

**The Hon Malcolm Turnbull,  
Prime Minister of Australia**

**Mr Dan Tehan, Federal Member for Wannon**

**Ms Sue Laver, Telstra General Counsel**

**Mr John P Mullen, Telstra Board Chair**

**The Hon Barnaby Joyce**

**Deputy Prime Minister**

**Cape Bridgewater Holiday Camp  
Service Verification Tests (Report)  
Collision, Deception, Misleading and Deceptive Conduct**

**Exhibits 31-A to 46-E**

**Alan Smith  
Seal Cove  
1703 Bridgewater Road  
Portland (Victoria) 3305**

NT BY: HUNT & HUNT

: 12- 5-85 : 2:41PM ;

MELBOURNE OFFICE--

61 3 277 8797:8 2



# Hunt & Hunt

LAWYERS

12 May 1995

Our Ref: GLH

Matter No:

Your Ref:

BY FAX: 277 8797

Mr Warwick Smith  
Telecommunications Industry Ombudsman  
221 Exhibition Street  
Melbourne VIC 3000

Partners  
David M. Scarlett  
Edward S. Boyce  
James G.J. Hanowell  
Christine A. Colley  
Gordon L. Hughes  
Mark T. Krupar  
Ian S. Craig  
Peter J. Smith  
Wayne E. Cahill  
Verity G.H. Debnar  
Grant D. Selten  
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Associates  
Shane G. Hill  
John S. Mohr  
Valeria A. Manderson  
James V. Galichio  
John D.F. Moran

Dear Warwick

### FAST-TRACK ARBITRATION PROCEDURE

You have asked me for my comments on the arbitration process, now that I have delivered my first ruling.

Upon my return from leave in 2 weeks, I would be happy to discuss this matter with you in detail.

In simple terms, my observations are as follows:

- as far as I could observe, both Telecom and Smith co-operated in the Smith arbitration;
- the time frames set in the original Arbitration Agreement were, with the benefit of hindsight, optimistic;
- in particular, we did not allow sufficient time in the Arbitration Agreement for inevitable delays associated with the production of documents, obtaining further particulars and the preparation of technical reports;
- there have been allegations by Smith and other claimants that Telecom deliberately slowed the process by delaying the production of documents under FOI - certainly the FOI claims have caused delays but I am unable to comment as to whether there has been a deliberate delaying tactic;
- request for further particulars are, I think, unavoidable - although the emphasis in the arbitration process is upon a quick resolution of the dispute, a party (in this case Telecom) faced with a significant claim

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31A

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: 12- 5-95 : 2:41PM :

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61 3 277 8787: 3

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against it is entitled to be presented with particularised complaints, not generalised and unsubstantiated allegations;

- the preparation of technical reports by the claimants is always going to be a problem - in simple terms, Telecom has all the information and the claimant has to pay a technical expert to examine and interpret it.

In summary, it is my view that if the process is to remain credible, it is necessary to contemplate a time frame for completion which is longer than presently contained in the Arbitration Agreement.

There are some other procedural difficulties which revealed themselves during the Smith arbitration and which I would like to discuss with you when I return. These centre principally upon the fact that claimants, who are often seeking large sums, are generally unable to specify the legal basis for their claim (eg negligence, breach of contract, Trade Practices Act), yet it is necessary for me to base my rulings upon a breach of legal duty. This means that I have to in part rely upon Telecom to identify the legal basis of the claim made against it (which is somewhat perverse and which was in any event handled by Telecom in a less than satisfactory manner), and/or I have to search myself for a legal basis without assistance from the parties (which inevitably contributes to the time and expense associated with the proceedings).

I wonder whether some pro forma document could be developed which could point claimants in the right direction.

I apologise for the brevity of these comments. I am happy to provide you with a more detailed written report when I return from leave in 2 weeks. Ultimately, I think we should have a conference involving you, me and Peter Bartlett to consider these and related issues.

Yours sincerely

  
GORDON HUGHES

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resolution by mediation or negotiation. In several cases settlements had already occurred in the past with some of the CoT claimants, but had not achieved finality. The second benefit was the confidentiality of the process as opposed to, for instance, litigation in open court. The experience has shown that not all of these benefits have emerged or materialised.

In my view, there was one potential difficulty that should have been obvious from the outset. I do not make any apology for coming along to this committee and saying that outright, because it should have been obvious, in my view, to the parties and everyone involved from the beginning. This deficiency revolves around the vexed question of how the claimants were to obtain, and the best method of obtaining, documents from Telstra which were to assist them in the process. In the process leading up to the development of the arbitration procedures—and I was not a party to that, but I know enough about it to be able to say this—the claimants were told clearly that documents were to be made available to them under the FOI Act. The Commonwealth Ombudsman has already reported on the problems encountered by the claimants in that process, and I do not propose to reiterate her findings.

Senator SCHACHT—Do you disagree with her findings?

Mr Pinnock—No. For present purposes, though, it is enough to say that the process was always going to be problematic, chiefly for three reasons. Firstly, and perhaps most significantly, the arbitrator had no control over that process, because it was a process conducted entirely outside the ambit of the arbitration procedures. Secondly, in providing documents Telstra was entitled to rely on whatever exemptions it might be entitled to under the FOI Act, and this often resulted in claimants receiving documents, the flow of which made them very difficult to understand. In some cases, there were obviously excisions of information. In contrast to this, the claimants could have sought access to documents on a regular basis under the arbitration procedures. Provided that those documents were relevant, the arbitrator could have directed Telstra to produce those documents without any deletions. If there was any argument as to the relevance of documents, the arbitrator would have had the power to require their production and inspection by him to make that determination in the first place. Thirdly, we know that the FOI process as administered was extremely slow, and this contributed to much, but certainly not all, of the delay which the claimants encountered in prosecuting their claims through the arbitration procedures.

With the benefit of hindsight, I will turn now to the lessons that are learnt from experience of the process. Firstly, arbitration is inherently a legalistic or quasi-legalistic procedure. It does not really matter how you might finetune any particular arbitration. It has the normal attributes of a quasi-legal procedure, where you have parties opposing each other with someone in the middle having to make a determination. Even having said that, I am on record as saying that Telstra's approach to the arbitrations was clearly one which was excessively legalistic. For instance, in many instances it made voluminous requests for

  
**Hunt & Hunt**  
LAWYERS

23 January 1996

Our Ref: GLH  
Matter No:

Mr J Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
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Francis V. Galichi  
John D.J. Meade  
Michael S. Conick

Internship  
Trevor Abemah

Dear Mr Pinnock

**INSTITUTE OF ARBITRATORS - COMPLAINT BY ALAN SMITH**

I enclose copy letters dated 18 and 19 January 1996 from the Institute of Arbitrators Australia. I would like to discuss a number of matters which arise from these letters, including:

- (a) the cost of responding to the allegations;
- (b) the implications to the arbitration procedure if I make a full and frank disclosure of the facts to Mr James.

Yours sincerely

  
GORDON HUGHES

Encl.  
cc P Barrett

melb  
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bris  
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newc  
adelaide  
darwin

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**COPY**

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Neville G.H. Debnay  
Grant D. Selton  
Charles Vanders  
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Shane G. Hird  
John S. Molnar  
Melissa A. Henderson  
Bridget C. Callisto  
Neil D.F. Morris

3 August 1995

Our Ref: GLH  
Matter No: 5126900  
Your Ref:

Mr E Benjamin  
National Manager  
Customer Response Unit  
Telecom Australia  
Level 37, 242 Exhibition Street  
MELBOURNE Vic 3000



Dear Mr Benjamin

**ARBITRATION - SCHORER**

I telephoned the claimant on 3 August 1995 in order to determine whether he was now in a position to proceed.

Mr Schorer advised me that due to a combination of factors, including the current state of his health, the commercial pressures imposed by his business and an impending FOI claim, he is unable to submit a claim at present.

Mr Schorer has advised me, however, that he remains anxious to pursue a claim as soon as he is able to devote adequate time to its preparation.

Yours sincerely

**GORDON HUGHES**

cc [redacted] Pinnock, P Bartlett, J Rundell

- Melbourne
- Sydney
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# Hunt & Hunt LAWYERS

4 September 1995

Our Ref: GLH.

Matter No:

Your Ref:

Mr G Schorer  
Golden Messenger  
493-495 Queensberry Street  
NORTH MELBOURNE Vic 3051

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Melissa A. Henderson  
Franca V. Callicchio  
John D.F. Morris

ENTERED  
15-9-95

TB ✓  
SB ✓

Dear Mr Schorer

## ARBITRATION - TELSTRA

I refer to our telephone discussion on 3 August last and would be pleased to know if you are yet in a position to indicate whether, and if so when, you intend proceeding with the submission of your claim documentation.

Yours sincerely

**GORDON HUGHES**

CC E Benjamin, J Pinnock, P Bartlett, J Rundell

Black ✓  
Benjamin ✓  
Geary  
Evert  
Armstrong  
Phillips  
Dwyer

Haar  
Chisholm  
Gamble  
Levy  
Deloitte  
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Kearney Sel

Froehills  
Mellerson  
Holding Redlich  
~~Blombery~~

File Schorer

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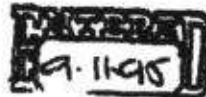
6 November 1995

Our Ref: GLH

Matter No:

Your Ref:

Mr G Schorer  
 Golden Messenger  
 493-495 Queensberry Street  
 NORTH MELBOURNE Vic 3051



Handwritten initials: TB / SB

Dear Mr Schorer

## ARBITRATION - TELSTRA

Please advise me within 7 days when you expect to complete the submission of your claim.

If you anticipate a delay of considerable or indeterminate length, I will give consideration to the question of whether this arbitration should be abandoned.

Yours sincerely

**GORDON HUGHES**

CC E Benjamin, J Pincock, P Bartlett, J Rundell

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~~Armstrong~~  
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**Recommendation 24:** Telecom introduce a national system whereby a fault which reduces the level of service below a level determined by AUSTEL and which cannot be identified or resolved within a specified time frame at one level is escalated to the next level of management for resolution (cf: Coopers & Lybrand Recommendation 3).

**TELSTRA Status Comment - 30 June 1995**

*The time escalation parameter is one of the central planks of the new fault management process which has now been implemented nationally.*

*As noted in AUSTEL's third quarterly report of 2 February 1995 "Telstra has substantially fulfilled the requirements of this recommendation, which is the introduction of a national system for escalation of faults in specified circumstances".*

*Action to implement this recommendation is now completed.*

**AUSTEL Comment**

Telstra has provided AUSTEL with information which provides a numerical summary of escalated faults under the new fault management process during the December 1994, March 1995 and June 1995 quarters. AUSTEL is examining this data and will be arranging a meeting with Telstra to discuss the effectiveness of its new escalation procedures.

As noted above, AUSTEL is examining issues recently brought to its attention by Telstra customers concerning Telstra's current fault recording and escalation procedures.

**Recommendation 25:** Telecom commit itself to rectify the majority of difficult network faults which reduce the level of service below a level determined by AUSTEL within three to six months and all within a period of twelve months.

**TELSTRA Status Comment - 30 June 1995**

*Telstra has now completed its program of Service Verification Tests on the sixteen DNF Customers referred to Telstra by AUSTEL with the exception of three customers who have refused to allow the tests to take place. As indicated previously, the program of SVT did not include those services where the service either no longer existed in the same form as previously, or was a mobile service, or where the difficulties related to*

*CPE and not the network. All services on which the SVT was carried out have met or exceeded the SVT requirements.*

*Should any of the customers who have refused permission for the Service Verification Tests to be carried out withdraw that refusal, then Telstra will carry out the tests.*

*Telstra considers that this recommendation is finalised.*

#### **AUSTEL Comment**

Telstra has provided AUSTEL with a summary of the Service Verification Test (SVT) results for the services of customers identified in AUSTEL's *COT Cases* report and has advised that the services for which testing was completed passed the SVT. The summary notes that following initial approval to conduct the SVT, three of these customers subsequently withdrew that permission. The SVT for these services were therefore limited to the Call Delivery Tests. Telstra has advised AUSTEL that each of these services passed the Call Delivery Tests.

AUSTEL notes Telstra's comment that - "should any of the customers who have refused permission for the Service Verification Tests to be carried out withdraw that refusal, then Telstra will carry out the tests"; and agrees that this recommendation is finalised. Further comment is provided on the SVT under recommendation 41.

**Recommendation 26:** Telecom devise plans with time-frames for resolving difficult network faults which reduce the level of service below a level determined by AUSTEL and inform its customers accordingly (cf: Coopers & Lybrand Recommendation 24, Bell Canada International's Rotary Hunting Group Study Recommendation 8.2).

#### **TELSTRA Status Comment - 30 June 1995**

*The new Complaint and Fault Management Processes provide time frames for resolving faults. (See also Rec 25)*

*Telstra considers that this recommendation is finalised.*

#### **AUSTEL Comment**

AUSTEL agrees that this recommendation is finalised.

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93/94 WRH:MYC

24th November, 1995

Dr Gordon Hughes  
c/- Messrs Hunt & Hunt  
Lawyers  
Level 21  
459 Collins Street  
MELBOURNE VIC 3000

Dear Dr. Hughes,

RE: Arbitration - Golden Messengers and Telstra

We refer to your letter of 6th November last to our client and subsequent correspondence.

Our client advises that it is not in any position to advise with certainty whether or not it anticipates "a delay of considerable or indeterminate length".

The arbitration proceedings were entered into on a clearly accepted basis that Telstra would supply required documentation under FOI provisions. Our client cannot proceed without the relevant information being made available.

Without being critical of Telstra at this stage, the fact is that the material is being provided extremely slowly. The last delivery of documentation was received only this month. We are instructed that material which is well known to have existed (and presumably has not since been lost or destroyed) is still awaited.

Our client is aware of the disastrous state of affairs as to the supply of FOI documents in the recent Smith arbitration wherein documentation was supplied shortly before and after you made your decision; it does not want to be similarly disadvantaged in its own proceedings.

Your advice that you will give consideration to the question of whether the arbitration should be abandoned is noted. Our client, as we are at present advised, would not be agreeable to any such proposal.

However, if you personally find the present situation tedious and simply wish to resign as arbitrator for that or for any other reason, our client would not object, nor would it consider it would be entitled to offer objections.

Yours truly,

HUNTS'

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Office of Customer Affairs  
Commercial & Consumer

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

Telephone (03) 9634 2977  
Facsimile (03) 9632 3255

19 January 1996

Dr Gordon Hughes  
Hunt and Hunt  
Lawyers  
Level 21/459 Collins Street  
MFI.RCRIRNB VIC 3000

By facsimile: (03) 9614 8730

Dear Dr. Hughes:

Schorer

I refer to my letter of 16 January, 1996 and your direction made on 18 December 1995 which requires Telstra to make available to Golden Messenger:

*"such documentation in its possession or control which has not previously been made available to the claimant pursuant to an application under the Freedom of Information Act ["FOI Act"] and which might reasonably be considered relevant to the claim as set out in the claim documentation submitted by the claimant on an interim basis on 23 December 1994".*

I note that in your direction you have set out the parameters under which Telstra has agreed to disclose certain telephone number information. I assume that all information being made available for inspection by Golden Messenger must be used solely for the purposes connected with its claim and must be kept confidential by the claimant and his advisers and must be returned to Telstra in accordance with the *Fast Track Arbitration Procedures*. Please confirm that this is the case.

Following your direction, Telstra has conducted searches for documentation which may fall within the scope of your direction. These searches are continuing. These searches are in addition to the searches already carried out in response to various FOI Act requests by Golden Messenger.

As a result of these searches, further documentation has been located. Once this documentation has been analysed by Telstra, such of the documentation as is relevant to Golden Messenger's claim will be made available for inspection.

I should note, however, that in the circumstances Telstra faces great difficulty in attempting to place practical limits on the scope of its searches. This is due both to the vague nature of Golden Messenger's claim and the wide scope of your direction, which is broadly analogous

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Telstra Corporation Limited  
ACN 061 170 888

to a direction for Telstra to give discovery of documents, a situation which was not envisaged when the parties entered into the Fast Track Arbitration Procedure.

In this regard, I would like to make the following points:

1. A vast amount of information has already been provided to Golden Messenger under the FOI Act; approximately 66,000 pages and 15 computer disks. In processing Golden Messenger's various FOI Act requests, Telstra approached, among others, the following areas within Telstra:

Commercial Waverley  
 Commercial Area Sales Footscray  
 Commercial Queensland  
 NNI  
 Corporate Marketing  
 Commercial Waverley FM&D  
 Network Products  
 Commercial Waverley Test Centre  
 Commercial CED Heidelberg  
 Commercial Western  
 TRNS  
 Commercial Waverley Service Delivery  
 Commercial Central CED  
 Commercial  
 C&G  
 Commercial & Consumer Business, Noise Investigation  
 Service Delivery Vic/Tas Region  
 Metro West Operations  
 Heidelberg CBD  
 CAN Construction & Design Melbourne Metro Region  
 Service Assurance Commercial Vic/Tas  
 C&C, Difficult Network Faults  
 Melbourne Network Operations - Exchanges  
 Network Products - Southern Region  
 Corporate Strategy  
 Board Support

Telstra is conducting a review of documents previously exempted in full under the FOI Act to determine which of these, if any, may fall within the scope of your direction. Documents exempted on the grounds of Legal Professional Privilege will not be reviewed. Telstra does not propose to review documents which have previously been released with deletions (that is, "B" documents), as those documents have clearly already been made available to Mr. Schorer. In many cases these deletions amounted to no more than the removal of 3rd party names.

2. The further searches carried out by Telstra following your direction have been restricted to:
- (1) the North Melbourne exchange building (incorporating the North Melbourne Telephone Exchange, the old North Melbourne tandem exchange and the North Melbourne ISDN node);
  - (2) the Footscray Exchange (the Footscray exchange is of particular relevance to Golden Messenger's claim because it provides the last choice routes for traffic into and out of the North Melbourne Telephone Exchange);
  - (3) the Footscray District Telstra office (at one time the administrative centre for the North Melbourne Telephone Exchange);
  - (4) the St Albans' Exchange Maintenance Group ("EMG") (the EMG responsible for the North Melbourne Telephone Exchange);
  - (5) Telstra's National Network Investigations group ("NNI"); and
  - (6) searches of various of Telstra's computer databases for information relating to the performance of the North Melbourne Telephone Exchange and the last choice routes into the North Melbourne Telephone Exchange.
3. The performance of the Inter-Exchange Network surrounding the North Melbourne exchange may, in a broad sense, be relevant to Golden Messenger's claim. The same could be said of Telstra's entire telephone network. Indeed, this appears to be Golden Messenger's intention judging by the content of its letter to you dated 22 December 1995. However, were Telstra to broaden the scope of its searches to, for example, only those exchanges with direct links to the North Melbourne exchange or tandem, it would need to search for documents relating to the performance of approximately 50 telephone exchanges, representing over one third of the telephone exchanges in the Melbourne metropolitan area. This would require a very large diversion of resources and would inevitably result in further long delays in the progress of this arbitration (in Telstra's estimate, thousands of hours of effort). Further, in Telstra's view, such searches would be highly unlikely to uncover any information which would, in a practical sense, materially alter the picture created by the documents which either have or will be made available to Golden Messenger.

#### Relevant classes of documents

Those classes of documents which, in Telstra's view, are likely to be of significance in this arbitration are set out here:

1. LEOPARD, which is a database tracking complaints to 1100 or 132999 operators concerning Mr Schorer's service. Those reports classified by operators as *Trouble Reports* (that is, which are considered to relate to faults which are likely to affect individual customers) are archived to MAPS; those classified as *Technical Assistance*

*Reports* (that is, which are considered to relate to faults which are likely to affect many customers) are archived to GAPS or, more recently, NSQSS.

2. Service Plus (a database performing a similar function, set up for use by business customers. Reports entered into Service Plus via 132999).
3. RASS (a similar database, intended to track complaints relating to special services - in Mr Schorer's case, ISDN services).
4. Documents created by Paul Killeen and other employees within the National Network Investigations group, including personal diaries, file notes, internal memoranda, letters and an extensive technical report on the performance of the North Melbourne Exchange, produced following lengthy investigations over a six month period in 1989.
5. Documents, including file notes, letters and internal memoranda created by customer service staff and managers.
6. Exchange trunking diagrams showing the configuration of the North Melbourne Telephone Exchange and surrounding Inter-Exchange Network at various points in time.
7. Exchange diaries indicating work performed on the North Melbourne Telephone Exchange equipment.
8. Details concerning complaints by all customers connected to the North Melbourne Exchange, extracted from the computer databases MAPS, GAPS and NSQSS;
9. Fault dockets, showing investigations by exchange technicians (whether referred to the exchange following a LEOPARD or Service Plus report or comprising a special investigation) and exchange clearances;
10. Traffic information relating to routes into the North Melbourne Exchange and Tandem, sourced from various computer databases (RUBAS, TROB and ROMANS).
11. Exchange Maintenance Group ("EMG") reports, being management reports containing information relating to the performance of exchanges within the relevant EMG.
12. North Melbourne Telephone Exchange Inhouse of Traffic Route Testing ("TRT") runs into the North Melbourne Exchange.

Some documents falling within these classes have already been provided under the FOI Act. Further documents will shortly be made available pursuant to your direction. Telstra is making all reasonable efforts to locate such documentation as may exist which falls within any of these categories. However, it is clear from searches carried out and documentation located to date that Telstra retains very few manual records relevant to Golden Messenger's claim for the period pre 1985, and virtually no relevant computer records for the period pre 1991.

\* \* \*

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In the circumstances, Telstra submits that the provision by it of such documentation as may exist which falls within any of the categories numbered 1 to 12 under the heading "Relevant classes of documents" above satisfies your direction made on 18 December, 1995. If you do not agree with this approach then I suggest that the best way forward would be to discuss Telstra's approach to the provision of documentation at the directions hearing on 5 February 1996. It may be beneficial if the technical resource unit were also able to attend to assist in the discussion of these matters.

Yours faithfully



**Ted Benjamin**  
Group Manager  
Customer Affairs

cc: Mr John Pinnock, TIO  
By facsimile: (03) 9277 8797

Mr Graham Schorer  
By facsimile: (03) 9287 7099



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Page 1 of 2 Pages (Total)

C04550

DATE: 2 November, 1990

RECIPIENT: TELECOM BUSINESS TERMINALS.

ATTENTION: MR PETER GAMBLE.

FAX NO: (03) 642 0091

FROM: TREVOR HILL

RE: TELECOM V GOLDEN MESSENGER LEGAL PROCEEDINGS

If you do not receive all pages please telephone (03) 606 5431

COMMENTS:

PETER,

AS DISCUSSED, THE FOLLOWING COMMENTS ARE OFFERED TO ASSIST YOUR BRIEFING OF FRANK JONES:

- (1) AT THIS MORNING'S DIRECTIONS HEARING IN THE FEDERAL COURT THE MATTER WAS STOOD OVER UNTIL THE 7TH DECEMBER 1990. THIS WAS AGREED TO BY BOTH PARTIES.
- (2) BETWEEN NOW AND THE 7TH DEC. TELECOM WILL BE REQUIRED TO FINALISE THE DISCOVERY OF DOCUMENTS RELEVANT TO THE PROCEEDINGS.
- (3) TELECOM WILL ALSO NEED TO INSPECT ANY DOCUMENTS LODGED BY GOLDEN MESSENGER AS PART OF ITS (GM'S) DISCOVERY OBLIGATIONS

37B

C04551

(4) TELECOM NEEDS TO EXAMINE THOSE DOCUMENTS PERTAINING TO THE TESTS CARRIED OUT ON NORTH MELB. EXCHANGE TO DETERMINE IF ANY OF THOSE DOCUMENTS HAVE BEEN GENERATED AS A RESULT OF AN "INTERCEPTION". IF SO, THEN TELECOM WILL BE PRECLUDED FROM DISCLOSING THEM UNDER THE DISCOVERY PROCESS. I INTEND TO ASK MR PAUL KILLEEN OF NETWORK INVESTIGATIONS TO UNDERTAKE THIS TASK.

(5) THE AUSTRALIAN GOVERNMENT SOLICITOR, ON BEHALF OF TELECOM, HAS WRITTEN TO THE SOLICITORS ACTING FOR GOLDEN MESSENGER SEEKING THEIR UNDERTAKING NOT TO DISCLOSE TO THEIR CLIENT OR OTHERS THE CONTENTS OF THE REPORT ON THE NORTH MELB. EXCHANGE. TO DATE, THERE HAS BEEN NO RESPONSE.

(6) AT THIS STAGE IT IS UNLIKELY THAT THIS CASE WILL BE HEARD BEFORE JUNE 1991.

(7) TELECOM NEEDS TO CONSIDER THE TACTICAL QUESTION AS TO HOW TO BEST PRESENT ITS EVIDENCE AT THE FINAL HEARING. THAT IS, ORALLY OR IN WRITTEN (SWORN AFFIDAVIT) FORM.

WOULD YOU PLEASE KEEP ME INFORMED AS TO ANY DEVELOPMENTS THAT MIGHT OCCUR IN FUTURE DISCUSSIONS BETWEEN TBS AND GOLDEN MESSENGER AS TO SETTLEMENT OF THIS LITIGATION.

SHOULD YOU OR FRANK HAVE ANY QUESTIONS IN RELATION TO THIS MATTER PLEASE DON'T HESITATE TO CONTACT ME ON 606 8007.

REGARDS,

*Trevor Hill*

TREVOR HILL  
MANAGER - LEGAL SUPPORT SERVICES

CO:TREVOR1:19

378

Hill, Trevor

From: Darling, Peter  
To: Johnstone, Philip R; Hill, Trevor; Quan, Alex  
Cc: Clarke, Lawrie; Duc, Nguyen; Darling, Peter; Dugan, Yasmin  
Subject: FW: AUSTEL Mandatory Performance Regulation  
Date: Monday, 13 December 1993 10:41AM  
Priority: High

From: Darling, Peter  
To: Campbell, Ian; Marshall, Ross  
Cc: Hambleton, Dennis V  
Subject: AUSTEL Mandatory Performance Regulation  
Date: 13 December 1993 10:38  
Priority: High

Ross and Ian,

This E-Mail is to alert you to a possible regulatory interaction with the current work on "COTS Cases" and ongoing work with AUSTEL on network performance.

As you know, a Ministerial Direction gave AUSTEL power to set end-to-end network performance standards. The AUSTEL Standards Advisory Committee established a working group (designation WG 12/1) to set these standards, and Telecom has had a fairly hostile reception in this working group.

Yasmin Dugan from my area has been co-ordinating this work, working closely with Network Products (especially Operations) and the Business Units. The AUSTEL staff member leading the group originally wanted a very wide list of mandatory parameters, but after discussion with Bob Horton and a presentation to the Standards Advisory Committee by Yasmin, AUSTEL have agreed to limit the scope of the initial work to the few parameters our customer surveys had shown as being of most concern. This work is now well advanced.

I believe that the "Service Operation Deemed Satisfactory" Project Team as part of the COTS case work has also been looking at issues relevant to a service specification and testing procedure, and that originally they came out with a large number of parameters to specify and test.

The powers to set mandatory performance standards that AUSTEL has been given could well be used in some sort of regulatory outcome from AUSTEL's current COT case investigation. I believe it is essential that we provide a consistent approach to AUSTEL. I'm hopeful that your team has taken Telstra's corporate position to AUSTEL as the starting point for their work. I strongly request that you give us early advice if for strategic reasons we should change our position with AUSTEL in the SAC and the working group 12/1.

Peter Darling,  
Standards & Regulatory Strategy



Customer Response Unit  
Commercial & Consumer

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

Telephone (03) 834 2877  
Facsimile (03) 832 3233

25 January, 1996

Mr Graham Schorer  
GIM (Melbourne) Holdings Pty Ltd  
493-495 Queensbury Street  
NORTH MELBOURNE VIC 3051

By facsimile: (03) 287 7001

Dear Sir

**Golden Messenger - Arbitration**

I refer to Telstra's letter of 31 January, 1995 to the Arbitrator, Dr Gordon Hughes, which enclosed Telstra's proposed Request for Production Documents and proposed Request for Further Particulars.

Telstra wishes to raise with you an issue in relation to documents and believes that an agreement from you on this issue will assist in expediting this arbitration.

At paragraph 16 of the Claimants' Statement of Claim, the Claimants state that they purchased from Honeywell Australia an AT&T Definity Computerised Telephone and Call Centre Management System for the purpose of allowing the Claimants to be connected to the Telstra Australia ISDN Network. I shall refer to this system as the PABX in this letter.

At paragraph 17 the Claimants state that their business was connected to the Telstra Australia ISDN Network in December 1993 by Telstra Australia, but the service difficulties, problems and faults previously experienced still continued.


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Page 2

Telstra understands that the PABX generator reports at the premises at which it is located and also generates reports which are sent to or generated at the premises of the company responsible for servicing that PABX. Those reports are relevant to this Arbitration to enable Telstra to distinguish between the telephone service difficulties, problems and faults attributable to the CPE, CAN and Network and misoperations by the Claimants. Indeed these documents are requested at paragraph 7 (g) and (h) of Telstra's proposed Request for Production of Documents forwarded to the Arbitrator, Dr Hughes, under cover of Telstra's letter of 31 January 1995. Dr Hughes subsequently forwarded a copy of this proposed Request onto you. It would assist Telstra in the investigations it is presently carrying out if you, Honeywell and AT&T would provide those documents at this time. In the circumstances Telstra asks that you provide copies of those reports in your possession to Telstra and further that you instruct AT&T and Honeywell that it is in order for Telstra to contact each of those companies to request copies of those reports.

I look forward to hearing from you as to the above matters.

Yours faithfully



Ted Benjamin  
Group Manager  
Customer Affairs

9632.7700  
9630 2977

cc: Mr John Pincock, TIO  
By facsimile: (03) 9277 8797

Dr Gordon Hughes, Arbitrator  
By facsimile: (03) 9614 8730

16th February, 1996

RE: SCHORER & COT CASES

On 16th February attending Amanda Davis who rang on the suggestion of Schorer. She told me she had complained in effect to Bartlett of the legal support team to Hughes that the administrator (the Telecom Ombudsman's department) had been pressurising Hughes to produce results and get on with the matter generally. She was putting it to Bartlett that any pressure on Hughes should be related to getting Telecom to produce results and not just to wind the matter up. ↘

The impression I go was that Bartlett's view was that the administrator had to keep out of the rights and wrongs of the disputation between the parties to the arbitration. He was concerned with process and not with the matters of contest. ↘

In general terms Amanda Davis said her client Maureen Gillam was in the same boat as Schorer.

After lengthy discussion in terms of generalities mostly the point that it was not a battle between class that this was an unusual case in that all the proof of the claimant's case was within the documentation that ought to be there with Telecom and was not being produced.

She was certain that the parties in Telecom had convinced themselves that they were the subject of unreasonable demands by parties who had lost touch with reality.

One thing she did say is worth following up and that is that Telecom's defence in general terms is related to material that is put together after the event whereas the claimants have (or in Schorer's case ought to have available) documentation and records put together at the time and which ought to be given its proper weights even though item by item it may not be conclusive.

I suggested to Davis that she get her client the subject of a Section 9 in some way or other under the Ombudsman's Act and that in consequence we could then make a common cause to try and get an investigator put there by the Ombudsman to look for what must be there which will either prove that Telecom is right or that we are in each case.

On 15th February Schorer rang me and told me he was at the stage where he would have to put the whole thing on hold because he could not continue on. He had to attend to his business and he would need to concentrate on getting the costs paid as directed by the original Ombudsman.

WRH

8-4-1996  
A → JLS  
X  
dick miss

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FERRIER HODGSON CORPORATE ADVISORY

STRICTLY PRIVATE & CONFIDENTIAL

*Pra  
4/14/95  
we to discuss*

BY COURIER

18 April 1995

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

Dear Sir,

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

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

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

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

Smith

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

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

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD  
A.C.N. 092 403 040

EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SELAK  
LEVEL 25 140 WILLIAM STREET MELBOURNE VICTORIA 3000  
TELEPHONE 03 639 8855 FACSIMILE 03 639 8561

LICENSED INVESTMENT ADVISER

3913





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

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

↙ Garms

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

↙ Gillan/Valkob

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

Resource Unit (including Technical Support)

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

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

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





Arbitration

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

Conclusion

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

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

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

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

Yours faithfully,

FERRIER HODGSON CORPORATE ADVISORY

JOHN RUNDELL  
Project Manager - Resource Unit  
Associate Director

Encl.

c.c.

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

39B



# FERRIER HODGSON CORPORATE ADVISORY

[Redacted]

**ATTENTION:** Dr Gordon Hughes

**DATE:** 18 March 1996

**COMPANY:** Hunt & Hunt

**FAX:** 9617-9299

**FROM:** Oren Zohar

**PAGES:** 1

Dear Gordon

**RE: SCHORER AND TELSTRA / SCHEDULING OF MEETINGS**

I refer to your recent correspondence to the parties (dated 8 March 1996) and your request that I make arrangements for the necessary informal meetings and subsequent directions hearing.

Telstra has proposed that the meetings be held on Monday, Wednesday and Friday of the week commencing 25 March 1996. Graham Schorer has yet to confirm whether these dates are acceptable and he has advised that he will contact me once he has spoken with George Close and his solicitor, Bill Hunt.

I kindly request that you ask Caroline to confirm whether your boardroom facilities are able to be used on the proposed dates as the venue.

Graham Schorer has also requested that I relay to you the following issues which he would like addressed prior to the proposed meetings.

1. That you be present at all meetings, including the proposed informal meetings.
2. That all meetings (including informal meetings) be transcribed.
3. That a copy of a resume/curriculum vitae for Doug Grady of Lane Telecommunications be provided, in the event that Mr Grady attends the proposed meetings with Andrew Crouch.
4. The involvement of staff from Lane Telecommunications other than David Read.

I have suggested to Graham Schorer that he may wish to put his concerns to you in writing or to contact you directly to discuss these matters. If we can be of assistance, please do not hesitate to contact either Susan (who is back on board as of today) or myself.

Regards,

*[Signature]*  
Oren Zohar

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**FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD**

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TELEPHONE 03 9402 1461 FACSIMILE 03 9442 0561

IN/FERRICA/UTS/RAKES/FA/07.DOC  
18/03/96

40

19th March, 1996

RE COT CASES

On 22nd January 1996 Mr. Schorer points out to me that the letter from Telstra to Hunt & Hunt was dispatched to Gordon Hughes apparently on 19th January probably by fax by that doesn't necessarily follow but he didn't get his copy of the thing dated 19th January until this morning Monday 22nd January. Schorer points out that Telstra has been increasingly not running to the rules, ditto Hughes in the sense of the word that Hughes is apparently leaving it to Telstra to send copies to the other party Schorer whereas it should be Schorer receiving it from Hughes so that Hughes knows everybody's got it. This way he doesn't really know whether they have or they haven't. Also Schorer doesn't know for sure whether he's got everything he ought to have and Hughes would see a copy cc notice on a letter would assume for certain that Schorer did have it. Same is unsatisfactory because we don't trust Telecom.

Moreover it's a known fact that in the matter of Smith's case he Smith did not receive copies of what he should have received and in consequence material which should have alerted him to what was going to be dealt with in the arbitration was not known to him he therefore was prejudiced.

First testing of North Melbourne exchange calls to and from Golden under Austel directions known as the Neat Testing programme carried out by Telstra produced a result whereby more calls were received by Golden than were sent out according to the tests from the North Melbourne exchange for one week. This information has been published in a report given to Austel and obtained under FOI by Schorer.

At or about the same time Bell Canada had Telstra doing reports on its service in relation to Golden's receipt of same. At or about the same time similar tests were being done on the Telstra equipment relating to Smith and the results of those cover the demonstration that they could not have been done.

The continuation of the Telstra neat testing what was in place being conducted at the time the Bell Canada directives were being allegedly held or done.

As to the second Bell Canada test Schorer has on disk the Telstra abandoned certain tests as to part from certain exchanges. One can only assume that the reports were unsatisfactory to Telstra or supportive of Schorer.

Incidentally a forfeit means 2 lines. One for calls to come

41A



AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

95/0594-01

141

93/507

9 December 1993

Mr Ian Campbell  
Managing Director - Commercial Business  
Telecom

Fax 834 3878

Dear Mr Campbell

### BELL CANADA INTERNATIONAL REPORT

This letter is to convey to you advice to the effect that while AUSTEL was -

- consulted on the terms of reference for the Bell Canada International (BCI) audit of Telecom's testing and fault finding capability, and study of its network, to determine if there is a fundamental network fault
- of the view that the proposed testing would provide a useful *snapshot* of current network functionality and that the terms of reference allowed for sufficient flexibility to produce results relevant to a consideration of issues raised by *COT Cases* (without drawing conclusions on an individual customer's complaint),

on a preliminary analysis the report fails to live up to the expectations raised by the terms of reference.

#### Findings must be qualified

The BCI study concluded that "...customers served from the test originating and test terminating exchanges receive a grade of service that meets global network performance standards..." (sixth paragraph of the Executive Summary). Any findings to that effect must be qualified by the fact that the BCI audit focused on only one part of what is commonly called "the network", namely Telecom's exchange-to-exchange operations. BCI's audit did not extend to an equally significant part of "the network", namely the customer access network.

To put it another way, the tests conducted by BCI neither were nor purported to be "end-to-end" testing, but involved testing of part of the network only - the inter-exchange network. The tests were not applied in a manner designed to check complete end-to-end network performance from a customer's perspective. They were made from exchange equipment to exchange equipment and, except in one case, did not traverse customer lines or use customer premises equipment. The conclusions which may be drawn from the

5 QUEENS ROAD, MELBOURNE, VICTORIA  
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41B

study cannot go beyond the inter-exchange network. The findings cannot be presented in the way they were in the Executive Summary to suggest that they embrace the network as a whole, including the customer access network.

#### **Test call patterns not typical of COT Cases**

The test calling patterns adopted apparently reflected the main network traffic streams relevant to the exchanges currently providing services to the COT Cases and related customers, but did not necessarily reflect typical traffic patterns experienced by those customers. While the results can be considered indicative of the general switched public network performance of the exchanges involved, they cannot be guaranteed to be representative of calling performance from typical client locations to the exchanges serving the COT Cases and related customers.

Also for whatever the reasons, such as time constraints, the testing undertaken by BCI appears very narrowly focused. For example, in Melbourne BCI undertook test calling from only seven exchange localities out of the 100 or more in the Melbourne metropolitan area, with only selective test calling from the Western suburbs. This is particularly disappointing in that both of the Melbourne businesses included in the testing claim to have experienced difficulties with respect to calls from Western suburbs based clientele.

#### **Testing of PBX ("rotary") search facility**

Particular concern has been expressed by COT Cases dependent on older (cross bar) exchange technology, in relation to periodic faults of the rotary search facilities which are designed to allow calls dialled to a single number to be offered to a group of access lines appearing in the customer's premises.

With the benefit of hindsight, exchange-to-exchange network integrity tests for COT Cases traffic cannot be considered comprehensive without the inclusion of testing of this facility in the terminating exchanges serving the relevant COT Cases.

I understand that BCI is currently undertaking further testing to redress this shortcoming in its report.

#### **008 services**

Also with the benefit of hindsight, given the concerns expressed by certain of the COT Cases the realistic testing of network performance should have included test calling via any relevant 008 number.

#### **Retrospectivity**

The report itself highlights the fact that the tests provide only a *snapshot* which does not necessarily reflect the problems that COT Cases have experienced in the past - see paragraph 5.00 of the report which "... recognises that the tests performed by BCI ... look at the network at a specific point in time. The results therefore, may be completely different from those obtained at some other point in time. Furthermore, as troubles are cleared when found, it is unlikely that the same trouble conditions will show up in subsequent tests".

**41B**

In summary

Having regard to the above, I am of the opinion that the BCI report should not be made available to the assessor(s) nominated for the COT Cases without a copy of this letter being attached to it.

Yours sincerely



Cliff Mathieson  
Specialist Advisor - Networks



example, in Melbourne, Bell Canada International undertook test calling from only seven exchange localities out of the 100 or more in the Melbourne metropolitan area, with only selective test calling from the Western suburbs. This was disappointing in that both of the Melbourne businesses included in the testing claimed to have experienced difficulties with respect to calls from Western suburbs based clientele.

#### Testing of PBX ("rotary") search facility

11.15 Particular concern had been expressed by *COT Cases* dependent on older (cross bar) exchange technology, in relation to periodic faults of the rotary search facilities which are designed to allow calls dialled to a single number to be offered to a group of access lines appearing in the customer's premises.

11.16 With the benefit of hindsight, exchange-to-exchange network integrity tests for *COT Cases* traffic should have included testing of this facility in the terminating exchanges serving the relevant *COT Cases*.

#### 008 services

11.17 Also with the benefit of hindsight, given the concerns expressed by certain of the *COT Cases* the realistic testing of network performance should have included test calling via any relevant 008 number.

11.18 Telecom responded to AUSTEL's letter of 16 December 1993 referred to in paragraph 11.10 above in the following terms -

*"As you would be aware, the CAN is simply a distribution network from the Telephone Exchange to the customer premises. It does not raise the same sort of issues in terms of complexity of operation as the inter-exchange network.*

*Bell Canada International Inc (BCI) was commissioned by Telecom Australia (Telecom) to test the network and to determine if there was a fundamental network fault or series of faults which would create the type and magnitude of troubles identified by the customers referred to as difficult fault causes. The BCI approach (given the study time requirements) was to complete an overall review of network translations and routing patterns and to assess any common network elements that could be applicable to the difficult fault Customer's problems. BCI then developed and conducted an appropriate testing program which maximized testing of the likely common problem areas. Given the nature of the faults reported, any potential problem was considered most likely to be in the public switched telephone network.*

41B

*The CAN and customer lead in are also an important element in delivering a service and also must operate to agreed standards of performance. However, they are more direct in operations and are not subject to the same level of complexity and hence the same potential for concerns as the inter-exchange network. In addition, the CAN is normally specific to a particular customer and is not common.*

*As you may be aware, Telecom has extensively tested the CAN. These results indicated a satisfactory level of performance. Telecom is also reviewing the benefits of an independent review (tests) of the CAN for the selected difficult fault customers. Before making a decision on further testing, Telecom is undertaking a further detailed analysis of tests conducted and alternative testing methodologies to better assess the benefits of additional testing. The compliance testing currently being jointly developed by AUSTEL will also form part of Telecom's consideration of the need for further independent testing.*

*In respect of your comments on the perceived limitations in the report from the perception of the COT cases, BCI has now completed additional testing to address these perceived limitations.*

*Additional testing did not include testing via relevant 008 numbers. However, the 008 service is essentially a service that utilises the inter-exchange network and is a set of translations which directs calls to the appropriate telephone numbers through the inter-exchange network. That segment of the 008 service that utilises the inter-exchange network will perform at a level comparable to the inter-exchange network.*

*I have attached for your information a copy of the following reports:*

- i) the Rotary Hunting Group Study completed by BCI; and*
- ii) The Inter-Exchange Network Test results for the supplementary tests of Western suburbs exchanges."*

*(Letter dated 7 January 1994, Telecom's Group General Manager - Customer Affairs to AUSTEL)*



expert reports and statutory declarations and statements from individuals who have some awareness of the problems he encountered. He claims his personal records, and corroborating documentation, are particularly significant because of Telecom's failure to keep comprehensive fault records. He believes he is "the only individual who has a full and comprehensive knowledge of the extent of the faults" on his system.

### 3.3 *Overview of Defence*

(a) Telecom submits that:

- the claimant in fact experienced relatively few faults and that those which occurred were promptly rectified;
- some faults were attributable to incorrect use by the claimant of the installed telephones and associated equipment;
- the claimant has no entitlement to compensation in respect of the period prior to 11 December 1992 because of a settlement reached on that day, pursuant to which the claimant was paid \$80,000.00 and provided with a 008 telephone service and a \$5,000.00 credit towards 008 charges. The settlement was made with a denial of liability in full and final resolution of all claims to that date;
- a fault free telephone service is not guaranteed and is impossible to provide and, in any event, the level of service as tested was satisfactory during all relevant periods; and
- there are no grounds upon which a finding of legal liability could be based and, even if there were, Telecom would be entitled to take advantage of statutory immunity.

(b) As a consequence, Telecom does not consider it should be required to make any payment, beyond the settlement of 11 December 1992, to the claimant.

### 3.4 *Previous Inquiries*

(a) The COT Cases have been the subject of previous investigations and reports. These reports were placed in evidence. The most significant of these reports appear to be:

- *Report to Telecom Australia, Bell Canada International Inc; 1 November 1993* ("the Bell Canada Report");
- *Review of Telecom Australia's Difficult Network Fault Policy and Procedures, Coopers & Lybrand, November 1993* ("the Coopers & Lybrand Report"); and

- *The COT Cases: AUSTEL's Findings and Recommendations*, Australian Telecommunications Authority, April 1994 ("the AUSTEL Report").

(b) An overview of these reports is set out below.

### 3.5 *Bell Canada Report*

- (a) Telecom commissioned Bell Canada International ("BCI") to audit its testing and fault finding capabilities as a result of problems reported by a number of commercial telephone customers, including the COT Cases. Telecom noted at the time that it had been unable to find a widespread network problem or individual problems which could account for the nature and extent of these reported faults.
- (b) As part of the audit, BCI conducted test calls in October 1993, originating from digital and analogue exchanges and terminating in the exchanges in Melbourne and Brisbane where four of the COT Case members were located. In summarising its findings, BCI concluded that the tests revealed a grade of service being delivered by Telecom to its customers which met global network performance standards. There was no evidence of any network dysfunction that could create the variety and magnitude of troubles reported by the COT Cases. This was "not unexpected since, in general, customer reported troubles are analysed to the extent which would prevent network faults from remaining undetected". Tests revealed some faults but these would have an insignificant impact on network performance.
- (c) BCI recommended that Telecom accelerate its modernisation program to "maintain its leadership as the quality service provider in a competitive environment". This was a reference to Telecom's older analogue equipment which was past its expected service life.

### 3.6 *Coopers & Lybrand Report*

- (a) Telecom commissioned Coopers & Lybrand to conduct an independent audit of the adequacy, reasonableness and fairness of its approach to "Difficult Network Faults" and to recommend changes which would improve, in particular, the perceived quality of customer service.
- (b) "Difficult Network Faults" are faults so described by Telecom and which Telecom is unable to resolve to the satisfaction of a customer through the operation of routine fault clearance procedures.
- (c) The report specifically avoided findings or recommendations in respect of specific cases which may be the subject of claims, including the COT Cases.

FAXED



Telecommunications Industry Ombudsman ACN 057 634 787  
Ground Floor, 321 Exhibition Street, Melbourne, Victoria, 3000  
Telephone: 61 3 271 8771 Facsimile: 61 3 271 8797

Telecommunication  
Industry  
Ombudsman

## Facsimile Cover Sheet

TO: PLB  
Company: Movers  
Fax: 9617 4621

FROM: PAD  
Company: TIO  
Fax: 9277 8797

42

Date: 22.6.95

Pages: 1 (including cover sheet)

Comments: Sorry to be so demanding on your first day  
Yeter,

could you please have a look at Hughes' letter  
to Pinnock dated 21 June 95 re Alan Smith.  
John wants to discuss it on Monday, and  
what the approach should be re parties  
seeking to revisit issues post Arb'n. His position  
is not to open the can of worms, but would  
like to discuss strategy with you.  
Regards, Kai.



# Hunt & Hunt LAWYERS

**Partners**  
 David M. Scarlett  
 Edward S. Boyce  
 James G.J. Harrowell  
 Christine A. Galley  
 Gordon L. Hughes  
 Mark T. Knopman  
 David P. Cooper  
 Ian S. Craig  
 Peter I. Ewin  
 Wayne B. Cahill  
 Neville G.H. Dobson  
 Grant D. Selton  
 Charles Weavers  
 Andrew Lago-Smith  
 William P. O'Shea

**Consultants**  
 Kenneth M. Martin  
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 Andrew Jenkins

**Associates**  
 Shona C. Hill  
 John S. Molnar  
 Melissa A. Henderson  
 Francis V. Galichio  
 John D.J. Morris

21 June 1995

Our Ref: GLH

Matter No: 5126886

Your Ref:

Mr J Pinnock  
 Telecommunications Industry Ombudsman  
 321 Exhibition Street  
 MELBOURNE Vic 3000

TB  
SB ✓

Dear Mr Pinnock

## ARBITRATION - ALAN SMITH

I enclose copy letter from Alan Smith dated 20 June 1995.

As you are aware, Mr Smith's arbitration was completed prior to you taking up your appointment as Telecommunications Industry Ombudsman.

I do not believe I have jurisdiction over this matter any longer, nor do I consider it appropriate for me to enter into correspondence with either of the parties regarding the conduct of the proceedings or matters which may or may not have come to light subsequent to the delivery of my award.

I would, of course, be happy to respond to any queries which you put to me, or which are put to me jointly by the parties. I believe that if Mr Smith has any lingering concerns, however, these should be directed, initially at least, to your office.

Yours sincerely

GORDON HUGHES

Encl.

cc A Smith, E Benjamin, P Bartlett, J Rundell

Melbourne  
Sydney  
Perth  
Adelaide  
Brisbane

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Level 21, 439 Collins Street, Melbourne, VIC 3000

beginning of the procedure, my expenses would have been minimal.

I leave this matter in your hands, with respect for your position. However, the question must be asked again: Did you request this Bell Canada data through the Chair of the Arbitration Procedure?

Respectfully,

Alan Smith

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TELEPHONE (03) 617 4617  
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28 April 1995

**STRICTLY CONFIDENTIAL**

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

Dear Warwick

Fast Track Arbitration - Smith

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

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

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

Regards  
  
Peter L Bartlett

enc.

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↑

**DRAFT**

↓

28 April 1995

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

By Facsimile: 614 8730

Dear Gordon

Fast Track Arbitration - Smith

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

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

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

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

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

Could you please contact me to discuss.

Yours sincerely

**DRAFT**  
Warwick L. Smith  
Ombudsman

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## RESOURCE UNIT TECHNICAL EVALUATION REPORT

Mr. Alan Smith of Cape Bridgewater Holiday Camp

30 April 1995

### Introduction

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

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

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

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

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

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

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## ARBITRATORS COPY

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

### Cape Bridgewater Documentation

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

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

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

Otherwise, the Technical Report on Cape Bridgewater is complete.

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

### "Bogus" Complaints

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

42E

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30 April 1995

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42F

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

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11 July 1996

Senator The Hon Richard Alston  
Minister for Communications & the Arts  
Parliament House  
CANBERRA 2600

Dear Senator Alston

**REPORT ON PROGRESS OF TELSTRA'S IMPLEMENTATION OF  
RECOMMENDATIONS OF AUSTEL'S *THE COT CASES REPORT***

I am pleased to provide AUSTEL's sixth status report on Telstra's progress in implementing the recommendations of AUSTEL's April 1994 *The COT Cases Report*.

This report consists of two parts: a summary of significant developments to date; and a more detailed commentary on the implementation of outstanding recommendations.

Telstra has now implemented most of the recommendations of *The COT Cases Report*. However, some significant recommendations remain to be implemented, and Telstra's progress in relation to these is of concern to AUSTEL. Of particular concern is Telstra's failure to introduce its enhanced fault management support system. Telstra continues to utilise the LEOPARD fault management system, which was identified by its consultants Coopers & Lybrand in November 1993 as being urgently in need of replacement.

On a more positive note, Telstra has now fully implemented recommendation 1 of the Bell Canada *International Network Consulting Study*, so that greater information is now available on reasons for call failure, thus allowing improved network fault identification. Telstra has also decided to adopt a universal complaint management system, known as CICERO. AUSTEL understands that Telstra is already deriving considerable benefit from its analysis of the complaint data produced by CICERO, and that this will lead to customer benefits.

Also included in AUSTEL's report is a report by the Telecommunications Industry Ombudsman (TIO) on the *Status and Progress of the Fast Track, Special and Standard Arbitration Procedures*. The TIO is critical of Telstra's behaviour and attitude in relation to these arbitrations.

Yours sincerely

Sue Harlow  
Member

Postal Address: P O Box 7443 St Kilda Road Melbourne Victoria 3004

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### **Standard Arbitration Procedure**

*There has been only one claim lodged under this procedure. That matter was settled by direct negotiation between the parties with the assistance of the Administrator. One further application for arbitration has been received by the TIO.*

*The TIO has instituted a review of the Standard Arbitration Procedure and has provided Telstra with some broad concepts for improvement. Telstra has indicated its willingness to canvass issues but is yet to provide any suggestions or reform proposals.*

### **Conduct of the Arbitrations**

*The TIO believes some comment on the behaviour and attitude of Telstra in the conduct of these Arbitration is warranted.*

*Recommendation 30 of the AUSTEL COT report recommends that the "proposed arbitration procedure only require a finding on reasonable grounds as to the causal link between a claim for compensation and alleged faults and allow reasonable inferences to be drawn from material". All three arbitration procedures make provision for this lower standard of proof. However, Telstra's conduct in the defence of most (if not all) claims has tended to assert that strict legal proof in relation to causation is required and is characterised by reliance on legal principles not in keeping with the spirit with which these arbitrations were instituted.*

*The TIO believes that Telstra has, in all claims, responded in an overly legalistic manner. It has shown a tendency to deny liability under every potential clause of action on the basis of perceived statutory and contractual immunities. It has provided large and detailed defences, often out of proportion to the size or complexities of claims. It has lodged lengthy and detailed requests for further and better particulars in most arbitrations. In short, while the arbitration procedure has sought to relax the legal burdens, Telstra's conduct has certainly not.*

*This, in turn, has led many of the claimants to respond in kind, resulting in the expenditure of large amounts of money on technical, financial and legal advice. There is no provision in the Arbitration procedure for the recovery of these costs.*

*There have also been considerable delays in the provision of claim and defence materials and further information from both claimants and Telstra. Telstra has taken excessive time in the provision of material requested under FOI. This has been the subject of a report by the Commonwealth Ombudsman in two cases. These delays and*

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**Supporting**  
Francis Alexander Lightowler

22 July 1996

Our Ref: GLH

Matter No:

Mr W Hunt  
Hunts  
Solicitors  
Mitchell House  
358 Lonsdale Street  
MELBOURNE VIC 3000

Dear Mr Hunt

## ARBITRATION - TELSTRA AND SCHORER

I have considered the submissions of the parties in relation to the request by the claimant for an adjournment of this arbitration until January 1997.

The essence of the claimant's request is that:

- the claimant has to give priority to his business at present;
- the proceedings are placing a considerable strain upon the claimant and could affect his health;
- the claimant is still waiting for the payment of compensation pursuant to a direction by the Commonwealth Ombudsman in November 1994 in relation to the handling of certain FOI requests;
- Telstra has not been co-operative to date in responding to FOI requests but (as I understand how the argument is put) further information might be usefully produced if Telstra is granted an adequate period of time in which to produce it.

Telstra has responded by asserting that:

- the arbitration agreement provides for the completion of steps within agreed time frames;
- the history of this arbitration demonstrates that Telstra has taken all reasonable steps to provide the claimant with relevant information;
- the outstanding question of compensation payable pursuant to the Commonwealth Ombudsman's direction is not relevant to this issue;

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- in two years the claimant has failed to provide substantial supporting documentation for his claim despite having been given every opportunity;
- there is no guarantee that, even if adjourned until January 1997, the claim will proceed in accordance with any time frame set by the arbitrator.

I appreciate that other relevant factors have been advanced by both parties. A number of assertions have also been made in relation to the background to this arbitration and the subsequent conduct of proceedings but I do not regard these as pivotal to this ruling.

After considering the matters raised by both parties, I have come to the following conclusion:

- the claimant agreed to the procedure as set out in the Fast Track Arbitration Procedure;
- the procedure contemplated the submission of a Statement of Claim within four weeks;
- in an attempt to expedite matters, I have been prepared to extend the time for submission of a Statement of Claim in the hope that all relevant materials are available to the claimant when the claim is initially articulated;
- it is not, however, essential that all relevant information be available to the claimant at the time the Statement of Claim is submitted;
- although the process may be somewhat cumbersome, there is no reason why the parties cannot respectively submit the Statement of Claim, the Defence and the Reply before further consideration is given to the adequacy of the documentation provided by Telstra to date;
- I am not in a position to form a definitive view on the adequacy of information made available by Telstra to date until the issues in dispute have been more formally and fully addressed by both parties;
- I do not believe the claimant would be prejudiced by submitting a claim based on information presently available to him;
- notwithstanding the lapse of time since these proceedings were commenced, I am prepared to grant in excess of four weeks from this point for the claimant to submit his claim as an acknowledgment of the fact that he may at present be unprepared to make a submission and may be taken by surprise by this direction.

In the circumstances, I direct that the claimant submit the Statement of Claim as required by clause 7.2 of the Fast Track Arbitration Procedure on



or before 1 October 1996. In default of compliance with this direction, I shall consider an application by Telstra pursuant to clause 7.7 of the Fast Track Arbitration Procedure but I will not treat the arbitration as having been abandoned without inviting a further submission from the claimant on this point at the appropriate time.

Yours sincerely

**GORDON HUGHES**

cc G Schorer, E Benjamin, J Pinnock, P Bartlett, S Hodgkinson

**File note**

**Telecom Arbitration**

**Date:** 18 February 1994

**Matter no:** 1673136

On 17 February 1994, between the hours of 9:00 a.m. and 1:00 p.m., I attended the offices of Hunt & Hunt for the purpose of having a discussion in relation to the arbitration rules prepared by Hunt & Hunt (the "Rules").

The meeting started at 9:30 a.m. and in attendance were Gordon Hughes, Peter Bartlett, Ann Garms, Graham Schorer and myself.

**Record of Meeting**

Ann Garms started by attempting to read from a letter by R Davey (Austel) but was interrupted.

The history of the negotiations leading up to the fast track settlement procedure ("FTSP") was discussed.

Ms Garms stated that all the Cot Claimants wanted was a commercial settlement of the matter, not an arbitration. The FTSP came out of a proposal put by Mr Schorer to John Holmes and I Campbell.

Mr Schorer stated that the Cot Cases had wanted a loss assessor and not an assessment procedure prone to "fine print". The proposal put forward by the Cot Cases was not backed by Telecom and subsequently negotiations got off the rails. Then the Austel investigation began and the media became involved. R Davey acted as a facilitator between Telecom and the Cot Cases. Previously, a draft agreement had been put to the Cot Cases which Telecom had stated would not be changed (which turned out to be incorrect).

The FTSP came out of several meetings and was put forward by R Davey.

Mr Schorer and Ms Garms agreed that the FTSP was the agreed way to resolve the dispute between Telecom and the Cot Cases.

Mr Schorer advocated that instead of having a claim, a break and then a defence being filed, both parties ie. the Cot Case and Telecom should do their presentation at the same time to the assessor. Mr Schorer did not like the arbitration procedure and the procedure he advocated was consistent with his understanding of the FTSP.

It should be noted that the FTSP does not refer to an arbitrator but an "assessor".

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Mr Hughes expressed his view that the powers of an arbitrator under the Commercial Arbitration Act made an arbitration a more effective way of determining the issues in dispute between the parties.

Mr Hughes stated the problems with an "assessor" were that it was a toothless position and that he was not convinced that it could guarantee the result as either party could withdraw or would not be bound by the result.

Mr Schorer asked if he could pull out of an "assessment" during the process if he did not like the way it was going. Mr Hughes and Mr Bartlett advised that this was not the case as he was contractually bound by whatever the terms of the assessment were.

Mr Hughes stated that an arbitrator had more powers and considering the current facts surrounding the Cot Cases ie. suspicions and the long period of antagonistic negotiations, the adjudicating party would need powers to ensure that all material relevant for the decision was obtained.

Mr Bartlett stated that Telecom and the Cot Cases wanted a method of resolution as a final settlement of the problem - no right of appeal, no recourse to the Courts.

Ms Garms agreed with this conclusion.

Mr Schorer stated that he needed documents from Telecom to prepare his case and without this material, he could not go to arbitration. Mr Schorer had raised the issue of documents with Austel and was unsatisfied with Telecom's response.

Mr Schorer stated that there was nothing in the Rules which provided that the Cot Cases were to get the relevant documents. Mr Schorer was disappointed at this stage that since 18 November 1993 2 of the Cot Cases did not have any documents.

Mr Bartlett stated that this was a reason for starting the arbitration as the arbitrator could order the production of documents.

Mr Hughes stated that he was aware of the dispute between the parties but did not have any idea as to the nature and indicated that from this point in time, there were two ways to proceed in relation to the problem of outstanding documents:

- (1) the procedure is put on hold until all the documents are exchanged in accordance with the FOI procedure; or
- (2) the arbitration procedure commences and then the arbitrator gives appropriate directions for the production of documents.

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

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

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

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

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

#### Causal Link

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

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

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

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

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

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

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• Telecom minute of 30 March 1988 from Regional Business Sales Manager-North to Manager, State Business Sales states -

*That advice from Legal and Policy Headquarters indicate that Golden Messenger appeared to have a case against us and that we should negotiate a settlement to prevent legal action proceeding.*

This advice was also contained in Telecom minutes of 27 April 1988 and 5 January 1992.

• Network Investigation Section progress report of 17 May 1989 on its investigation into Golden Messenger stated -

*The major problem still appears to be the slow response time of the Flexitel. This combined with high call through put resulted in operators misusing the system resulting in adverse service to their customers.*

Telecom Minute of 23 May 1988 from Commercial Engineering Section - Customer Terminals to State Business Sales - HQ advised of the following -

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*As you are aware we are having real problems with this system. We appear to have the speed up to what we hope is an acceptable level by the dodgy expedient of removing some of the DSS modules. This may or may not be acceptable to the customer (bless him) in the longer term.*

*The most pressing problem now is the intermittent failure of the station displays. The displays do not fail completely, remaining able to show "unobtainable" at the correct times as required, but nothing else. No CDR card is fitted. We intend to try and fit one but this may not be possible given the large size of the system.*

- 24 Despite having internal advice that network problems were being experienced at the North Melbourne exchange and that there were problems with the Flexitel system, on 11 October 1988, Telecom advised Golden Messenger as follows -

*I refer to the Flexitel System ordered by Golden Messenger and the continuing complaints by Golden Messenger that deficiencies in the public switched telephone network have resulted in Golden Messenger suffering damages due to loss of business.*

*As you are aware extensive investigations, reports and discussions, I confirm that Telecom cannot accept your*





*allegations and claims. In Telecom's view, all reasonable efforts to inquire into your complaints have been unable to substantiate the allegations and claims.*

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25 On 17 November 1989 Network Investigation Section issued the Golden Messenger - FINAL REPORT. Findings within this report related to both Flexitel and network issues. Some of the key findings were -

- *Congestion existed on the IDN exit route from Footscray Node to North Melbourne due to IDN changes and traffic growth*
- *Under dimensioned CL and PD individuals at Footscray Node were causing congestion*
- *Faults were also found with various exchanges in the network which affected the Grade of Service (GOS) received by G.M.*
- *The response time of the Flexitel was excessive causing misoperation by the operators. Whilst the Flexitel was configured in accordance with design rules, it was the 'sluggish' response to station keystrokes that was its worst characteristic.*
- *The inability to meet the customers requirements for call queuing was also a weakness and had to be overcome by the appendage to the Flexitel main equipment of call sequencers.*
- *Customers cited by G.M. were investigated and although they experienced similar symptoms of COS and BWF, they were in*

*issues. Telecom would welcome the opportunity to present its case in court but there is not accepted mechanism for it to initiate court proceedings on these matters. Hence Telecom must continue to bear the brunt of negative media activity despite its attempts to resolve these cases.*

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**Comments**

Golden Messenger has advised that its decision to accept a settlement and not proceed with legal action was made on the basis that it was not in a position to fund the legal action in the Federal Court. It should be noted that for five years prior to the settlement, that is for the entire duration of the dispute period, Telecom maintained that the Flexitel System was satisfactory whilst internal correspondence from technical and legal staff acknowledged that -

- the system did not meet Golden Messenger operational requirements (paragraphs 23,24 and 25 refer)
- Golden Messenger was likely to be successful in establishing that Telecom engaged in misleading and deceptive behaviour (Legal Briefing Paper, dated 1 July 1992, prepared by Principal Legal Officer).

The above findings do not support Telecom's claim of COT receiving fair treatment.

In answer to the question: 'if it is and was an unsuitable system for Golden Messenger's business needs back in 1987, what system would have been appropriate in the price limit of \$41,000?' It was Mr Afonczenko's opinion that:

*"No other equivalent equipment manufacturer, back in 1987, could have provided a suitable product within this price limit".*

[Ref: R25687 to R25693]

On 10 October 1992 a LEOPARD record shows that (03) 329 0055 was reported as DAF (Does not Answer -Faulty). The fault report was referred NPAC. There is no further documentation located in relation to this fault report. [Ref: 000401 & C05370]

On or about 11 October 1992: (precise date uncertain) a AT&T DEFINITY PABX was installed at the Claimants' premises by Honeywell. For details of new configuration see section "Claimants' CPE and Service Configuration". [Ref: 000547 to 000549]

On 14 October 1992 an exchange fault docket records that STU 163 was causing disturbances. The faulty STU was detected as the result of a REA sorter dump, which is taken within the exchange twice a day. While the fault was evident and before the device was blocked, the Claimants' (03) 329 7xxx rotary groups could have experienced a 3.3% outgoing call failure as the faulty STU was 1 of 30 available to the (03) 329-7xxx group. This STU was not used by the Claimants' (03) 329 0xxx group. This fault would not have affected any incoming calls to the Claimants. [Ref: A93481]

On 15 October 1992 an exchange fault docket records that disturbances were generated by SLCD-3 of the (03) 329 0xxx Subscriber Line incoming stage. The fault was found to be caused by a sticky R3 relay (which controls the transfer of the B party number from the code receiver) which results in CD time outs. The disturbance alarm would be generated immediately the CD times out. The generated alarm would result in action by a technician, and the faulty equipment would be blocked to traffic as soon as practical. In worst case conditions, while the fault was evident prior to the equipment being blocked, 33% of incoming calls to (03) 329-0xxx would return busy tone. The Claimants did not report any service difficulties this day, the Claimants (03) 329-7xxx groups were not affected. [Ref: A93515]

On 20 October 1992 Mr Schorer in a letter to Mr Robert Arnold stated that:

- a. the Claimants were still receiving wrong numbers for the 'Melbourne Diagnostic Group';
- b. substantial improvement in regard to drop outs on answer (ANV) from the previous levels of 50 per day, on the (03) 329 0055 group since the installation of his new internal telephone system (AT&T PABX installed recently);
- c. clients calling the Operations number are now experiencing predominantly more engaged signals than ring tone (BWF), and
- d. clients ringing the Administration group, which is still working through the Flexitel system, are predominantly receiving more ring tone than engaged signals without the calls registering on the Flexitel.

Mr Schorer continued, that the only option he can see to fix the problems is to install an ISDN service. [Ref: 000922 & 000923]

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## Service Chronology

On 1 October 1992 an exchange fault docket records that a customer (03) 329-7xxx (not the Claimants) reported a problem of Ring Tone to 'A' party and Ring Over Conversation to the 'B' party when the called number was busy. The technical staff at North Melbourne Telephone Exchange found faulty springset contacts on relay TK1 in SLM1 (Subscribers Line Marker). The fault caused calls to 329-7xxx switched by SLM1 to test a busy straight line subscriber as free. If the called number is a directory number of a rotary group the PBX equipment will replace the dialled number with the first free auxiliary number in the SLM.

The effect to the Claimants' (03) 329 7xxx rotary group services would be as follows:

- i. if any auxiliary is free the problem can not occur;
- ii. when all auxiliaries are busy and the directory is free the problem can not occur;
- iii. when all auxiliaries are busy and the directory is busy the above problem may occur; and
- iv. if the caller dials direct to a busy auxiliary rather than the directory number the problem may occur.

However, when the problem could occur then 50% only of these calls would be effected as there are two SL markers in this thousand group. This problem does not represent lost calls to the Claimants as the incoming calls would not have been able to be successful anyway as the lines were busy. The effect, if any, on the Claimants' services would have been a nuisance only for 329-7xxx services whilst the Claimants' 329-0xxx services were not affected. [Ref: A93525]

On 9 October 1992 Mr George Afonzenko of Housley Communications, reported, as requested, to Mr Richard Boughton of the Attorney General's Department, his findings in relation to viewing at the Claimants' premises on 7 October 1992. The report noted the following:

*"During the course of our observation the following problems were encountered:*

- a. *Ringling in to the system without receiving ring tone or visual indication appearing on any of the stations when lines are free.*
- b. *Receiving busy tone indication when all lines indicated being free.*
- c. *No display of exchange line identification on the Liquid Crystal Display (LCD) when an incoming call is received on System A."*

It was Mr Afonzenko's opinion that:

*"The Flexitel system is not operating in accordance with the plaintiffs expectation. This is a another point of contention due to the lack of written evidence of Golden Messenger's original requirements stating their expectations of the system. All requirements were expressed verbally"*

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noticeably, in fact he "needs the half installed computer system to manage the work".  
[Ref: J05777 to J05778]

8. On 31 October 1995 Mr Benjamin wrote to Mr Schorer in relation to the introduction of the AUSTEL Numbering Plan and eight digit numbers. Mr Benjamin advised that the 6 month period of dual numbers was about to end, and progressively from November 1995 callers failing to dial 9 as the first digit of a telephone number will not be able to successfully complete their call. He noted that some of the Claimants' vehicles still did not have the 9 included in the advertised number and this may cause difficulties for some of his customers. [Ref: J05780]

9. On 19 January 1996 the Claimants' complained that at 4:30pm they attempted to ring their own (03) 9287 7000 number following a clients complaint of receiving RVA intermittently. The fault was traced to incorrect data at LONU exchange on 10 October 1995. [Ref: J05771 to J05774]

A detailed analysis of this fault is provided in 'Investigations, Analysis and Supportive Data'. The estimation of the impact of this fault to the Claimants' ISDN service is:

- a. for 10 October to 12 December 1995, approximately 0.12% call loss from the Melbourne (03) network attempting to call the Claimants' ISDN services; and  
for 13 December 1995 to 23 January 1996, 0.23% call loss from the Melbourne (03) network attempting to call the Claimants' ISDN services.

Therefore the data error in Lonsdale had negligible effect on call delivery to the Claimants' ISDN services and no effect to their PSTN services. The Claimants' outgoing calls were not affected.

See 'Investigations, Analysis and Supportive Data' for full details.

10. On 22 January 1996 the Claimants' complained that while attempting to dial (055) 267 xxx and received (03) 905 5xxx. The Claimants' apparently dialled '9' in front of the 055 prefix. The Claimants' therefore, received (03) 905 5xxx which is an extension off another customers' PABX. A test call performing the same dialling error was answered by the same customer. Data at NMEE exchange was verified as being correct for the code (055). It apparent that this complaint was most likely due to the Claimants' mis-dialling. [Ref: J05767 to J05770]
11. On 11 March 1996 the Claimants' complained of receiving 3 different recorded voice announcements (RVA's) when calling mobile numbers 019 925 xxx and 041xxxxx. The Claimants' advised of the exchange code heard at the end of the RVA's. The exchange code given appeared to be a Mobile Network exchange. Clear codes indicate that the fault existed in privately maintained equipment. [Ref: J05314 to J05315 & J05137 to J05141]
12. On 11 April 1996, as requested by the Claimants', Telstra cutover 8 of the Claimants' PSTN lines from NMEE to NMEK and cancelled the remaining 29 PSTN lines (Telstra's records indicate 4 of these lines are not the Claimants' services). A personalised RVA (Messagebank) was placed on the Claimants' cancelled directory lines. The cutover was originally planned for 3 April 1996.

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Melbourne area, there is no such requirement for STD codes. [Ref: J05767 to J05770]

- d. **Exchange Faults:** two complaints for which exchange equipment was determined as the cause. Both of these complaints were caused by incorrect exchange data. (see explanations below)

1.4.1.1. **Network and Exchange Faults**

1. Details of the two exchange faults identified as a result of the Claimants' complaints are outlined below.
2. The first exchange fault occurred with the cutover of (03) 329 from ARE-11 (NMEL) to System12 (NMEE) on 11 April 1995, where the omission of specific exchange data did not allow the Claimants' to make outgoing STD calls during the actual cutover, accounted for one complaint. This was reported at 12 noon and rectified in the afternoon of the same day of the complaint. The effect to the Claimants' was negligible, as no incoming traffic, or local outgoing calls were affected, only outgoing STD calls were affected. This fault had no effect on the Claimants' ISDN service which was their primary service for incoming calls [Ref: A46746 & A46729].
3. The second exchange fault occurred as a result of an error in routing data loaded into and activated in Lonsdale AXE Telephone Exchange (LONU) on 10 October 1995. Under limited conditions and only from certain origins, callers to one hundred group (03) 9287 70xx (of the four one hundred groups) allocated to the Claimants' ISDN service would incorrectly receive an RVA message. The Claimants' ISDN service was connected to North Melbourne ISDN Telephone Exchange (NMEX). The data error was corrected on 23 January 1996. A detailed analysis of the impact of this fault is set out below.
4. ↙ From 10 October 1995 customers whose services were directly connected to LONU exchange would incorrectly receive a RVA when calling (03) 9287 70xx (8 digit dialling). Customers connected to North Melbourne System-12 exchange (NMEE) would incorrectly receive the RVA on 50% of call attempts to (03) 9287 70xx as calls from NMEE to NMEX were trunked on a 50/50 basis via LONU and North Melbourne AXE Telephone Exchange (NMEA).
5. Calls from LONU and NMEE made to (03) 297 70xx (7 digit dialling) were not effected until 13 December 1995. [Ref: J06242 & J06243 & J06164 to J06181]
6. The implementation of a further data change (associated with AUSTEL Numbering Plan) in LONU on 13 December 1995 compounded the problem, in that callers from LONU and NMEE incorrectly received an RVA 100% and 50% of calls respectively to (03) 297 70xx.
7. Network routing of a small number of exchanges utilised LONU exchange to switch calls to NMEX only under overflow conditions. For the duration the data error only 2 calls destined for NMEX overflowed through LONU.
8. Traffic Observation data available for the codes (03) 286 & 287 xxxx and (03) 9286 & 9287 xxxx shows that the percentage of callers dialling new 8 digit codes was less than 20% in October 1995 and less than 50% in December 1995.

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that we also have a power to refer matters to the Trade Practices Commission, the Commonwealth Ombudsman or the Telecommunications Industry Ombudsman. In the course of the investigation in what is known as the casualties of Telecom—the COT cases—we have persuaded Telecom and, in consultation with Telecom, moved it to implement a proposed arbitration procedure, which it is developing in consultation with the Telecommunications Industry Ombudsman. This procedure would provide for a binding system of arbitration for that sort of complaint.

Senator ALSTON—But you are continuing to pursue your own separate investigations and, indeed, you are a couple of months late in handing down a report, are you not?

Mr Davey—No, I do not think we are a couple of months late in handing down a report. We are pursuing an investigation and we propose to report by mid March.

Senator ALSTON—Had you not said last year that the report was to be expected before the end of the year?

Mr Davey—I had hoped to have a report earlier, but the investigations and the material available to us have expanded.

Senator ALSTON—So you will be covering matters other than those that are currently before the arbitrator?

Mr Davey—Most certainly.

Senator ALSTON—But you still lack power to enforce any recommendations, orders or assessments of damages?

Mr Davey—That is correct. I will not be assessing damages.

Senator ALSTON—But you have the power to do that?

Mr Davey—So I am advised.

Senator ALSTON—Does that compromise your negotiating power with Telecom? Surely, if you are not actually able to enforce any orders against Telecom, you have to accept whatever proposals it puts forward for self-regulation, do you not?

Mr Davey—No, I think the way it has proceeded is that we have always held the threat of appointing our own assessor—and I

use that word carefully—to be in the background and have that power. Problems would then be exposed to public scrutiny and there would be moral suasion on Telecom to meet that assessment.

Senator ALSTON—It is surely not as good as having a legal power?

Mr Davey—As I said, it is not Austel's usual role to pursue the individual complaints, as we have in this case. We came into these matters more as a circuit breaker or because they had gone from one agency to another. We felt we might as well try to break the loop there and see what we could do to assist them and to investigate the underlying causes of complaints. In the usual course of events, these sorts of complaints would be referred to the Commonwealth Ombudsman, TIO or to the Trade Practices Commission, as appropriate.

Senator ALSTON—I refer you to a minute from Telecom dated 2 July 1992 in relation to Mr Alan Smith of Cape Bridgewater—no doubt well known to you and to me. This minute says:

Our local technicians believe that Mr Smith is correct in raising complaints about incoming callers to his number receiving a Recorded Voice Announcement saying that the number is disconnected. They believe that it is a problem that is occurring in increasing numbers as more and more customers are connected to AXE.

The upgrading to AXE exchanges has continued apace since that time, has it not?

Mr Davey—My understanding is that it has, yes.

Senator ALSTON—On the face of it that letter then suggests or implies that you will be having more and more complaints as a result—presumably some sort of overload. Is that something that you are investigating?

Mr Davey—Certainly within the ambit of our inquiry.

Senator ALSTON—Is there any restriction or limitation on your ability to make that sort of judgment?

Mr Davey—No. Indeed, that is the sort of thing where we have no reservations or qualifications about the powers that we possess.

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/66 Conference Call Minutes - Meeting #5THURSDAY 24th FEBRUARY 2.00pm EDT

Ian Brent, Greg Earl, Harry Burden	NSS CW	F 08 231 2102	P 08 230 5328
Tony Rayner	NASS Melbourne	F 03 650 1285	P 03 657 3482
Alex Kindler, Michael Miltiadou	NASS Melbourne	F 03 654 7252	P 03 657 4908
David Conolly, Maher Mansour, Amy	NASS Sydney	F 02 261 2910	P 02 267 9066
Mal McDonald	NSS	F 03 632 2985	P 03 634 6285
Colin Campbell	NSS - S & DM	F 08 410 1638	P 08 230 5760
[REDACTED]	Ericsson Australia	F 03 301 4 [REDACTED]	P 03 301 [REDACTED]
Les Brooks	Parramatta EMG	F 02 891 5459	P 02 689 3222
Martin Power	City EMG	F 03 602 2020	P 03 602 1199
Bob Paton, Martin Spear, Edwin Khaw	AXE Technology	F 03 634 6606	P 03 634 7039
Trevor Peak	Central EMG	F 08 269 9555	P 08 269 9515
Don Blaby	Peninsula EMG	F 03 770 1156	P 03 784 2290

1. Review of Previous Action Points

**ACTION POINT:** Edwin Khaw is raising the issue with Ericsson in order to achieve the final solution.

↙  
**\*\*ACTION POINT:** AXE-T (Edwin Khaw) to raise Charging Check issue with Ericsson, and advise when the final solution will become available.

↙  
**\*\*ACTION POINT:** AXE-T (Edwin Khaw) to raise Charging Check issue with Ericsson, and advise when the final solution will become available.

↙  
**ACTION POINT:** AXE-T to provide a "Release Binder" for /66 Package 1, including SCP's, for NSS CW (Adelaide), NASS Sydney, NASS Melbourne & S & DM. COMPLETED

**\*\*ACTION POINT:** AXE T (Edwin Khaw) to follow up with Frank Chai to ensure PBA strapping details are updated and supplied to O & M staff. ONGOING

**\*\*ACTION POINT:** AXE-T (Edwin Khaw) to ensure that the /66 data structure is documented and disseminated prior to any implementation of package 2. ONGOING

**\*\*ACTION POINT:** AXE-T (Martin Spear) to advise on results of ELISA testing, and confirm the requirement for /36 standard data prior to conversions. ONGOING

**ACTION POINT:** AXE-T (Bob Paton) to check that testing of RVA routes after the next AX62 conversion is performed. TOMMOROW

**\*\*ACTION POINT:** AXE-T (Bob Paton) to supply NSS CW with a list of outstanding package 2 faults, in order to reach agreement on those which must be solved prior to first implementation. SUPPLIED but ONGOING

**\*\*ACTION POINT:** AXE-T (Edwin Khaw) to ensure that /66 electronic B Module help files are made available prior to pkg 2 implementation. ONGOING