to settlement uniformly argued that the Cape Bridgewater Holiday Camp service was at an acceptable level and that Telecom was capable of rapidly rectifying faults as they arose.
- 33 On September 1, 1992, Mr Smith received a letter from the Telecom General Manager, Telecom Commercial Vic/Tas, who was then dealing with his service complaints. This letter stated that *"our recent tests indicate that your service is now performing to normal network standards"* and foreshadowed further testing on Mr Smith's service. A subsequent letter on September 18 from the Service Manager, Telecom Commercial Vic/Tas, sought to re-assure Mr Smith that Telecom was:

*a technical organisation capable of responding quickly and efficiently to a service difficulty should there be a need. We believe that the quality of your telephone service can be guaranteed...*

**Major Fault Analysis performed on Cape Bridgewater Holiday  
Camp prior to Settlement**

125

- 34 It is necessary to examine action taken by Telecom to identify problems on Mr Smith's service to determine the basis on which Telecom's assurances of service integrity were derived.
- 35 As a result of ongoing complaints from Mr Smith the examination of his problems were elevated to Telecom's National Network Investigations & Support Unit (NNI) on 24 July 1992. It appears that the initial focus of NNI was on reports from Mr Smith of RVA's affecting his service, but it is also clear that over subsequent months NNI performed a range of tests relating to both the RVA and NRR faults reported from the Cape Bridgewater Holiday Camp Service. Foremost amongst these test was a program of test calls to Cape Bridgewater Holiday Camp.
- 36 In late July and early August 1992 over 15,000 test calls were generated to 055 267 211, a number close to the Cape Bridgewater Camp numbers. Only 4 switching faults were identified by this testing. These test calls did not utilise Mr Smith's local RCM equipment or cable characteristics. In early August a Portable Tone Answering Relay Set (PTARS) was set up at the Camp and test calls utilising this RCM equipment were made from the Toorak, Port Melbourne and Seymour exchanges to 055 267 230. Again, Telecom's assessment of these calls was that there were no appreciable problems on Mr Smith's service.<sup>21</sup> Telecom placed great reliance on the results of this testing in their assessment of Mr Smith's problems.

**Reports of faults from other Cape Bridgewater Subscribers**

- 37 Mr Smith reported a problem with "cross conversations" on 2 October 1992. Telecom's investigation of this complaint uncovered two other local numbers experiencing this problem on a frequent and ongoing basis. People on these numbers also reported other problems, one reporting being told of a caller to his number receiving an RVA

---

<sup>21</sup> This will need to be update when a response is received on the RCM channel location of the PTARS during testing.

"number disconnected" message, with another person stating that "callers have told her they frequently get busy when calling her."

126

- 38 A Minute which details the "cross conversation" faults from the Network Officer, Portland Telephone Exchange, concluded "*All of the above customers are in the one RCM.*"<sup>22</sup> An important point is that only three numbers on this RCM were involved in Telecom's inquiries at that time: there is no record of contact being made with other people receiving a service via this RCM to establish what their fault experience was. Based on an annual growth rate of 5%, Telecom has estimated that approximately 70 services operated from the RCM in late 1992,<sup>23</sup> so this would not have placed an onerous demand on Telecom resources.
- 39 As a result of the fault information received on the two services the Customer Manager Warmambool stated "he would initiate tests of cables and possible changes of RCM equipment." It appears, however, that at least in the case of the RCM equipment comprehensive testing by suitably qualified personnel was not performed until March 1993. The RCM was tested, however, for weak ring output in October 1992, with no fault found.<sup>24</sup> Weak ring output was one possible cause of the NRR problem.
- 40 A Telecom Minute dated 9 September 1993 from the OMG Manager, Network Operations, Vic/Tas, Warmambool states in the context of faults affecting the Cape Bridgewater Holiday Camp service that in October 1992 the following work was performed:

*Cable repairs to overcome crosstalk involving three customers at Cape Bridgewater as a result of a letter to Telecom.*<sup>25</sup>

- 41 Unfortunately this Minute does not identify who the three customers are, who wrote the letter and the nature of the cable repairs performed. It is therefore not certain that this reference to crosstalk is

<sup>22</sup> Gordon Stokes to Dave Stockdale 2/10/92

<sup>23</sup> The actual number of services of the RCM needs to be identified

<sup>24</sup> 555 - 9 Sept 1993

the same as the crosstalk problem verbally complained of by Mr Smith, although this appears probable. This reference to the "cable repairs" performed at this time is the only reference AUSTEL was able to locate in the file documentation on this issue. This is also unfortunate, as it is therefore impossible to assess what impact, if any, this problem may have had on other faults experienced by Mr Smith prior to the cable being repaired on his service, if indeed the cable was repaired on his service. AUSTEL has raised the matter with Mr Smith, and he has stated that he is unaware of any cable work being performed on his service or that of his neighbours at that time.<sup>26</sup> (Problems experienced by AUSTEL in assessing issues pertaining to Mr Smith as a consequence of file documentation not provided by Telecom are discussed under Allegation 2).

- 42 Some important question are raised by the possible existence of a cable problem affecting the Cape Bridgewater Holiday Camp service. Foremost of these questions is why was the test call program conducted during July and August 1992 did not lead to the discovery of the cable problem. Another important question is exactly how the cable problem would have been manifested in terms of service difficulties to the subscriber.
- 43 There was other fault information available to Telecom which indicated possible problems at Cape Bridgewater in late 1992. Technical Assistance Exchange Results for the period 1 September 1992 to 23 October 1992 recorded 9 subscribers in the number range 267 201 to 267 279 (other than the Cape Bridgewater Holiday Camp numbers) reporting problems - of these 7 subscribers reported problems with NRR and 6 with not being able to receive Dial Tone.<sup>27</sup> Two of these Technical Assistance entries on the 23 September 1992 also recommended an RCM test.<sup>28</sup> As no other fault report records remain in existence from Cape Bridgewater residents prior to this period, or these records have not been provided to AUSTEL, it is

<sup>25</sup>555 - ( Sept 1993

<sup>26</sup>NOC - Alan Smith 28/2/94 - Diary entry.

<sup>27</sup> From NNI - Cape Bridgewater file. - we really need to ask for other GAPS info.



difficult to gauge the level of problems in the area which should have been known to Telecom based on their own routine reporting data.

- 44 Given the range of faults being experienced by Mr Smith and other subscribers in the Cape Bridgewater it is clear that Telecom should have initiated more comprehensive action than the test call program. It appears that there was excessive reliance on the results of the test call program and insufficient analysis of other data identifying problems. Again, this deficiency demonstrated Telecom's lack of a comprehensive and co-ordinated approach to resolution of Mr Smith's problems.

### Conclusion

- 45 It would appear reasonable to assume that given the history and circumstances of Mr Smith's complaints Telecom would take comprehensive action to ensure that his service was performing at an acceptable standard and continued to do so. Such action would have been mutually beneficial, as Mr Smith would have received an acceptable service and the number of complaints to Telecom from Mr Smith would have diminished. It is clear that action performed by Telecom was not sufficiently comprehensive to identify the faults on his service, and that greater consideration of customers' complaints would have assisted in the resolution of Mr Smith's problems. It also seems that the considerable number of testimonials from callers experiencing problems contacting Cape Bridgewater Holiday Camp were similarly discounted by Telecom.
- 46 File evidence clearly indicates that Telecom at the time of settlement with Mr Smith had not taken appropriate action to identify possible problems with the RCM. It was not until a resurgence of complaints from Mr Smith in early 1993 that appropriate investigative action was undertaken on this potential cause. In March 1993 a major fault was discovered in the digital remote customer multiplexer (RCM) providing telephone services to Cape Bridgewater holiday camp. This fault may have been in existence for approximately 18 months.<sup>29</sup> The fault

---

<sup>28</sup> Run past Brian Morgan.

<sup>29</sup> Exact period needs to be clarified.

would have affected approximately one third of subscribers receiving a service of this RCM. Given the nature of Mr Smith's business in comparison with the essentially domestic services surrounding subscribers, Mr Smith would have been more affected by this problem due to the greater volume of incoming traffic than his neighbours. (A summary of the circumstances surrounding the RCM fault are detailed under Allegation (iii)).

- 47 Telecom's ignorance of the existence of the RCM fault raises a number of questions in regard to Telecom's settlement with Smith. For example, on what basis was settlement made by Telecom if this fault was not known to them at this time? Did Telecom settle with Mr Smith on the basis that his complaints of faults were justified without a full investigation of the validity of these complaints, or did Telecom settle on the basis of faults substantiated to the time of settlement? Either criteria for settlement would have been inadequate, with the latter criteria disadvantaging Mr Smith, as knowledge of the existence of more faults on his service may have led to an increase in the amount offered for settlement of his claims.

#### **Allegation (ii) Failure to keep clients advised**

##### **Introductory Comment**

- 48 AUSTEL has been hampered in assessing Telecom's dealings with Mr Smith by Telecom's failure to provide files relating to Mr Smith's complaints. A file from the local Telecom area who first dealt with Mr Smith's complaint has not been provided to AUSTEL, although documents from this file have been copied to other files. At the time of writing, no explanation for the failure to provide this file or other files has been received from Telecom.<sup>30</sup>
- 49 As a result of Telecom's failure to provide file documentation relating to Mr Smith some of the following conclusions are consequently based on insufficient information. The information which is available, however, demonstrates that on a number of issues Telecom failed to

<sup>30</sup> May need to be re-written if other information comes to light.

keep Mr Smith informed on matters fundamental to the assessment of his complaints. 130

**Congestion problem on Cape Bridgewater Holiday Camp service prior to commission of RCM on 21 August 1991**

- 50 It is not known exactly what information was imparted to Mr Smith concerning the problem of congestion in the Cape Bridgewater area prior to the commission of the RCM at Cape Bridgewater on 21 August 1991. It is also not clear from the available documentation exactly how conscious Telecom was that congestion was a problem in this area prior to the arrival of the RCM. Apart from a record of the continuing reports of congestion from Mr Smith there is no available file evidence that congestion was a problem in the area, although Mr Smith's reports alone are sufficient indication that this problem existed. There are 4 LEOPARD fault reports which remain in existence prior to the installation of the RCM, records being unavailable prior to 27 June 1991, but these records relate to either NRR, No Dial Tone or No Progress, which are unlikely to have been caused by the congestion problem.
- 51 The available documentation indicates that apart from the period immediately prior to the commission of the RCM Mr Smith's complaints were treated as either customer equipment or exchange faults - and not a problem of insufficient line capacity. On 20 June 1992 Mr Smith wrote to the Manager - Customer Services Hamilton and outlined the history of his problems

*Due to constant complaints that ..... "Your phone is always busy!" Telecom technicians (during the first three years) came out to the Centre so many times that I lost count. A new 'Alarm System' was fitted outside the Office to ensure that I heard all in-coming calls. Then again, through frustration, new wiring was installed inside and outside both the Office and main kitchen, so that nothing was left to chance . . . but the complaints still continued."*

*It was explained to me that there were only a limited number of lines available , as we were on a sub-station, and , when those*

*lines were busy, anyone ringing the Holiday Camp would get an "Engaged Signal".<sup>31</sup>*

- 52 It should be noted that the "new wiring" was installed at the Cape Bridgewater Holiday Camp in approximately May 1991.
- 53 A file note entitled "267 267 - A. Smith incoming congestion", which was apparently written shortly before 18 March 1991 notes some details of Mr Smith's complaint. This document appears to originate from the local Telecom region. The note of the complaint from Mr Smith reads:
- NO incoming calls for 3-4 days engaged signal to incoming calls. Straight line phone. - Tech's unable to fix so far. Complaining re loss of revenue. Advised re new Exchange. Advised Techs would follow up with him and we would contact customers to see if they are experiencing same problem.*
- 54 (It should be noted that although there is a difference between an engaged tone and a congestion tone many callers confuse the two signals. It is clear from the heading of the document that the author was treating Mr Smith's complaint of "busy when not" as probable congestion.)
- 55 AUSTEL has not viewed any document which refers to contact made with other Cape Bridgewater customers on the congestion problem, if such a document exists. It is clear that the author of this document was not aware of a congestion problem in the area, which is why the author states he will be contacting other subscribers in the area to see if they are experiencing this problem. There seems to be an implicit assumption, however, that if there are congestion problems they will be resolved by the "new Exchange."
- 56 It seems that Telecom's local regional analysis of the congestion issue may not have progressed much by mid August 1991. Again Mr Smith has lodged a complaint which could relate to congestion:

---

<sup>31</sup> 000006

- i/c (incoming) callers are receiving engaged signal when its not eg. two calls from Collingwood PM 14/8/91

- this has been a continuing problem and he is losing a lot of business

- I said it appears from the fault history that the problem may be in the exch and the next RCM 21/8 would solve these problems but that I would check this out with the techs

- 57 The same file note records a verbal report from a technician which discusses previous action taken on Mr Smith's complaints. Apart from faults located on LEOPARD, testing on incoming STD calls and monitoring of calls have uncovered no faults. The file note states:
- there are only five lines portland - cape/brg if all are busy caller gets cong (congestion) tone
- 14/8 7.30 - 8pm 5 busy 8 - 8.30 pm 4 busy
- RCM will fix this problem
- 58 This note is the only record viewed by AUSTEL which indicates specific analysis of the congestion problem before the RCM was commissioned. It substantiates that congestion was occurring during the period tested. The analysis was performed 7 days prior to the installation of the RCM.
- 59 The author of the 15 August 1991 file note informed Mr Smith that they believed his range of problems were caused by his old exchange and would be solved "by the cutover to Portland AXE.". Mr Smith is also informed the congestion problem would be solved by this cutover. The brief comment on the March file note quoted above of Mr Smith being "Advised re new Exchange" also intimates that a suggestion was made at this time his problems would be alleviated by the new exchange.
- 60 It appears that the Telecom staff with whom Mr Smith was communicating his problems were not as aware of the possibility of congestion problem at Cape Bridgewater as should have been the case after his complaints. It is apparent that the congestion problem

should have been identified earlier than it was based on the period over which Mr Smith had been complaining. The failure of action taken by Telecom to resolve his problems both frustrated Mr Smith and diminished his confidence in Telecom's ability to deal with his complaints. (It should be noted, however, that some of the actions taken by Telecom prior to the installation of the RCM were also directed at resolving his concurrent problem of NRR).

- 61 In summary, the failure to advise Mr Smith of the congestion problem appears to have been more a failure to effectively diagnose the problem rather than a withholding of this information from Mr Smith.
- 62 A briefing note was prepared for senior Telecom management around the middle of September 1992. The author of the briefing note is unclear. The briefing note states:

*Before August 1991, Mr Smith was connected to an old exchange which may have had some congestion problems as well as more frequent faults than a more modern exchange*

- 63 The briefing note goes on to say :

*the installation of the RCM (AXE Exchange) was brought forward in an attempt to resolve Mr Smith's problems.*

- 64 No evidence has been found to support the contention that the installation of the RCM was brought forward. From the March file note quoted above it is clear that the installation of the RCM was already in the pipeline when the author of the file note spoke to Mr Smith. The briefing note clearly misled Telecom management, conveying an impression that Mr Smith's fault complaints had been accommodated in a professional and sympathetic manner not supported by the documentation. The briefing note also makes clear there was little actual data on congestion which may have existed at Cape Bridgewater prior to the installation of the RCM.

**Failure to advise of other subscribers experiencing NRR in Cape Bridgewater area**

- 65 As with the issue of congestion on the Cape Bridgewater Holiday Camp service the documents dealing with early reports of this problem from Mr Smith are scarce. Mr Smith maintains that he experienced this problem from the time he commenced operations at the camp.<sup>32</sup> Extant LEOPARD reports which relate to the Cape Bridgewater Holiday Camp alone indicate a number of reports of NRR from Mr Smith prior to the installation of the RCM at Cape Bridgewater. Complaints of the NRR problem also continue beyond the date the RCM was installed, with a number of these reports being provided by other subscribers in the Cape Bridgewater area.
- 66 A document dated 5 March 1991 entitled "RE NRR - CAPE BRIDGEWATER" is the only document provided to AUSTEL which examines the NRR problem at Cape Bridgewater prior to the installation of the RCM on the 21 August 1991. This document is a summary of an ad hoc survey of subscribers in the area. It seems that only one attempt was made to contact each number in the Cape Bridgewater area. The survey indicated that the NRR problem was affecting other people. The document obviously originates from a local Telecom file relating to Mr Smith which at the time of writing has not been made available to AUSTEL.
- 67 The NRR survey apparently involved calling 21 numbers and asking the subscriber whether they had any experience of the NRR problem. 12 numbers failed to answer, 4 indicated they had experienced the NRR problem, 4 said they hadn't experienced this problem and one subscriber wasn't sure. Of the 4 people who said they had experienced the NRR problem, one subscriber identified two additional numbers in the Cape Bridgewater area who may have had the NRR problem. This subscriber had not made any fault reports to Telecom on the NRR problem.
- 68 The Telecom survey provided a body of circumstantial evidence that other people in the Cape Bridgewater area were experiencing NRR, certainly enough information to initiate a more comprehensive follow up concerning the NRR problem. An important point in relation to NRR is that a subscriber may be experiencing this problem without

---

<sup>32</sup> 6 - 24/6/92

knowing it, as identification of the problem is dependent on reports from other people to that subscriber of he or she not answering their phone at a given time. Often such a report may be made some time after this call was attempted, and the subscriber may not be able to remember the specific details of what they were doing when the call attempt was made, and so assume they were absent when the call attempt was made. In this context, information from the Cape Bridgewater area of 6 out of 11 subscribers indicating they had experienced the NRR problem is very significant, particularly from an area with the subscriber profile of Cape Bridgewater (refer heading above "Comparative Uniqueness of Cape Bridgewater Holiday Camp Service" for comments on subscriber profile in area).

- 69 It is not known what action, if any, was taken by Telecom at this time to identify the cause of the NRR problem which was suggested by the survey, or whether an actual fault was subsequently identified. It is therefore not known whether Telecom was in a position to inform Mr Smith of a NRR problem in the area. Mr Smith maintains that he has never been informed by Telecom of other people in his area who have experienced the NRR problem.<sup>33</sup>
- 70 In June 1991, after a fault complaint from Mr Smith, a faulty final selector was detected in the old RAX exchange.<sup>34</sup> The fault could have caused NRR. The information on the fault rectification comes from a briefing summary prepared in September 1992, which states:

*Other customers reported problems over several days preceding the detection of this fault which would indicate that the switch could have been faulty for a maximum of two to three days.*

- 71 (AUSTEL has not been provided with the documents on which the conclusions in this briefing summary were reached, such as fault reports from other Cape Bridgewater subscribers over this period or the details of the faulty final selector fault. It would have been

<sup>33</sup>Need to identify or obtain quote from Smith to support this argument - not sure if has provided formal statement re this.

<sup>34</sup>From Smith briefcase file - front page - briefing to persons unknown.



↘ expected that these documents would have been retained on file as background to the summary. It can only be assumed that they are contained within the documentation not provided to AUSTEL.) 136

- 72 The argument used in concluding the length of period that the final selector was faulty is questionable, given the information on possible NRR problems in the area obtained in March 1991 and previous NRR reports from Mr Smith. An alternative argument could be advanced that the final selector had been intermittently faulty before finally reaching the stage of being unworkable. In the absence of the data relating to the actual fault on the final selector, however, no firm conclusion on this matter can be made. In examination of the NRR problem in relation to Cape Bridgewater Holiday Camp over this period, a possible cause of this problem may have been minimal maintenance of the old exchange due to the knowledge that it was due for replacement in August 1991.
- 73 Mr Smith has continued to report NRR problems affecting the Cape Bridgewater Holiday Camp since the RCM was installed. These complaints have occurred on a constant basis, running at approximately 2 per month from the data contained in the LEOPARD system. Since the problem with the RCM was diagnosed and rectified in March 1993, no cause for this ongoing problem has been identified by Telecom.<sup>35</sup> Nevertheless Mr Smith continues to report the problem, and there are a number of declarations from people attempting to contact the camp which attest to his claims.
- 74 In the absence of any documents which identify an ongoing fault of NRR affecting Mr Smith's service over the last year Telecom cannot be criticised for a failure to inform Mr Smith of the existence of this fault on his service over this period. During earlier periods, however, when Telecom staff were aware of other subscribers in the area experiencing NRR Mr Smith should have been appraised of this information, even if the cause of the fault had not been identified. There is a major difference in telling a customer that a fault cannot be identified and that he or she is the only one reporting faults, in comparison to stating that a fault cannot be identified and that a

<sup>35</sup> There may be a few "one of" incidents - such as data changes at Exchange etc.

number of other people are reporting faults or have experienced the problem. A complaint obviously has greater credibility if supported by other subscribers.

137

75 When the problem with the Cape Bridgewater RCM system was discovered in March 1993 Mr Smith should most certainly have been informed that a probable cause for some of the faults he had reported in the past had been identified. He should also have been informed of the impact of this problem. Failure to provide this information to Mr Smith had these consequences:

- Mr Smith's confidence in the network and the ability of Telecom's technicians to deal with the problems was irrevocably undermined, as he was not aware that Telecom had diagnosed and repaired a significant problem on his service
- Mr Smith had no reason to believe a source of ongoing faults had been rectified - he was therefore denied information which was relevant to future business decisions relating to the Cape Bridgewater Holiday Camp
- Mr Smith was denied information which could have been used in any subsequent claim for compensation for the period post his original settlement.

76 One disturbing matter in relation to Mr Smith's complaints of NRR is that information on other people in the Cape Bridgewater area experiencing the problem has been misrepresented from the local Telecom regional manager to a more senior manager. Telecom's Manager, Customer Service Hamilton wrote to the Manager - Customer Service Units Victorian Country Region on 12 May 1992, referring to the March 1991 period:

*An interview of customers on the Cape Bridgewater exchange found only one other customer experienced this problem.<sup>36</sup>*

---

<sup>36</sup> 675 - Mark Ross to John McCreery

- 77 It is assumed that the "interview" referred to is the March 1991 survey of 9 customers on this exchange identified above. If so, this statement was false. As noted previously, there were 3 other people who stated they had experienced the problem, with one subscriber identifying two other people experiencing the same problem. The context of the statement suggests that the survey was comprehensive, when in fact only 9 out of approximately 60 subscribers were surveyed. Imparting misleading and false information of this nature to Telecom's senior management diminished Mr Smith's credibility as a complainant. AUSTEL regards this misinformation as a very serious breach of ethics by Telecom's Customer Services Manager in this region, and behaviour that cannot be condoned.

#### **Failure to advise of PCM problem at Cape Bridgewater**

- 78 A number of points made in the preceding section are relevant to this issue, which is one of the most important issues relating to problems on the Cape Bridgewater Holiday Camp. The issue is discussed in detail in Allegation 3.<sup>37</sup>, as is the advise provided to Mr Smith on this problem.

#### **Failure to advise on issues relating to RVA's on Cape Bridgewater Holiday Camp service**

##### Introductory Comment

- 79 Mr Smith has reported Recorded Voice Announcements (RVA) on his telephone service over an extended period of time. Telecom has admitted that RVA's occurred on his service over a given period, far shorter than that claimed by Mr Smith. The unravelling of the occurrences and causes of RVA's on the Cape Bridgewater Holiday Camp is one of the most complex issues in relation to Mr Smith's service difficulties. It is clear, however, that Telecom's communication with Mr Smith on the issue of RVA's occurring on his service was inadequate and served to aggravate an already contentious issue. It is necessary to examine the RVA issue in some

<sup>37</sup>Make sure cross reference is correct.

detail to explain the significance of Telecom's failure to adequately advise Mr Smith on matters relating to this issue.

139

Significance of RVA problem

- 80 The first written communication from Mr Smith to Telecom complaining of the RVA problem was on the 20 June 1992, following on from a fault report made by Mr Smith on 16 March 1993 complaining of this fault. The letter was addressed to the Hamilton Manager of Customer Services. Mr Smith's letter provides an insight into the significance of the RVA problem from the customer's perspective.
- 81 Mr Smith detailed in his letter how an English tourist had informed him of receiving an RVA message after attempting to call the Cape Bridgewater Holiday Camp from Melbourne a number of times in succession on a day in March 1992. The tourist had informed Mr Smith, after eventually getting through to him, that she had received a message stating that *"This number is not connected."* As the tourist had called Mr Smith the previous day from Adelaide, she knew that the camp was in operation and that the Camp number should be connected. The RVA message was obviously incorrect, the call should have been connected without any message being received by the calling party.
- 82 In the letter to the Hamilton Manager of Customer Services Mr Smith noted that he had received complaints of this RVA message prior to the report from the English tourist *"but having had so many other complaints, I did not put two and two together."* (The "other complaints" referred to by Mr Smith are the other faults he had experienced on his service.) Mr Smith stated in the letter that he had made some further inquiries on the RVA issue:

*Investigations to numerous sources, from which I had expected inquiries regarding literature which I had sent, all brought a similar reply. For the period: December 1991 to as late as April 1992, those ringing were told ..... "This number is not connected?"*

- 83 After noting that his camp must meet certain criteria set by the Education Department to be listed as an approved excursion venue, Mr Smith went on to detail the potential damage to his reputation of the RVA message:

*Five weeks ago a friend, in jest, said: "I'm glad to see that you've paid your phone bill". Those words, although said in fun, give a pretty accurate summation of the opinions derived upon hearing ..... "This number is not connected." What effect does it have on the general public? What effect does it have upon prospective patrons? Would you recommend a venue which appears incapable of paying its bills?*

- 84 Mr Smith was also concerned that if a group of teachers met and were discussing the Cape Bridgewater Holiday Camp comments may be made such as *"Steer clear of them! They can't even pay their phone bill."*
- 85 As Mr Smith points out, the RVA message had the potential to severely damage his business. An important point in relation to the possible financial impact of the RVA message on the Cape Bridgewater Holiday Camp service is the camp's dependence on group bookings. In June 1992 the camp tariffs ranged from \$1500 to \$6000 per week, so the loss of even one booking because of the RVA problem could mean a substantial financial loss. On calling up Directory Assistance a calling party would have been informed that the number was connected, but many callers would probably not have taken this action, accepting the contents of the RVA message at face value.

Range of possible causes of RVA's on the Cape Bridgewater Holiday Camp service

- 86 From examination of Telecom's documentation concerning RVA messages on the Cape Bridgewater Holiday Camp there are a wide range of possible causes of this message. A list of known causes of RVA messages affecting the Camp is provided below, although this list may not identify all possible causes of RVA on the Camp services.

**Incorrect Dialling of Cape Bridgewater Number**

141

- 87 In certain circumstances incorrect dialling of the Cape Bridgewater Holiday Camp number could produce an RVA message. Telecom documentation canvasses incorrect dialling as a possible cause of reports of RVA from callers trying to contact the Camp. A analysis from Telecom's undertaken by Telecom's National Networks Investigation states:

*It is worth noting that, by calling 0055 267 26 we obtain a female Recorded announcement "The number you have called is not connected, please.....". It is therefore possible that some of the reported RVA may relate to mis-dialled numbers.<sup>38</sup>*

- 88 It should be noted, however, that most callers would be expected to check the number they have dialled and/or attempted a second or third call, which would minimise the potential of incorrect dialling as a source of reports of RVA's.

**RVA's originating from Portland region due to 'intermittent digit storage problem' at Portland exchange**

- 89 An "intermittent digit storage problem" was found in a register in the Portland exchange and repaired on 7 October 1992. This problem could cause either wrong numbers or RVA's on calls made from subscribers on ARK exchanges parented of the Portland exchange. Subscribers calling Cape Bridgewater Holiday Camp from these regions could therefore have experienced RVA's when calling the camp, and, in fact, some subscribers did and reported the problem to Telecom.<sup>39</sup>
- 90 On 24 November 1992 Telecom's Area Manager - Special Products - Commercial Vic/Tas wrote to Mr Smith and said that the "register" problem would have "affected a maximum of 1.5% of incoming calls between 2 October and 7 October 1992."<sup>40</sup> It is not clear how the

<sup>38</sup>Document entitled Analysis of 055 267 267 problem - from M93

<sup>39</sup> Probably Savill and who else?- need to locate quotes or reword this - also important for setting time frame for duration of problem

duration or extent of the problem were so precisely identified, although the duration appears to be based on some fault reports from local subscribers in early October 1992. The analysis provided is challenged by a file note made by the Hamilton Manager of Customer Services after a conversation with Mr Smith on 5 October 1992:

*Mr Smith received a letter from a lady .....who lives in Heywood. She claims (on) 22/9/92 (she) rang 267 267 between 10 and 11 am. Received RVA message this number is disconnected. Rang 267 267 25/9/92. Rang from 9.20 am onwards 7 times received RVA message, 2 times No Response, No Tones. (note: callers number was from 055 prefix region)*

- 91 Other evidence also suggests the problem had existed for a longer period than a 5 day period as Mr Smith was informed. An undated note from a Technical Officer at the Portland exchange to the Manager, National Network Investigations - Melbourne discusses his investigation of the matter. The Technical Officer had contacted the Heywood caller, who had told him she had contacted another subscriber in Cape Bridgewater "on many occasions .... and sometimes she gets a recording (MALE)" stating the service had been disconnected. The officer went on to say:

*We have had quite a few complaints from ARK-M customers (including HEYD) about this recording<sup>41</sup>*

- 92 It appears that the RVA problem the Heywood caller was experiencing when calling Mr Smith and another subscriber in Cape Bridgewater was significantly greater than 1.5%, and had been in existence for some time. From the recent information provided by the Heywood caller via Mr Smith the problem had commenced at least 10 days earlier than the period Mr Smith was informed by Telecom. It should also be noted that the problem seems to be quite severe, at least from callers from the Heywood region.

---

4030

41 NNI file

93 Information provided by the Heywood caller suggests this particular RVA problem had almost certainly been in existence for a much longer period than a few weeks prior to the fault being repaired. A chronology of events on the Cape Bridgewater Holiday Camp provided to AUSTEL by Mr Smith notes that the same Heywood caller had tried to contact him on 16 March 1992 and experienced an RVA when attempting to see if accommodation was available at the Camp for 12 guests at her premises seeking accommodation in the Cape Bridgewater area.<sup>42</sup>

94 The letter provided by Telecom's Area Manager - Special Products - Commercial Vic/Tas is a further demonstration of Telecom's inability to co-ordinate customers' complaints...Mr Smith's faith in Telecom's fault investigation procedures and integrity must have been further eroded by a letter which minimised the extent and duration of the "relay" problem, particularly when the 5 day period of the problem which is admitted does not include dates identifying experience of the problem which Mr Smith had reported to Telecom.

**Incorrect programming of Cape Bridgewater number code at Windsor Digital Trunk Exchange (MELU)**

95 Of all the identified causes of RVA's on the Cape Bridgewater Holiday Camp service the most severe cause, in terms of the volume of incoming call traffic affected, was when the Cape Bridgewater number code data was not correctly programmed at the Windsor Digital Trunk Exchange (MELU). The length of period that this problem existed, however, is contentious. Telecom wrote to Mr Smith stating the problem occurred for a maximum of three weeks, whereas Mr Smith argues, from information provided to him by callers to the Camp, the problem existed for at least 4 months<sup>43</sup>.

96 As detailed above, Mr Smith's knowledge of this RVA problem was first brought to his attention by an English tourist trying to contact the Camp in March 1992. From Telecom's LEOPARD fault data<sup>44</sup> the first

---

<sup>42</sup>This call would not have trunked via MELU unless she called the 008 number, as call was a local call.



report made by Mr Smith complaining of the RVA was on 16 March 1992. LEOPARD records two prior reports of RVA from other Cape Bridgewater subscribers, with the first of these made on 4 March 1992.

- 97 Telecom's Area Manager - Special Products, Telecom Commercial Vic/Tas wrote to Mr Smith on 24 November 1992 providing information on the duration and cause of this particular RVA. This letter was the first written communication to Mr Smith providing details on the nature and duration of the problem. It was provided 8 months after the fault had been rectified, after numerous communications from Mr Smith concerning this matter. This letter stated:

*A fault at Windsor exchange in Melbourne was caused by a network program change. This programming caused a network recorded message to be given to some callers, and affected incoming STD calls from Melbourne to Bridgewater for a period of up to 3 weeks prior to the fault being fixed. The maximum impact on your incoming STD calls from Melbourne, could have been up to 50% and would have depended on exchange traffic at the time of call attempts. The Windsor exchange was reprogrammed on 19 March 1992 and this has rectified the problem.<sup>45</sup>*

- 98 The time taken by Telecom to provide this information to Mr Smith indicated extreme negligence on this matter, particularly given the severity of the problem to the Cape Bridgewater Holiday Camp service.
- 99 Telecom's argument for the maximum 3 week duration of this RVA problem is based on both customer fault reports and data number changes performed at the Windsor exchange. After seeking information from a number of sources this conclusion was reached by National Network Investigations (Melbourne) in a report dated 28 August 1992, over 5 months after the fault was rectified.<sup>46</sup> It is

<sup>43</sup>30 - 24 Nov 92 - from Smith says 9 months, but Smith originally said 4 months.

<sup>44</sup>624 - COBPAK Adhoc Request - what is this?

assumed that this analysis was used as the basis for the letter to Smith of 24 November 1992 which stated that this problem had occurred 'for a period of up to 3 weeks.'

- 100 On 5 February 1993 the Manager - National Network Investigations (Melbourne) produced another report on the issues of RVA and NRR from the Cape Bridgewater Holiday Camp. This report was distributed to other National Network Investigations Managers, to the Manager - Tas/Vic Commercial Business, Commercial & Consumer Business, and to the Manager Warmambool Operations Management Group. In regard to the MELU RVA error, this report stated:

*An exact period that this data error was effective for is difficult to obtain but analysis of MELU information indicates that the data change was in place for approximately 6 weeks.<sup>47</sup>*

- 101 In mid 1993 a briefcase containing file information was inadvertently left at Mr Smith's premises during a visit by Telecom National Networks Investigation personnel, and Mr Smith subsequently viewed the contents of his file, which contained the 5 February 1993 report. Mr Smith noticed the discrepancy in the duration of the MELU RVA problem, and alleged to AUSTEL that he had been mis-advised on this issue by Telecom. Telecom responded to AUSTEL stating that the 6 week period identified in this report was an error, and that the earlier 3 week estimate was correct.<sup>48</sup>

NEW TEASTRA DOCUMENTS  
SHOW 8 MONTHS

- 102 AUSTEL has also viewed some documentation relating to the period the data error at MELU was causing RVA on calls to Cape Bridgewater. The circumstantial evidence indicates the problem may have occurred for only 3 weeks, but no precise or definitive duration of the problem can be ascertained from the available data. A more accurate assessment of the duration of the problem would

<sup>45</sup>30

<sup>46</sup> 694 - Hew Macintosh for Manager - NNI - 28 August 1993

<sup>47</sup>NNI file - front page

undoubtedly have been assisted by a much earlier examination of the problem.<sup>49</sup>

- 103 It is apparent from Telecom's documentation that no investigation of the duration of the MELU data error problem would have been initiated without the persistence of Mr Smith's complaints on the matter. It also follows that no investigation was intended into the circumstances which led to the error occurring. The lack of this process raises serious questions about Telecom's ability to ensure such errors are not repeated.
- 104 The assessment provided to Mr Smith that up to 50% of STD calls from Melbourne to the Cape Bridgewater Holiday Camp would have been affected by the MELU RVA problem appears to be accurate.

### Conclusion

- 105 The advise provided to Mr Smith on matters relating to the RVA message caused by the data error at MELU was inadequate. The impression conveyed by Telecom's letter of 24 November 1992 to Mr Smith was that Telecom was certain of the maximum duration of the RVA problem, a certainty which is not conveyed by internal communications on the matter. It should be noted that the original advice provided to Mr Smith must be assessed in the context that Mr Smith had submitted a claim for compensation.
- 106 Telecom also failed to investigate the cause of the MELU RVA within a timeframe which would have assisted a more precise identification of the duration of the RVA problem. This was a failure to initially treat this issue with sufficient gravity.

### **RVA Problem for calls made from Public Payphones**

- 107 Complaints of RVA have been received from callers using public payphones trying to contact the Cape Bridgewater Holiday Camp.<sup>50</sup>

---

<sup>48</sup>Need to identify document which makes this claim

<sup>49</sup>Documentation shown and discussed with Cliff Mathieson on 17/2/94.

<sup>50</sup>see 18a - Macintosh to Exchange Managers.

Telecom tested for this fault, but was unable to substantiate whether it occurred. It is not clear how comprehensively Telecom tested this issue. It should be noted that there is conclusive, however, that Cut Offs to the Cape Bridgewater Holiday Camp from Public Payphones occurred because of incorrect data coding in the network. The documentation provided to AUSTEL is not conclusive on this issue, and provides little detail on the extent or nature of the problem.<sup>51</sup> 147

#### **Local technician's perception of existence of RVA problem**

- 108 Mr Smith is sceptical of the advice provided to him by Telecom's senior management concerning the extent and duration of the RVA problems affecting the Cape Bridgewater Holiday Camp service. A contributing factor to this scepticism was probably information provided to him by local Telecom technicians on the RVA fault.<sup>52</sup> It should be note that Telecom technicians regularly visited Mr Smith during mid 1992. An internal briefing history prepared in late 1992 described the technical service provided to Mr Smith over this period as catering "to Mr Smith's every whim."<sup>53</sup>
- 109 The view of the local Telecom technicians in relation to the RVA problem is conveyed in a 2 July Minute from the Customer Service Manager - Hamilton to Managers in the Network Operations and Vic/Tas Fault Bureau. This Minute stated:

*Our local technicians believe that Mr Smith is correct in raising complaints about incoming callers to his number receiving a Recorded Voice Announcement saying that the number is disconnected.*

*They believe that it is a problem that is occurring in increasing numbers as more and more customers are connected to AXE.<sup>54</sup>*

<sup>51</sup>Need to find more quotes if I leave this in.

<sup>52</sup>Smith to substantiate this.

<sup>53</sup>617 - Briefing Hlstory - Mr Alan Smith, Cape Bridgewater.

- 110 It should be noted that this statement is made over 3 months after the date when the MELU RVA problem has been rectified. Although field technicians are not necessarily in the best position to identify the cause of RVAs, they certainly receive a body of anecdotal evidence from customers of problems which they are experiencing. 148
- 111 It is clear that there was a certain level of perception by Telecom technicians that other customers in the region were also experiencing the RVA problem. This perception was probably based on other instances of data errors similar to that which affected the Cape Bridgewater Holiday Camp. One data error affected the Mr Richmond locality immediately adjacent to Cape Bridgewater, where after an upgrade to a digital exchange programming had not been changed from analogue to digital for calls switching to Mt Richmond via Melbourne's MELC exchange. This meant that calls switching via this exchange could not reach Mt Richmond. A July 1992 Telecom Minute from a Warrnambool technician which discusses both this error and the MELU RVA error notes: *"Both these problems were found a considerable time after the (exchange) cutovers."*<sup>55</sup>
- 112 It should be noted that in reference to the Mt Richmond problem this problem had been in existence for at least 6 months after the exchange had been upgraded to a digital exchange. This demonstrates that fault reports alone are not necessarily a reliable indicator of the extent or duration of this type of problem.

#### Other Data Coding Problems

- 113 The July 1992 Minute from the Warrnambool technician notes other data coding problems occurring in his region. The Minute states

*We have also had problems with ARK's parented off the Portland AXE not being able to get local customnet and 008 codes because the A-Number analysis for these exchanges were not in the data in the Warrnambool Node.*

<sup>54</sup>Mark Ross to Chris Doody and Graeme Davies - 626

<sup>55</sup>Geoff McCann to Chris Doody 517

*What concerns me is that with the number of ARK to AXE reparenting being carried out across the state how can we be sure of and who is going to check the A-Number and B-Number analysis, routing etc in all the Nodes throughout Victoria so that this does not become a major problem in the network.*

*I suggest to enable us to have confidence in the whole network that these problems have to be addressed and that checks should be performed in all Nodes across the state.*

- 114 Mr Smith's 008 number did not begin operating until December 20 1992, so the reference to problems with data coding for 008 numbers in his region are not relevant in this instance. The broader concern raised by the author of this Minute as to an apparent failure to effectively co-ordinate programming of number data when upgrading to digital AXE technology is relevant. It is possible that calls to "the Cape Bridgewater Holiday Camp were affected by this problem. It is also possible that this problem was the cause of some instances of RVA on calls to the Camp.<sup>56</sup>
- 115 Some problems with incorrectly coded data seem to have existed for a considerable period of time. In July 1993 Mr Smith reported a problem with payphones dropping out on answer to calls made utilising his 008 number. Telecom diagnosed the problem as being to "Due to incorrect data in AXE 104, CC-1. Fault repaired by Ballarat OSC 8/7/93"<sup>57</sup> The original deadline for the data to be changed was June 14th 1991.<sup>58</sup> Mr Smith's complaint led to the identification of a problem which had existed for two years.
- 116 AUSTEL does not know how widespread the problem with incorrect coding of data was (or is) throughout the network. It should be noted that the data problems seem to coincide with an region being upgraded to digital technology.

---

<sup>56</sup>Cliff to confirm

<sup>57</sup>555 - 9 Sept 1993 - Rod Smith to Manager, Warrambool.

<sup>58</sup>589 - K.Grant to various Manager - pre June 14 1991

**Summary**

- 117 There is no indication that the multiplicity of possible causes of RVA's on the Cape Bridgewater Holiday Camp service were ever adequately explained to Mr Smith. A number of factors may have contributed to this failure, foremost of these being the length of time it took to identify some of the causes of RVA on the Camp service.
- 118 When Telecom wrote to Mr Smith on 24 November 1992 explaining two known causes of RVA on his service the information provided was inadequate. The duration of both RVA problems did not correspond with information Mr Smith had received from callers of their experience of RVA's when trying to contact the camp. Telecom's own internal documentation on the duration of both problems demonstrates that there was evidence that faulty relay problem almost certainly existed longer than stated, and that uncertainty exists on the duration of the MELU RVA problem.
- 119 Given the questionable information provided to Mr Smith on RVA's affecting his service and the delay in providing this information it is not surprising he questioned the explanations provided by Telecom when they arrived. Information received from local technicians would have compounded Mr Smith's perception of the problem.
- 120 The consequence of Telecom's failure to adequately advise Mr Smith on RVA problems affecting his service was that Mr Smith's faith in Telecom's integrity and capacity to resolve faults was severely undermined. Mr Smith was subsequently highly sceptical of Telecom's interpretation of faults on his service, and he undertook extensive inquiries within his industry and with people in contact with the Camp to try and ascertain the extent of the problems affecting the Cape Bridgewater Holiday Camp services.

**Failure to advise of consequences of testing program**

- 121 In July 1993 Mr Smith complained to Telecom that callers from payphones in his local region could not make contact with the Cape Bridgewater Holiday Camp. It transpired that the cause of this problem was specialised monitoring equipment then being used on

his line. The Telecom staff responsible for connecting the specialised equipment knew that the problem would occur through utilising this equipment, and failed to inform Mr Smith of this fact.

- 122 Mr Smith was only informed of the side-effect of the monitoring equipment when he complained of the fault. It is not sure to what extent this fault would have affected potential customers for the camp, or how many callers were affected by it. Mr Smith should have been appraised of the consequences of the use of the monitoring equipment, however, as it was ultimately his decision whether the possible benefits of the use of the monitoring equipment outweighed the potential loss of revenue from the loss of callers.

**Failure to advise of Answer No Voice problem affecting Cape Bridgewater Holiday Camp Service**

- 123 Mr Smith began experiencing faults which related to a condition termed Answer No Voice in late 1992, although it is possible some earlier fault reports from Mr Smith also related to this condition.<sup>59</sup> Answer No Voice is defined in this instance as when the called party receives a burst of ring, but upon answering the call receives dial tone.
- 124 In February 1993 Mr Smith was communicating faults directly to Telecom's Commercial Vic/Tas area. A senior Telecom officer who was a regular Telecom contact for faults reported by Mr Smith noted the following fault report of 2 February 1993:

*He (Mr Smith) received on burst of ring at 1.15 pm and 5.05 pm yesterday, when he picked up the receiver (sic) he heard dial tone. This problem occurs intermittently through-out the Network and although it is recognised as a problem there appears to be no one person or group involved in resolving it.<sup>60</sup>*

<sup>59</sup>For corroboration - see Smith chronology - 289 - completed May 20 1993.

<sup>60</sup>Customer complaint form print-out - Cape Bridgewater monitoring folder.



- 125 The comment from the senior officer does not engender faith in either Telecom's treatment of network fault resolution as a priority or its capacity to co-ordinate fault resolution. No note was made at this time that Mr Smith was informed of Telecom's knowledge of this problem. It appears from subsequent reports of the problem from Cape Bridgewater Holiday Camp, along with notes made by another Telecom officer from the Commercial Vic/Tas area also handling Mr Smith's complaints, that Mr Smith was not informed of Telecom's knowledge of the existence of this problem until 10 March 1993. Mr Smith's assistant reported the Answer No Voice problem on 9 March 1993. The officer noted:

*I believe this may be tied (sic) up with the axe network problem which gives only 1 burst of ring and the calling party gets busy tone.<sup>61</sup>*

- 126 The officer spoke to Mr Smith on 10 March 1993 and noted that he had informed Mr Smith of "the axe problem." At least on this occasion Mr Smith was apparently informed by Telecom of a network problem affecting his service, but this information should have been imparted when Mr Smith first reported the fault. Even if the fault could not be resolved at the time it was first reported, admission of its existence would have assured Mr Smith that Telecom accepted the validity of his complaint.
- 127 The resolution of the Answer No Voice problem provides an insight into the consequences of a failure to inform clients of known problems on their service. The same officer who informed Mr Smith of the "axe problem" took a call from Mr Smith on 12 March 1993 and noted that Mr Smith said "he was getting to his wits end" as a result of his telephone problems. Again one of the problems identified by Mr Smith was the Answer No Voice problem.
- 128 On 25 March 1993 Mr Smith again complained of the Answer No Voice problem to the same officer who had received his complaint of 12 March. This officer contacted the Portland Exchange and spoke to the Manager of the Exchange, who informed him:

---

<sup>61</sup>Customer complaint form print-out - Cape Bridgewater monitoring folder.

*it was a problem caused by the AXE at Warmambool not having enough soft ware blocks released and this was to be done on 26/03/93. I then rang Mr Smith back and he accepted the explanation that it was not just him suffering the problem.<sup>62</sup>*

129 It appears that this fault was not as difficult to diagnose as originally thought, and the resolution of the fault pertained more to an incorrect structure of the local network serving the Portland region than an inexplicable nationwide fault condition. Of note is that at this time Mr Smith was obviously concerned that the fault was affecting his service alone, whereas if Telecom had made known to Mr Smith their knowledge of other people reporting the same problem Mr Smith would not have had this concern, and perhaps some of his frustration with his telephone problems would have been alleviated. A failure to acknowledge other people reporting the same fault also relieved the pressure on Telecom staff to deal with this problem at an early stage, and it seems that this problem was not diagnosed and rectified as quickly as it should have been.

130 On 8 April 1993 Mr Smith wrote to AUSTEL and referred to the apparent resolution of the Answer No Voice problem on his service.<sup>63</sup> Mr Smith maintained that it was only his constant complaints that had led Telecom to uncover this condition affecting his service, which he maintained he had been informed was caused by "*increased customer traffic through the exchange.*" On the evidence available to AUSTEL it appears that it was Mr Smith's persistence which led to the uncovering and resolving of this problem - to the benefit of all subscribers in his area. The time taken for rectification of the fault by Telecom was excessive, particularly in relation to the assurances given to Mr Smith by the Service Manager, Telecom Commercial Vic/Tas on 1 September 1992 (letter previously quoted under Allegation (I)), stating that Telecom was:

*a technical organisation capable of responding quickly and efficiently to a service difficulty should there be a need.*

<sup>62</sup>customer complaint form print-out - Cape Bridgewater monitoring folder.

<sup>63</sup>g1

**Allegation (III) Denial of existence of problem or its underestimation**

- 131 From the customer complaints records it is evident that Telecom technical staff usually advised Cape Bridgewater Holiday Camp in general terms of testing taken in response to faults/problems reported. What is not evident in any documentation is whether the customer was advised of how the testing addressed the faults being reported on a continuing basis or how the testing would isolate and thereby identify the causes of faults/problems being reported.
- 132 No documentation was found of Telecom effectively addressing the issue that many callers in the Cape Bridgewater area were reporting similar faults/problems as the camp. Despite continuing programs of test calls to Mr Smith's premises, no comprehensive surveys were conducted of other subscribers in the Cape Bridgewater area to examine problems they may be experiencing. When limited inquiries were made in the area, problems of faults were substantiated to a level which should have initiated further inquiries.
- 133 There was no documentation found where the results and significant findings of major investigations were advised to the camp apart from where information was specifically requested.
- 134 The approach adopted by senior executives of Telecom corresponding to the camp advising that the network was working satisfactorily, did not reflect the evidence available to Telecom that the camp was experiencing problems over an extended period of time.

**RCM Faults on the Cape Bridgewater Holiday Camp Service**

Background to identification of RCM fault

- 135 On August 21 1991 a digital RCM was installed at Cape Bridgewater. The RCM was essentially the terminating exchange for the services delivered to the Cape Bridgewater Holiday Camp, and the final vital link in the network serving the Camp.

- 136 On 2 March 1993 a technician from the Pair Gains Support section of Telecom investigated the Cape Bridgewater RCM system. The reason for the investigation was the continuing complaints of service difficulties from Mr Smith. Apparently this was the first time specialised expertise was requested to assess the operation of the RCM. This raises questions about the basis for the service assurances provided to Mr Smith in late 1992. ↙
- 137 It seems that an important contributing factor in Telecom initiating a thorough investigation of the operation of the RCM was a Telecom officer's own experience of service difficulties when conversing with Mr Smith. This officer, whom Mr Smith was regularly reporting faults to in early 1993, noted the following information on 24 February 1993:
- Had a call from (Telecom employee) to say a Ballarat customer of A Smith had put a fault in via 1100 indicating she could not get through.....I attempted to ring Mr Smith when the ring tripped I received a noise similar to "carrier noise" and a very faint "hello" after waiting a while the person at the other end hung up. <sup>64</sup>*
- 138 The officer later successfully connected a call to Mr Smith, who informed the officer that a "several people had rung and reported the same problem.". The Cape Bridgewater Holiday Camp services 267 267 and 267 230, which were both located in one of the three RCM systems, were immediately taken out of this system and located in each of the remaining two RCM systems. The next day the officer requested that the local region call in specialised assistance to assess the operation of the RCM. It appears that the Telecom officer's own experience of the problem held considerably more weight than the numerous reports previously made by Mr Smith to this officer and his colleagues.
- 139 It should be noted that some minor actions had been performed by local Telecom staff on the RCM prior to the request for specialised assistance. A card in the RCM dedicated to the Cape Bridgewater

---

<sup>64</sup>Telecom Customer Complaint Form

Holiday Camp service had been swapped with another card on the 10 February 1993 to see if a faulty card was a possible source of Mr Smith's problems. Mr Smith continued, however, to make fault reports after the swap.

140 The specialist assessment of the RCM was performed by an officer from the Pair Gains Support Section of the National Switching Support (Melbourne) group on 2 March 1993. A Minute dated 12 July 1993 discusses the findings of the Pair Gains Support officer in regard to the Cape Bridgewater RCM. (It should be noted that AUSTEL's investigation of matters relating to the RCM problem has been hampered by Telecom's failure to make available to AUSTEL a file specifically relating to the Pair Gains Support investigation of the RCM. This file was requested by AUSTEL on 9 February 1994.)

141 The 12 July 1993 Minute details a number of problems which were found at the Cape Bridgewater RCM in March 1993. (The fact that this Minute was written some three months after the investigation clearly indicates that the author was working from notes or other documents made at the time which have not been provided to AUSTEL). The problems identified in the RCM were:

- error counter readings for incoming calls to Cape Bridgewater indicated that on System 1 of the RCM there were a significant number of "degraded minutes" and "errored seconds", although the indicator of most severe problems, "severely errored seconds", read zero. Until 24 February 1993 the Cape Bridgewater Holiday Camp was located in System 1 of the RCM.
- "the presence of 500 Hz. noise on all lines at -58 dBm causing minor noise problems."<sup>65</sup>
- "cable ducts into both the cross connect cabinet and the concrete hut were (sic) not sealed allowing the ingress of moisture, which could affect the error counters ..."

- *"the alarm system on all three RCM systems had not been programmed. This would have prevented any local alarms being extended back to Portland."*
  - *strapping records for the RCM could not be located, so that testing of the "inground repeaters using the "trios" system" could not be performed*
  - *"a problem with the installation of the enhanced lightning protection modules in the IDS block at Cape Bridgewater was discovered"*
- 142 The RCM system was monitored overnight and analysis the next day revealed that System 1 was running a high number of "degraded minutes" and "errored seconds". The problem with the lightning protection module was discovered and rectified, and the error counters were monitored after the next night and no errors were recorded .
- 143 The officer who wrote the 12 July Minute noted that when he had been called in to conduct the investigation he had been informed *"of a vocal customer at Cape Bridgewater complaining of VF (very frequent )cut-offs in one direction."* After noting the readings from the RCM error counters, he commented *"these errors could have caused the VF cut-off problem."*
- 144 AUSTEL has raised the issue of the significance of the RCM error counter readings with Telecom. The Group General Manager Customer Affairs wrote to AUSTEL on 18 February 1994 stating:
- The effect of the Errored Seconds and Degraded Minutes may cause some degradation of the voice services, manifesting itself as low level noise (eg "clicks). The zero count of Severely Errored Seconds confirms that there was a low probability of any call drop out or impact on the ability to receive or make calls.<sup>66</sup>*
- 145 The response from the Group General Manager Customer Affairs clearly downgrades the potential severity of the *"VF cut-off problem"* at

---

<sup>66</sup>Black to MacMahon - 18 Feb 1994 - Page 2.

the Cape Bridgewater RCM from a definite possibility, as noted by the Pair Gains Support officer, to that of a "low probability." There is body of other information, however, which considerably raises the probability of the RCM fault causing more severe problems.

- 146 It should also be noted that the Pair Gains Support officer commented that he was unable to assess the period of time over which the error counters had accumulated the error data. It is impossible to retrospectively determine, therefore, whether these errors had been accumulating since the RCM began operating in 1991.

Fault Reports from Cape Bridgewater from late 1992 to early 1993 indicating possible problems with the Cape Bridgewater RCM

- 147 On 6 January 1993 a Telecom minute was sent to an officer in Telecom's Commercial Vic/Tas area which outlined recent fault reports from Mr Smith. It is not clear who the author of the Minute is, but it appears to originate from another area of Commercial Vic/Tas.

- 148 The Minute states:

*Had a call from Alan Smith this afternoon. He is having intermittent (sic) probs with STD call's cutting off during conversation (sic) one way over last 2 - 3 wks.*

*He is speaking and reception only disappears for a short time then comes back but other party can hear him speaking continuously*

*I organised (a local technician) to change the phone due to suspected rec cond<sup>67</sup> but he spoke to me from the cust premises and told me they are having local problems in the network with cut off's one way on STD calls*

*Could you please chase up the network issue.....<sup>68</sup>*

<sup>67</sup>What is this - receiver condition?

<sup>68</sup>742

- 149 Although it is easy in retrospect to be critical of action not taken which should have been taken, it appears little action was undertaken in "chasing up the network issue" at the local level at this time. An important point to note in this Minute is that there is a clear indication that other subscribers in the area are experiencing the same problem as Mr Smith.
- 150 Mr Smith continued to report faults throughout January and February 1993. On 2 February 1993 he complained of No Progress, and on 4 February Answer No Voice. Reports were received of calls from Werribee experiencing electrical noise. A caller from the Melbourne region on 8 February experienced clicking and breaks in conversation. Cut Offs were also experienced by Mr Smith during this period. There was obviously a considerable body of information indicating that Mr Smith was experiencing problems.
- 151 Mr Smith was not the only subscriber in the Cape Bridgewater region complaining to Telecom in late 1992 and early 1993. LEOPARD fault records show that many subscribers in the area were complaining of a range of problems over this period.<sup>69</sup> As mentioned previously, LEOPARD fault records for the Cape Bridgewater region need to be analysed in the context of the subscriber profile of the area, which could be expected to generate less fault reports than many other regions. It should also be noted that LEOPARD fault reports from the Cape Bridgewater area corroborate the information imparted by the local Telecom technician on 6 January 1993 of service problems in the area.
- 152 There are indications that at times the problems with the RCM were quite severe, and may have denied callers access to the Cape Bridgewater area. AUSTEL has written to Telecom requesting information on what the impact of an RCM going "down" (or failing to accept calls) would be to parties trying to call the Cape Bridgewater area when this occurred. Telecom's Group General Manager - Customer Affairs replied stating that:

---

<sup>69</sup>No time to do proper analysis - would like someone to go through LEOPARD data and list all numbers which reported problems of a network nature - (not customer equipment)



*If the RCM goes "down" the effect would be the same as a break in the cable of a customer connected directly to an exchange. Thus when an outgoing call was attempted, no dial tone would be received and hence a call could not be made. When another customer originated a call to a customer on an RCM system that was "down", the calling customer would receive normal ring tone. It should be noted that, should this situation occur, then an alarm signal would be generated by the exchange unit of the RCM to alert staff to the situation.<sup>70</sup>*

- 153 A feature of the RCM system is that when a system goes "down" the system is also capable of automatically returning back to service. As quoted above, normally when the system goes "down" an alarm would have been generated at the Portland exchange, alerting local staff to a problem in the network. This would not have occurred in the case of the Cape Bridgewater RCM, however, as the alarms had not been programmed. It was some 18 months after the RCM was put into operation that the fact the alarms were not programmed was discovered. In normal circumstances the failure to program the alarms would have been deficient, but in the case of the ongoing complaints from Mr Smith and other subscribers in the area the failure to program these alarms or determine whether they were programmed is almost inconceivable.
- 154 Examination of LEOPARD data for individual fault reports from Cape Bridgewater complaining of both NDT and NRR over the period September 92 to the end of February 93 indicate a substantial number of these complaints. The relevance of these fault reports to a system in the Cape Bridgewater RCM going "down" are that they indicate that calls from services in the area could neither get in or out of the area, indicating that the RCM may have gone "down" for a period. Complaints of both NDT and NRR originated from at least 15 separate services in the area over this period. The period of most numerous complaints occurred from 21 to 24 November 1992, with complaints originating from 6 separate services, none of which belonged to the Cape Bridgewater Holiday Camp. When inquiries

<sup>70</sup>Black to MacMahon - 18 Feb 1994

were being made by Commercial Vic/Tas officer into Mr Smith's problems in February 1993 a local Portland Officer informed this officer that:

*"there were problems in the RCM causing by a lightning (sic) strike to a bearer in late November these problems (damaged PCB's etc.) appeared to be resolved by late January....."<sup>71</sup>*

- 155 It appears from this quote that some action was taken to address the problems with the RCM as a result of the lightning strike, though exactly what action was taken is unclear. The fact that the alarms were not programmed was not discovered at this time raises some questions about the expertise of the staff dealing with the problem.
- 156 The condition of the Cape Bridgewater RCM when examined by the Pair Gains Support officer suggests that in reality little work had been undertaken by the local area to address potential problems in the RCM. The inadequate sealing of the cable ducts and the lack of strapping records support this contention, as no apparent technical expertise was required to locate and correct these deficiencies.
- 157 An issue of note is that despite a considerable body of evidence indicating that a lightning strike did cause major service problems to a significant number of Cape Bridgewater subscribers in November 1992 there was no record of Seriously Errored Seconds on any of the RCM systems as a result of the strike. This suggests that either the counters were reset subsequent to this date or the error counters did not record faults occurring as a result of the strike.
- 158 The crucial issue in regard to the Cape Bridgewater RCM is that assuming the lightning strike did cause problems to the RCM in late November 1992 these problems were not resolved till the beginning of March 1993, over 3 months later. This was despite a number of indications of problems in the Cape Bridgewater area. Fault reports from September 1992 also indicate that the commencement of problems with the RCM may have occurred earlier than November

<sup>71</sup>Customer Complaint form entry 9 Feb 93 - Cape Bridgewater Monitoring Folder.

1992. A related issue is that Mr Smith's persistent complaints were almost certainly responsible for an earlier identification of problems with the RCM than would otherwise have been the case.

- 159 Telecom clearly underestimated the possible existence of a problem with the Cape Bridgewater RCM. As with many of Telecom's activities in regards to complaints from Mr Smith, this failure seems to originate more from a lack of adequate fault identification methods and co-ordination of fault location activities than a commitment of resources to resolve his problems. There is some indication, however, of laxity of maintenance of the Cape Bridgewater RCM.
- 160 It should be noted that it is hoped that a number of issues in regard to the Cape Bridgewater RCM will be clarified when Telecom provides the documentation requested by AUSTEL.

Information provided to Mr Smith concerning problems with the RCM

- 161 A 9 March file note from the Commercial Vic/Tas officer whom Mr Smith was reporting faults to in early 1993 states that he "*explained the results of our investigation*" to Mr Smith. It is assumed that this was the results of the RCM investigation. It is obviously not known from this comment exactly what information was imparted to Mr Smith on this issue. Mr Smith, however, maintains that he was not told of the problems with the RCM, and only became aware of these problems when he received Telecom documentation as a result of his FOI request.
- 162 The facts concerning the information imparted to Mr Smith by Telecom on the Cape Bridgewater RCM problems are not clear. What is clear, however, is that Mr Smith was entitled to receive a detailed explanation given the length of time he had been complaining to Telecom of problems on the Cape Bridgewater Holiday Camp service.
- 163 Although Telecom's Group General Manager Customer Affairs has downgraded the potential of the RCM problem to impact on Cape Bridgewater subscribers' "*ability to receive or make calls*" it is clear that this view was not entirely shared by the officer who states he

informed Mr Smith of the results of the "investigation". This officer noted on 9 March 1993, a week after the RCM problems had apparently been rectified, that Mr Smith:

*did agree that he had received far more calls recently which could be tied to the changing of his service into sys 3 (on the RCM)*

**Allegation (iv) That Telecom employees suggested problem could be overcome by purchase of new customer equipment when it knew that this was not the problem**

164 No evidence was found with documentation reviewed that Cape Bridgewater Holiday Camp claimed that faults would be overcome if it purchased improved customer equipment. Mr Smith's equipment was replaced, however, on a number of occasions.

165 As was the case with many of the COT group, it seems that Telecom employees considered there would be a benefit in replacing customer equipment with new equipment even if it was known that this would not resolve the complainant's problems. In Mr Smith's case this is demonstrated in the following note dated 10 February 1993 by a Commercial Vic/Tas officer after a visit to the Cape Bridgewater Holiday Camp:

*(we) swapped an 800 telephone (sic) Mr Smith had on his Fax line for a tf200 for PR and not technical reasons*

166 The "PR" benefit of this action was questionable, as the action failed to resolve the problem, and the complainant was not convinced his or her complaints were being treated seriously.

167 A number of problems with equipment used by Mr Smith were identified by Telecom employees. In particular, Mr Smith was assisted in the operation of his cordless phone by Telecom staff

**Allegation (v) Representation of problem as unique to the complainant**

- 168 On 22 July 1993 Mr Smith wrote to the Manager Commercial Vic/Tas stating that he now had evidence that previous representations by that Manager that his problems were unique to his service were incorrect and that similar problems were being experienced in the district generally.
- 169 Documentation reviewed indicates that other network users attached to the Cape Bridgewater exchange did report problems similar to those experienced by Cape Bridgewater Holiday Camp. It is also clear that problems identified in the area would have impacted on other network users as well as Cape Bridgewater Holiday Camp.
- 170 There is no document which clearly identifies that Mr Smith was told by a Telecom employee he was the only person reporting problems in his area. At a meeting held between AUSTEL and Telecom staff on 12 July 1993, however, which discussed Mr Smith's complaints, the message was clearly conveyed to AUSTEL that Mr Smith was the only person who had reported significant problems in the Cape Bridgewater area. The LEOPARD fault data, however, indicates that there had been a number of other subscribers in the area reporting problems such as NRR over the previous 12 months. It should also be noted that Telecom did not mention the problems which had been identified with the RCM at this meeting.


**Allegation (vi) Withholding of information**

- 171 Mr Smith has only recently received information from Telecom under his FOI application. AUSTEL has not had the opportunity to assess the information provided to Mr Smith under FOI.
- 172 A number of issues discussed in preceding sections, for example, the failure to adequately advise on the extent of the RVA problems affecting the Cape Bridgewater Holiday Camp service border on the withholding of information, but are more appropriately concerned with

a failure to adequately advise Mr Smith of issues relevant to his service.

**Allegation (vii) Arrogant and bullying behaviour (i.e. unjustifiably long period of disputation over faults, unjustifiably long period taken to reach settlement, harsh conditions of secrecy)**

**False claims of statutory immunity from suit**

- 173 It is not proposed to discuss this matter in detail as it has been discussed with the main body of this report. It is clear that misleading advice was provided to Mr Smith by Telecom Managers that Telecom was under no obligation to pay him compensation for service difficulties he had experienced. 
- 174 On 1 July 1992 the Customer Services Manager - Hamilton wrote to Mr Smith stating that Telecom's liability in respect to the provision of telecommunications services excluded - as far as was legally possible - liability for loss or damage. It was stated that where liability cannot be lawfully excluded it "was limited to the re-supply of the service, or the cost of having the service re-supplied"<sup>72</sup> Despite Telecom's lack of liability the Hamilton Manager stated that he would be prepared to reimburse Mr Smith's advertising costs "which would have been current during the period of 17th of March 1992." The particular fault which was the subject of compensation was the incorrect coding of data at MELU (discussed above). The letter noted that the author was aware that Mr Smith was not satisfied with the offer being made. The general tenor of the letter was that the offer being made was the best that Telecom could provide.
- 175 The information imparted on the liability issues was incorrect, as it implied that Telecom had a broad immunity from suit which, in fact, did not exist in law. The advice was clearly wrong when it stated that where immunity did not exist, Telecom's liability only extended to the re-supply of the service. Telecom's potential liability existed well beyond this.

---

72669

- 176 The Customer Services Manager - Hamilton also wrote to the Federal Member for Wannan on 2 July 1992 stating that:

*although under the relevant Sections of the Telecommunications Act 1991, Telecom is not liable for any compensation, a business judgement could be made to reimburse Mr Smith some out of pocket expenses, if that was deemed appropriate.<sup>73</sup>*

- 177 This advice was more blatantly incorrect than that provided to Mr Smith, as it suggests that Telecom is not liable for compensation in any circumstance. Of perhaps even greater concern is that this letter makes clear that the Hamilton Manager had received his advice on compensation from Telecom's "legal people in Brisbane."
- 178 On 20 July 1992 the Customer Services Manager, Commercial-Country Victoria wrote to Mr Smith enclosing:

*a cheque for \$1,392 being the amount of reimbursement for costs of advertising which you incurred during a period where a fault condition was found to prevalent on your service<sup>74</sup>*

- 179 No admission of liability was made by Telecom and the offer was made as a business judgement.
- 180 On 27 July 1992 Mr Smith spoke to a senior Telecom Manager who recorded notes of the conversation. The notes demonstrate that not only did Telecom provide Mr Smith with false information on Telecom's liability for the problems he had experienced, but they argued that the \$1,392 offer was generous:

*I explained to Mr Smith that we were starting to get technical documentation together and that the show of good faith*

---

<sup>73</sup>665 2 July 1992

7410

*payment \$1392 appeared generous it could get us into trouble with the hierarchy should he go further<sup>75</sup>*

181 Pressure was clearly being applied to Mr Smith to accept the payment and not to take the matter further. It should be noted that at this time Telecom staff were not sure how long the MELU RVA problem had existed on Mr Smith's service. The need to determine the length of the problem is obviously less imperative when a position is held that, in any case, no compensation is payable for the existence of the problem. Mr Smith stated at the end of the conversation that he had no intention of cashing the cheque for \$1,392.

182 Mr Smith's views on this issue are represented in a letter he wrote to the Commonwealth Ombudsman on 31 August 1992. The amount offered is referred to as a "token gesture" and "an insult". Mr Smith goes on to say:

*Telecom have informed me because there is a clause and a section in the Telecommunication Act they cannot be sued for misconduct (sic)...how is it then a Semi-Government Department like Telecom can dictate in the way they have, waving (sic) this clause in the Telecommunication Act every time they are challenged on their workmanship. <sup>76</sup>*

183 Mr Smith's views are understandable given both the amount of the payment offered and the misleading advice provided by Telecom.

#### **Reliance on Testing Regime**

184 It is evident from letters sent to Telecom from Smith and from records of meetings/conversations that Smith did experience a high level of frustration and anger at having visitors from schools and the Royal Childrens Hospital being subjected to problems in contacting parents and in one case making medical arrangements with the Portland Base Hospital.

<sup>75</sup>Author unclear - but probably Rosanne Pittard. 638.

<sup>76</sup>Smith to Comm. Ombudsman. 31/8/92. 620.



- 185 Telecom's approach of relying on its testing regime as a basis for insisting that the network was operating satisfactorily, even though information and testimonials from other network users supported/confirmed the claims made by Smith, reflects a lack of sensitivity in dealing with their customers.
- 186 Cape Bridgewater Holiday Camp settled with Telecom on 11 December 1992 and in view of the fact that the request for settlement action was initially made on 26 August 1992, this is not seen as an unreasonable period of time.
- 187 The insistence by Telecom that the network was operating satisfactorily, notwithstanding information available to it indicating that continuing problems were occurring and insisting that further testing and agreement that the level of service is normal prior to settlement are seen as insensitive and arrogant behaviour.
- 188 Of particular note is the Telecom letter of 18 September 1992 which Smith relied upon as a guarantee of a future acceptable level of service. Documentation reveals that at time of sending this letter to Smith, Telecom were aware of significant continuing problems with the network.

#### **Failure to honour settlement conditions**

- 189 On 26 August 1992 the COTs put forward the following two questions to Telecom -
- 190 Question 1 Is Telecom prepared to restore its telephone services of our foundation members within 28 days from today at no cost to the foundation members?
- 191 Question 2 Is Telecom prepared to resolve the issue of financial compensation for the foundation members within 28 days from today by way of an independent arbitrator?
- 192 Telecom responded by suggesting that it appoint an internal project manager to review each case.

- 193 The negotiating point for Telecom was Mr D Campbell, Group Managing Director Commercial and Consumer and Mr G Schorer, in his capacity as COT spokesperson, was the negotiating point for COT.
- 194 The record of conversation, prepared by D Campbell, of the meeting of 15 September 1992 between himself and G Schorer reveals that -
- Regional Telecom people appear convinced that there were no problems beyond normal
  - COT customers left no doubt that they viewed the situation quite differently and in some cases found the service totally unsatisfactory
  - D Campbell recommended further testing, including the placement of Telecom staff in COT customer premises, to get a more accurate perception of the customer's problems and undertake monitoring to positively identify the extent and type of problems
  - G Schorer was of the view that it was important to fix the problem even if it meant "bypassing the problem" and suggested that Telecom should try unique solutions and indicated that all COT customers should be moved to other exchanges
  - D Campbell reminded G Schorer that until the cause of the problems was known there was no certainty that service would improve by relocating to another exchange
- 195 Letter of 22 September 1993 from G Schorer to D Campbell advises that COT have no objections to further testing, but request immediate connection to AXE exchanges in the same charging zone. Letter also states that COT cannot accept that Telecom need to do further testing to be satisfied that problems have been experienced.
- 196 Letter of 23 September 1993 from D Campbell to G Schorer incorporated the following statements -

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

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

- Telecom letter of 14 October 1992 from D Campbell to G Schorer
- Telecom letter of 21 October 1992 from D Campbell to G Schorer

198 Clearly Telecom, prior to any settlement action taking place, had adopted the view that Telecom could not settle until telephone problems had been resolved and a service at normal network standards provided.

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

- the strong views<sup>77</sup> of Telecom regional technical experts that the network was operating satisfactorily and that extensive testing had already been performed and that all indicators

---

<sup>77</sup>(Telecom Minute from Pittard to Campbell of 28 October 1992 refers)

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

- the absence of any specific methodology to be followed in the proposed further testing

- 200 The COTs were placed in a catch 22 situation where the same experts would conduct the same testing procedures that led them to forming the view that the network was operating satisfactorily to test if the COTs claims could be substantiated as a precondition to settlement action.
- 201 Whilst AUSTEL has not had access to the settlement arrangements/agreement, documentation reviewed indicates that Smith and Telecom agreed on a settlement on 11 December 1992.
- 202 On 6 March 1993 Smith letter to Telecom includes the following -

*"It must be appreciated that my acceptance of the 11th December agreement was based upon the representation in your letter of the 18th September, 1992 signed by Mr Bob Beard which virtually guaranteed the quality of my telephone service. That representation and guarantee have not resulted in my business receiving an acceptable telephone service. In fact that service remains so fraught with problems of which you are aware, that the only conclusion that can be drawn is that the representations were false and the guarantee worthless.*

*I feel, therefore, that I was misled by Telecom Australia at the time I signed the agreement and I am dismayed by the fact that I have been misled by a Commonwealth Government utility purely to have me sign an agreement accepting a lesser sum than that to which I was entitled.*

*On the day of settlement Ms. Pittard verbally agreed to provide me with a new line to the camp as part of the settlement. After settlement I was then told there was no need for the additional line. If that were true then I ask why I was provided with such a line three weeks ago?*

*It is my view that Telecom has clearly failed to keep its part of the bargain that resulted in the agreement between us and I consider that this casts doubt on the enforceability of the agreement particularly given that it was prepared by your legal advisers and I did not have the benefit of legal advice. In these circumstances I want the entire matter re-opened and appropriate compensation paid".*

- 203 The alleged guarantee referred to by Smith was incorporated in the Telecom letter from Beard to Smith of 18 September 1992. The specific portions of the letter which contains the alleged guarantee is as follows -

*"May we assure you that Telēcōm is committed to providing a quality service for all our customers and this commitment is supported by a technical organisation capable of responding quickly and efficiently to a service difficulty should there be a need.*

*We believe that the quality of your telephone service can be guaranteed and although it would be impossible to suggest that there would never be a service problem we could see no reason why this should be a factor in your business endeavours".*

- 204 Letter dated 22 July 1993 from Cape Bridgewater Holiday Camp to Telecom further advises of continuing problems and that these problems demonstrate that the alleged guarantee of 18 September 1992 had not been honoured.
- 205 The above correspondence clearly indicates that Smith relied on the assurances provided by Telecom on 18 September 1992 in his agreement to the settlement proposed by Telecom on 11 December 1992.
- 206 The chronology of significant events along with testimonials from other network users who experienced difficulties in making contact with the camp, clearly show that the camp was exposed to network problems during and subsequent to settlement.

**Allegation (viii) Misleading briefings to review agencies and politicians** 173

- 207 Review of the Telecom brief of 17 August 1993 to The Hon David Beddall MP, Minister for Communications revealed that the brief did not present a balanced representation of the situation.
- 208 A number of statements have been extracted from this brief and comments, in terms of the findings against the other allegations, are provided on these extracts.

**Extract**

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

**Comments**

- Telecom did not convey to the Minister the impact of Telecom's statutory immunity from losses/problems prior to July 1991 and that Telecom had advised the COTs of this in their dealings regarding settlement matters
- The COTs were not in a position to commence legal proceedings to seek recompense for business losses prior to July 1991
- A balanced brief would need to advise of the capability of the COTs to fund proceedings in the Federal Court
- This statement is also misleading as it does not advise that the reason that the two COTs are no longer complaining of unsatisfactory service is that they have ceased operating

**Extract**

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

**Comments**

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

**Extract**

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

### Comments

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

### Conclusions

209 Cape Bridgewater Holiday Camp has a history of service difficulties dating back to 1988. Although most of the documentation dates from 1991 it is apparent that the camp has had ongoing service difficulties for the past six years which has impacted on its business operations causing losses and erosion of customer base.



- 210 Service faults of a recurrent nature were continually reported by Smith and Telecom was provided with supporting evidence of this in the form of testimonials from other network users who were unable to make telephone contact with the camp.
- 211 Telecom testing isolated and rectified faults as they were found however significant faults were identified not by routine testing but rather by the persistent fault reporting of Smith.
- 212 In view of the continuing nature of the fault reports and the level of testing undertaken by Telecom doubts are raised on the capability of the testing regime to locate the causes of faults being reported. ↙