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OUR REFERENCE

PLB 928549 FJS

YOUR REFERENCE

DIRECT LINE

(03) 617 4651

24 January 1994

Dr G Hughes
 Hunt & Hunt
 Solicitors
 21st floor
 459 Collins Street
 MELBOURNE 3000

BY COURIER

Dear Gordon

COT matters

Following our meeting on Thursday last, I now enclose revised Procedure for your consideration.

I make the following comments upon it:-

1. The underlying aim of the Procedure is for it to be workable and fair to both parties as well as being generally in accordance with the "Fast Track" agreements previously entered into.
2. We discussed whether or not the Procedure should come within the ambit of the Victorian Commercial Arbitration Act 1984. We decided that it should. Relevant considerations were that under the Commercial Arbitration Act:

- you are entitled to administer oaths and affirmations (S19 (2));
- subpoenas can be issued to compel the production of documents (S17);
- if a party or witness fails to comply with your directions, application can be made to the Supreme Court (S18).

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SYDNEY
 02 210 4444

BRISBANE
 07 533 9666

CANBERRA
 06 241 7547

GOLD COAST
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HONG KONG
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Further considerations are:

- . some of the procedures adopted are somewhat novel in the arbitration context e.g. the use to be made of the Resource Unit. However, arbitration procedures are meant to be flexible and, provided the parties agree, as they will have by signing the Request for Arbitration, this does not concern me;
- . under Section 38 of the Commercial Arbitration Act, with the leave of the Court, there is the right to appeal on a question of law arising out of an award. This right of appeal can be excluded under Section 40 by having the parties enter into an "exclusion agreement". Such an exclusion agreement can only be entered into after the arbitration proceedings have "commenced" (Section 40 (6)). Pursuant to Section 3 (5) the arbitration is deemed to have "commenced" once the Request for Arbitration has been signed by both parties. The possibility of having an exclusion agreement could be discussed at your initial meeting with the parties;
- . it is provided in Clause 6 that legal representation is to be at your discretion. This is in line with Clause 2 (e) of the "Fast Track" agreement. Section 20 however states the circumstances in which an arbitrator is required to grant legal representation. This regime cannot be amended by the agreement of the parties. In practice, the issue of legal representation will only arise if you require oral submissions and even then there is to be no cross-examination. I would not anticipate the issue of legal representation being of great moment.

On balance, it was decided that it would be preferable to have the Procedure operating under the Commercial Arbitration Act. ✓

3. You will note that I have amended the Procedure so that it is clear that you are conducting four separate arbitrations and will hand down four separate awards although you may combine some aspects of the four hearings. I have also provided that all four claimants must agree to the Procedure before there is a binding arbitration agreement with respect to any of them. I would be interested in your thoughts upon this.
4. As you would be aware, Section 14 of the Commercial Arbitration Act allows you, subject to the Act and to the Procedure, to conduct the proceedings in such manner as you see fit. This gives you a high degree of flexibility. However otherwise, the Procedure must be conducted in accordance with the rules of natural justice. ✓
5. I will be interested in your thoughts on Clause 8 which relates to the Resource Unit. I thought it best to define the Resource Unit in fairly general terms.
6. In paragraph 1 on page 8, you will note that I have provided for any loss suffered by Telecom as a result of breach of the confidentiality provisions to be determined by arbitration in
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accordance with Section 22 (2) i.e. not according to law but by reference to considerations of general justice and fairness. Following our discussion, I thought this might be a workable manner of dealing with this difficult situation.

7. Once you are happy with the suggested Procedure, I suggest you convene a preliminary conference with the parties to discuss the Procedure and also to discuss the possibility of exclusion agreements. At this conference you could also inform the parties that you will be informing AUSTEL in accordance with Clause 2 (h) of the "Fast Track" Agreement.

I look forward to discussing the suggested Procedure with you after you have considered it.

Yours sincerely,



F. J. SHELTON

enclosure

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TELSTRA CORPORATION LIMITED
"FAST-TRACK" PROPOSED RULES OF ARBITRATION

Scope of the Procedure

1. This Procedure ("the Procedure") provides arbitration as a final and binding method of resolving the disputes listed in Schedule A ("the Disputes") between the customers listed in Schedule B (jointly and severally "the Claimants") and Telstra Corporation Limited ("Telecom Australia").
2. The Claimants and Telecom Australia will be bound by the Arbitrator's decision, and the Claimants, by accepting the application of the Procedure to the Disputes will be deemed to have waived their respective rights to commence proceedings in any court or other forum in respect of the facts giving rise to the Disputes.
3. Arbitration under the Procedure will be administered independently by the Telecommunications Industry Ombudsman ("the Administrator") and conducted by X ("the Arbitrator").
4. A request for arbitration under the Procedure in respect of a Dispute does not relieve any Claimant from any obligation that Claimant may have to pay Telecom Australia any other amounts which are due and are not part of the Dispute the subject of arbitration.

Commencement of Arbitration

5. (a) Each Claimant will complete and sign a prescribed request for arbitration form as set out in Schedule C annexed in respect of their Disputes. The form must be completed and returned to the Administrator by the Claimant within X days of receipt of the form by the Claimant.
- (b) On receipt of the duly completed request for arbitration form, the Administrator will immediately forward the application form to Telecom Australia for signature and return within X days. Upon return of the signed request for arbitration form to the Administrator Telecom Australia will become a party to the arbitration.
6. Arbitration commences for the purpose of this Procedure when the Administrator has received and accepted the request for arbitration form signed by the Claimant and Telecom Australia. Upon receipt and acceptance of the signed request for arbitration form the Administrator will dispatch written notice to the Claimant, Telecom Australia and the Arbitrator of that acceptance.

Arbitration Proceedings

7. Unless the Arbitrator otherwise specifies, the arbitration will be on documents and written submissions only. The Arbitrator may form the opinion that the arbitration requires one or more oral hearings in which event the Arbitrator will advise the parties of a date, time and venue for those hearings. Any oral hearing will not be open to the public nor any other non-parties to the arbitration. In an oral hearing no cross examination of any witnesses is to be allowed.

All written evidence shall be in the form of a statutory declaration. All oral submissions shall be on oath or affirmation. Either party may request a transcript of any oral evidence or submission given at the hearing. The cost of the transcript shall be borne by the party requesting the same.

Subject to any directions of the Arbitrator the Procedure will be as follows:

- (a) The Claimant is required, within X weeks of receipt of notification of acceptance of the request for Arbitration by the Administrator, to send to the Administrator, in duplicate, its Statement of Claim and any written evidence and submissions ("the Claim Documents") in support of that claim. The Statement of Claim shall, with sufficient particularity, state the following:
 - (i) the identity of the Claimant or Claimants;

- (ii) the faults in the telecommunications service which are alleged to have occurred including the dates and periods over which such faults allegedly occurred;
 - (iii) the loss allegedly suffered and particulars of how that loss is calculated.
- (b) A copy of the Claim Documents will immediately be sent by the Administrator to Telecom Australia which is required, within X weeks of receipt of the Claim Documents, to send to the Administrator, in duplicate, Telecom Australia's Statement of Defence, including any counterclaim or set off and any written evidence and submissions ("the Defence Documents") in support of that defence, counterclaim or set off. The Statement of Defence shall, with sufficient particularity state the following:
- (i) Telecom Australia's answers to the allegations referred to in the Statement Claim; and
 - (ii) any affirmative defence which Telecom Australia will seek to rely upon.
- (c) A copy of the Defence Documents will immediately be sent by the Administrator to the Claimant. The Claimant may send to the Administrator within X weeks of receipt of the Defence Documents a defence to any counterclaim made by Telecom Australia and/or a reply to the Statement of Defence together with any supporting documents. Such reply will be restricted to points arising in the Statement of Defence, and may not introduce any new matters, points, or claims.
- (d) At any time after the commencement of the Procedure, either party may request the Arbitrator to require the other party to produce further documentary information and/or particulars of claim or defence. The request for further documentary information and/or particulars by a party must be made in writing to the Arbitrator and must be supported by written reasons for the request which shall state the relevance of that further documentary information and/or particulars to the arbitration. The Arbitrator will consider the request and if the Arbitrator reasonably believes that the further documentary information and/or particulars requested is or are relevant to the arbitration, the Arbitrator will require the other party, by notice in writing, to provide the further documentary information and/or particulars.
- (e) The Arbitrator may, through the Administrator, require by notice in writing, either the Claimant or Telecom Australia to provide any further documentary

information and/or particulars which the Arbitrator reasonably considers would assist the Arbitrator in the Arbitrator's decision.

- (f) If the documentary information and/or particulars are supplied within such time as the Arbitrator prescribes under Clause 9(d) and 9(a), then the documentary information and/or particulars shall be copied to the other party to the arbitration by the Administrator on the same basis as the Defence Documents are to be sent to the Claimant under clause 9(c), and the party receiving the copies of the documentary information and/or particulars shall be afforded an opportunity to make submissions in relation to them within such times as the Administrator reasonably prescribes.
- (g) If either party does not within X weeks of receiving a notice from the Arbitrator under clause 9(d) and (e), comply with the notice, the Arbitrator shall stay the arbitration until either the notice is complied with or the Arbitrator determines that the party receiving the notice has given a reasonable explanation for non-compliance.
- (h) If the Claimant does not furnish the Claim Documents within the time allowed and does not remedy this default within two weeks after dispatch to the Claimant by the Administrator of written notice of that default, the Claimant will be treated as having abandoned the Claimant's claim under the Procedure, and the arbitration will not proceed.
- (i) If Telecom Australia does not furnish the Defence Documents within the time allowed and does not remedy this default within X weeks after dispatch to Telecom Australia by the Administrator of written notice of that default, then subject to any directions the Arbitrator may give, the dispute will be decided by the Arbitrator by reference to the Claim Documents only.
- (j) Either party, may prior to the expiry of any of the deadlines specified in these Rules, request an extension of time to meet a deadline. No request for an extension made after the expiration of a deadline will be allowed. The other party will be notified of such request and if there is any objection then the Arbitrator will be asked to give directions and the Arbitrator may make such direction as to the grant of further time as the Arbitrator deems appropriate in the circumstances.
- (k) The Arbitrator will make an award having regard to the questions of Telecom Australia's liability and questions of loss as set out in this clause 9(k).

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(aa) In relation to Telecom's liability, if any, to compensate for any demonstrated loss on the part of the Claimant the Arbitrator will:

(i) give effect to any contractual or statutory limitations on Telecom Australia's legal liability, and any limitations on Telecom Australia's liability to the Customer as determined by Austel pursuant to section 121 of the Telecommunications Act 1991 which limitations may apply in respect of some period or periods of time covered by the Claimant's claims and for that reason in making the findings the Arbitrator will:

(A) determine for the time covered by the claim, the period or periods for which Telecom Australia is not strictly liable or has no obligation to pay and the period or periods for which Telecom Australia is liable and has an obligation to pay;

(B) determine in respect of each such period the amount of loss, if any, incurred by the Claimant;

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

(ii) set off against any amounts found by the Arbitrator to be otherwise owing by Telecom Australia to the Claimants any amounts paid to, rebates granted to, or services carried out for the Claimant by Telecom Australia to date.

(bb) In relation to any assessment as to the Claimant's loss, the Arbitrator:

(i) will take into account the Claim and Defence Documents, sworn written evidence and submissions made by the parties and, if applicable, any sworn or affirmed oral evidence presented to the Arbitrator by the parties to the arbitration;

(ii) will make a finding on reasonable grounds as to the causal link between each of the Claimant's claims and the alleged faults or problems with the relevant telephone service and, as appropriate, may make reasonable inferences based upon such evidence as is

presented by the Claimants and by Telecom Australia (ie. unless the Arbitrator is able to conclude on reasonable grounds that Telecom caused the loss claimed, there will exist no basis for a claim against Telecom.)

- (iii) apply normal Australian accounting standards as applicable at the time of the claimed loss and the rules of evidence relating to causation and assessment of loss.
- (l) The award made by the Arbitrator shall be compensatory only and not of a punitive nature.
- (m) The Arbitrator's reasons will be set out in full in writing and referred to the Arbitrator's award.
- (n) The parties shall not comment publicly on the conduct of the arbitration proceedings at any time after the commencement of the arbitration. The Arbitrator shall suspend, dismiss or otherwise refuse to deal with the arbitration proceedings in the event that the Claimant contravenes this rule.
- (o) Subject to Clause 9(p), confidential information relevant to the arbitration including the Claim and Defence Documents ("Confidential Information") shall not be disclosed by any party to the arbitration. The Arbitrator shall suspend, dismiss or otherwise refuse to deal with the arbitration proceedings in the event that any party contravenes this rule.
- (p) The following is not Confidential Information for the purposes of clause 9(o):
- (i) information which at the time of disclosure to a party to arbitration is in the public domain.
 - (ii) information which, after disclosure to a party to the arbitration, becomes part of the public domain otherwise than as a result of the wrongful act of the party to whom the information was disclosed.
 - (iii) information which was received from a third party, provided that it was not acquired directly or indirectly by that third party from a party to the arbitration.
- (q) The Administrator will publish the Arbitrator's award by sending copies of the award to each of the parties to the arbitration. The Arbitrator's award shall be kept strictly confidential by the Administrator, the Arbitrator and all of the parties to the arbitration. Telecom Australia has submitted to the arbitration in consideration

of the conduct of the Procedure, the Confidential Information and the Arbitrator's award being kept strictly confidential by the Claimant. Any disclosure of the conduct of the Procedure, the Confidential Information or the Arbitrator's award by the Claimant will render any obligation of Telecom Australia to pay any sum to the Claimant null and void. Any payment already made by Telecom Australia to the Claimants pursuant to the Arbitrator's award under these rules shall be wholly and immediately refundable by the Claimant to Telecom Australia as liquidated damages in the event of a breach of the obligation of confidence owed by the Claimant to Telecom Australia pursuant to the rules embodied in the Procedure.

- (r) Telecom commits in advance to implementing any recommendation made by the arbitrator pursuant to clause 9(k)(aa)(D)(C).
- (s) Subject to clause 9(q) and unless directed otherwise in the Arbitrator's award or the parties otherwise agree, within three weeks of dispatch to the parties of the Arbitrator's award, payment shall be made of any monies directed by the award to be paid. Such payment shall be made by the party liable direct to the party entitled, and not through the Administrator. If the Arbitrator determines in respect of a Claimant's claim an amount less than that paid under an earlier settlement, Telecom agrees not to recover the difference.
- (t) If either party has sent original or copy documents in support of its case to the Administrator that party may within six weeks of publication of the award request the return of those documents. Subject to that, case papers will be retained by the Administrator and may in due course be disposed of in accordance with the Administrator's policies from time to time.
- (u) The Arbitrator and Administrator shall conduct and progress the arbitration as quickly as justice to all the parties reasonably permits.

Costs

- 9.- The Arbitrators fees and expenses shall be paid by the Administrator and are part of the administrative costs of the Procedure.
- 10. The administrative costs of the Procedure are subject to a separate agreement between the Administrator and Telecom Australia.
- 11. Each party bears its own costs of preparing and submitting its case.

Liability of Administrator and Arbitrator

- 12. Neither the Administrator nor the Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules save that the Arbitrator (but not the Administrator) shall be liable for any conscious or deliberate wrongdoing on the Arbitrator's own part.

Schedule A

("the Disputes")

- (a) In respect of each of the Claimants other than Graham Schorer (+ other related claimants):
- (i) the liability of Telecom Australia to the Claimant in respect of alleged faults in the provision to the Claimant of telecommunication services;
 - (ii) the adequacy of the amounts paid by Telecom to the Claimant under earlier settlements in relation to alleged faults in the provision to the Claimant of telecommunication services;
 - (iii) the liability of Telecom Australia to the Claimant in respect of alleged faults in the provision to the Claimant of telecommunication services since the date of the settlement payment for the respective Claimant's earlier claims, up to the date of the Arbitrator's decision;
 - (iv) If Telecom Australia is found liable in accordance with (i) or (iii) above, the quantum of compensation payable by Telecom Australia to the Claimant for the Claimant's proven loss.
- (b) In respect of Graham Schorer (+ other related claimants):
- (i) the liability of Telecom Australia to Graham Schorer (+ other related claimants) in respect of alleged faults in the provision to Graham Schorer (+ other related claimants) of telecommunication services;
 - (ii) If Telecom Australia is found liable in accordance with (i) above, the quantum of compensation payable by Telecom Australia to Graham Schorer (+ other related claimants) for Graham Schorer's (+ other related claimants) proven loss.

Schedules

("The Claimants")

- (a) Graham Schorer (+ other claimants - companies etc.)
- (b) Ann Garms (+ other claimants - companies etc.)
- (c) Maureen Gillan (+ other claimants - companies etc.)
- (d) Alan Smith (+ other claimants - companies etc.)

ELC/031/0015.6 - 10 January 1994 (15x17)

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(This form will serve as written evidence of both Telecom and the Claimants having formally agreed to submit to arbitration under the rules)

Schedule C

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Scope of the Procedure

1. This Procedure ("the Procedure") provides arbitration pursuant to the Victorian Commercial Arbitration Act 1984, as amended, ("the Act") as a final and binding method of resolving the disputes listed in Schedule A ("the Disputes") between the customer named in Schedule B ("the Claimant") and Telstra Corporation Limited ("Telecom Australia").
2. The Claimant and Telecom Australia will be bound by the Arbitrator's decision, and the Claimant, by accepting the application of the Procedure to the Disputes, will be deemed to have waived all rights to commence proceedings in any court or other forum in respect of the facts giving rise to the Disputes or the Disputes themselves.
3. Arbitration under the Procedure will be administered independently by the Telecommunications Industry Ombudsman of 321 Exhibition Street, Melbourne ("the Administrator") and conducted by Dr Gordon Hughes C/- Hunt & Hunt, Solicitors, 21st floor, 459 Collins Street, Melbourne, 3000 ("the Arbitrator").
4. A request for arbitration under the Procedure in respect of the Disputes does not relieve the Claimant from any obligation the Claimant may have to pay Telecom Australia any other amounts which are due and are not part of the Disputes the subject of this arbitration.

Commencement of Arbitration

5. Each party shall complete and sign a Request for Arbitration form as set out in Schedule C annexed in respect of the Disputes. The form must be completed and returned to the Administrator by a party within 7 days of

receipt of the form from the Administrator. The Administrator shall notify the parties and the Arbitrator in writing when he has received completed and signed Request for Arbitration forms from both parties and from the parties to the arbitrations between each of the three Claimants referred to in Schedule D and Telecom Australia. Neither party shall be bound by this Procedure until the Administrator has despatched this written notice.

The Administrator shall forward with this written notice an exclusion agreement in the form set out in Schedule E. This agreement must be completed and returned to the Administrator by each party within 7 days of receipt.

Arbitration Proceedings

6. Unless the Arbitrator otherwise specifies, the arbitration will be on documents and written submissions only. The Arbitrator may form the opinion that he requires one or more oral hearings in which event the Arbitrator will advise the parties of a date, time and venue for those hearings. Subject to Clause 8.3, any oral hearing will not be open to the public nor any other non-parties to the arbitration apart from any of:-

- The Administrator;
- A representative or representatives of the Administrator;
- Special Counsel to the Administrator, Mr Peter Bartlett, C/- Minter Ellison Morris Fletcher, Solicitors, 40 Market Street, Melbourne ("the Special Counsel"); or
- A representative of the Special Counsel.

In an oral hearing no cross examination of any witnesses is to be allowed. Legal representation of the parties shall be at the Arbitrator's discretion.

All written evidence shall be in the form of an affidavit or statutory declaration. All oral submissions shall be on oath or affirmation. Either party or the Arbitrator may request a transcript of any oral evidence or submission given at the hearing. A copy of the transcript shall be given to the parties, the Arbitrator and the Special Counsel. The cost of the provision of the transcript shall be part of the administrative costs of the Procedure.

A copy of all documents and correspondence forwarded by the Arbitrator to a party or by a party to the Arbitrator shall be forwarded to the Special Counsel.

7. The Procedure will be as follows:-

7.1 The Claimant shall within 4 weeks of receipt of written notice from the Administrator pursuant to Clause 5 that he has received completed and signed Request for Arbitration forms send to Telecom and to the Arbitrator in duplicate, its Statement of Claim and any written evidence and submissions ("the Claim Documents") in support of that claim. The Statement of Claim shall, with sufficient particularity, state the following:

7.1.1 the identity of the Claimant;

7.1.2 the faults in the telecommunications service which are alleged to have occurred including the dates and periods over which such faults allegedly occurred;

7.1.3 the loss allegedly suffered and particulars of how that loss is calculated

together with a request for any documents the Claimant requires which the Claimant believes are in the possession custody or power of Telecom Australia.

- 7.2 Telecom Australia shall within 4 weeks of receipt by it of the Claim Documents send to the Claimant and the Arbitrator in duplicate its Statement of Defence, including any counterclaim or set off and any written evidence and submissions ("the Defence Documents") in support of that defence, counterclaim or set-off. The Statement of Defence shall, with sufficient particularity, state the following:
- 7.2.1 Telecom Australia's answers to the allegations referred to in the Statement Claim; and
- 7.2.2 any affirmative defence which Telecom Australia will seek to rely upon.
- Copies of the documents requested by the Claimant pursuant to sub-clause 7.1, or an explanation as to why those documents have not been provided, shall accompany the Defence Documents.
- 7.3 The Claimant may send to Telecom Australia and to the Arbitrator within 4 weeks of receipt of the Defence Documents, a defence to any counterclaim made by Telecom Australia and/or a reply to the Statement of Defence together with any supporting documents. Such reply will be restricted to points arising in the Statement of Defence, and may not introduce any new matters, points, or claims.
- 7.4 Either party may, upon reasonable notice in writing to the other party, apply to the Arbitrator for directions upon any matter in relation to the proceedings including the production of further documentary information, further particulars of claim, defence, counterclaim or reply or an extension of the time limits set pursuant to sub-clauses 7.1, 7.2 or 7.3.

- 7.5 The Arbitrator may by notice in writing require either party to provide any further documentary information and/or particulars which he reasonably considers would assist him.
- 7.6 If the Claimant does not furnish the Claim Documents within the time allowed pursuant to sub-clause 7.1 or any further time allowed by the Arbitrator and does not remedy this default within 2 weeks after dispatch to the Claimant by the Arbitrator of written notice of that default, the Claimant will be treated as having abandoned the Claimant's claim under the Procedure, and the arbitration will not proceed.
- 7.7 If Telecom Australia does not furnish the Defence Documents within the time allowed pursuant to sub-clause 7.2 or any further time allowed by the Arbitrator and does not remedy this default within 2 weeks after dispatch to Telecom Australia by the Arbitrator of written notice of that default, then subject to any directions the Arbitrator may give and subject to Section 17 of the Act, the dispute may be decided by the Arbitrator by reference to the Claim Documents only.
- 8.1 The Arbitrator may, as he sees fit, use as a resource unit the services of personnel employed by Ferrier Hodgson, Chartered Accountants, 459 Collins Street, Melbourne and DMR Group Australia Pty. Ltd. of 1 Southbank Boulevard, South Melbourne ("the Resource Unit").
- 8.2 The Arbitrator may require the Resource Unit to examine documents, inspect premises or systems or carry out such other enquiries or research as he directs. A report of any such activities shall be made available to the parties who shall be entitled to make a written submission upon such report on such terms as the Arbitrator thinks fit.

- 8.3 Such members of the Resource Unit as the Arbitrator requires may be present at all or part of any oral hearing.
- 8.4 Subject to sub-clause 8.2, the Arbitrator shall be at liberty to consult the Resource Unit as he sees fit and shall be under no obligation to disclose to the parties advice given in such consultations.
- 8.5 The fees and expenses of the Resource Unit shall be part of the administrative costs of the Procedure.
9. The Arbitrator may, as he thinks fit, combine parts of this Procedure with parts of the identical procedure being used in respect of claims by those whose names appear in Schedule D including the hearing of oral evidence concurrently.

The Award

10. The Arbitrator shall make his award having regard to the questions of Telecom Australia's liability and questions of loss as set out in this clause.
- 10.1 In relation to Telecom's liability, if any, to compensate for any demonstrated loss on the part of the Claimant the Arbitrator will:
- 10.1.1 give effect to any contractual or statutory limitations on Telecom Australia's legal liability, and any limitations on Telecom Australia's liability to the Customer as determined by Austel pursuant to section 121 of the Telecommunications Act 1991 which limitations may apply in respect of some period or periods of time covered by the Claimant's claims and for that reason in making the findings the Arbitrator will:

- 10.1.1.1 determine for the time covered by the claim, the period or periods for which Telecom Australia is not strictly liable or has no obligation to pay and the period or periods for which Telecom Australia is liable and has an obligation to pay;
- 10.1.1.2 determine in respect of each such period the amount of loss, if any, incurred by the Claimant;
- 10.1.2.3 recommend whether, notwithstanding that in respect of a period or periods that Telecom Australia is not strictly liable or has no obligation to pay, Telecom Australia should, having regard to all the circumstances relevant to the Claimant's claim, pay an amount in respect of such a period or periods and, if so, what amount.
- 10.1.2 set off against any amounts found by the Arbitrator to be otherwise owing by Telecom Australia to the Claimants any amounts paid to, rebates granted to, or services carried out for the Claimant by Telecom Australia to date.
- 10.2 In relation to the Claimant's loss, the Arbitrator:
- 10.2.1 will take into account the Claim and Defence Documents, written evidence and submissions made by the parties and, if applicable, any sworn or affirmed oral

evidence presented to the Arbitrator by the parties to the arbitration together with any information obtained by the Resource Unit or any advice given to him by the Resource Unit.

10.2.2

will make a finding on reasonable grounds as to the causal link between each of the Claimant's claims and the alleged faults or problems with the relevant telephone service and, as appropriate, may make reasonable inferences based upon such evidence as is presented by the parties together with any information obtained by the Resource Unit or any advice given to him by the Resource Unit.

10.2.3

apply normal Australian accounting standards as applicable at the time of the claimed loss and accepted legal principles relating to causation and assessment of loss.

11. The award made by the Arbitrator shall be compensatory only and not of a punitive nature.
12. The Arbitrator's reasons will be set out in full in writing and referred to in the Arbitrator's award.
13. Telecom commits in advance to implementing any recommendation made by the arbitrator pursuant to sub-clause 10.1.2.3.

14. Subject to clause 19 and unless directed otherwise in the Arbitrator's award or the parties otherwise agree or a Court otherwise orders, within three weeks of dispatch to the parties of the Arbitrator's award, payment shall be made of any monies directed by the award to be paid. Such payment shall be made by the party liable direct to the party entitled, and not through the Administrator. If the Arbitrator determines in respect of a Claimant's claim an amount less than that paid under an earlier settlement, Telecom agrees not to recover the difference.
15. The Arbitrator and Administrator shall conduct and progress the arbitration as quickly as justice to all the parties reasonably permits.

Confidentiality

16. Save as required by law, the parties shall not comment publicly on the conduct of the arbitration proceedings at any time after the commencement of the arbitration. The Arbitrator may take such steps as he thinks appropriate, including the dismissal of the claim or any counterclaim, in the event that either party contravenes this rule.
17. Save as required by law and subject to clause 18, confidential information relevant to the arbitration including the Claim and Defence Documents ("Confidential Information") may not be disclosed by any party to the arbitration. The Arbitrator may take such steps as he thinks appropriate, including the dismissal of the claim or any counterclaim, in the event that either party contravenes this rule.
18. The following is not Confidential Information for the purposes of clause 17:
- 18.1 information which at the time of disclosure to a party to arbitration is in the public domain.

- 18.2 information which, after disclosure to a party to the arbitration, becomes part of the public domain otherwise than as a result of the wrongful act of the party to whom the information was disclosed.
- 18.3 information which was received from a third party, provided that it was not acquired directly or indirectly by that third party from a party to the arbitration.
19. This clause is to be read subject to any requirements of law or of any Court application relating to the Procedure. Upon making his award, the Arbitrator shall immediately forward two copies of it to the Administrator and the Administrator shall thereupon send a copy to each party. The Arbitrator's award shall be kept strictly confidential by the Administrator, the Arbitrator and all of the parties to the arbitration. Telecom Australia has submitted to the arbitration in consideration of the conduct of the Procedure, the Confidential Information and the Arbitrator's award being kept strictly confidential by the Claimant. If there is any disclosure of the conduct of the Procedure, the Confidential Information or the Arbitrator's award by the Claimant any dispute as to any damages suffered by Telecom Australia as a result of such disclosure shall be determined by an Arbitrator nominated by the President of the Institute of Arbitrators Australia. Such Arbitrator may determine any question that arises for determination in the course of such arbitration proceedings by reference to considerations of general justice and fairness.

Costs

20. The Arbitrators fees and expenses shall be paid by the Administrator and are part of the administrative costs of the Procedure.

21. The administrative costs of the Procedure are subject to a separate agreement between the Administrator and Telecom Australia.
22. Subject to clause 21, each party shall bear its own costs of the arbitration.

Notices

23. Any document letter or notice may be served upon a person if delivered by hand or sent by pre-paid post to the address of that person appearing in this Agreement and, if sent by pre-paid post, shall be deemed to have been received by the person to whom it is addressed on the third day after the day of posting.

Liability of Administrator and Arbitrator

24. Neither the Administrator nor the Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules save that the Arbitrator (but not the Administrator) shall be liable for any conscious or deliberate wrongdoing on the Arbitrator's own part.

Schedule A

("the Disputes")

* For Claimants (plus other related claimants, companies, etc) other than Graham Schorer:

1. the liability of Telecom Australia to the Claimant in respect of alleged faults in the provision to the Claimant of telecommunication services;
2. the adequacy of the amounts paid by Telecom to the Claimant under earlier settlements in relation to alleged faults in the provision to the Claimant of telecommunication services;
3. the liability of Telecom Australia to the Claimant in respect of alleged faults in the provision of the Claimant of telecommunication services since the date of the settlement payment for the respective Claimant's earlier claims, up to the date of the Arbitrator's decision;
4. If Telecom Australia is found liable in accordance with (i) or (iii) above, the quantum of compensation payable by Telecom Australia to the Claimant for the Claimant's proven loss.

O R

* For Graham Schorer (plus other related claimants, companies, etc):

1. the liability of Telecom to the Claimant in respect of alleged faults in the provision of telecommunication services;

2. If Telecom Australia is found liable in accordance with 1 above, the quantum of compensation payable by Telecom Australia to the Claimant for the Claimant's proven loss.

* **DELETE AS NECESSARY**

Schedule B

("the Claimant")

Name

**(Plus other related claimants,
companies, etc)**

Address

Schedule C

Request for Arbitration

XY (name of Claimant) of and (here insert name of related claimants, companies etc and their addresses) hereby agree to the Procedure annexed for the resolution of the Disputes between them and Telstra Corporation Limited in the manner described in the Procedure.

Dated this day of 1994.

.....
.....
.....

Telstra Corporation Limited hereby agrees to the Procedure annexed for the resolution of the Disputes between it and (insert name of Claimant and related claimants, companies etc) in the manner described in the Procedure.

Dated this day of 1994.

.....

Schedule D

(Here insert names of other three claimants)

Schedule E

Exclusion Agreement

XY (name of Claimant) of and (here insert name of related claimants, companies etc and their addresses) and Telstra Corporation Limited hereby agree to exclude the right of appeal under Section 38 (2) of the *Victorian Commercial Arbitration Act 1984*, as amended, ("the Act") in relation to the award to be handed down pursuant to this Procedure and the right to apply under section 39 (1) (a) of the Act with respect to a question of law arising in the course of the arbitration to be conducted pursuant to this Procedure. This agreement is made pursuant to section 40 of the Act.

Dated this day of 1994.

.....
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.....
.....

Campbell, Ian

From: Campbell, Ian
To: Campbell, Ian
Subject: FW: Gordon Hughes
Date: Thursday, 3 March 1994 9:18AM

DELIVERED TO IAN CAMPBELL INSTEAD OF IAN CAMPBELL

From: Blount, Frank
To: Black, Stephen
Cc: "Mason, Delaine"; Zol, Charles; Vonwiller, Chris; Burdon, Steve; Campbell, Ian new; Park
 Carmel; Campbell, Doug; Krasnostein, David; Parker, Harvey; Rizzo, Paul; Scott, Sue
Subject: RE: Gordon Hughes
Date: Thursday, 3 March 1994 7:21AM

Stephen:

I am more and more of the view that some form of summit meeting be held between Warwick Smith, AUSTEL (Robin Davey), Gordon Hughes, David Krasnostein, me, and perhaps others to put this "foolishness" behind us.

Please advise.

Frank

From: Black, Stephen
To: Blount, Frank
Subject: FW: Gordon Hughes
Date: Wednesday, March 02, 1994 10:50PM
Priority: High

Frank

Copy for your information

Steve Black

From: Black, Stephen
To: Krasnostein, David
Cc: Parker, Harvey; Rizzo, Paul
Subject: Gordon Hughes
Date: Wednesday, 2 March 1994 10:48PM
Priority: High

David

As discussed it appears that Gordon Hughes and Peter Bartlett are ignoring our joint and consistent message to them to rule that our preferred rules of arbitration are fair and to stop trying to devise a set of rules which meet all the COTS requirements and with which we might agree if we were prepared to waive further rights.

Whilst at a personal level I am of the view that we should walk away I do not believe that this option suits Telecoms wider strategy in that it would appear to lead directly to a senate enquiry.

My course therefore is to force Gordon Hughes to rule on our preferred rules of arbitration.

I am having our preferred rules prepared now based on Bartlett's latest rules plus our amendments. I have also initiated an independent and authoritative view on these rules, which I expect will advise th these rules are fair. I will then send these directly to Gordon Hughes with a direct and blunt request rule on whether they are fair.

I expect this action to be finalized by tomorrow midday.

Steve Black

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