

To:	Mr. Robin Davey	From:	C.O.T. Cases Australia
Company:	Chairman AUSTEL		P.O. Box 318, NORTH MELBOURNE. 3051.
Fax No:	(03) 828 7394		
			Phone: (03) 329 7355
Date:	23 November, 1993		Fax: (03) 328 4462
			Pages: (6) Incl. Fax Header
Mailed?	YES () NO (X)	Contact:	Graham Schorer

Dear Mr. Davey,

LETTER OF UNDERSTANDING

This letter has been documented for the purpose of clarifying the collective and individual's understanding of Mr. Davey's explanation of how each clause or part of a clause or an individual word contained within a clause, would be interpreted by the assessor.

Mr. Davey, over two lengthy meetings and a number of telephone calls, went to great pains to explain to the Members, how the assessor will approach certain subject matters and what the assessor will be required to do prior to reaching a finding in each individual Member's case.

The final draft of the "Fast Track Settlement Proposal" was prepared as a joint effort by Telecom and Austel.

This jointly signed letter of understanding forms part of each individual C.O.T. Case Member's written acceptance of the "Fast Track Settlement Proposal" dated 18th November 1993 to be forwarded to Austel.

The reason this letter will accompany each individual member's signed acceptance is to ensure the Arbitrator and the finally appointed Assessor are left in no doubt as to the understanding of the C.O.T. Case Members collectively or individually of what the "Fast Track Settlement Proposal" contains and how the document will be interpreted by the Arbitrator and, most importantly, the Assessor.

As all of the C.O.T. Case Members are lay people, who do not have legal expertise, it was necessary for Mr. Davey, Chairman of Austel, to explain what clauses, parts of the clauses, plus certain words in the clauses meant including further explanations of how the assessment would work.

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Based upon the C.O.T. Case Members past experience in dealing with Telecom, the C.O.T. Case Members deemed it necessary to jointly prepare a document of understanding to ensure the Assessor precisely understands the grounds that the individual C.O.T. Case Members finally agreed to enter the "Fast Track Settlement Proposal" agreement.

The last thing the individual C.O.T. Case Members want during the course of the assessment is a disagreement or an incorrect interpretation to be applied to the "Fast Track Settlement Proposal" by having the document clinically read and acted upon by a third party using an interpretation that does not represent the basis of the individual C.O.T. Case Member's understanding of the intent of the agreement prior to acceptance, as the agreement is binding on all parties without recourse.

Clause 2 (c).

The word "losses".

Austel explained losses shall include causes and effects, consequential losses including additional expenses incurred and additional losses as a result of flow on.

Losses will include lost business reputation and good will, credibility, loss of business opportunity and additional losses incurred as a consequence.

Losses include loss incurred as a loss of business focus and direction as a result of senior management or the proprietor totally committing to (the exclusion of all other priorities) the permanent resolution of all telephone service faults and difficulties that are preventing receiving incoming calls that generate business.

Losses will also take into consideration personal pain and suffering including health injury because of stress, personal injury, loss of personal reputation and business credibility.

Clause 2 (c) 1 & 2.

Except in so far as they are relevant due to faults and problems in his or her telephone service.

Where the manner or conduct of Telecom has resulted in the individual incurring additional expenses by way of continuing or increased advertising, new promotions, installation of new customer premises equipment on the advice of Telecom to overcome telephone service difficulties preventing individuals from being connected to different exchange technology to assist the individual to be successful in their endeavour to mitigate their loss.

The manner and conduct Telecom engaged in past settlements that increased individual members losses due to the inadequacies of the amounts paid, causing lending institutions to withdraw support resulting in business having to be wound up or "voluntarily disposed of".

Where the manner and conduct of Telecom's dealings with the individual's telephone service difficulties and faults is viewed in conjunction with other Federal Legislation has increased Telecom's legal liability, the Assessor can seek an independent professional third party opinion or make an additional allowance by way of recommendation regarding Telecom's liability of legal obligation.

Clause 2 (d).

That in respect of Mr. Schorer the matters covered by the earlier settlement between his company and Telecom are specifically excluded because that settlement was via a payment in court and was confined in relation to the matters it covered, none of which need or should be re-opened.

Astel's explanation that Telecom's refusal to revisit the court settlement over the customer premises equipment action was final.

However, as Telecom acknowledged that they pay nothing in respect to those claims regarding alleged faults and problems with his telephone service, a new claim regards faults and problems commencing at the beginning of Mr. Schorer's telephone service difficulties and problems would be the claim the Assessor would be dealing with as Telecom had paid nothing in respect to that claim.

Mr. Schorer would be required to compile a new claim representing losses as a result of telephone service difficulties and problems from the commencement of known problems causing loss till the problems have been rectified.

Clause 2 (e)

The Assessor may, however, call for oral presentations by either party. Such presentations will not include cross-examination, and would not be open to the public or third parties. Representation of the parties will be at the Assessor's discretion.

Astel went on to explain that this clause did not mean that the Assessor would automatically allow each individual to be represented by a third party at the Assessor's cost.

The Assessor, upon meeting each individual, would make an assessment of the individual's ability, in relationship to the nature and size of their claim, and make an individual assessment as to whether that person required third party representation to assist that individual to place a written submission regarding their claim plus liaise directly with the Assessor.

The cost of third party representation will only be borne by the Assessor at the Assessor's discretion and this will be known prior to the commencement of the assessment process.

Clause 2 (f)

That in conducting the review the Assessor will make a finding on reasonable grounds as to the causal link between each C.O.T. Case's claims and alleged faults or problems in his or her telephone service and, as appropriate, may make reasonable inferences based upon such material as is presented by each of the C.O.T. Cased Telecom i.e. unless the Assessor is able to conclude that Telecom caused the loss claimed, there will exist no basis for a claim against Telecom.

Austel explained that this clause meant that the individuals could rely upon letters or written statements from intending clients, then existing clients, industry associations, competitors, suppliers, past management and staff and ex carriers to demonstrate the causal link between each C.O.T. Case Member's claim for loss in respect of faults or problems with his or her telephone service.

As Telecom did not keep accurate records or record all of the telephone service complaints made by each of the individual members, Austel stated there would be many periods of time Telecom could not refute the statements made by the individuals.

The experiences of individual C.O.T. members including where the individual was constantly busying out lines i.e. 1st and/or 2nd auxiliary in an attempt to get the rotary mechanism to successfully process an incoming call was all explained as good evidence.

The Assessor would have access to Austel technical people who could clarify and substantiate precisely what the individuals were attempting to do and would give technical explanation of how, under certain circumstances, the busying out of auxiliary lines may assist in allowing incoming calls to be successfully processed by the local exchange rotary mechanism.

Internal Telecom documents gained under "freedom of information" or court proceedings to do with one member would be admissible evidence when it was able to be reasonably explained that the same information was relevant to another member's telephone service difficulties preventing incoming telephone calls.

Again, it was explained that Austel could be relied upon to provide the Assessor with the technical understanding of the contents of these Telecom documents.

The reliance of Telecom upon their testing results to dispute individual claims during certain time periods again was explained that the Assessor would be given access to Austel's information and findings obtained as part of the Austel inquiry.

Clause 2 (g)

That in respect of some period or periods of time covered by the C.O.T. Cases claims Telecom may not be strictly liable, or have any legal obligation, to pay any amount to them and for that reason in making the findings the Assessor will in respect of each C.O.T. Cases.

Austel explained that the words "strictly liable" were specifically written this way without mention of the Telecommunication's Act to ensure the word "liable" when applied to Telecom would include all Federal Acts of Parliament governing corporate conduct.

Any legal obligation of Telecom was further explained by Austel to include the relevant sections of the Trade Practices Act including where the individuals could demonstrate the conduct of Telecom had breached such Acts where such breaches would have the consequences of expanding Telecom's liability regardless of the statute of limited liability of the relevant Telecommunication's Act for that period of time.

The C.O.T. Case Memebhrs accept Austel's interpretation of Telecom's liability and legal obligation including the wisdom of just mentioning liability and legal obligation without mentioning which Act of Parliament it is relevant to as it should have always been relevant to all Acts of Federal Parliament and Acts of State Parliament relevant to the individual.

Clause 2 (g)(iii)

(iii) recommend whether, notwithstanding that in respect of a period or periods that Telecom is not strictly liable or has no obligation to pay, Telecom should, having regard to all circumstances relevant to the C.O.T. Case's claim, pay an amount in respect of such a period or periods and, if so, what amount.

In the four C.O.T. Cases covered by this Proposal, Telecom, acting in good faith, commits in advance to implementing any recommendation made by the Assessor pursuant to clause 2 (g)(iii).

Austel explained this clause enabled the Assessor, on examination of all the four C.O.T. Case Member's claims, to view the conduct and manner that Telecom had dealt with all four C.O.T. Case Members as a whole prior to dealing with the individual member's claim to make a recommendation for loss that may or may not be supported by strict interpretation as a result of gaining an independant opinion that may or may not have been sought.

It was explained that this clause was broad enough to give the Assessor sufficient scope to deal with the consistent generalities contained within all of the four C.O.T. Case Member's dealings with Telecom enabling the Assessor to come up with reasonable findings that could be put under the heading of "recommendations" supported by the added benefit of Telecom's committment in advance to implement any recommendations made by the Assessor.

Clause 2 (k)

That Telecom will pay the Assessors reasonable costs.

Austel explained it would be reasonable for the Assessor to appoint an independant accountant to check the financial figures presented by the individual members if the Assessor so desired.

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It would also be reasonable for the Assessor to seek an independant legal opinion and independant technical advice if the Assessor so desired.

The cost of all these independant opinions would be part of a reasonable approach to produce reasonable findings and would be included in the Assessor's reasonable costs which Telecom have already agreed to pay.

Summary:- Based upon the C.O.T. Case Member's collective and individual's understanding of the "Fast Track Settlement Proposal" dated the 16th November 1993 as outlined in this

LETTER OF UNDERSTANDING,
(dated 23rd November 1993)

all of the CO.T. Case Members have unanimously agreed to accept the "Fast Track Settlement Proposal" without change.

Yours respectfully,

A. Garms

A. Garms. Tivoli Restaurant.

23/11/93

M. Gillad

M. Gillad. Japanese Spare Parts.

23/11/93

A. Smith

A. Smith. Cape Bridgewater Holiday Camp.

23/11/93

G. Schorer

G. Schorer. Golden Messenger.

23/11/93

1 A

COT CASES
FAST TRACK SETTLEMENT PROPOSAL

- (1) This "Fast Track" Settlement Proposal:
- (a) applies in respect of the following four *COT Cases*:
- (i) G. Schorer: Golden Messenger
 - (ii) A. Garms: Tivoli Restaurant
 - (iii) M. Gillan: Japanese Spare Parts
 - (iv) A. Smith: Cape Bridgewater Holiday Camp
- (b) provides the basis for a process (copy attached) being developed in consultation with AUSTEL that may be applied as a dispute resolution process additional to the Telecommunications Industry Ombudsman scheme. (Telecom acknowledges that the *COT Cases*' proposal has assisted Telecom to clarify its views about dispute resolution processes suitable for small business in the future.)

(2) Telecom and the four *COT Cases* agree:

- (a) to a review of:
- (i) the adequacy of the amounts paid by Telecom to the four *COT Cases* under earlier settlements
 - (ii) claims since the earlier settlements to a date of the assessor's findings.
- (b) that the review be conducted by an assessor nominated by the Telecommunications Industry Ombudsman after consultation with Telecom and the *COT Case* involved to the assessment.
- The TIO's nomination shall be a person who is impartial and independent, with appropriate experience and high standing.
- (c) that the review will focus on losses alleged to have been incurred by the *COT Cases* due to faults or problems in his or her telephone service and will not review the following matters that are the subject of a separate inquiry by AUSTEL:
- (i) the manner in which Telecom handled each of the *COT Cases*' complaints; or
 - (ii) the manner in which the earlier settlements were handled or the reasons the *COT Cases* entered into those earlier settlements.

except insofar as they are relevant to the losses that are alleged to have been incurred by the *COT Cases* due to faults or problems in his or her telephone service. (Telecom will make available to the assessor copies of both the Coopers & Lybrand and Bell Canada International reports and its responses to those reports.)

- (d) That in respect of Mr Schorer the matters covered by the earlier settlement between his company and Telecom are specifically excluded, because that settlement was via a payment in court and was confined in relation to the matters it covered, none of which need or should be re-opened. =

It is assumed for the purposes of this proposal that Mr Schorer and Telecom have made a previous settlement regarding Mr Schorer's claims in respect of alleged faults or problems with his telephone service, and Telecom paid nothing in respect of those claims.

- (e) that the review will be primarily based on documents and written submissions. Each party will have access to the other parties' submissions and have the opportunity to respond.

The assessor may, however, call for oral presentations by either party. Such presentations will not include cross-examination, and would not be open to the public or third parties. Representation of the parties will be at the assessor's discretion.

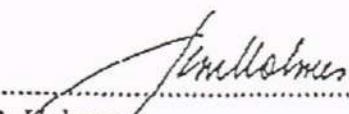
- (f) that in conducting the review the assessor will make a finding on reasonable grounds as to the causal link between each of the *COT Case's* claims and alleged faults or problems in his or her telephone service and, as appropriate, may make reasonable inferences based upon such material as is presented by each of the *COT Cases* and by Telecom, i.e. unless the assessor is able to conclude that Telecom caused the loss claimed, there will exist no basis for a claim against Telecom.


- (g) that in respect of some period or periods of the time covered by the *COT Cases'* claims Telecom may not be strictly liable, or have any legal obligation, to pay any amount to them and for that reason in making the findings the assessor will in respect of each of the *COT Cases*:

- (i) determine for the time covered by his or her claim, the period or periods for which Telecom is not strictly liable or has no obligation to pay and the period or periods for which Telecom is liable and has an obligation to pay
- (ii) determine in respect of each such period the amount of loss, if any, incurred by the *COT Case*
- (iii) recommend whether, notwithstanding that in respect of a period or periods that Telecom is not strictly liable or has no obligation to pay, Telecom should, having regard to all the circumstances relevant to the *COT Case's* claim, pay an amount in respect of such a period or periods and, if so, what amount.

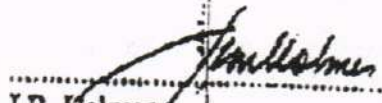
In the four *COT Cases* covered by this Proposal, Telecom, acting in good faith, commits in advance to implementing any recommendation made by the assessor pursuant to clause (2)(g)(iii).

- (h) that before the assessor commences the review, to inform AUSTEL in writing that the assessor's finding will be final and binding upon each of the COT Cases, and that no claims will be pursued or considered for those services for the period reviewed for any reason in any forum.
- (i) that if the assessor determines in respect of a COT Case an amount less than that paid under an earlier settlement, Telecom will not recover the difference.
- (j) that speed is of the essence, and that the assessor will be instructed accordingly and to give priority to preparing a mutually acceptable timetable for consideration by the parties.
- (k) that Telecom will pay the assessor's reasonable costs.
- (l) that the amounts paid by Telecom under this agreement will be maintained confidential by the parties.
- (3) Telecom does not accept the COT Cases' grounds for reviewing the earlier settlements. However, on the basis of a denial of liability and without any legal obligation to do so and purely as a matter of good faith and business expediency, Telecom is prepared to agree to the above mentioned review.
- (4) This proposal constitutes an offer open to all or any of the COT Cases referred to in Clause (1)(a), which will lapse at 5pm on Tuesday 23 November 1993. This offer may be accepted by signature below and sending advice of such signature to AUSTEL or the Telstra Corporate Secretary before that time.



..... Date 18. 11. 93.
J.R. Holmes
Corporate Secretary
Telstra Corporation Ltd

Accepted 
..... Date 23. 11. 93
Graham Schloer

- (i) that before the assessor commences the review, to inform AUSTEL in writing that the assessor's finding will be final and binding upon each of the COT Cases, and that no claims will be pursued or considered for those services for the period reviewed for any reason in any forum.
 - (j) that if the assessor determines in respect of a COT Case an amount less than that paid under an earlier settlement, Telecom will not recover the difference.
 - (k) that speed is of the essence, and that the assessor will be instructed accordingly and to give priority to preparing a mutually acceptable timetable for consideration by the parties.
 - (l) that Telecom will pay the assessor's reasonable costs.
 - (m) that the amounts paid by Telecom under this agreement will be maintained confidential by the parties.
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 J.R. Holmes
 Corporate Secretary
 Telstra Corporation Ltd

Date 18. 11. 93

Accepted 
 Date 22/11/93



AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

95/0594-01^{176.}

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PRIVATE AND CONFIDENTIAL

92/0596(8)

2 December 1993

Mr W Smith
Telecommunications Industry Ombudsman

Facsimile No: (03) 277 8797

Dear Mr Smith

In your letter of 1 December you sought background material on the four COT Cases to assist you in the nomination of an assessor or assessors.

Contact details are as follows:

Mrs Maureen Gillan,
19 Carnarvon Court
EVERTON HILLS QLD 4053
• phone (07) 353 4264
• fax (07) 353 3593

Mr Graham Schorer
Golden
493-495 Queensberry Street
NORTH MELBOURNE VIC 3051
• phone (03) 329 7355
• fax (03) 328 4462

Mrs Ann Garms
65 King Arthur Terrace
YERRONGAPILLY QLD
• phone (07) 892 5040
• fax (07) 257 1583 (Tivoli Club)

Mr Alan Smith
Cape Bridgewater Holiday Camp
Blowholes Road
RMB 4408
CAPE BRIDGEWATER VIC
• phone (055) 267 267
• fax (055) 267 230

13-C

Brief details of the four cases are outlined below. All four are complex and of fairly long duration.

Mr Smith is probably the most simple of the cases (or potentially involves the smallest claim). Mr Smith received a settlement late in 1992 on the understanding that his service problems had been rectified. He subsequently claimed that the service had not been rectified and had he known that his problems would continue he would not have settled his previous claim for the amount he accepted. He also claimed to have ascertained that the problems were greater than he had been led to believe.

Mrs Gillan, formerly trading as Japanese Spare Parts, is possibly the claimant whose dispute is of longest duration. It extends back, I understand, to 1984. She claims to have been forced to cease trading as from earlier this year and accepted a settlement in May. She claims that financial pressures on the business forced her to accept an amount less than was justifiable. I understand that she may wish to base her claim on the material already submitted to Telecom but updated for the period which follows that claim. In other words her claim may be the best advanced.

Mrs Ann Garms claims to have had some \$4,000,000 invested in her business. Her dispute also goes back to her previous business (Roseville Restaurant) but I understand that she is likely to limit her claim to the time when she established the Tivoli Theatre Restaurant (1989). Mrs Garms has the most extensive records of any of the COT Cases. In her dispute and her earlier settlement she has had a very significant involvement of lawyers, accountants, loss adjustor etc. She claims her settlement (June 1993) was made under duress in terms of both the financial and health difficulties which she and her husband were experiencing. Mrs Garms has stated that financial pressures forced her to cease trading as a theatre restaurant and to lease the premises to other persons who now operate it as a licensed club for the benefit of the cause of hospitality training. Her claim is likely to be of very significant proportion. Mrs Garms is also likely to claim that when she formulated her claim (settled earlier this year) Telecom withheld certain information which would have been relevant to preparing that claim. AUSTEL has concluded that there is some substance in this issue.

Mr Schorer is also a case of long duration and may well extend back for 7 to 10 years. Mr Schorer has never made a claim on Telecom based on inadequate telephone service though he believes he has long suffered from that situation; rather, given the immunity from suit which Telecom had under the *Telecommunications Act*, he initiated court action on the basis that Telecom had sold him telecommunications equipment which was not adequate for his purposes and was unable to meet the claims made for it. He ultimately settled for an amount lodged with the court by Telecom. Telecom is not prepared to reopen this issue but will accept a claim from Mr Schorer based on his view that he has received an inadequate service. Mr Schorer's claim is likely to be of major proportion. I doubt that he would be as far advanced as some of the others in the preparation of his material.

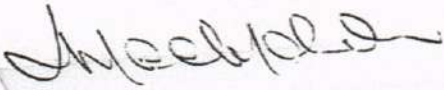
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3.

I trust these broad outlines, which are essentially my impressions, are of assistance. Should you wish to obtain further background material of this nature you might call me on 828 7342.

Yours sincerely



John MacMahon
General Manager
Consumer Affairs

COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

Postal & Mailing: Commonwealth Ombudsman, Parliament House, Canberra City
2600 Canberra ACT 2601 Australia
Telephone: 06 252 1111 Fax: 06 252 1122

20 January 1994

C/94/195.C/94/225:JW

Mr J R Holmes
Corporate Secretary
Telstra Corporation Ltd.
38th Floor, 242 Exhibition Street
MELBOURNE VIC 3000

Dear Mr Holmes

I 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 have summarised Mr Smith's complaint as alleging that TELECOM unreasonably has decided to apply charges to his FOI request and that the charges will be considerable.

Mr Schorer's complaint is that TELECOM unreasonably refused to remit the application fee and is proposing to impose processing charges.

Ms Garms also has complained that TELECOM unreasonably is imposing charges.

All three assert that they require the information to support their submissions to the imminent review in accordance with the Fast Track Settlement Proposal (FTSP) agreed between TELECOM and AUSTEL, and endorsed by the then relevant Minister.

I understand that the FTSP provides a basis for a Proposed Arbitration Procedure that may be applied as a dispute resolution process additional to the Telecommunications Industry Ombudsman scheme. I also understand that TELECOM acknowledges that the COT Cases proposal has assisted TELECOM to clarify its views about dispute resolution processes suitable for small business in the future.

Clearly it is important that the FTSP be given every opportunity to achieve its objectives. As clause 2(e) stipulates that the review will be primarily based on documents and written submissions and that each party will have access to the other party's submissions and have the opportunity to respond, TELECOM should facilitate access by the parties to relevant information. Furthermore, it is important that TELECOM be seen to be co-operating as far as is reasonable.



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In the circumstances, the giving of access to information required by the applicants to present their cases to the assessor appointed under the FTSP is in the general public interest, in the context of s 29(5) and s30A(1)(b)(iii) of the FOI Act. Accordingly, it is my view that TELECOM should waive payment of the application fees in respect of the FOI applications. Also, TELECOM should 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.

I should also draw your attention to section 14 of the FOI Act which states:
Nothing in this Act is intended to prevent or discourage Ministers and agencies from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so or are required by law to do so.

In view of the importance of the FTSP, I think that TELECOM should release to the applicants all of the information required by them in connection with presentation of their cases to the assessor, outside the provisions of the FOI Act. TELECOM could invite the applicants to make an application under the FOI Act if they require further information which TELECOM is not prepared to release without considering an application under the FOI Act. Should you decide to withhold some documents, it would be helpful to the applicants if you would describe them so that they may make an informed judgement as to whether to pursue access through the FOI Act.

I should be grateful for your early comments on my views.

Should your officers wish to discuss any of the foregoing they could contact John Wynack on 06 2760153.

Yours sincerely

PS

Philippa Smith
Commonwealth Ombudsman.



21 December 1993

Commercial & Consumer

Level 5
242 Exhibition Street,
MELBOURNE VIC 3000
Australia

A00356

Telephone (03) 634 6671
Facsimile (03) 634 3876

Mr W. Smith
Telecommunications Industry Ombudsman
Ground Floor, 321 Exhibition Street
MELBOURNE, Vic. 3000

Dear Mr Smith,

RE: FAST TRACK SETTLEMENT PROCEDURE

Thank you for your letter of 16 December 1993 advising of your preliminary view about arrangements for the above process.

Telecom's response to these arrangements, using the same headings as your letter, is as follows:

1. **ASSESSOR**

Generally agreed with the following additional comment.

Because the procedure is a "flexible, quasi-judicial process" and could lead to significant precedents for the new, similar future dispute resolution process based on arbitration, Telecom's view is that the priority requirement is for legal and financial experience in common law assessment of commercial claims for losses.

Telecom is aware of a small number of people who do not have a legal background, but would be suitable - for example, Mr Fergus Ryan of Arthur Andersen. However, there are few such people, and care should be taken if a non legal person is being considered.

2. **RESOURCE UNIT**

Agreed with two additional comments:

- (a) "Independence. No conflicts are permissible."

Agreed.

You may receive arguments from others that because Telecom uses (Price Waterhouse, Arthur Andersen, KPMG, Coopers & Lybrand, etc) from time to time, and indeed may be using them now, they are not independent because of possible conflict.

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Telecom does not accept this argument and nor, in our view, would most reasonable businesses. What would be reasonable is that if the firm providing the Resources Unit is also doing work for Telecom, that firm provides the TIO with arrangements it proposes to ensure independence with no conflict.

- (b) Capacity in small business and communications issues is vital.

Agreed.

|| It is suggested a high level of financial and accounting expertise is needed as well as project management.

3. STRUCTURE

Agreed, with two additional comments:

- (a) It is understood that the TIO, in addition to appointing the assessor and administering the process, will:

- || ? ||
- make any necessary directions on the conduct of the process
 - approve and issue the final report and recommendations.

- (b) It is assumed that, while the Legal Advisor reports to the TIO, the Legal Advisor would also be available to advise and assist the Assessor.

4. FUNDING ARRANGEMENTS

Agreed.

Early advice, when available, would be appreciated of the budgetary cost estimates for the process - Assessor, Legal Advisor and the Resource Unit.

5. TIMING

The indicative timetable is agreed.

Your intention to push for an earlier resolution where possible is supported.

In view of the nature of the complaints and the previous history, compliance to the final timetable should be required of the parties. A particular issue that Telecom would like to discuss with you is the time allowed for Telecom to respond to the four "Statements of Claim". Apart from volume, it would be expected that a significant part of these statements may be new to Telecom.

It is noted that outstanding issues on the assessor's procedure are scheduled to be finalised by 30 January 1994. Telecom will be making some suggestions before

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25 December 1993 for your consideration about items not covered by the "Fast Track" Agreement.

Please phone me if you wish to discuss any of the above matters further.

Yours sincerely,

Ian Campbell
MANAGING DIRECTOR
CUSTOMER PROJECTS

c.c.: S. Black
P. Rumble
D. Pinel

A00353

MEDIA Release



Telecommunications
Industry
Ombudsman

RELEASE: IMMEDIATE

DATE: 17TH JANUARY, 1994

"Settlement Resolution Procedure For Claims Against Telecom"

Under a proposal for Fast Track Settlement of the claims of four customers against Telecom (COT cases) developed in consultation with AUSTEL it was determined that the Telecommunications Industry Ombudsman would appoint an Assessor to resolve the claims.

I have appointed Dr. Gordon Hughes as Assessor. He is an immediate past President of The Law Institute of Victoria and currently Managing Partner of the Melbourne office of national law firm Hunt & Hunt. Dr. Hughes is a leading expert in information technology law and is on the Executive of the Law Council of Australia.

In addition I have appointed Ferrier Hodgson, a major Australian Chartered Accounting practice and DMR Group Australia, an international consulting group with specialist expertise in information technology and telecommunications to act as an expert resource unit to the Assessor.

In addition Mr. Peter Bartlett a senior Partner with Minter Ellison Morris Fletcher a national legal firm, and currently Chair of the Law Council's Business Law Committee on Telecommunications and Media has accepted the position as special counsel to the Telecommunications Industry Ombudsman for the purposes of the "Fast Track" Settlement process.

The process will commence immediately.

For further information: Mr. Warwick Smith
Telecommunications Industry Ombudsman
Phone: (03) 277 8777

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(4) 3/1



Telecommunications
Industry
Ombudsman

January 24, 1994

Warwick L Smith LLB
Ombudsman

Ms. Fay Holthuisen ^{3/2}
Assistant Secretary
Regulatory Policy Branch
Telecommunications Policy Division
Department of Communications
P.O. Box 2154
CANBERRA ACT 2600

Tom
Will call you
contact.
at 3/2

By Facsimile: (06) 274 6893


Dear Faye,

I understand you spoke with Sue Harlow about the COT case matters and just to confirm, please feel free to call again if you want a bit more indepth detail and background.

My role is as administrator under the "Fast Track Settlement Proposal", a copy of which is enclosed. This was brokered by AUSTEL with the COT group and Telecom. My appointments were announced in a press release dated the 17th January, 1994, also enclosed.

As you know, Michael Lee visits today and I will informally advise him about this and other matters.

Yours sincerely,


Warwick L. Smith
Ombudsman

Enc. 2

13-6

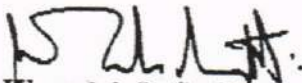
"... providing independent, just, informal, speedy resolution of complaints."

I point out that my office is not, subject to public service regulation legislative arrangements such as Freedom of Information, Commonwealth Ombudsman or Auditor-General. I have indicated to all that I am happy for my office to contribute positively to the process and to contribute where necessary to the work of all other agencies in the most positive way possible.

The process has every chance of success if there is a commitment to it from all parties. A positive resolution of long outstanding claims would be a benefit to all. I urge you all to continue the commitment to the process so that there is every opportunity for it to deliver a result. The alternative of course is for this process to be abandoned with other alternatives such as court proceedings which will entail greater expense and time than what is currently available.

It is regretted that during the early weeks of January that the intense activity of phone calling, faxing etc. has led to some difficulties. I hope that these can be now put in proper context and that it be recognised through that process progress has been made and that is what is important above everything else. The more formal approach to the dealings with my office is to the mutual benefit of the continued viability of the "Fast Track" proposal.

Yours faithfully,


Warwick L. Smith
Ombudsman

G.
The exact same letter went to Telecom.



AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

92/596(9)

7 February 1994

Mrs A. Garms, OAM
65 King Arthur Terrace
TENNYSON QLD 4105

Fax: (07) 892 3739

Dear Mrs Garms

FAST TRACK SETTLEMENT

The terms of the procedure to be followed by Dr Gordon Hughes in resolving your claim (and the claims of the other three *COT Cases* subject to the *Fast Track Settlement Proposal*) are for you and the other three *COT Cases*, on the one hand, and Dr Hughes, on the other, to agree having regard to Telecom's position. For AUSTEL to become involved in that process would be to usurp the role of Dr Hughes. As stated in his letter of 3 February 1994, Dr Hughes is prepared to convene a meeting to resolve any outstanding issues regarding his procedure. Subject to that qualification, I can, however, provide you with my understanding of the *Fast Track Settlement Proposal* by confirming the advice conveyed to you by John MacMahon, AUSTEL's General Manager, Consumer Affairs, on Friday 4 February 1994 to the effect that -


- The thrust of the *Fast Track Settlement Proposal* was review and assessment. This may be seen by contrasting the words in the *Fast Track Settlement Proposal* with their emphasis on "a review" and on "an assessor" with the words in the *Proposed Arbitration Procedure* which was attached to the *Fast Track Settlement Proposal*.
- While clause 2(f) of the *Fast Track Settlement Proposal* dealing with the causal link was based on clause 8(j)(iii) of the *Proposed Arbitration Procedure*, it quite deliberately omitted the words "... giving due regard to the normal rules of evidence relating to causation ..." which appear in clause 8(j)(iii). While clause 10.2.2 of the "Fast Track" *Arbitration Procedure* which accompanied your fax of 4 February to John MacMahon appears to be consistent with clause 2(f) of the *Fast Track Settlement Proposal*, the words "... accepted legal principles relating to causation and assessment of loss" in clause 10.2.3 appear to be at odds with the thrust of clause 2(f).

5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 828 7300 FACSIMILE: (03) 820 3021

13-H

- The *Fast Track Settlement Proposal* was silent on the issue of AUSTEL determining a maximum amount recoverable in tort against Telecom. It was certainly not my intention that any amount so determined by AUSTEL should apply to your claim against Telecom.
- While the *Fast Track Settlement Proposal* was also silent on the issue of "set offs", I did have in mind that amounts previously paid by Telecom to you would be "set off" against the amount, if any, determined in your favour. The issue of the "set off" of "... services carried out..." in terms of clause 10.1.2 of the "*Fast Track Arbitration Procedure*" is one you should clarify with Dr Hughes.

Yours sincerely



Robyn C Davey
Chairman

Fax from : 61 3 6323241

JAN 11 '94 08:53AM CUSTOMER AFFAIRS 632 3241

A4->A4 11/01/94

09:32 Pg: 2

9:50 BRISBANE TIME

11/01/94

08:57

Pg: 2

P.2/2

Telecom
AUSTRALIA

Commercial & Consumer
Customer Affairs

Locked Bag 4980
Melbourne Vic 3100

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

11 January, 1994

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

Dear Warwick,

I refer to your suggestion re. Mr Pengilly as an alternative assessor. Telecom's position is still as per my original letter to you of 24 December 1993. Telecom's view is that your nominee, Mr Rogers QC, is a suitable person who will provide an independent and impartial view. In respect of Mr Pengilly I do not have a detailed CV, but my enquiries have revealed that his primary expertise is Trade Practices Law and this background is not of direct relevance to this arbitration. An assessor with a greater level of direct commercial expertise and judicial background such as Mr Rogers QC is seen as necessary.

I have received your facsimile of 11 January 1994 and the attached letter from Mrs Garms. Mr Rumble's contact with Mrs Garms was in direct response to the voice monitoring issue and was also intended to deal with the supply of information under her FOI request. At no stage did Paul Rumble raise the issue of alternative assessors. Please be assured that Telecom will only consider assessors nominated by yourself and has no intention of, entering into discussions with the other parties to the arbitration in respect of potential assessors.

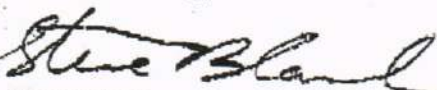
I have asked the Corporate Solicitor to comment on Mrs Garms' statement that Telecom had previously accepted the appointment of Mr Fox as suitable to themselves. Apparently, the name of Mr Fox was included on a list of names which was discussed with Mrs Garms some time ago. My understanding is that this matter never progressed and does not appear relevant to the current deliberations.

My personal view is that the appropriate way forward is to appoint one assessor to ensure the consistent application of legal principles in these cases. In addition, the assessor needs to be a person of some eminence is legal and commercial negotiations as the outcome of these cases is likely to establish a precedent for future complaint handling.

However, it does appear to me that the claimants are losing sight of an important factor and that is the fact that the TIO is the person with the responsibility for arbitrating on this matter, and that the assessor that is now under discussion is in fact making a recommendation to the TIO. Under these circumstances it appears to me that far too much weight is being placed on the appointment of the assessor. The primary requirement is that this person is definitively impartial and has the necessary professional standing and legal and commercial qualifications.

Please contact me directly (6327700) if I can be of any further assistance in obtaining a speedy resolution of this matter.

Yours sincerely,



Steve Black
GROUP GENERAL MANAGER - CUSTOMER AFFAIRS

13-1

While the *Fast Track Settlement Proposal* was also silent on the issue of "set offs", I did have in mind that amounts previously paid by Telecom to any of the *COT Cases* would be "set off" against the amount, if any, determined in their favour. The issue of the "set off" of "... services carried out ..." in terms of clause 10.1.2 of the *"Fast Track" Arbitration Procedure* is one which perhaps should be clarified with Dr Hughes.

Yours sincerely



Robin C Davey
Chairman

A10011



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Cape Bridgewater

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Host - Alan Smith

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27th January 1994

Mr. Warrick Smith,
Telecommunications,
Industry Ombudsman

Mr. Peter Bartlett,
Special Counsel to
Mr. Warrick Smith

Dr. Gordon Hughes,
Assessor,
Fast Track Proposal

Mr. John Rundle,
Ferrier Hodgson,
Accountants

This summary has been completed in two separate stages. The first extract on May 20th 1993, page 18, was given to both Senators, Mr. Richard Alston, Shadow Minister, Communications, and Mr. Ron Boswell, National Party in the Senate in July 1993.

The additional segment was completed at the end of October 1993. These two summaries were from information kept by me on known communication faults. There was at a time prior to this that I thought the only justice to be reached was a Senate Enquiry followed by a book of facts of the faults monitored here at Cape Bridgewater.

I present these summaries for your viewing. This should give an insight into some of the difficulties experienced during my years when trying to run a telephone dependant business.

I have also mentioned this on occasions in this summary. These are only registered faults with evidence. Verbal faults or hearsay are only mentioned in brief. I have had many of these over the past years. One can summarize the devastation from the now mentioned typical verbal complaint, Phillis McDonough & Associates Pty. Ltd., Insurance Assessors & Loss Adjusters.

On ringing this company, based in Mount Gambier, South Australia, when we, C.O.T. agreed on the fast track proposal I rang to ask if I could gain some information on putting together my assessment of losses re Telecom. After talking for only two minutes Mr. McDonough asked had the Cape Bridgewater Holiday Camp storm damage some three years ago. It had. Mr. McDonough's company was appointed loss adjusters by my insurance company, NZ Insurance. He quoted from memory. At the time of trying to make an appointment to assess the damage he and his partner could not ring into the Camp. It appeared our phones did not work. The company ended up by sending a letter of intent to present themselves at a date. This letter I remember. Although this complaint is verbal it is recent, therefore I have included the name and telephone number as reference (087) 25 5166.

13-K

Likewise, here is another example - Hamilton High School. I have a written letter confirming the communication difficulties experienced by Mr. Tony Speed, Camp Co-ordinator of that school. He has been aware of the telecommunication faults here at the camp for the past four years.

This school can be used as an example scenario of typical revenue loss.

Hamilton High School amalgamated with Hamilton Secondary School late last year. Mr. Tony Speed is Camp Co-ordinator for both schools. For the past four years Hamilton High School has stayed for a two-night camp here at Cape Bridgewater. Those past four years have yielded revenue of \$15,000 with an average student number per year of approximately 70 - 80.

On 16th February to 18th February this year I will have an average student attendance of 160 for the two nights. This camp is worth approximately \$8,700.

We now look at a very painful situation.

Had Mr. Tony Speed not known of my communication problems three years ago and elected to go elsewhere just the revenue lost from this one customer would be \$23,700 (including this and past three years camps). This is a lot of money.

When you look at the 48 letters I have received from other customers who took the time to write of their experiences in trying to contact Cape Bridgewater, we then realize that there must have been many others who did not bother to persist in trying to make a connection to this business.

One had only to read the letter from the Camping Association of Victoria to understand the name I now have and the customers I have lost.

Whatever assessment is reached of the losses incurred due to these five years of an inadequate phone service, five years where Telecom have blatantly lied about my service, the fact that I had to re-borrow on my mortgage to service it during this time mattered not. This loss will never be measured. My health and wellbeing, like the others of C.O.T., have been stretched to the limit. And, still we are fighting Telecom for our rights under the F.O.I. Act to gain evidence of this injustice.

HEAR WE GO AGAIN! TUESDAY, 25TH JANUARY 1994!

On trying to service my mortgage via St. George Bank, Sydney, last week I applied for a \$5,000 loan. That afternoon, at 12.05 I heard one ring, then nothing. At 12.20 I heard one ring then nothing. Half a minute later I heard one ring, then nothing. Half a minute later my phone rang normally. I answered to find that a lady who identifies herself as Michelle from the Loans Department, Sydney St. George Bank. My loan was declined due to my last six years of bad credit rating. I take this on the chin. However, I then asked this fine Australian lady did she experience communication problems before she made contact with the Camp. (SHE DID!) While dialling my 008 number, 008 816 522, she heard only a dead line twice. The other ring at 12.05 must have been someone else trying to ring.

However, back to St. George, Michelle told me she ended up by ringing my other line 055 267267 to get through. I have spoken to her office in Sydney and contracted a Sandra Harris, who is reluctant to get involved, even though Michelle has agreed this happened. I have spoken to Senator Alston's office, Shadow Minister for Communications, about this episode, Austel, and a letter has been written to Mr. Warwick Smith, Telecommunications Industry Ombudsman. I am led to believe he will chase this up and apply for a letter from this staff member of St. George Bank.

I guess now that I have once again put pen to paper. We now go to:

JANUARY 13TH, 1994

Mrs. Tina Velthuyzen tried to ring this business on the morning of this day at 11.38. She has sent along with a letter a Statutory Declaration outlining her difficulties this day in making contact with my Camp.

She rang my 008 number, 008 816 522 seven times. Each time this line was busy - engaged. The eighth time she heard a voice announcement that the number she had dialled is not connected. She reported this to Austel and Telecom.

However, the saga is not yet over. After receiving my 008 account I found that I was charged for three calls which did not register into the Camp.

Telecom's computer print-out NOTE MINE! MRS. VELTHUYZEN is adamant that she spoke to me once only in the afternoon of this day, yet there are three charges.

I might also go back to Christmas and provide more with evidence of a Mr. Jim Humphreys of Mount Gambier. When trying to book into the camp for a Singles Group weekend for three days, he tried to make contact only to get a dead line after many attempts. On the third day he heard a voice announce that we were not connected. However, on the fourth day he got through. It was lucky I did not lose his patronage. He knew of this telecommunication problem as others he had spoken to in Mount Gambier, South Australia, knew of our difficulties. I have a letter from him about this episode.

Now that an assessor has been appointed I was not going to record these faults as I do believe my phones are 200% better than they were four months ago. But again, after losing five faxes a week ago in sending to my accountant, Mr. Selwyn Cohn, my fax registered them as being received. However, on sending the first two, my accountant received the first batch. Then 30 seconds later I sent the other five faxes. Where they ended up is anyone's guess!!! However, my print out records this five as having been transmitted to my accountant, but he did not receive them!.

I spoke with our spokesperson, Graham Schorer, three days ago. My phones don't ring even now, although they are probably 200% better than four months ago. But I have the same nasty feeling as Graham - that the damage is now done and it will take a long haul back to get our should-have-been customers ringing our numbers. The other two C.O.T. cases have already lost their businesses: Ann Gaums and Maureen Gillen. The price for running up against a Government utility has taken its toll!

A documentary has already been started, at least the letters have gone out. Mr. Alston, Shadow Minister for Communications, has agreed to be interviewed, likewise Mr. Campbell, Telecom Group Manager, will, I hope, be pro-active. This 50-minute documentary will show how eight business persons and four C.O.T. members have been treated over many years by Telecom, the Government, Bill Canada South and others. Austel, the Government of the day, has to sit up and take notice.

The documentary is not for vengeance only a case of record.

Allan Smith



AUSTEL
AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

95/0596-02

38

92/0596(9)

3 March 1994

Mr S Black
Group General Manager
Customer Affairs
TELECOM.

Facsimile No: (03) 632 3241

Dear Mr Black

COT Cases - Freedom of Information

I refer to our conversation yesterday about the provision of information. I would confirm the view expressed that while AUSTEL has no formal role in enforcing the Freedom of Information Act it is concerned that if the Fast Track Settlement Proposal is to be effective then the COT members must be given access to the documentation in Telecom's possession necessary for them to prepare their cases.

Yours sincerely

John MacMahon
General Manager
Consumer Affairs

MAR 28 '94 05:01PM

cc: Paul Rumble - 4844
 Jim Campbell - 43876
 Jim Holmes - 23215
 Steve Black - 23241
 Dave Kravetsky - 42358
 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

28 March 1994

C/94/195.C/94/225

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

CEO
 Melb. Office

28/3/94 PA

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.

13-L
 003716

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

D0371J

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.

D03720

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

Imposition of conditions on release of documents.

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

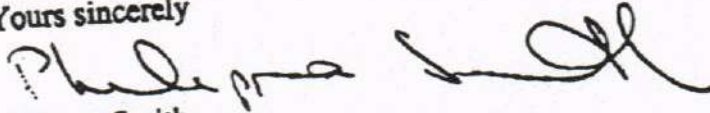
There is no provision in the FOI Act which would permit Telecom to impose such conditions on applicants prior to granting access to documents - access under the FOI Act is public access. Notwithstanding that Telecom's undertaking to me may have been to provide access outside the FOI Act, it was made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

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

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

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

Yours sincerely


Philippa Smith
Commonwealth Ombudsman.

D03721



AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

14 April 1994

Mrs Ann Gams
65 King Arthur Terrace
TENNYSON QLD 4105

FAX: 07 892 3739

Dear Mrs. Gams

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

Yours sincerely

John MacMahon
General Manager
Consumer Affairs

13-111

FAST TRACK SETTLEMENT PROPOSAL	TRANSMISSION
[Illegible]	FILE NO. (03) 277 0197
[Illegible]	FILE NO. (01) 217 1001
[Illegible]	DATE 15 APR 1994
REF: Fast Track Settlement Proposal	[Illegible]
NO OF PAGES	[Illegible]

Dear Mr Smith

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

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

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

Thanking you,

Yours sincerely

Graham Selinger

Alan Garms OAM

Alan Smith