

For the attention of:

**Mr Paul Crowley
Chief Executive Officer
Institute of Arbitrators Mediators Australia
PO Box 1364 Law Courts
Melbourne 8010**

**Arbitration – Discrimination
In Relation to Alan Smith
Arbitration (1994/95)**

Exhibits 1 to 39

**Prepared by Alan Smith
Seal Cove 1703 Bridgewater Road
Cape Bridgewater Vic 3305
15th July 2009**

Exhibit 1

W. T. ...

Holmes, Jim

From: Vonwiller, Chris
To: Campbell, Ian; Parker, Harvey; Holmes, Jim
Cc: Stanton, John; Blount, Frank; Rizzo, Paul
Subject: Warwick Smith - COT Cases
Date: Wednesday, 10 November, 1993 6:58PM

CONFIDENTIAL

Gentlemen:

Warwick Smith contacted me in confidence to brief me on discussions he has had in the last two days with a senior member of the parliamentary National Party in relation to Senator Boswell's call for a Senate Inquiry into COT Cases.

Advice from Warwick is:

- > Boswell has not yet taken the trouble to raise the COT Cases issue in the Party Room.
- > Any proposal to call for a Senate Inquiry would require, firstly, endorsement in the Party Room and, secondly, approval by the Shadow Cabinet.
- > This would appear highly unlikely at this stage, given Boswell's apparent lack of interest of raising it within the Party Room.
- > The intermediary will raise the matter with Boswell, and suggest that Boswell discuss the issue with Warwick Smith. Warwick sees no merit in a Senate Inquiry.

He has undertaken to keep me informed, and confirmed his view that Senator Alston will not be pressing a Senate Inquiry, at least until after the AUSTEL report is tabled.

Could you please protect this information as confidential.

Chris Vonwiller

Exhibit 2

30/11/93



Internal Memo

To Mr I Campbell
Customer Projects
Executive Office - C&C

From E. J. BENJAMIN

Commercial & Consumer
Customer Affairs

Locked Bag 4900
Melbourne Vic 3100

Subject TIO AND COT

File

Telephone (03) 634 2977
Facsimile (03) 632 3241

Date 30 November, 1993

At today's Council Meeting the TIO reported on his involvement with the COT settlement processes - it was agreed that any financial contributions made by Telecom to the COT arbitration process was not a matter for Council but was a private matter between Telecom, AUSTEL and the TIO.

I hope you agree with this.

Ted Benjamin
GROUP MANAGER - CUSTOMER AFFAIRS

DON PIVEL

FAXED
2/12/93

Don

seems OK to me.
when I spoke to Darwinle I
suggested that at least for his
first group he develop a
separate budget, agree with
us, approve bills for payment
and we pay direct.
when we have had experience with
this can decide to continue for
Group 2 and future

001248

Telecom Corporation Limited
ACN 051 775 550

Exhibit 3

FOI
M133449

Mr Hughes indicated that one party can ask for documents once the arbitration has commenced. Mr Hughes advocated this course of action as more effective and that as arbitrator, he would not make a determination on incomplete information.

Mr Schorer asked Mr Bartlett why the FOI law was not as broad as the discovery procedure.

Mr Bartlett did not answer this question directly but confirmed that he believed it was wider and that documents would not be partially deleted as was claimed by Mr Schorer.

Ms Garms stated she had three concerns about the Rules as drafted:

- (1) causal link;
- (2) flow on effects of treatment by Telecom - adequately compensated; and
- (3) Telecom's liability amended to give assessor the right to make recommendations.

Causal Link

In relation to this matter, Ms Garms stated that it was agreed that there would not be a strict application of legal burdens of proof, etc., in relation to the proving of the loss suffered by the Cot Claimants. Reference was made to discussions with Ian Campbell and two Senators. Ian Campbell admitted that Telecom had been remiss. Ms Garms stated that Telecom was in a difficult position and queried the current drafting of the Rules in relation to a requirement that the strict causal approach be applied.

Mr Schorer stated that Telecom was in a difficult position because a lot of the relevant documents either did not exist or had been destroyed.

Mr Bartlett referred to clause 2(c), (f), and (g) of the FTSP in relation to the causal connection. Ms Garms had received advice from R Davey that there was a difference between the FTSP and the old rules that had previously been prepared by Telecom, (not the Hunt & Hunt Rules).

Mr Schorer accepted that W Smith had been appointed as administrator. W Smith had invited the Cot Cases to talk to the TIO and had requested input in relation to the rules beforehand. Mr Schorer was disturbed that once Mr W Smith was in place, there was a document prepared by Telecom of proposed rules for the arbitration. Mr Schorer considered Telecom was already moving away from the spirit of the FTSP.

Mr Bartlett and Mr Hughes both stated that they had not received this document and had not read it and that it was irrelevant.

Ms Garms returned to discussion about causation which was her point no. 1.

Exhibit 4

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

COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

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

25 March 1994

C94/195.C94/225

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

CEO
 Melb. Office

25/3/94 ip

Dear Mr Blount

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Decisions under the FOI Act

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

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

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

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

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

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

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

003720

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

Imposition of conditions on release of documents.

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

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

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

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

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

Yours sincerely


Philippa Smith
Commonwealth Ombudsman.

003721

Exhibit 5

COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

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

15 April 1994

C/94/225

Mr Steve Black
Telstra Corporation Limited
Facsimile 03 632 3241

Dear Mr Black

I refer to previous communications concerning the complaint we received from Mr Alan Smith concerning TELECOM's handling of his application under the FOI Act.

In your letter to Mr Smith dated 5 April 1994 you informed him, inter alia, " the documents which now have been provided to you are copies of all of Telecom's files as at 30 November 1993 which exclusively concern your telephone services, from the following sections within Telecom:

- Commercial and Consumer
- Network Operations
- National Network Investigations."

In your facsimile message to Mr Smith dated 14 April 1994 you referred to 'records' held by Telecom which refer to Mr Smith discussing with three Telecom officers, over the past twelve months, a discussion Mr Smith had with Mr Malcolm Fraser.

Mr Smith informed me that the records are not included among the documents provided to him by Telecom.

Please advise where the 'records' of the discussions with Telecom officers are located and why they were not included with the documents sent to Mr Smith. It would be helpful if you would send copies of the 'records' for my perusal.

Should you require any clarification of my request, I should be pleased to discuss the matters with you.

Yours sincerely


John Wynack
Director of Investigations

cc Rod Pollard

000725

Exhibit 6

GEO
Melt. Office
10/5/94

COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

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

6 May 1994

C/94/195:JW

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

cc: Steve Black.
Aue Kasnastair.
Ian Campbell
S40. (2011) Ofic
(2 pages)

Dear Mr Blount

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

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

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

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

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

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


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

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

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

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

Yours sincerely


Philippa Smith
Commonwealth Ombudsman

- ① Outright & para. 11. ...
② Infracted
③ Email & prepare report. (Not
④ Appreciation of reasons
⑤ Not big stick
⑥ Reference to new unit in response
Acknowledged

000722

Exhibit 7

URGENT

URGENT

Attached is a fax received from Alan Smith regarding access to FOI documents at Telecom.

Smith is alleging that the documents are not in chronological order and blanking done for earlier FOI inspections has made the collection of appropriate documentation uncertain and diminished the opportunity for him to satisfactorily present his case.

Mr Smith has demanded a TIO member be present at today's examination of papers by him at Telecom.

I have attempted to contact Peter Bartlett as the most appropriate person to comment in your absence but he is unavailable.

I have also attempted to contact Gordon Hughes to seek his views but at this point he too is unavailable.

Finally I have contacted John McMahon at Austel to see if he was aware of any undertakings regarding the access to FOI documents and commitments about the presentation of these that might have been given by Austel or any other parties. He said he was not aware of any such commitments.

[Handwritten signature]

See

16 May 1994

PS Mr Smith subsequently arrived in the office. He asked that someone from the office go to Telecom with him. I said that this was not possible but that he should call this office and advise us of his telephone number when he was allocated an office in the Telecom building. In the interim I undertook to:

- advise you of his concerns as soon as you arrived and said that you would call as appropriate;
- advise Hughes and/or Bartlett of his concerns when they were available;
- seek your advice as to whether the Commonwealth Ombudsman's office should be involved.

I also noted that the absence of proof in the form of documents may be seen as weakening his case but could also be seen as weakening Telecom's defence and he should bear this in mind when examining documents. Mr Smith was also concerned about documents which stated that there were attachments where no attachment was available. He left an example of this with us (also attached).

6/5

Spoke to Smith + Andrew
relating to process etc.

I, ALAN SMITH

of CAPE BRIDGEWATER

HOLIDAY CAMP PORTLAND

in the State of Victoria

do solemnly and

sincerely declare

3306

THAT
At approximately 4.20 pm yesterday, I spoke to Detective Superintendent Jeff Piorose (Federal Police) regarding my concerns about what had just taken place.

Telecom had just returned to me, two (2) identical copies of an Austel letter addressed to Telecom attached to two (2) different types of header sheets of different dates.

My purpose for being at Telecom House was that when Telecom had originally supplied the F.O.I. documentation, they had somehow failed to supply the adjoining documentation that should have accompanied some of these Fax Header Sheets, (fifty six (56) header sheets in all).

It was now apparent my concerns were justified.

Telecom had no intention of supplying the full documentation either maliciously or by the fact of their own admission made yesterday by Mr Pollock the Telecom F.O.I. Officer, because that much of this documentation is out of the correct chronological order due to so many viewings that had taken place, either by Austel, Coopers & Lybrand, Commonwealth Ombudsmans Office and others. Mr Pollock also stated in the company of two (2) other Telecom employees, one male, one female, in the office provided for me, that because much of the F.O.I. documentation was so blanked out that it was hard to match the correct correspondence to the Telecom Header Sheets in question.

I asked Rod Pollock, how can I put my claim together if the material, that I have requested under the F.O.I. agreement is in such a mess, that even Telecom themselves, their own office, is unable to be sure that the information they are supplying to me is in fact the correct documents I originally applied for under the F.O.I. agreement.

Even though an office had been allocated for me, with a note on the door to that effect, "reserved from 8am to 6pm", the moment I brought to their attention the irregularities regarding the two Fax's in question, there was an immediate urgency to terminate my presence and I was asked to leave at 4.40 pm. These two Telecom employees made it known there was no bad feelings, however the male Officer also made it very clear, that like Rod Pollock had previously said, because of the way the F.O.I. documentation was laid out and had been viewed by so many different People and Departments etc., they were finding it hard to match the correct F.O.I. Fax Header Sheets to correspond with the original documentation.

With reference to this signed declaration and the admissions of these Telecom employees mentioned, one can only perhaps wonder for good reason, has the C.O.T. Case Members actually received their appropriate documentation under F.O.I. conditions (Act), which will allow them to have every opportunity to have their known communication faults shown by the correct data presented by Telecom?

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

DECLARED at *Camberwell* in the
State of Victoria this *14th*
day of *May* One thousand
nine hundred *94*



Before me



N. D. CREASEY
Senior Constable 21524

Camberwell Police Station
317 Camberwell Road.
Camberwell, Victoria 3124

Exhibit 8



Hunt & Hunt LAWYERS

COPY

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

Consultants
Kenneth M. Martin
Richard J. Kellaway

Associates
Peter A. Cornish
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Galichio
Roy Seit
Randal P. Williams

23 May 1994

Our Ref: GLH

Matter No:

Your Ref:

BY FACSIMILE: 055 267 230

Mr Alan Smith
Cape Bridgewater Holiday
Camp & Convention Centre
Portland VIC 3305

Dear Mr Smith

TELECOM - ARBITRATION

I acknowledge receipt of your facsimile dated 18 May 1994.

I have discussed your request with Mr Rumble of Telecom. Although Mr Rumble does not concede the matters asserted in your letter, he has agreed to an extension of time for the submission of your Claim Documents until 15 June 1994 as requested.

Mr Rumble has indicated that Telecom would be opposed to a further extension of time beyond 15 June 1994. He has also emphasised that he would inspect a similar indulgence, if requested, in relation to the lodging by Telecom of its Defence Documents.

Yours sincerely

GORDON HUGHES

cc P Rumble, P Bartlett, W Smith, J Rundell

26/5
Copy: To Steve ✓
Blank

I file original
on ~~hard~~ Fast Track
Arbitration Files

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

darwin

11253437_GLH/AK

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

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

The Australian Member of Interlaw, an international association of law firms • Asia Pacific • The Americas • Europe • The Middle East

M34127

Exhibit 9

Cape Bridgewater Camp

PORTLAND - Phone (055) 267 267

A[✓]

Victoria's Birthplace 1834.

Part of

THE SHIPWRECK COAST



Mr Paul Rumble
General Manager
Customer Response Unit
Commercial & Consumer
Telecom.

47/94

Dear Mr Rumble,

Further to your telephone conversation with me on the evening of Friday 31/06/94. The discussion was associated with my concern about certain confidential matters, which I firmly believe Telecom has breached, by allowing its personnel access to my private phone conversations, Monitoring without my consent. Checking up on who I might decide to ring. Example, re: hand written, names of the people I have spoken to at the side of the data, telephone numbers. I thought this type of invasion of privacy, only happened in a un-democratic country.

Mr Rumble, I gave you my word on Friday night, that I would not go running off to the Federal Police etc, I shall honour this statement, and wait for your response to the following questions I ask of Telecom below. As we are in an Arbitration Process, I shall only send a copy of this letter, to the associated incorporated within this process. These questions are in point form, with copies of the information FOI extracts accompanied with this letter.

(1) re: letter addressed to Mark Ross from myself. This letter, as you can see, was confidential. I was asking Telecom for only a Guarantee that my phone service was at an acceptable level, not for them to look into my private business matters. (Question) I had tendered for a quote with a bus company to accommodate persons at the Cape Bridgewater Holiday Camp. How come Mr Rumble, that the name of this company appears hand written at the top right hand corner of a copy of the letter sent to Mr Ross. This copy was obtained from the FOI request.

I make this very clear, at no time did I discuss the name of this company, other than with Mr Pat MacNamara's Office, the then Opposition Minister for Tourism. It was unlikely his office would have had access to Telecom correspondence from me.

(2) My telephone calls to various locations. Why has Telecom found it necessary to hand write the names of the people I have spoken to at the side of each column.

(Example) What would Telecom have to gain from knowing who I am speaking to on a daily basis. I find the name of my ex-wife hand written at the side of her phone number that I have rung. My son also happens to live there, I guess however that you already know that. (Question) Why has Telecom not only wrote my ex-wife's name in these columns, but also, Austel, Telecommunication Ombudsmens Office, Graham Schorer, and other private persons who I have rung? How was this going to fix my phone faults?

(3) We have a letter addressed to a David, Telecom document. I assume this David is Mr Stockdale. Seeing this letter is dated the 7/4/94, 2.05pm. I am bewildered to read this letter to David. I ask the writer, Mr Bruce Pendelbury, how come? I quote from this letter: Mr Smith is absent from his premises from the 5/8/94 to 8/8/94.

My first question is: Can Mr Pendelbury read into the future, I don't even know if I will even be at these premises in August 1994. Much of Mr Pendelbury's future remarks about my phone service being up to network standard, has not born fruit to date. Perhaps he may have got the dates wrong, or is it another typist's error, similar to perhaps the Bell Canada Report. The only conclusion associated with these dates, is maybe he meant the 05/05/94. When talking on the phone to Mr Pendelbury, I made mention I could be coming to Melbourne then. However, I had a school group coming in on this day, and I was not at the premises to see them. I was only in Melbourne to see the school group, and I was not at the premises to see them.

(4) Again my friend Mr Pendelbury, how come he has written a letter to Simon Chalmers, Telecom's outside Solicitor, informing him I had spoken to him some twelve months prior, regarding a telephone conversation I had, with the former Prime Minister Malcolm Fraser.

I look at the date of this letter, dated the 14th April 1994, and view the article re: Herald Sun dated 15th April 1994, I think back to a recorded statement by a Mr. Steve Black, Telecom Group Manager, he informed me, documented. That there were Telecom internal documents, three in fact. That stated three Telecom employees were known to have heard me say I had rung Mr Fraser. I know what really happened. What say Telecom give a statement on this issue raised.

(5) I have a Telecom internal letter, please read. You will see that it refers to my staff leaving the Camp unattended when they were paid to stay the night.

Who is the author of this document, he has not only attacked my staff, but showed his contempt, and disregard for others at this fabrication.

Because I did not have a lot of money during these past two years, I used to give two days off in lieu of staying at the Camp overnight. I have questioned the two staff members who this has affected. Telecom can speak to these persons at will.

(6) (Question) Could Telecom please explain the following Telecom minute. I quote from this document.

To check that incoming calls to the Portland Exchange were successfully connected through Mr. Smith, the investigating Technical officer at Portland Exchange set up equipment which trapped data on those calls, then sounded an alarm. At this point the Technical Officer would check to see if the call had been connected by the monitoring line. This process was established from approx. June 1993 to August 1993, however the equipment was only set up to trap data while this particular officer was available.

(a) If this was only set up for one Officer to listen to my calls, then it was not much of a testing procedure. A waste of time. What about the early morning calls, the late night calls. Or was it just open slather to Micro my calls in the Telephone Exchange for entertainment.

Telecom is well aware, that this technical monitoring should have customer approval. You have gone outside the rules of common decency.

I make this known now Mr Rumble. I have friends now saying it is okay to talk to you now Alan, this may be in jest, but not that way with a female friend of mine in Portland. To think that our private conversations have been listened to by local people, people my friend and I see at various times in Portland. You, telecom have left us with very little dignity. I cannot even feel safe now to make just the every day acceptance of a common phone call, without wondering, perhaps Telecom is listening?

If Telecom had approached me, and requested to use this device to monitor, listen to the calls, this would have been different. My private conversations, intimate female and male simple talk, with my lady partner has been violated.

I now ask one more question from Telecom. I quote from this Telecom internal document.

Caller usually from this number, but supposedly somewhere near Adelaide, on this occasion.

How did Telecom know that the person from that particular number usually rang from that particular location? How did they know who this person was?

Perhaps I can tie this in with this other Telecom internal document I received under the F.I.O. agreement. I also quote from this document.

The information regarding the phone numbers called by this customer following this incident, are available from Network Investigation, and my information was verbal from? The name of that person has been blanked out.

How in the bloody hell was Telecom going to fix my phones, by the things I have mentioned in this letter, was or is this Telecom standard practice to go about their communication programmes in this manner?

I await your answer.

Sincerely,


Alan Smith.

C.C. Mr Warwick Smith, Telecommunications Industry Ombudsman.
Dr. Gordon Hughes, Fast Track Arbitrator.



Exhibit 10

11 July 1994

COMMERCIAL AND CONSUMER
CUSTOMER AFFAIRS

37/242 EXHIBITION STREET
MELBOURNE
VICTORIA 3000
Australia

Telephone (03) 632 7700
Facsimile (03) 632 3235

F A X E D

...1.7...1.94

Mr Warwick Smith
Telecommunications Industry Ombudsman

Facsimile No. 277 8797


Dear Mr Smith

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

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

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

Yours faithfully


Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

12

12

K54215

Exhibit 11

| | | | |
|-----------|---|---------------------------------------|---------|
| FAX FROM: | ALAN SMITH | DATE: | 12.8.94 |
| | G. O. T. | | |
| FAX NO: | 085 267 230 | | |
| PHONE NO: | 008 618 522 | NUMBER OF PAGES (including this page) | |
| FAX TO: | Dr Gordon Hughes Hunt & Hunt Lawyers Melbourne Fast Track Arbitrator | | |

Dear Dr Hughes,

I have no difficulty with any information going to the Resource Team, if it will enable them to review evidence being forwarded to them: independent views of Telecom network faults, Telecom's response to these faults allegations etc; the Austel C.O.T. report which made a significant finding where the Bell Canada testing was concerned.

Cliff Matherson, Technical Officer of Austel has written documentation that should be read in conjunction with the Bell Canada Report. The Resource Team should apply for a copy of this documentation.

My final submission will be presented to your office at 3pm on Wednesday of next week.

I have still had no response from Telecom to my request for the number of customers connected to the old ARK exchange at Cape Bridgewater, prior to out-over day in August 1991. This information has not yet been supplied. Again, with regard to a similar request for the number of Telecom customers presently connected to the now new RCM at Cape Bridgewater - Telecom Commercial Waverley has, in written form, conveyed to me that there are 50 customers. I challenge this information.

The information required from the above two requests was vital to my early completion of this Fast Track Submission.

I will be making two presentations to the arbitration procedure:

Firstly: Telecom has told me that they know the Bell Canada report is flawed in various areas. I am asking this Arbitration process to request, from Telecom, all raw data associated with the Bell Canada testing. An example of this incorrect technical reporting is Telecom's acknowledgement that test calls to some C. O. T. case premises were incorrectly tabled in the Bell Canada Report. Mr Peter Gamble, Telecom Engineer, has admitted this testing has what he calls 'a typist error'.

In the case of the Cape Bridgewater Holiday Camp: I have evidence, as a result of cross-testing at various times into the one PTARS, from two different locations at the same time. No engaged, busy or congested signal registered. This happened in two separate situations on two different days.

The resource team has to view these tests as inadequate, for if a mistake has occurred (and Telecom have admitted that mistakes did happen when testing my services) then the whole testing of C.O.T. has a flawed taint to this much criticized international testing.

The raw data from all the testing of C.O.T. must be requested from Telecom. The fact that Telecom has denied me, as an individual involved in this arbitration process, the raw data from other testing suggests the same taint of a cover-up of incorrect testing.

I would also like to make the Resource Team aware that I have been denied the information regarding difficult network faults, which was sought as part of my F.O.I. request. Much of this information has been

umbrellaed under the Legal Professional Privilege act.

This is against the F.O.I. act, yet Telecom still continue to go outside this agreement.

My second presentation relates to evidence of yet another Telecom cover-up.

Please view the two documents accompanying this facsimile. One can see a legal professional privilege stamp on a difficult network working document. This document must be read with the other document tabled. These are both about the same incident, it was luck only that the two documents have been able to be put together.

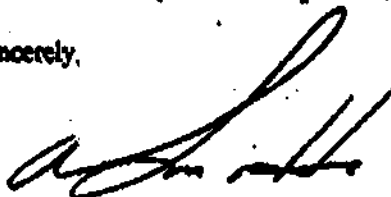
I ask for this incident to be viewed and the importance of both documents to be taken into account with what has been admitted internally within Telecom and RVA. This is only one of five faults experienced over six and a half years.

Again, Telecom did not instruct Bell Canada to run tests to my 008 number, even though this could have been done at any time. In this report there is no mention of 008 testing figures for either completed or not completed calls. Why was this not done? Dr. Hughes, John MacMahon, General Manager of Consumer Affairs, Austel, was aware of the many faults on my 008 line. In fact, at the Austel previewing of the final draft of this C. O. T. report, Mr MacMahon asked me to keep him and Cliff Matherson informed of results, faults etc. I have rung Austel on several occasions since, with evidence of incorrect charging short duration calls, only now these phone calls fall on deaf ears. The Chairman, Mr. Davey, has gone and Mr. MacMahon has been shifted.

Dr. Hughes, these are the only two requests I ask of the Arbitration procedure, although I have run out of time regarding my request for the relevant raw data etc. related to both customer counts on the old ARK before 1991 and the present number of customers now on the RCM.

I wait for this request in anticipation.

Sincerely,



Alan Smith

cc. Paul Rumble
Customer Resource Unit
Telecom

Exhibit 12

| | | | |
|-----------|--|---------------------------------------|---------|
| FAX FROM: | ALAN SMITH | DATE: | 15.8.94 |
| | C. O. T. | | |
| FAX NO: | 055 287 230 | | |
| PHONE NO: | 008 816 522 | NUMBER OF PAGES (including this page) | |
| FAX TO: | DR GORDON HUGHES HUNT & HUNT LAWYERS MELBOURNE FAST TRACK ARBITRATOR | | 4 |

Dear Dr. Hughes,

My submission will be a day late because of a telephone call I had from Paul Rumble's Office. I am now told any information regarding the RCM, numbers of customers will now be forwarded to me early this coming week.

This is too late for my binding and finished process of the final submission. I had hoped for this information by Tuesday of last week, however, this wait for information which never comes from Telecom has put me behind once again.

Thursday, 3 o'clock, at your office is my final dead-line. There will be no more claims for written submissions to be re-introduced.

However, again, I must draw your attention to Telecom's reluctance to forward relevant documentation to produce the evidence. Had I been given my true F.O.I. documentation, much more of this evidence, in support of my allegations of an inadequate phone service over these past years, would have been substantiated. I feel like a blind man without his stick. Telecom has in their favour the fact of what has been supplied.

My claim, as it is produced in this second interim submission, will, I feel sure, show you and your Resource Team many alarming facts.

I am asking, through the Arbitration Chair, for you to direct Telecom to produce the Bell Canada Raw Data. My two interim requests are for Telecom to respond in writing to the Arbitrator showing that there was incorrect documentation: calls which could not have possibly over-dialled other calls connecting to the PTARS at Cape Bridgewater at the time of the Bell Canada testing.

Telecom, likewise, did not test my 008 account at any time during this Bell Canada testing. This must be addressed through the Chair of this Arbitration process. I shall not write a response to their claim. I shall leave this in the hands of the Arbitration team, the Resource Team.

I have forwarded you a letter found by Ann Ganns yesterday, while going through her F.O.I. I did not receive this Raw Data, as mentioned by Simon Chalmers. It did exist; I knew it did, but time has beaten my health and patience. Telecom has timed much to suit themselves.

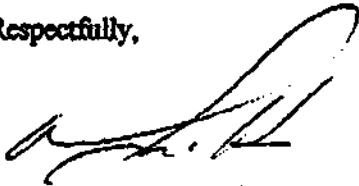
I wish only for the second interim request to be granted: for Telecom to allow C.O.T. to view documentation under the Professional Privilege Act, to be done at their centre. This, of course, will be viewed under the secrecy agreement, the confidential agreement of this Arbitration. No copies will be made for distribution, other than for your perusal, and that of the Resource Team. If you think this information is a valid document then it will be submitted only, without a written submission as to the contents.

I forwarded you a very interesting document last week which was tabled under this Professional Privilege Act. That document was of a network fault. The document has since been viewed by John Wynack, Commonwealth Ombudsman, F.O.I. as being illegal under the Act to be umbrellaed in legal privilege documents.

On Thursday I will present you with my claim, plus a further 8 pages of documents I believe are of importance to my claim (Privilege documents).

I thank you for your time and patience in these trying months.

Respectfully,



Alan Smith.

cc. Mr Paul Rumble
Customer Resource Unit
Telecom

fax: (03) 634 8441

Exhibit 13

CLAIM DOCUMENTS SUBMITTED BY THE CLAIMANT ON 18 AUGUST 1994

1. In relation to the document (untitled and undated) which contains a table consisting of five columns and a further table which the Claimant has stated contains an example of some of the "Raw Data" which Telecom refused to give to Cape Bridgewater Holiday Camp during this Arbitration Procedure:
 - (a) Provide an explanation of how this document is relevant to the documentation submitted by the Claimant.
 - (b) Provide details of other examples of the type of "Raw Data" which Telecom has refused to give Cape Bridgewater Holiday Camp during this Arbitration Procedure.

Answer Question 1:

- (a) It is relevant to the extent that the Raw Data I believe proves technical issues. I believe production of all the Raw Data would benefit my claim.
- (b) If Telecom produces Raw ELMI Data over a period of time, two weeks in May 1993 and 13 October 1992 to 30 October 1992. As I was at the Camp at the time of 13 October 1992 and Telecom lied about this monitoring being in use. I can show the Assessor four calls in a one day period which I did not receive. We go to the 28 October 1992. Produce the full Raw Data for this day and I will show how the ELMI registers in coming calls as incoming, yet they were not answered at the Camp.

L69183

All Raw Data from May to July 1993. Raw Data which is on Telecom fault records. Check and you will see many CCAS and CCA7 data, which have not been provided.

A letter to Simon Chalmers from Dave Stockdale 11 January 1994, clearly shows Telecom withheld information from my resource team (see attachment forwarded direct to

Arbitrator).

This information would have produced evidence of calls not being answered at the Camp, yet Telecom has suggested otherwise.

Mr Steve Black informs me there were no MCT on my line from August 1993, I have proof that there was, Telecom's own technical staff has said this interfered with the calls coming into the Camp, yet Telecom still had this device in operation. Data will show calls not getting through. CCAS Data miss calls, this can be checked by tracing Raw Data.

Telecom have not produced Bell Canada Data. Three lots of calls coming into the same PTARS.

L69184

Exhibit 14

FAX FROM: ALAN SMITH
C. O. T. **DATE:** 18.9.94

FAX NO: 055 287 230

PHONE NO: 008 816 522 **NUMBER OF PAGES (including this page)**

FAX TO: MR JOHN WYNACK
INVESTIGATING OFFICER
COMMONWEALTH OMBUDSMAN'S OFFICE
CANBERRA

Dear Mr Wynack,

Telecom have again turned around a statement to benefit their charter, this time it is the statement regarding supply of the Bell Canada Testing Raw Data associated with testing at Cape Bridgewater to the Arbitrator, Dr. Gordon Hughes.

I originally requested this information under my F.O.I. application, 9 months ago. It is appalling for a company the size of Telecom to muster such thuggery against a small business person such as myself.

I have faxed to you a copy of a letter from Paul Rumble, Telecom Customer Response Unit. You will note that this raw data is discussed in the last two paragraphs of this letter. Mr. Rumble has quoted that Telecom has not yet been directed to supply any Bell Canada Raw Data. This shows that any information Telecom holds on this testing will only be supplied under the Arbitration Procedure.

Mr. Wynack, I am requesting the Commonwealth Ombudsman's Office to intervene on my behalf and direct Telecom to forward this information to Dr. Hughes under my F.O.I. request. Telecom knew of the time structure I was working within from the beginning. I had no alternative but to finish my Arbitration Submission after 9 months, even though Telecom still have deliberately withheld not only the F.O.I. documents in question, but also vital Telecom documents which I applied for under our Australian democratic rights.

By not supplying the documents I needed Telecom management have hindered me in my preparation of this Fast Track Procedure, after all, the Assessor can only view what is before him. These delaying tactics are an Australian disgrace and will be a black mark against Telecom and those who chose to conjure and conspire to pervert the course of natural justice. I have evidence at hand that shows where Telecom have gone out of their way to hinder my claim. What we have here with C.O.T., are four ordinary small business people against the might of a huge corporation, but still Telecom are afraid to supply documentation under the F.O.I. act. What will this show the General Public in time to come?

Mr. Wynack, I stress the urgent need for you to intervene on my behalf and enforce my F.O.I. application, to demand that Telecom supply this Bell Canada Raw Data to Dr. Gordon Hughes under my F.O.I. request and not through the Arbitration Procedure.

Sincerely,


Alan Smith.

cc.

Dr. Gordon Hughes, Fast Track Arbitrator,
Hunt & Hunt, Lawyers, Melbourne

Mr. Paul Rumble, Customer Resource Unit, Telecom.

Mr. Warwick L. Smith, Telecommunication Industry Ombudsman.

Exhibit 15



Hunt & Hunt LAWYERS

21 September 1994

Our Ref: GLHC/F
Matter No:
Your Ref:

FACSIMILE 634 8441
Mr. Paul Rumble
National Manager - Customer Response Unit
Telecom Australia
Level 8
242 Exhibition Street
MELBOURNE Vic 3000

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

Consultants
Kenneth M. Martin
Richard J. Kelloway

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

Dear Mr Rumble

ARBITRATION - SMITH

I acknowledge receipt of your letter dated 13 September 1994.

I confirm I have not directed the production by Telecom of any Bell Canada International documents.

At this stage I would be encouraging Mr Smith to defer any requests for discovery until Telecom's defence documents have been submitted.

Yours sincerely


GORDON HUGHES

cc. A. Smith, W. Smith, P. Bartlett, J. Rundell

L69201

melbourne

sydney

sydney west

brisbane

canberra

newcastle

Represented in

adelaide

darwin

11325359 ACZF/CF

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

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

The Australian Member of Interlaw, an international association of law firms • Asia Pacific • The Americas • Europe • The Middle East

Exhibit 16



3 October 1994

COMMERCIAL AND CONSUMER
CUSTOMER AFFAIRS

8/242 EXHIBITION STREET
MELBOURNE
VICTORIA 3000
Australia

Telephone (03) 634 6736
Facsimile (03) 634 9930

622770

Mr G. Schorer
Golden Messenger
405 Queensberry Street
NORTH MELBOURNE VIC 3051

RE: MEETING WITH THE ARBITRATOR

Dear Mr Schorer

I refer to discussions with Mr Alan Smith on 3 October 1994. Mr Smith advised me that he understood the Arbitrator had indicated his availability to convene a meeting between Telecom and Mr Smith, Mrs Gams and yourself.

Subject to the confirmation of the consent and availability of the Arbitrator I confirm my agreement to meet with him, Mr Smith, Mrs Gams and yourself on Wednesday 5 October 1994, or such other date as the Arbitrator is available. I will confirm with the Telecommunications Industry Ombudsman arrangements for the reimbursement of travel expenses for Mrs Gams and Mr Smith.

The Arbitrator will determine the format of the meeting, which topics will be dealt with in joint session and which topics are more appropriately dealt with on an individual basis. The purpose of the meeting is to address the means by which these Arbitrations may be progressed promptly. In particular the meeting will focus on issues relating to the production of documents both by Telecom and between the parties.

Yours faithfully

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

Exhibit 17

FAX FROM: ALAN SMITH
C. O. T.

DATE: 27.10.94

ATTACHMENT K

FAX NO: 055 267 230

PHONE NO: 008 816 522

NUMBER OF PAGES (including this page)

FAX TO: MR TED BENJAMIN
NATIONAL MANAGER
CUSTOMER RESPONSE UNIT
TELECOM

FAX: (03) 632 3235

Dear Mr Benjamin,

↓ You and I both know of the many letters that have gone back and forth, correspondence on the CCAS, CCS7 and Smart 10 data. The fact is that, like Paul Rumbia, either you have been lied to by Network Investigations or you have conspired with them to defraud me with regard to the information sought on this data.

I shall now ask for information of a similar nature, or the next best thing. Telecom can hardly say this information is not at hand: would you please release under the F.O.I. Act, the documents noted below, under my F.O.I. application dated 21st December, 1993.

I am including in this fax a document similar to those I am seeking, dated at around the same time. I received this particular document on Friday 21st October, 1994 as a result of my new F.O.I. application.

↓ The documents requested are: CCS7 Call Statistics documents similar to the one following this page. I require documents dated 4/11/93, 5/11/93, 6/11/93 and 9/11/93. These CCS7 Call Statistics will help me further my investigations and my Arbitration Procedure.

Since this CCS7 documentation should have been supplied under my first F.O.I. application some 9 months ago it should now be forwarded as priority one.

Sincerely,



Alan Smith.

cc. Dr. Gordon Hughes, Hunt & Hunt (Fast Track Arbitrator)
John Wynack, Commonwealth Ombudsman's Office, Canberra

Exhibit 18

FAX FROM: ALAN SMITH
C. O. T.

DATE: 3.11.94

ATTACHMENT L

FAX NO: 065 287 230

PHONE NO: 008 516 522

NUMBER OF PAGES (including this page)

FAX TO: STEVE BLACK
CUSTOMER RESPONSE UNIT
TELECOM

Dear Mr Black,

I am again requesting that you supply information, and I trust that you will not supply the information requested only through the Fast Track Arbitration Procedure. The Bell Canada Testing Report was a document of PUBLIC INTEREST, and as such should not be restricted by the Arbitration Procedure - it should remain in the public domain.

I have a faxed copy of Call Statistic CCS7, filename 266. This is a code for the PTARS at Cape Bridgewater RCM. This document, as you will see, states that on the 4/11/93 there were 3365 calls generated to that PTARS. Likewise, there are 41 calls on this CCS7 data that did not register as calls received at the PTARS.

If we go to the Bell Canada Testing Report, we see on 6/11/93 the same number of generated calls (3365) being received at the 266 PTARS and also the same number of lost calls (41). My question is from the public domain: Are these calls the same calls being captured at the PTARS on two different days, two days apart? Is this just coincidence, or are they they same set of calls?

This request of mine is most important. I would like a response from the Customer Response Unit, after all, is this not what the Unit was set up for - Customer Response?

Mr. Black, if these calls are just coincidental then I would be most grateful if you would, as a sign of good will, forward me the other copy in relation to the CCS7 Call Statistic Report of the 6/11/93.

This request was originally made in my F.O.I., some ten months ago, and the information should have been supplied under Network. However, I am not writing to go over old ground or just to enable me to clarify sections in my Arbitration. I believe I have good grounds to ask for this information.

A copy of this fax has been sent to the Minister for Communications, the Hon Michael Lee. I understand that his office would be concerned at irregularities, if any, in the Bell Canada Testing.

Sincerely,


Alan Smith.

cc. Mr Warrick Smith, Telecommunication Industry Ombudsman
Dr. Gordon Hughes, Hunt & Hunt (Fast Track Arbitrator)
The Hon. Michael Lee, Minister for Communication

Exhibit 19



COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

Prudential Building, over London Circuit & University Avenue, Canberra City
GPO Box 442, Canberra, A.C.T. 2601, Australia
Tel: (06) 276 0111; fax: (06) 348 7828; int. fax: + 61 6 248 7829

10 November 1994

C/94/225

Mr Frank Blount
Chief Executive Officer
Telstra Corporation Ltd
38th floor, 242 Exhibition Street
MELBOURNE VIC 3000

Attention: Ms Joy Geary

Dear Mr Blount

At the request of Ms Geary, I am notifying you of the details of the complaints made to the Ombudsman by Mr Alan Smith.

20.1.94 Telecom unreasonably has decided to apply charges to his FOI request and has stated that the charges will be considerable.

2.3.94 Telecom has delayed providing access to documents.

2.3.94 Deletions from documents provided and exemptions were not explained.

24.3.94 Telecom claimed that documents given to Telecom by Mr Smith in 1992 had been destroyed or lost.

Telecom unreasonably refused to give any further documents to Mr Smith.

Telecom has lost or destroyed a number of files relating to his contacts with Telecom prior to 1991.

14.4.94 Telecom unreasonably refused to provide documents allegedly referring to discussions Mr Smith had with three Telecom officers concerning a discussion Mr Smith had with Mr Malcolm Fraser.

Telecom unreasonably deleted information from documents released.

Telecom unreasonably denied Mr Smith access to 460 documents. (letters of 14.4.94 and 15.4.94 from Mr Smith to Mr Black refer)

5.5.94 Telecom unreasonably delaying providing access to many documents.

Telecom denied access to ELMi tapes for 21, 22, and 23 October 1992.

Telecom imposed unreasonable charges for access to documents sought under the FOI Act.

25.5.94 Telecom failed to provide fault reports for the period after 22/6/93, particularly from 9/8/93 to November 1993.

14.9.94 Telecom refused access to documents relating to voice monitoring for fault finding during 1993.

18.9.94 Telecom acting unreasonably in refusing to provide access to 'Bell Canada Raw Data'.

2.10.94 Telecom delayed providing access to documents under the FOI Act while Telecom's solicitors examined the documents.

23.10.94 Telecom unreasonably refused access to 'ELMI Smart 10 tapes' for the period May to July 1993. (Mr Smith's letter to Mr Benjamin on 23.10.94 refers).

27.10.94 Telecom unreasonably refused access to GCS7 Call Statistics documents dated 4/11/93, 5/11/93, 6/11/93 and 9/11/93. (Mr Smith's letter to Mr Benjamin dated 27.10.94 refers).

26.10.94 Telecom incorrectly informed Mr Smith that Telecom did not have in their possession 'any of the raw data and working papers to do with the Bell Canada testing and report.'

7.11.94 Telecom unreasonably refused to provide the 'Portland/Cape Bridgewater Log Book associated with the RCM at Cape Bridgewater' for the period 2 June 1993 to 6 March 1994.

I think the above is comprehensive; but I have sent a copy of this letter to Mr Smith and invited him to apprise me of any complaints he has made which I may have omitted inadvertently.

Yours sincerely



John Wynack
Director of Investigations

Exhibit 20

| | | | |
|------------------|---|--|-----------------|
| FAX FROM: | ALAN SMITH C. O. T. | DATE: | 17.11.94 |
| FAX NO: | 055 267 230 | | |
| PHONE NO: | 008 816 522 | NUMBER OF PAGES (including this page) | |
| FAX TO: | DR GORDON HUGHES HUNT & HUNT LAWYERS MELBOURNE | | |

FAST TRACK ARBITRATION PROCEDURE

Dear Dr. Hughes,

Considering the time delays between the signing of the Fast Track Settlement Proposal, now called the Arbitration Procedure, and the delivery of F.O.I. documents by Telecom, there is reason for doubt as to the integrity of Telecom and the Board of Telstra.

The fact is that it is now nearly 12 months since C.O.T. signed an agreement, in good faith, to settle our claims with Telecom within a reasonable time frame. This gives rise to the doubt mentioned above and also doubt regarding an ulterior motive for these delaying actions.

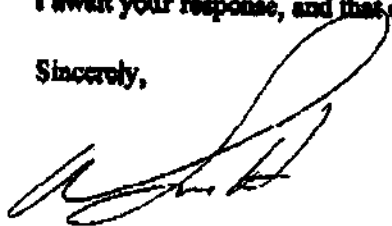
I am concerned at the way Telecom and the Board of Telstra have gone about hindering my Arbitration Procedure. Mr. Ted Benjamin has stated that Telecom has not now, and has never had in the past, a hidden agenda where C.O.T. and the supply of documents under the F.O.I. Act is concerned. As Telecom's defence is due in less than two weeks and I believe I still have not received all the F.O.I. documents due to me under the F.O.I. Act, and as Mr Benjamin states that I have, then I consider it appropriate for a Director of Telecom to give their seal, signed with the approval of the Telstra Board, to a statement that Telecom has:

1. not been negligent in the preparation and provision of documents as requested under the F.O.I. Act.
2. not manufactured documents where the authenticity of the material is in question.
3. supplied my own technical resource team with all the Network documents, diary notes and daily fault records, Commercial and Consumer records, and any other documents that I have applied for under my three F.O.I. requests.
4. not withheld any historic documents that could have assisted me in furthering my claim of an inadequate phone service these past six and a half years.

I would like this statement written by a Director of Telecom, with the seal of Telstra, on the completion of Telecom's defence, noting the above points 1 to 4.

I await your response, and that of Telecom,

Sincerely,



Alan Smith.

cc. Mr Ted Benjamin, Telecom Customer Response Unit

Exhibit 21

FAX FROM: ALAN SMITH
C. O. T.

DATE: 27.11.94

FAX NO: 055 267 230

PHONE NO: 008 816 522

NUMBER OF PAGES (including this page)

FAX TO: DR GORDON HUGHES
HUNT & HUNT
LAWYERS
MELBOURNE

Dear Dr Hughes,

I refer to your letter dated 15 November, 1994.

In paragraph three you have noted that, if newly released F.O.I. material is made available by Telecom, and if that makes it necessary for me to amend my claim, I should advise you accordingly.

I have continually corresponded with both yourself and Telecom about my concerns with regard to the conduct of Telecom Management; Simon Chalmers; Freehill, Hollingdale & Page and their delaying tactics. Their drip feeding procedure, where the release of these F.O.I. documents is some twelve months late, has disadvantaged me in the preparation of my submission under the Fast Track Arbitration Procedure.

Newly released documents on their own may only show limited evidence, painting a small picture. However, had this newly released F.O.I. material been released some twelve months ago, as it should have been under the F.O.I. Act, this material, when combined with documents already released, would have helped in many instances to further the point made on certain issues.

Telecom Management, by using this destructive system, has disadvantaged C.O.T. and its members throughout this Arbitration Procedure. By not allowing all the evidence to be viewed by C.O.T., Telecom has stopped us from substantiating all our claims with all the available material. "A Jigsaw Puzzle Can Only Be Finished When All The Pieces Are Tabled": and didn't Telecom Management play this to a break!

I would be obliged if the Resource Team would now note my point as follows: I present a typical situation as an indication of how this late F.O.I. documentation has hindered my preparation of the submission presented to Dr. Hughes:

I have just received Telecom Exchange diary notes, log book extracts and fault reports. On reading the log book entries my mind was taken back to evidence which was presented in my first submission in June of this year: *five months ago*. When I originally contemplated serving an F.O.I. request on Telecom, in early 1992, I received a letter from a Mr Taylor, Warrnambool Customer Operations, Telecom, dated July 3rd, 1992. Mr Taylor stated that there was no historic reference to my complaints to Telecom prior to 27th June, 1991. However, these new diary notes and log book entries, that Telecom released under F.O.I. two weeks ago, triggered me to look back at my first submission and here I once again ask for patience from the Resource Team.

Please turn to reference 2100-2101 of my first Submission and view two Telecom accounts. The lower sections of these accounts clearly show that my phones had been disconnected on Telecom Management approval. On September 4th, 1990 I was charged \$96.00 re-connection fees for that service.

I am not only drawing attention to a business in dispute with Telecom having their phones disconnected: what I am showing here is that the newly released F.O.I. documents and log book entries triggered me to think about not only this evidence, but likewise other evidence already presented in my second submission. Forty-nine Telecom customers, who were in dispute with Telecom, had CCAS data connected to their incoming phone lines as early as 1/11/90, yet Telecom have continually stated that no historic documents

exist. In a letter to Ted Benjamin, Telecom Customer Response Unit, on the 7th October, 1994, I asked if I (Alan Smith), was the only Telecom customer in this region about who Telecom had no historic documentation on phone faults. He declined to answer.

We now have this new F.O.I. evidence which would have helped my resource team further to prove that I have had a continuing phone problem for years. Telecom have again stated that, as early as 1987, the Cape Bridgewater Holiday Camp had been complaining of phone faults, yet they have no records.

We have documented evidence of forty-nine Telecom customers having phone faults prior to June 27th, 1991, in the Portland region, yet NO reference to a business having their phones disconnected for five days. ***FIVE DAYS IT TOOK TELECOM TO RECONNECT MY PHONES SO THAT I COULD CONTINUE TO COMPLAIN OF A FAULTY PHONE SERVICE.***

Telecom Commercial know why there are no records associated with my phone faults. I go one step further: in the Senate Estimates, 25th February, 1994, Senator Richard Alston refers to a Telecom memo dated 2nd July, 1992, and I quote from his briefing and from the Telecom Memo:

"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. The Portland exchange is AXE."

I now ask Telecom Management "Where did the technicians find the information relating to Mr Smith and his complaints which raised Telecom's attention to the continued Voice Announcements?" I put this to the Resource Team: my letters, sent over a four year period prior to July 1992, the ones that Telecom cannot find, are where the local technicians gained their knowledge.

If we are to view any further new F.O.I. documentation in order to contribute to Telecom having to present a further defence, then we are left with no alternative but to remain inconvenienced in no uncertain manner.

Dr Hughes, I have presented here only one example of where Telecom, by the late delivery of the material requested under F.O.I., has inconvenienced my submission. Not only has late presentation of F.O.I. documents been a contributing factor, causing me to be unable to present all the facts as documented in Telecom's own files, but their denials that the files exist has also disadvantaged C.O.T. members.

I again raise the issue of Telecom continually denying that an ELMi tape monitoring device was at the RCM at Cape Bridgewater during the period of May to July, 1993. I have evidence that there was such a device, a six day copy of a tape from a period during May 1993. This tape proves, beyond all doubt, that not only was I losing incoming calls, but my 008 account was incorrectly charged for these non-connected calls. So, not only do we have my claim hindered by the late delivery of documents requested under F.O.I., but it was also hindered by the denials of Telecom Management regarding this ELMi tape monitor being connected to the RCM.

I shall not burden you here with further evidence which has already been submitted to the Resource Team and which shows so many other documents which should have been provided under my previous F.O.I. requests.

So, in response to your letter of 15th November, 1994: How can I amend my claim? Telecom have already had five months to view my first submission as presented in June, 1994, and three months to view my second submission presented in August, 1994. I am already living on borrowed time, in more ways than one, and each delayed week is having an effect, particularly where advertising for next year is concerned - this has already been disadvantaged.

The fact that Steve Black, Customer Response Unit, Telecom refused to give my Real Estate Agent some sort of guarantee that my business phones are now working at Network Standard, further contributed to a non-sale of this business.

The feedback from those prospective buyers who did view this business, although they were reluctant to actually say so, was a concern about the reputation this business has with the Camping Association of Victoria. The fact that the Executive Council of the Association had, over many years, re-directed customers to continue to try to make contact with this business has, in itself, added to the demise of a saleable asset.

It has been brought to my attention by an education consultant that the criteria set and the standards that must be met when taking children away on Camps, must be met at all levels. An example of this is a letter I received from the Royal Childrens' Hospital, Melbourne (refer to my first submission, reference 2034). I quote from that letter:

"We require a guarantee that the telephone system was fully operational before considering Cape Bridgewater Camp as a future venue".

There are also other letters received from various clubs who have had similar problems making contact with this business.

I now have had no other alternative but to withdraw this business from sale as of Monday 28th November, 1994.

I will have to budget my advertising for 1995/1996, as most group bookings will be lodged and taken twelve months in advance. My main priority over the next two months is to try and vamp an advertising program, which is not only costly, but also time consuming.

Over these past twelve months, the preparation of my submission has had a snowball effect on next year's advertising. The fact is that I now have to put the past behind me and grind away to produce revenue and goodwill for 1995/1996 and this will need my complete concentration.

Dr Hughes, we have to draw the line somewhere. To view more F.O.I. documents is going to be time consuming, time that I am running out of. Many of the documents that will be viewed, those that Telecom withheld from my first and second F.O.I. requests, will need to be sorted and categorised, then Telecom will have to put in a further defence, and so it goes on.

I do not have the resources to have a professional team view these additional F.O.I. documents which have just been released by Telecom. I have spent time writing reference to these examples and enough is enough. All future F.O.I. that has not been provided will have to stay put. I am today mentally exhausted and unable to continue taking part in Telecom's façade, their Merry Go Round.

I thank you for your time, and that of the Resource Team.

Sincerely,

Alan Smith

cc. Mr Benjamin, Telecom Customer Response Unit.

Exhibit 22



CAPE BRIDGEWATER Holiday Camp

RMB 4408
Cape Bridgewater
Toll Free 008 816 522

Host - Alan Smith
Ph. 055 267 267
Fx. 055 267 230

*Country
Get - Aways
Historical Portland
Victoria's first permanent settlement*

Mr. Frank Blount,
Executive Officer
Telstra.

29th November, 1994

Dear Mr. Blount,

(1) For six and a half years, I have been in conflict with Telecom management. ✓

On Monday, 28th November, 1994, I viewed "The 7.30 Report" on the A.B.C. television network, where Mr. Graham Schorer, spokesperson for C.O.T., was being interviewed. I was amazed to see how much he has aged over the short span of 2½ years of which I have had the pleasure of knowing him. It appears to me that the four original members of C.O.T. are still fighting, against overwhelming odds, the giant Telecom Corporate animal.

We have been treated as criminals. Four small business people, from four completely different walks of life, spanning two States of Australia. Does the Board of Telstra really believe that such a group, with diverse interests and separated by such great distances, could possibly concoct such similar stories, if those stories were not absolutely true? Those people were bound together by one common bond — an enormous battle to try and make Telecom understand and accept the fact that their businesses were plagued by constant and never-ending telephone faults.

Not only did the four of us have similar complaints against Telecom, but we all received the same high-handed treatment when we lodged those complaints. We were belittled, derided and lied to by Telecom management — both individually and collectively. It became evident, as we discussed our problems, that we were the victims of misleading and deceptive Corporate conduct, from the hands of a few Telecom employees.

In two days, Mr. Blount, Telstra is to produce its defence against my Submission, in accordance with the Fast Track Arbitration Procedure.

Twelve months ago I signed an agreement with you, Mr. Blount. You broke that agreement. Nothing has changed. Telecom is still lying to C.O.T. and its members. Again I ask, does the Board of Telstra really believe that we (C.O.T.) are all willing to risk our integrity by fabricating a story to suit our own ends?

I, along with other C.O.T. members, have evidence that Telecom employees lied about certain incidents. They fabricated stories which were intended to deceive and mislead; the reasons for which are known only to themselves.

Never at any time during my discussions with Telecom management, did they show any interest in hearing what I had to say about these fabricated stories. Stories told by the very people who were responsible for relaying messages back to that same management. Thus I was told that no communication faults were known on my service.

C.O.T. was born out of the frustration of its members when confronted with bad management, as practised by a few senior Telecom employees. Nothing else.

I know of a young Telecom employee who refused a senior position within Telecom — the inner sanctum. The reason for that refusal, was that he believed he lacked management skills.

I may be wrong, Mr. Blount; I may be well off target. But just maybe, therein lies your problem. This man knew his capabilities. Surely he could have received additional training. How many technical people have Telecom trained in customer relations?

One has only to review the case of Mr. Steve. Black, Customer Response Unit, to understand where Telecom has gone wrong. In the Senate Estimates he was described as a man with a point of view, different to the truth.

Look at his response when questioned about the "bugging" of a Ballarat man. This is just another example of the misleading and deceptive behaviour practised by certain members of Telecom Management. They find it easier to lie than seek out a solution to the problem.

I spent some time with Mr. Ralph Bova when he and his family came to my Camp for a holiday. They had no money. The holiday was a gesture, on my part, to help someone in need. Nothing more. Ralph Bova, in case you are not aware, used to be a very good Pizza cook — a man proud of his heritage.

One day, in conversation, he tearfully told me his story. True, he may have been stressed out, but he was certainly not a liar. His story triggered an awareness in me — that like Mr. Bova and Ms. Anne Garms, my telephone, too, had been "bugged" by Telecom.

Mr. Bova is a broken man today. He has been clinically certified as "mentally unstable." His accusations against Telecom — his constant story that Telecom had "bugged" his phones, has now been proved to be correct. One wonders whether the effect of what Telecom allowed to happen, will ever be erased from that man's mind?

In preparing the submission for my claim against Telecom, I spoke with two Clinical Psychologists. I produced my diaries, which recorded the saga of Telecom/C.O.T. events; and which caused me some embarrassment as I was reminded of incidents which triggered so much anger, goading me to write as I did. Yet I tabled these documents, holding nothing back, despite my embarrassment.

I met with Kaye Frankcom, a Psychologist, here in Portland, in her professional rooms. She treated me like a human being and I felt like one. Likewise, I was interviewed by Mr. Christopher Mackey, in his rooms. Again I was treated humanely and not belittled.

I submitted the report from Christopher Mackey, and though I did not entirely agree with his findings, I presented his notes; as I had nothing, either then or now, to hide.

Of all the things that have occurred to me during my life, through my years in the Merchant Navy right up to this present confrontation, nothing compares with my experience at the hands of Telstra and Clinical Psychologist, Ian Joblin.

Mr. Rumble, Customer Response Unit, Telecom, arranged for me to meet with Ian Joblin, who, supposedly, had no previous association with either Telecom or Mr. Rumble. I hope this is the case.

(2) The newly-appointed (?) Telecom Psychologist chose, as the venue for my appointment, the Public Bar of the Richmond Henty Hotel. Not being a regular hotel patron, I felt ill at ease from the very outset. For five hours, Mr. Blount, I was handed hundreds of small cards, which I had to place in three different piles. Never, in all my life, did I believe that I would be subjected to Psychological Analysis in a public place, i.e.: a Hotel Bar. ↙

(3) I would suggest to you, Mr. Blount, that you take a good long, hard look into Telecom. Why, I keep wondering, did your staff lie? Certainly you eavesdropped on my calls . . . you placed my home under surveillance; but what, in the long-run, did it all achieve? ↙

(4) From the very beginning the whole thing has been a bloody disgrace . . . a bloody Australian disgrace . . . and still the lies continue. Telecom are still denying C.O.T. members the right to view F.O.I. documents. What are they frightened of now? ↙
What else can I say, but, "Meet me in the Richmond Henty."



ALAN SMITH
Cape Bridgewater Holiday Camp,
Portland, 3305.

Exhibit 23

Ms Geary—I can assure you that Telecom is doing everything it can to do that as quickly as possible.

Senator BOSWELL—I turn to the Australian Federal Police report. Senator Bolkas said, 'I am assured by the Australian Federal Police that, as indicated in the Senate on Monday 17 October, the DPP advice had little or no effect on the final outcome of the AFP investigation.' This advice is contrary to that provided to Ann Garra by the investigating office of the Australian Federal Police. The Australian Federal Police is getting advice that Telecom has a shield of the Crown, so it could not be prosecuted. It is quite obvious to me that, if that is your legal advice, then it is wrong.

Mr Krasnostein—I will address that because I have some personal knowledge of it. I am not sure where this allegation emanated from. There was never a period of time when Telecom either received advice or asserted a position that it had a shield of the Crown. I do not know who is asserting that, but it is nonsense to do so.

Senator BOSWELL—I would hope so.

Mr Krasnostein—What the Australian Federal Police have concluded and what the DPP have concluded is something that we are not privy to. We have given full cooperation in the Australian Federal Police investigation, to the extent that we were lawfully able to do so—which was almost total. They interviewed whoever they wanted to interview, they gained access to documents that they requested. There was only one issue of some tapes that they had a problem getting hold of. We are not privy to the result of that investigation. We are not privy to what their recommendation was—or their report, if they did not make a recommendation to the DPP, and we are not privy to what the DPP deliberations are.

Senator BOSWELL—Why did Telecom advise the Commonwealth Ombudsman that Telecom withheld FOI documents from Alan Smith because Alan Smith provided Telecom FOI documents to the Australian Federal Police during their investigation?

Ms Geary—Could you please repeat that?

Senator BOSWELL—Why did Telecom advise the Commonwealth Ombudsman that Telecom withheld FOI documents from Alan Smith because Alan Smith provided Telecom FOI documents to the Australian Federal Police during their investigation?

Ms Geary—I am not aware that that has been said. I can take that on notice.

Senator BOSWELL—Mr Krasnostein would probably be able to—

Mr Krasnostein—No, I am not aware of who at Telecom made that statement. I would be happy to take it on notice unless you have some information that sheds some light on it.

Senator BOSWELL All right, I will do that. I will ask you another question. Telecom is cooperating fully with the Australian Federal Police inquiry. Why would Telecom withhold vital documents from the AFP? Also, why would Telecom penalise COT members for providing documents to the AFP which substantiate that Telecom had conducted unauthorised interceptions of COT members' communications and subsequently dealt in the intercepted information by providing that information to Telecom's external legal advisers and others?

Mr Krasnostein—Could you ask that question again?

Senator BOSWELL—You may take it on notice. It will be on the record.

Mr Krasnostein—I might add that—and I am sure the Australian Federal Police will confirm this to you—we had total cooperation with the Australian Federal Police. They were able to interview whatever staff they wanted to and they were given free and unrestricted access to a document room containing all the documents they wanted. They photocopied whatever they wanted. Inspector Penrose, who conducted the investigation, said to me that we cooperated fully and freely, and I do not know where an allegation would come from that there has been anything but total cooperation with the Australian Federal Police.

Senator BOSWELL—Thank you very much.

Senator TIERNY—I refer to a question I put on notice in the Senate on 10 October

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Exhibit 24



Hunt & Hunt LAWYERS

- General Manager
- Partners
- Senior Counsel
- Senior Associates
- Associates
- Administrative Staff

30 November 1994

Our Ref: GLE
Mater No:
Your Ref:

BY FAX 632 5253

Mr Ted Benjamin
National Manager - Customer Response Unit
Telecom Australia
Level 37
249 Exhibition Street
Melbourne VIC 3000

Dear Mr Benjamin

COT ARBITRATIONS - PREFERRED TIMETABLE

Your letter requesting an extension of time for submitting Telecom's defence in the Smith arbitration (to which I shall respond separately) has prompted me to consider my preferred timetable for the completion of the Smith, Garms and Valkobi arbitrations.

My strong preference is to be in a position to instruct the Resource Unit to commence such formal inquiries and investigations as may be necessary from early January 1995. I understand that the relevant members of the Resource Unit will be available throughout January and I am anxious to make the most of this period.

It is also my preference that the Resource Unit be in a position to evaluate and investigate the Smith, Garms and Valkobi claims simultaneously.

It follows that it is my further preference to receive Telecom's defence in relation to each of these claims, together with the respective claimants' replies (if any), prior to Christmas. This being the case, I would utilise the period between Christmas and New Year to determine what inquiries and investigations should be made by the Resource Unit.

I believe it is in the interests of all concerned for these matters to be resolved as soon as possible. It would not be possible to instruct the Resource Unit in early January 1995 in relation to any or all of the matters if Telecom requires the full time permissible under the Fast-Track Arbitration Procedure for the submission of its defence in each case (not to mention extensions) or if the claimants require the full time permissible

1200909 GLE/RS

Level 21, 433 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 8711.
Facsimile: (61-3) 614 8730. G.P.O. Box 1233N, Melbourne 3001. DX 252, Melbourne.

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under the Fast-Track Arbitration Procedure for the submission of any replies.

If all parties are anxious for this matter to be dealt with expeditiously, and in particular if the parties are anxious for the matter to progress during the holiday period, all concerned must meet their commitments and exercise their rights within reduced time frames.

It follows that whilst I am prepared to grant an extension of time in the Smith arbitration, I am doing so in the hope that in a spirit of co-operation, Telecom will use its best efforts to submit its defences in Gams and Valkobi on or before the same date.

If Telecom is able to submit all three defences on or about the same date, I shall prevail upon the claimants to submit their replies (if any) prior to Christmas.

Having said this, I do not intend to place any pressure on any of the parties to compromise their rights under the Fast-Track Arbitration Procedure. The purpose of this letter is to emphasise, however, that an expeditious resolution of these three claims will require co-operation and compromise from all concerned.

I do not propose forwarding a copy of this letter to the claimants as I do not consider it appropriate for me to discuss any individual's claim with other Claimants.

I would appreciate any comments you may have.

Yours sincerely

~~_____
GORDON HUGHES~~

CC W Smith, P Bartlett, J Fundell

Exhibit 25

7th December, 1994

Dear Dr. Hughes and the Resource Team,

This report is based on the F.O.I. material which I have received late. I have put in four F.O.I. requests to Telecom since December, 1993, but there are still many F.O.I. documents that have not been provided by Telecom.

I have an official complaint in at the Commonwealth Ombudsman's Office for the way in which Telecom has conducted the release of documents requested by me under the F.O.I. Act, 1982.

Because of the continued delays with this release of F.O.I. documentation, I have only just finished the part of my assessment that relates to this late received F.O.I. information. This added documentation must be, I feel sure, taken as part of my claims. I have measured up to all the requests asked by both Telecom and Dr Hughes, without question.

I have no say, and rightly so, as to how the Arbitrator, Dr Hughes, views these late documents. My own belief is, however, that because Telecom disadvantaged the smooth process of the Arbitration Procedure, they have no right to contest these latest documents, with extra time out for defence.

There are approximately two or three more issues to raise, as far as added documentation. This late preparation has again been caused by Telecom's reluctance to provide documents under the F.O.I. Act.

The Commonwealth Ombudsman, John Wynack, sent information to Telecom on Monday 5/12/94, concerning illegal blanking out of F.O.I. documents. This particular blanked out document in question is a very important example in that it will prove, contrary to Telecom's assertions, that calls were lost, and that there was incorrect charging and lies by Telecom (that certain equipment was not connected to my business phone).

I ask for this information to also be included as part of my claim, considering the conduct of Telecom.

Yours respectfully,

Alan Smith

Exhibit 26

TIC OFFICE

**CAPE BRIDGEWATER HOLIDAY CAMP
PORTLAND
VICTORIA**

Dr Gordon Hughes
Hunt & Hunt
Lawyers
459 Collins Street
Melbourne 3000

6th January, 1995

ARTIBRATION - TELECOM

Dear Dr Hughes,

The following information, sought by the Cape Bridgewater Holiday Camp, is to substantiate incorrect details as presented in Telecom's Defence Documents. These requests are listed in point form:

- (a) All ELMI raw data tapes of monitoring of my phone lines from early May 1993 to July 1993.
- (b) All EOS data readings. This equipment was attached to my in-coming 267 267 line during 1993.
- (c) All ELMI raw data tapes which were released to Austel during the Austel monitoring.
- (d) All working notes from Dave Stockdale, NNI re the lock problems experienced on my 267 267 line on 9/8/93 by Mrs McGraw.
- (e) Telecom Defence Document File 5, Appendix 40, states "Test calls from Queensland - Portland"
How many calls in all?

TRT between Ferntree Gully and Portland 807 calls.

TRT between Ballarat and Portland 300 calls.

All data associated with these calls, signed and dated by the on-duty technician, and his findings.

- (f) Telecom Defence Document File 5, Appendix 37, Telecom Minute, states that 11,000 errors per hour were measured. This was in the PCM system.

All documentation associated with these findings, accompanied by technicians' reports.

- (g) Telecom Defence Document File 5, Appendix 31 R01447, i.e.: obtained CCAS data via the VAX/VMS (Week ending 11th September).

All CCAS data showing these unanswered calls for the week ending 11th September and likewise the week ending 25th September.

- (h) Telecom Defence Document File 5, Appendix 31 K04410 states that 34,686 test calls were generated into various locations.

Full information on these test calls, data associated with where the end-to-end call terminate
This data to have a technician's signature to the completed and finished test calls.

(Continued on page 2)

(Continued from page 1)

- (i) All CCS7 data for 1993 and to August 1994

All CCAS data for 1993 and to August 1994

All EOS data for 1993 and to August 1994

- (j) Gordon Stokes, Portland Technician, states in his Witness Statement/Statutory Declaration, that a listening device was used for several months on my phone service.

Steve Black, Customer Response Unit, Telecom, has informed me that this was, and I quote from a Telecom internal letter, submitted in my Claim titled "Cape Bridgewater 2": "To check that incoming calls to the Portland exchange were successfully connected"

Mr Black stated that this device was for "fault finding only". I now seek all documentation, fault records etc. which were written or documented over these several months. These records must be accompanied by the author's signature, and must state the types of faults experienced when listening to these calls. This information is to include times, dates etc.

This information is very relevant to my claim.

- (k) All CCAS, CCS7 Data which was used to determine the outcome of the Neat Testing at the Cape Bridgewater RCM PTARS 267 211. The dates of these tests are as follows:

| | | |
|---------------------|----------------------|-----------------|
| 23/10/93 to 4/11/93 | All days 9am to 10pm | 390 test calls |
| 28/10/93 to 8/11/93 | | 1030 test calls |

CCS7 Call Statistics would have shown breakdown of calls, those which were effective and those which were not. This information is very relevant to my claim.

Accompanying this letter is a Telecom Internal Memo from Network Investigations. The third paragraph of this letter clearly states that there were files associated with faults on the lines to this business. I have not received these files under F.O.I. The only documents I have seen from NNI are the first released documents. I have not seen any great quantity of technical information.

Dr. Hughes, I also present a letter from Simon Chalmers, the Telecom Solicitor, addressed to Duncan Wallace (No. R11704, R11705). Again, there is mentioned in the third paragraph of this letter that Telecom have not provided all NNI working notes. This is a significant point to substantiate.

David Stockdale has indicated in his letter that it would require 5 - 6 days for him just to obtain some of Mr Smith's records and that locating and copying/printing the records is only part of the task.

I now ask Dr Hughes to view paragraph two of this letter. Mr Chalmers writes that if any records are not provided, not only could Telecom be in breach of the F.O.I. act, but Telecom may also, by hiding these records and by not complying with the F.O.I. act, be preventing themselves from using those documents in their own defence.

Dr Hughes, it appears that Telecom chooses not to release this quantity of NNI technical information; that they believe it far better to present their lies and their fabricated and manufactured F.O.I. documents, rather than the real thing.

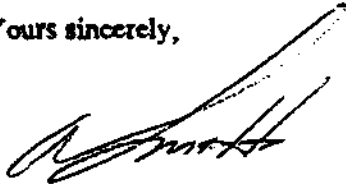
(Continued on page 3)

(Continued from page 2)

As I understand it, under the Fast Track Arbitration Procedure, in my submission I can only address the documents actually presented. It is a sad day when a Government-owned company can hide behind the rule "I show you mine, you show me yours".

These are the last set of documents I am asking the Arbitrator to access from Telecom, that is, if Telecom provide anything at all.

Yours sincerely,



Alan Smith

P.S. I am now disadvantaged even further. It is the 6th January, 1995, and still my own Resource Team have not been provided with Telecom's defence on disk.

Exhibit 27

**Cape Bridgewater Holiday Camp and Convention Centre
Portland, Victoria, 3503**

**Dr. Gordon Hughes
Hunt & Hunt
Lawyers
Melbourne**

10th January, 1999

Dear Dr. Hughes,

A ruling regarding information associated with the Defence Documents being presented in this manner must be addressed. I had no intention of drip feeding information to the Arbitration Dr Hughes, once my final Submission had been presented.

It is now thirteen months since the first of four FOI applications was presented to Telstra and yet, even after all this time, Telecom have not supplied the material I have sought: NNI documentation, technician's diary notes, ELM1 raw data, CCS7, CCAS and EOS data and voice monitoring fault records. Very little of this information has been supplied under the Arbitration Procedure.

When reading Telecom's Defence and FOI documents it is apparent that they have referred to this documentation when compiling much of their defence. Mr. Arbitrator, you are wrong if you think that I am just holding the stage on these issues alone, without merit to their value.

I have set out in this letter to show the significance of viewing the material and documentation that is currently missing. Cross-checking only the information which has been supplied still shows discrepancies and flaws in Telecom's test results and in their monitoring of customer's lines. If this can be shown using only limited material I'm sure the Resource Team can understand my frustration at not receiving the rest of the FOI material as sought under the FOI Act. This other material would have enabled me to substantiate even further, the inadequacies of Telecom's testing; the fabrication of files and test calls to establish an incorrect reading when Telecom technicians knew different.

In my reply to Telecom's Defence Documents, which is titled "*Brief Summary of Telecom's Witness Statements, Conflicting Evidence*", under the heading of "*Bell Canada and Neat Testing*", I show incorrect monitoring of calls into my business on 055 267 267. Telecom Documents 101312 and 101313 show that, from 3/9/93 to 12/10/93 Austel was supplied raw ELM1 tape data of these calls into my business. I have not received this data, however, my own calculations can be viewed by checking what is written in the graph/table as shown on document 101313. A total of 376 answered calls registered into this business during those five weeks mentioned. The C/B/H/C first Submission, 7/6/94 (ref 0433 to 0444) shows these calls were incorrect.

My calculations show 425 answered calls, not 376 as shown in the graph. The graph also shows no incoming answered calls of less than five seconds, yet my calculations show 158 answered calls within this five second period. My total unanswered calls are 7 instead of 8 as shown in the graph. With this letter I present a further example, marked 'A' - test calls 10/6/94 (8 test calls). If we look at 15.30.07 to 15.30.57, four test calls took place in 44 seconds, allowing for the answered calls. This did not allow for the setting up of the answered calls and the eight seconds these four calls took to be answered. We now have four test calls within a 35 second duration and this does not allow for the dialling pattern to be completed. These test calls were not conducted in an efficient manner by Telecom's own testing programmers.

(Continued on page 2)

A63473

(Continued from page 1)

A further example, marked 'B', is a copy of my 008 account. Please note the following:

- 8/9/93 at 01.00 pm call time 1.36
- 9/9/93 at 02.41 pm call time 2.59
- 14/9/93 at 03.36 pm call time 0.46
- 14/9/93 at 03.46 pm call time 3.37

The C/B/H/C first Submission, 7/6/94, ref 0435 will show that these calls were not registered into the CCAS, yet I was charged for them.

The Resources Team will also note that these four calls were also part of the registered calls which were shown in the graph as 376 and my calculations were seen at 425. So here are a further four calls (that we know of). These examples here show clearly that the monitoring and testing at C/B/H/C RCM at Cape Bridgewater was not as we are lead to believe.

As further evidence of misleading conduct associated with Telecom's testing I refer the Resources Team to Telecom's Defence Document, Appendix 3 at 7. We have Bruce Pendlebury stating that he called me to ask if I was still using my cordless telephone on 30/8/93. He further states that I told him that I hadn't used it for some time. His written notes have confused him and, certainly, others who would view this document, as it appears as though I still had my cordless phone, even though it was returned in early April, 1993. He further states that several test calls by Gordon Stokes were made to Smith. The C/B/H/C first Submission, 7/6/94, ref 0389 shows no test calls to my business, even though Gordon Stokes claims these calls took place.

Telecom document marked K02643, hand written by Cris Doody, is further evidence of misleading and deceptive conduct by Telecom. If the Resources Team view page 13 of my second submission, titled "Cape Bridgewater Part 2" they will see a letter from Mark Ross. This letter states that the MELU fault, which we now know was a non-programmed line route to Cape Bridgewater, meant that 50% of all metropolitan Melbourne callers (clients of this business) were switched via this exchange. This route did not acknowledge 055 267 ... numbers and so the callers would only hear a continued RVA message "The number you are ringing is not connected".

Mr Mark Ross states in his letter that this fault was only for "two" days. On the following page in my second submission (page 14) we see another hand written letter addressed to Rossanne, MELU, RVA, somewhere between 9/2/- and 19/3/-. Following this page there is a Telecom Minute and I quote from paragraph three, the last two lines: "One would think that if the code was not in data at MELU prior to that date, then complaints would have been likely to have been received before March, 1992."

Mr Arbitrator, the document K02643 referred to above (author Cris Doody), states that it is likely that this fault began on cutover day to the new RCM. This cutover date was 19th August, 1991 and the fault continued to 19th March, 1992, a period of seven months. A letter written to me on 23rd November, 1992 (author Don Lucas), states that this MELU fault lasted for only three weeks. This letter was only written because I continued to refute that two day period claimed by Mark Ross. The letter from Don Lucas also states that 50% of metropolitan callers would use this route.

My reply to Telecom Defence Documents, appendix titled "Brief Summary, Telecom's Witness Statements, Conflicting Evidence" under the heading "Appendix C1 Melu" shows a Telecom document stating that callers to Cape Bridgewater, via MELU, would be 50%. Not 'may be', but fact.

Telecom Defence Document "Holiday Camp Service History" page 19, paragraph 4, states that 33% of callers, on average, would use MELU. Telecom, in a written Statutory Document, has even tried to play this down 17%. That statement in this Statutory Declaration is misleading and commercial deception, the conduct is unconscionable behaviour.

(Continued on page 1)

A63474

(Continued from page 2)

My own letters from 1988, 89, 90 and 91, state that callers to this business had complained during that time of receiving continued voice announcements stating that the number they were ringing was not connected.

Dr. Hughes, and I address this also to all those who have read all my submissions and my reply to Telecom's Defence Documents. I firmly believe that Telecom has deliberately down-played this fault.

During my settlement period, and on the day of December 11, 1992, Telecom's Corporate General Manager, Commercial, Via/Tax, misled me on this MELU incident as well as other issues. It has been shown, in my correspondence to Dr Hughes, that this same Australian lady chose to also deceive Telecom's own outside solicitors, Freehill Hollingdale & Page, by stating that I had only complained of nine faults from 6th January 1992 to 9th August 1992. Nine times. Yet, in a Statutory Declaration regarding documents read by Ian Joblin, we see at least 34 complaints and also a number of "known" Telecom faults.

As a further indication of this misleading and deceptive behaviour by Telecom Corporate I present five Telecom documents, including my written FOI request to Telecom. The Telecom numbers are: K47562 to K47565 and R01623.

Regarding Document K47563, my initial request to Telecom on 21st December, 1992, we read that this request was not accompanied by the required \$30.00 application fee. I ask Dr. Hughes and the Resource Team to view Document R01623 (my FOI application), particularly the P.S. at the end.

I believe the author of the letter to Ms Fay Hothuzen, Department of Communications and the Arts was Paul Rumble, as this FOI document was obtained from his file. If this is so, then Mr Rumble has misled and deceived Ms Hothuzen. If this is not seen by the Commonwealth Ombudsman's Office as misleading and deceptive commercial conduct then it will at least show that Telecom will conjure words to defraud the general public.

The examples I have presented in this letter today must be viewed in the context in which they have been tabled. I am not of legal mind, however what I see is that Telecom would go, and has already gone, out of their way to down-play telecommunication faults, to confuse issues associated with these faults and, in an over-view of Telecom's witness statements and the History of the Cape Bridgewater Service, this Statutory Declaration is flawed.

If all this information can be obtained from the FOI documents that I have received, then the technical documents, files, diary notes of various technicians, including CCAS, CCS7, EOS, ELMI Raw Data Tapes would have shown so much more: faults, lies, cover-ups. Just to stop four individuals, members of COT from uncovering the truth.

Sincerely,



Alan Smith
Cape Bridgewater Holiday Camp and Convention Centre
Portland, 3305

A63475

Exhibit 28

*Cape Bridgewater Holiday Camp and Convention Centre
Portland, Victoria, 3305*

Mr John Wynack
Director of Investigations
Commonwealth Ombudsman's Office
1 Farrell Place
Canberra
ACT 2601

30th January, 1995

Dear Mr Wynack,

Even at this late date Telecom are still withholding documents requested under my FOI applications. ↙

I do not wish to drip-feed the Arbitrator, Dr Gordon Hughes, with letters asking for this document and that document etc., however, I originally asked Telecom for fault history on my service and documents to substantiate my complaints back in June, 1992. Telecom then wrote to me on 3rd July, 1992 stating that no records or data existed prior to June 27, 1991. This has since been proven to be a lie. This information was withheld to disadvantage me during the lead-up to a settlement procedure on 11th December, 1992.

Telecom are still playing the same game. A document titled "*Difficult Network Faults - PCM Multiplexer Report*", which is attached, confirms that there are documents from before June 27, 1991. The first paragraph of this document relates to complaints on file since 1987; I have not seen these files. The last paragraph of this same document states that records show that the "*Siemens A735 Loop Multiplexers never failed on the Cape Bridgewater trunk and this is supported by the probability of failure statistics.*" Again, I have not received this documentation.

These are just two examples where Telecom have withheld documents. There are many other issues and requests for data that the Arbitrator, Dr Gordon Hughes, is addressing in the Arbitration Procedure.

I would be obliged if the Commonwealth Ombudsman's Office would request that Telecom supply the information mentioned above. I would also like to draw attention to a copy of a letter, addressed to Ms Jill Cardiff, Senior Assistant Commonwealth Ombudsman, received 18th December, 1992. Page two of this letter, states that on 28/7/92, a PTARS was installed at the customer's premises. Paragraph two goes on to say that 34,686 calls were made to this PTARS:

1. Telecom have refused to provide this data
and
2. Telecom has stated that a loss of some 106 network faults transpired.

This statement by Telecom is incorrect. A document gained under FOI shows, in a graph/table, that the network loss was, in fact, 1,569 call losses.

This same document, in paragraph three, states that on 29/9/92 a CCAE was connected to my incoming line, generating from the RCM at Cape Bridgewater. Page 3 of this letter, in the first paragraph, states that no call losses were experienced at the customer's premises: this statement is incorrect. Attached please find a FOI document, a Telecom local report, which is from the actual tapes taken from this CCAE machine. The hand written notes are from Telecom technicians at Portland. These show that not all intended calls were arriving at my business. Again, these are only examples (tapes from this machine). I have further tapes which can be forwarded if need be, to substantiate my claim.

In conclusion to this segment, Telecom knew of failed calls: they also knew of a much greater fault loss, that is, if those calls did generate into my business via the PTARS unit, supplied by Telecom. At no time did I see raw data evidence, or was I shown any information of this testing procedure. Either

way, Telecom have fabricated a fault finding to the Ombudsman's Office. 106 faults compared to 1,569 faults is certainly some kind of discrepancy.

If I might return to page two of the letter to Ms Jill Cardiff: Telecom states that on 2/10/92 a faulty register was found and fixed five days later. This is again incorrect. The fault was detected on the 2/9/92 and fixed only some 35 days later.

Mr. Wynack, I further table five documents received through my FOI requests. These documents are numbered by Telecom K47562 to K47565 and R01623. I consider the letter to Ms Fay Hothuzen to be misleading and deceptive when it is viewed in conjunction with my letter to Mr Holmes (R01623). Telecom was prepared to mislead even the Department of Communications and the Arts.

We have faults down-played on the 2/9/92 by 30 days, we have deceptive and misleading statements to Ms Jill Cardiff, and now also to Ms Fay Hothuzen. It appears that Telecom will stop at nothing, just to starve C.O.T. and its members from gaining the truth.

I have presented these examples in this letter as evidence of Telecom Corporate's disregard for those who challenge their integrity.

I thank your office and your officers, who have shown that democracy is alive in some Government Departments.

Most respectfully,

Alan Smith
Cape Bridgewater Holiday Camp and Convention Centre
Portland, 3305

Exhibit 29

*Cape Bridgewater Holiday Camp and Convention Centre
Portland, Victoria, 3305*

**Dr Gordon Hughes,
Hunt & Hunt,
Lawyers,
Melbourne.**

15th February 1995

Dear Dr Hughes

I refer you to my copied letters to you dated 2nd and 10th October 1994, with regards to my complaints against Telstra's verification tests carried out on my service 29th September last. In her statutory declaration Ms Cathy Ezard, complained that she believed Mr. Gamble did not correctly test the supposed test calls which should have connected to both our fax line and our incoming service line. My own declaration of these complaints was also forwarded to your office including my concern that my Kiosk phone was not correctly tested as well as my Gold Phone. My records show your office has yet to respond to those complaints.

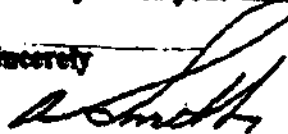
During late June through to September 1994, it appeared my service had improved during this period with only a few complaints from customers. However, since that period Ms Ezard and I have received quite a few complaints that our phones seemed to be constantly engaged or the phone rings out even though one of us is in attendance. My previous letters to you in January 21st and 26th also confirmed we were still experiencing problems with our service lines.

As you are aware the verification testing was prepared in consultation with Austel and was to form the basis for determining whether the CoT cases individual telephones service was operating satisfactory at the time of our arbitration. Our previous statutory declarations confirmed the testing was not conducted as they should have under the agreed testing process. As I have not received notice from you in regards to these declarations and my letters of January complaining of these faults that you find time to pass my comments onto Telstra for investigation purposes. I ask you to instruct Telstra to provide you and DMR, clarification as to why my phones are still not functioning, as they should.

Please find attached here supporting documents which confirm the continuation that both my 000 and fax service lines are still experiencing problems.

I thank you for your time.

Sincerely



Alan Smith

Exhibit 30



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

Consultants
Kenneth M. Martin
Richard J. Kellaway

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

21 February 1995

Our Ref: GLH

Matter No:

Your Ref:

BY FACSIMILE: 629 8361

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

Dear Mr Rundell

ARBITRATION - SMITH

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

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

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

Business Enquiries

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

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin

11411376_GLH/KS

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

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

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

Technical Enquiries

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

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

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

Yours sincerely

GORDON HUGHES

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

Exhibit 31



Hunt & Hunt LAWYERS

COPY

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

Consultants
 Kenneth M. Martin
 Richard J. Kellaway

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

21 February 1995

Our Ref: GLH

Matter No:

Your Ref:

BY FACSIMILE: 629 8361

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

Dear Mr Rundell

ARBITRATION - VALKOBI PTY LTD

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

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

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

Business Enquiries

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

melbourne

sydney

sydney west

brisbane

canberra

newcastle

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11411376_GLH/KS

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 8711.
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- (i) any of this data is inaccurate or unreliable;
 - (ii) in any instance, the data relied upon by either party is inappropriate; and
 - (iii) in any instance, additional data is required;
- (c) I would appreciate your opinion as to whether you consider any further financial or business documentation or other information (written or verbal) should be supplied by either party in order to facilitate my evaluation of the impact of the alleged service deficiencies;
- (d) for reasons of expediency, you should assume, in carrying out this evaluation, that the alleged faults existed. I believe it would be impractical to defer these enquiries until the technical evaluation is complete. If this makes it impossible or impractical in any instance to carry out the business and financial evaluation described above, I would appreciate an explanation to this effect;
- (e) if you consider the above enquiries necessitate a site inspection, this should be undertaken. You should notify me in advance, however, so that I can determine (after receiving submissions) whether it is appropriate for the claimant to be present and, if so, whether Telecom should also be provided with an opportunity to have a representative present;
- (f) I would appreciate an estimate of the date by which you believe these enquiries can be completed.

Technical Enquiries

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

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

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

Yours sincerely

GORDON HUGHES

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

Exhibit 32

11 11
A H
H

**PRIVATE &
CONFIDENTIAL**

MEMORANDUM

DRAFT

TO : Warwick Smith

FROM : Susan Hodgkinson

DATE : 30 March 1995

SUBJECT : Telecom - Points of Interest

You have asked for an overview of Telecom's approach to the COT claims. I have used Alan Smith's claim as an example and if you require a similar review done of the Garms and Gillan/Valkobi claim, I can complete one.

ALAN SMITH, CAPE BRIDGEWATER HOLIDAY CAMP ("CBHC")

Documents Provided

Alan Smith's claim has been presented in a fairly haphazard manner. He has included volumes of documents and the direct relevance of all this information is difficult to ascertain. Nonetheless, Smith has gone to a lot of trouble to assemble his POI information which, as you may be aware, was not provided in full by Telecom until 23 December 1994. To support his claim, Smith has engaged experts, including George Close and Associates (technical) and DM Ryan Accountants (financial). Smith has provided a detailed, well set out reply to Telecom's defence.

Telecom has provided a very detailed submission with the main documents including:

- Principal submission
- Legal submission (one volume of appendices)
- Technical Report (five volumes of appendices)
- Deloitte Touche Thomatsu Report (Financial Report)
- Overview document - providing background information of Telecom Australia
- Telecom Australia's Networking and Management Philosophy

Progress of Fast Track Arbitration Process

- On 21 April 1994 Smith signed his Request for Arbitration.
- On 25 July 1994, Smith lodged his claim documents.
- Delays from July 1995 to December 1994 include:
 - detailed request for further particulars by Telecom
 - an oral hearing to settle request procedures

Smith continued to "drip feed" lodgement of his claim documents based on the fact that Telecom "drip fed" his FOI request (this culminated in a complaint to the Commonwealth Ombudsman and subsequent FOI review by Telecom).

- Smiths claim was formally certified as complete in November 1994.
- On 25 November 1994, Telecom requested a two week extension to deliver their defence and this was granted.
- On 13 December 1994, Telecom delivered its defence to the Arbitrator.
- Smith has stated verbally to myself, that on 23 December 1994, he received 90 kilograms of FOI material. As his claim was "finalised" he did not have the ability to examine these documents and add to his claim.
- On 25 January 1995 Smith lodged his reply to the Telecom defence.

EXTRACTS OF TELECOM'S DEFENCE

Principle Submission

(A) Opening submission

- The total amount claimed by Smith of \$3.24 million is 11.5 times the 1988 purchase price of \$280,000 and represents 30 years of profit based upon a generous 30% return on investment.
- Claim documents submitted are in no apparent sequence or order.
- No where in the claim documents is there a statement, allegation or claim setting out the basis of any alleged legal responsibility which Telecom may have to the claimant in respect of provision of telecommunications service.
- Most of the allegations are unsubstantiated and many are not verified by statutory declaration.
- Smith has relied upon records kept in his diaries as his primary record of complaints.
- The magnitude of faults complaints reported is unsubstantiated and appears overstated.
- Of the few faults which occurred, most were trivial or short lived due to prompt rectification by Telecom.
- Those faults that did occur, many were due to misuse of telephone and associated equipment by the claimant or customers of CBHC.
- Of the 58 customers (66 by August 1991) connected to the Cape Bridgewater telephone exchange, only Smith has had a significant level of fault complaints. Is it virtually impossible that faults at this exchange can effect the claimant only.

Exhibit 33



85

FERRIER HODGSON CORPORATE ADVISORY

STRICTLY PRIVATE & CONFIDENTIAL

BY COURIER

18 April 1995

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

Dear Sir,

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

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

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

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

→ Smith

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

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

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD

A.C.N. 052 403 040

EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SELAK

LEVEL 25 140 WILLIAM STREET MELBOURNE VICTORIA 3000

TELEPHONE 03 629 8855 FACSIMILE 03 629 8361

LICENSED INVESTMENT ADVISER

*Pia
19/4/95
we to discuss*



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

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

↙ Garms

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

↙ Gillan/Valkobi

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

Resource Unit (including Technical Support)

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

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

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



Arbitration

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

Conclusion

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

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

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

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

Yours faithfully,
FERRIER HODGSON CORPORATE ADVISORY

JOHN RUNDELL
Project Manager - Resource Unit
Associate Director

Encl.

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

Exhibit 34

FAX FROM: ALAN SMITH
C. O. T.

DATE: 18.4.95

FAX NO: 055 267 230

PHONE NO: 008 816 522

NUMBER OF PAGES (including this page)

FAX TO: MR TED BENJAMIN
GENERAL MANAGER
CUSTOMER RESPONSE UNIT
TELECOM

Dear Mr Benjamin,

I refer to your letter of 12 April, 1995, addressed to Dr Gordon Hughes.

This letter is in reference to a fax I sent to Dr Hughes on 1st March, 1995. In paragraph 5 of your letter you state, and I quote:

"I note that a facsimile makes allegations against Telecom in relation to its handling of Mr Smith's FOI applications and conduct in the arbitration generally."

Mr Benjamin, these were not allegations, these are facts.

1. The late release of FOI documents, originally sought under the FOI Act in December, 1993, disadvantaged preparation of my claim/submission to Dr Gordon Hughes, Arbitrator. It mattered not to Telecom that this material was not supplied until some 11 months later (December 23rd, 1994) and *after* my final claim/submission had been submitted to Dr Hughes.

The following is one example of how the late arrival of these documents disadvantaged me:

There are two conflicting reports

- one received and included in my first claim which reads *"6/7/93 caller from 055 232 272 rang Mr Smith and 1 minute into conversation Mr Smith couldn't hear them, but they could hear him."* C/B/H/C ref 0711.
- a second report received on December 23rd, 1994, which reads *"6/7/93 Customer reported Graham Schorer was able to hear his conversation on 267 267 by calling 267 230 (Resolved - Incorrect CPE Operation).*

Had I received this second document 11 months before, under the FOI Act ruling, I could have then have compared C/B/H/C ref 0379 on 6/7/93 and ref 0400 on 15/10/93 to this late received document: "No" CPE faults in sight?

I present these two fault reports condensed at the end of this fax, for easy viewing. This is but one example of many conflicting statements and fault reports by Telecom where late supply of FOI documents has confused my technical advisors as well as myself.

2. Telecom fault records show, on the 6/7/93, nine months before beer was allegedly found in the 'hookswitch' of my TF200 phone, a similar fault report dated 27/4/94, where people could hear me talking in my office after I had replaced my TF200 (267 230) back in the cradle. Austel also experienced the same fault as did Telecom Network on the 27/4/94.

This is yet another instance where I could have used this particular FOI document in my reply to Telecom's Defence in relation to MR GAMBLE'S ORCHESTRATED REPORT of 6th May, 1994. Nine days after Mr Gamble received this phone it is delivered to Telecom's laboratories. Considering that a complaint of similar nature was reported on the 6/7/93, wouldn't one have thought the beer would be stale/dry by the 27/4/94?

3. Telecom has, in the conduct mentioned, disadvantaged my arbitration procedure.
4. Telecom has still not provided letters from Telecom officers to support Steve Black's statements (both in letter form and to the media) that Telecom has on record three separate reports stating that I told three independent Telecom officers of a conversation I had with the former Prime Minister, Malcolm Fraser.
5. Telecom have withheld fault data which registered faults into my phone service: in Telecom's Defence Document Gordon Stokes has admitted listening to my phone calls over many months - Telecom have not provided this fault report from Gordon Stokes.
6. Telecom have not supplied ELMI data for May to July 1993 when this equipment was connected to the RCM at Cape Bridgewater to monitor my service.
7. Telecom have not supplied all EOS data, which would have provided me with information on certain issues I wish to raise with the Arbitrator, Dr Gordon Hughes.
8. Telecom have not supplied CCS7 data for the NEAT testing program conducted at the PTARS Cape Bridgewater 267 211 for the dates of 28/10/93 to 8/11/93.
9. Telecom have not supplied me CCS7 data for NEAT testing from 23/10/93 to 4/11/93 to the PTARS 267 211 at the RCM Cape Bridgewater.
10. Telecom have not supplied CCS7 data for the Bell Canada testing from 5/11/93 to 9/11/93. I quote from a segment of the Bell Canada Report: "*As tests were performed, network specialists as shown in 15.13 and 15.23, the TEKELEC CCS7 monitoring system was used to monitor all CCS7 links terminating to homing exchanges of the two COT clients: Mr John Main, Glen Waters Fish Farm and Mr Alan Smith, Cape Bridgewater Holiday Camp.*"
11. When Telecom forwarded the first supply of FOI documents (approximately 3,300 documents) they arrived in a considerably confused state. The documents were not bundled in chronological order; were not numbered or indexed in any way so as to assist me to view them easily; and some documents were blanked out to such a degree as to make them unreadable.
12. Telecom have suggested to me, and to others in COT, that, due to the time factor, many historic fault testing material has been lost.

Mr Benjamin, the Bell Canada testing was a major undertaking by Telecom. How, in all reason, can Telecom claim they have lost 'ALL' the CCS7 data for not only the Bell Canada testing, but also for the NEAT testing as well? The fact that Telecom cannot produce this CCS7 data confirms my original claim: Telecom / Bell Canada did not test PTARS 267 211 from 5/11/93 to 9/11/93.

Taking all this into account you still have the audacity to state that Telecom has not hindered my claim/submission under the Fast Track Arbitration Procedure, which was for both parties to supply information sought. The fact that Telecom have not owned up regarding this non-Bell Canada Testing has undermined the Procedure to determine the faults on my phone service at the time allocated for this testing.

Please now issue two statements in response to the following questions:

- A. Can NEAT testing be carried out during other testing to the same PTARS, in this case, PTARS 267 211?
and
- B. Did Bell Canada test 267 211 on the 5/11/93 at the same time as the NEAT testing of that date?

I await your response,
Sincerely,

Alan Smith

| |
|--|
| cc. Dr Gordon Hughes Hunt & Hunt, Lawyers, Melbourne John Wynack Commonwealth Ombudsman's Office, Canberra. Peter Bartlett Minter Ellison Morris Fletcher Barristers & Solicitors, Melbourne |
|--|

Exhibit 35

FAX FROM: ALAN SMITH
C. O. T. DATE: 28.4.95

FAX NO: 055 267 230

PHONE NO: 008 816 522 NUMBER OF PAGES (including this page)

FAX TO: MR JOHN WYNACK
INVESTIGATING OFFICER
COMMONWEALTH OMBUDSMAN'S OFFICE
CANBERRA

Dear Mr Wynack,

In response to our conversation of 26th April, 1995, I present the following information, which includes data and documents I did not receive under my four FOI applications to Telecom.

It is now sixteen months since I lodged the first of these four FOI applications made during my claim period against Telecom, but Telecom has only supplied limited information of any substance. Telecom will, of course, argue against my point of view.

Telecom issued a statement to the Federal Police in 1994 which stated that, during a period from May to August, 1993, Telecom technicians had listened in to conversations on my phone service. According to this statement this was done only for fault finding. I have acquired written evidence that, for several months, voice listening did in fact take place. I have requested, under FOI, all documents pertaining to this period (May to August, 1993).

During this time period of *May to August, 1993*, some *ten people (out of a total of approximately 60 letters received)* have presented, in written form, their own experiences of faults while trying to make a phone connection to my business. These letters have been submitted, along with other similar information, to the Arbitrator, Dr. Gordon Hughes.

Ms Rosanne Pittard, General Manager, Commercial, Vic/Tas, is aware of some 30-40 registered fault complaints on my Service from 6th January, 1993 to August 9th, 1993, yet no fault records are available regarding this voice monitoring during the time these known faults were occurring.

A Telecom Secret Document, acquired under FOI (C04006) states (at 7) "*Many letters stating the problems of not getting through to Alan Smith*". Among the documents I received as a result of my four FOI requests to Telecom were only five letters from five different past clients who had taken the trouble to write to me, explaining their difficulties in ringing my business. Ms Pittard, General Manager of Telecom Commercial, Vic/Tas, was presented with a lot more than FIVE letters at a settlement meeting on the 11th December, 1992. In her Arbitration Witness Statement, Ms Pittard also made reference to a quantity of letters and documents having been received at that settlement.

Let me assure all parties and the Ombudsman's Office: **IN RESPONSE TO MY FOUR FOI CLAIMS, I DID NOT RECEIVE BACK FROM TELECOM THE QUANTITY OF LETTERS FREELY GIVEN TO TELECOM ON 11 DECEMBER, 1992.**

Because I believed Ms Pittard when she told me, both verbally at the settlement of 11 December, 1992, as well as in a letter prior to this meeting, that my phone service was not up to Network Standard, I gave her the original letters and documents pertaining to the faults experienced by other parties when they tried to contact my business.

I can account for at least four more letters. These were documents from Telecom, explaining faults in my service. Two of these letters were, I believe, of significant value as evidence of RVA (repeated voice announcement) stating that the number my clients were ringing was "not connected".

One of these letters was from the Collingwood Health & Community Centre. It stated that RVA was heard for a period "before August, 1991".

Two other letters were from the Ferry Terminal at Port Melbourne regarding Tasmanian guests who were experiencing a continued voice announcement in or around June or July, 1992.

The fourth letter stated that the phone continually rang out - we never seemed to answer it.

A Telecom memo, gained through my last FOI request, states that Ms Pittard suggested that Telecom charge me for FOI, even though they could not provide the information I sought. I quote from this document: *"Should we make Alan pay, even if we can't provide everything he wants?"*. This FOI request was made in May, 1993. For obvious reasons I did not pursue this request.

I present here, further documentation and fault data, documents which still have not been received under my FOI requests. I mention, just as an example: had Telecom provided indexed EOs for the periods I sought, as mentioned below, I believe I could have proved further misleading and deceptive commercial practices by Telecom employees.

Sincerely,

Alan Smith

| | |
|----|--|
| cc | Ted Benjamin General Manager Customer Response Unit, Telecom |
| | Sue Hodgkinson Ferrier Hodgson, Corporate Advisory |

Exhibit 36



MINTER ELLISON

ATTORNEYS

ALBERTA
BRITISH COLUMBIA
ONTARIO
QUEBEC
SASKATCHEWAN
YUKON

BRITAIN
CANADA
NEW ZEALAND
AUSTRALIA
HONG KONG
SINGAPORE

INDONESIA
MALAYSIA
PHILIPPINES
THAILAND
VIETNAM
JAPAN
KOREA
TAIWAN

AMERICA
EUROPE
AFRICA
MIDDLE EAST
AUSTRALIA
NEW ZEALAND

INDONESIA
MALAYSIA
PHILIPPINES
THAILAND
VIETNAM
JAPAN
KOREA
TAIWAN

INDONESIA
MALAYSIA
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40 MARKET STREET
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TELEPHONE (03) 617 4617
INTERNATIONAL +61 3 617 4617
FACSIMILE (03) 617 4626

PLB 928549

(03) 617 4623

28 April 1995

STRICTLY CONFIDENTIAL

Mr Warwick J. Smith
Telecommunications
Industry Ombudsman
Box 18098
Collins Street East
MELBOURNE 3000

Dear Warwick
Fast Track Arbitration - Smith

Further to our recent discussion, it seems to me that we should put to Gordon Hughes that we expect his Award to be made prior to his departure on 12 May 1995.

Attached is a draft letter to Gordon. It is in reasonably harsh terms.

Could you please consider whether a letter in this form or an amended form, should go to Gordon.

Regards

Peter L Bartlett

enc.

7/p10511804

↑

DRAFT

↓

28 April 1995

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

By Facsimile: 614 8730

Dear Gordon

Fast Track Arbitration - Smith

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

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

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

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

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

Could you please contact me to discuss.

Yours sincerely

Warwick L. Smith
On 04/28/95

DRAFT

18A

Exhibit 37

RESOURCE UNIT TECHNICAL EVALUATION REPORT

Mr. Alan Smith of Cape Bridgewater Holiday Camp

30 April 1995

Introduction

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

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

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

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

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

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

ARBITRATORS COPY

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

Cape Bridgewater Documentation

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

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

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

Otherwise, the Technical Report on Cape Bridgewater is complete.

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

"Bogus" Complaints

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

Sources of Information

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

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

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

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

Exhibit 38

RESOURCE UNIT TECHNICAL EVALUATION REPORT

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30 April 1995

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

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

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

"Bogus" Complaints

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

There were occasions when Mr Smith mistook problems with his own CPE for Telecom faults, but this is a normal occurrence in the operation of any multi-vendor system, which the end-to-end telephone system increasingly is. Telecom takes pains to separate these CPE problems from the legitimate faults, which they acknowledge.

Sources of Information

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

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

M34219

Telstra FOI Number

Exhibit 39

FAX FROM: ALAN SMITH
C. O. T. DATE: 3.5.95

FAX NO: 055 267 230

PHONE NO: 008 818 522 NUMBER OF PAGES (including this page)

FAX TO: MR JOHN WYNACK
INVESTIGATING OFFICER
COMMONWEALTH OMBUDSMAN'S OFFICE
CANBERRA ACT

Dear Mr Wynack,

Following this letter is a copy of a letter addressed to Dr Gordon Hughes and dated 27th March, 1995. Paragraph one of this letter relates to three documents: C04006, C04007 and C04008. These documents were released on 23rd December, 1994 as FOI documents which had been previously sought in my first FOI application in December 1993. Even allowing for preparation time by Telecom these documents were received eleven months after the request and three months after my final submission/claim had been submitted to the Resource Team under the Fast Track Arbitration Procedure.

My technical advisers, George Close and Associates, were disadvantaged by not viewing these three documents in question, particularly document C04006 which states at 4 "RVA on congestion".

On May 2nd, 1995 I received a copy of a Technical Report submitted by two individual communication companies: DMR Group Canada and Lanes Telecommunications Australia. It is highlighted in this report that, from the time I purchased Cape Bridgewater Holiday Camp (CBHC) in February 1988 until August 1991, my phone service was connected to an Old Exchange RAX. The comments from each of these individual technical people show clearly that during this time (1988 to 1991), congestion was one of the faults on this Old Exchange. Notwithstanding this, Telecom's own documentation, from a variety of sources, confirms that this Old Exchange suffered faults and congestion.

Mr Wynack, document C04006, which states "RVA on Congestion", clearly defines that when this Old Exchange was busy customers ringing in to this service would hear an RVA "The number you are ringing is not connected". This fault had a very significant, in fact monstrous, affect on my business during the first three and a half years, when I was trying to establish my clientele. The fact that Telecom hid this FOI document until my submission/claim had been finally submitted is just one more example of how they disadvantaged my claim preparation.

In conclusion, my own resource team: George Close and Garry Ellicott, would have hammered home this RVA on congestion as the fault from the outset; the fault which crippled this business before I had a chance to walk, let alone run!

Mr Wynack, I have an abundance of documents which were not produced by Telecom under FOI. If what I have shown here is any example of the effect that this non-compliance with the FOI Act has done to my claim, you would have to conclude that Telecom has disadvantaged my claim by these actions, in breach of the FOI Act.

Sincerely,

Alan Smith

cc Dr Gordon Hughes
Hunt & Hunt
Lawyers
Melbourne