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**Exhibits 541 to 495**

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AUSTEL

COMMONWEALTH & DEFENCE FORCE  
**OMBUDSMAN**

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281.

27 October 1994

C/94/195

*M. Wynack*

Mr John MacMahon  
Australian Telecommunications Authority  
PO Box 7443 St Kilda Road  
MELBOURNE VIC 3004

Dear Mr MacMahon

As I promised during the interview on 22 September 1994, enclosed is a copy of a transcript which was made by AUSCRIPT from the audio tape of the interview. I have enclosed a copy of the tape in case you wish to confirm the accuracy of the transcript.

Thank you for your assistance in this matter.

Yours sincerely

John Wynack  
Director of Investigations

495

**TRANSCRIPT  
OF PROCEEDINGS**



**AUSCRIPT**

95/0600-01

9

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NSW Region  
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**COMMONWEALTH AND DEFENCE FORCE  
OMBUDSMAN**

**RECORD OF INTERVIEW**

**CONDUCTED ON**

**THURSDAY, 22 SEPTEMBER 1994**

**INTERVIEWERS:**

**JAMES HINDS, Senior Investigation Officer  
JOHN WYNACK, Director of Investigations**

**INTERVIEWEE:**

**MR JOHN McMAHON**

MR J. HINDS: It is 3.20 pm on 22 September 1994. This is an interview with John McMahon at the offices of AUSTEL, 5 Queens Road, Melbourne. I would like those present to identify themselves. I am James Hinds, Senior Investigation Officer.

MR J. WYNACK: I am John Wynack, Director of Investigations.

MR B. MATTHEWS: I am Bruce Matthews. I work in AUSTEL's consumer protection area.

MR J. McNAMARA: And John McNamara from AUSTEL.

MR HINDS: Now, we will need to administer an oath. I am just wondering whether you want to make an oath or an affirmation.

MR McMAHON: An oath.

JOHN McMAHON, sworn:

MR WYNACK: Thank you, John. First of all, we're interested in filling in some understanding of the development of the fast track settlement proposal for the four original COTs which culminated in the agreement of 21 November 1993. I don't want chapter and verse. Our primary concern is what consideration was given to the processes whereby these people would be able to obtain documentation to enable them to submit their claims. So my first question is was there any discussion prior to the signing of the proposal of the means whereby the claimants could obtain documents?

MR McMAHON: Well, I think the - it was always envisaged that they would get their documentation from Telecom. Telecom wasn't going to hand it out simply by request and it was run down the FOI line and essentially AUSTEL always was under the impression that they would make FOI requests and have the documentation made available to them.

MR WYNACK: I don't have a copy of the letter with me, but AUSTEL in fact . . . . inaudible. . . . to Telecom and an FOI application lodged by Ann Garms. Robin Davey actually relayed it on to Telecom complete with the application fee. The letter concluded with a statement along the lines - or a request along the lines, "Would you process this application

urgently as Ms Garms needs the information to submit her claim to - under the FTSB." Were you aware of that letter going out, John?

MR McMAHON: Yes.

MR WYNACK: And is - was that really the expectation that Telecom would give some priority to FOI requests?

MR McMAHON: I think the background to that letter was that there was not good feelings between Telecom and the COT cases. There wasn't a high level of mutual trust at that stage and when Mrs Garms sought to get documentation from Telecom she just wanted to involve AUSTEL in the process, and so I think it was a unique set of circumstances, but rather than lodge a request directly with Telecom she wanted to relay it through AUSTEL to try to give it that extra highlighting, I guess, and certainly the COT cases had been reported to AUSTEL the difficulty that they had faced in getting documentation from Telecom. You know, we knew it wasn't really forthcoming and certainly the fast track settlement proposal sought then to lodge their submission within six weeks of agreeing I think, and so it was apparent that the success of the whole arrangement was going to revolve around getting prompt access to their documentation. And so when Mrs Garms' request was relayed by the chairman he just noted that prompt co-operation on the provision of documentation was - seemed to be important.

MR WYNACK: Do you recall whether there'd been any discussion with Telecom officers generally about giving some priority to the FOI requests.

MR McMAHON: Well, my recollection is there wasn't a - there wasn't such a discussion. We've always taken the point of view that FOI is not within our jurisdiction and it's not for us to make too much of a - too much of the issue, but as I've said you know there have been occasions in which the allegations made by the individuals that they had difficulty in getting these documentation provided was raised with Telecom, but it was raised you know as an issue of relevance and not one that we were in a position to pursue, but just in the spirit of what had been entered into it shouldn't - it was a necessary part of the process.

MR WYNACK: In that period, around November just prior to the finalising of those agreements, did Telecom and AUSTEL discuss whether there were perhaps alternatives to FOI to getting the documents to the COTs? Did Telecom for example suggest another way?

MR McMAHON: Prior to the FOI - prior to the fast track, I don't believe they - I don't believe that took place. I think from the - originally

the - originally we always thought that the FOI mechanism was the one that would be utilised. As I said, I mean, Telecom wasn't handing out documentation without FOI. And I think that you know part of Telecom's attitude was conditioned by some of the things that happened in the early stages of FOI where some of the - at least one of the COT cases got documentation which was sensitive as far as Telecom was concerned under FOI and they put it into the public arena, and the impression I got was that Telecom's attitude to FOI hardened at that point, that they didn't want to have sensitive documentation going into the public arena and so there was provision in the arbitration procedures whereby the arbitrator could determine - or if he considered that there was documentation that Telecom had that hadn't been made available, then he could seek that extra material under that provision and I think there was some suggestion that Telecom would be happier with that rather than FOI as a means of preserving the confidentiality of the documents.

MR WYNACK: These events occurred back in late February through March '94 I suspect, the ones you're talking about. That would have been between the period when an arbitration process was proposed by Dr Hughes and the period when the COTs accepted or agreed to enter into the arbitration in April - or are we talking about a different period?

MR McMAHON: We're probably talking about a probably a different period. I think we're probably talking about an earlier period and I think the - I think the things that really gave rise to the attitude was summary material on taping and that would have - that would have been, what, early - that would be early January, wouldn't it?

MR WYNACK: Yes, I think this correspondence was late December.

MR McMAHON: Yes, late December, just after Christmas, and I think the release of some suggestion as to the taping of conversations to the press was a bit of a watershed.

MR HINDS: So the proposal was in November and this correspondence that?

MR McMAHON: Yes, yes, the - the fast track settlement proposal had this provision whereby the arbitrator could seek additional detail. Now, that I believe is a fairly standard clause in arbitration. But it was probably after the - putting in the public domain some sensitive documents that Telecom started to see that that might be from their point of view a preferable mechanism. I mean, that's my judgment. I've got nothing to support it.

MR WYNACK: The fast track settlement proposal, clause 1B - have you got a copy of it there, John?

MR McMAHON: Yes.

MR WYNACK: It refers to the attached copy of a proposed arbitration procedure. Is your recollection that that proposed procedure in that paper, which I have not seen, but say - - -

MR McMAHON: Do you want it?

MR WYNACK: Yes, okay, then, perhaps it would fill out my files a little. But was it ever intended that those rules in that procedure would apply to the four COTs who were signatories to the fast track settlement proposal?

MR McMAHON: The - yes, it was a general approach. It was the approach that Telecom was suggesting that they would use in arbitration procedures and my recollection is we put these details in front of the COTs to let them get a feeling for the general approach Telecom was intending to adopt. But they - their own fast track settlement was going to have some unique provisions. So this would be the general approach, but there would be certain variations for them in terms of - yes, some of those conditions would have been liberalised for them.

MR WYNACK: We have been informed by two of the COT members that Robin Davey assured them that the rules in that document which at some stage was attached to the proposal were not to apply to the four COTs and that they were never actually given a copy of that document, the document being the attachment referred to in clause 1B. Have you any recollection if that was so?

MR McMAHON: No, I - I couldn't state firmly one way or the other. I - I do believe that - I mean, certainly my belief, without going back to the files, and I'm not even sure that the files would establish it. This is some of the chairman's own papers that don't have the COT documentation you know from the COTs themselves. It's more his writings. But I believe that they were - that this document was put in front of them and certainly - certainly discussed with them. I mean, you know we had discussions in the boardroom here as to the general approach, and I think they - my recollection - I'll just check with Bruce, but my recollection is they came back with comments on it.

MR MATTHEWS: Well, that's my general recollection as well, but I'm not certain on it either. I would have to go back and check our file documentation.

MR WYNACK: It would be difficult for us to verify whether it happened. One way to do it of course would be to speak to the former chairman - former chairman, isn't it - - -

MR McMAHON: Yes.

MR WYNACK: - - - on the matter. We did see the - what purported to be copies of the signed agreements - there were four of them - and none of those had the proposed arbitration procedure rules appended to and I'd be interested to know whether or not when - was it AUSTEL who forwarded them on to Telecom or did the Telecommunication Industry Ombudsman? I'm not sure now. But I'd be interested to know whether or not they were appended at the time they were signed.

MR HINDS: Well, would your records show that? You say you can check your records. Would they show that or - - -

MR MATTHEWS: It may show that. Our records may show that. I'd have to check that.

MR McMAHON: I would hope though they would show one way or the other, but I think pages have been on and off the file on so many occasions that I couldn't 100 per cent vouch for it, but the chances are they showed them and I guess we can identify that before you leave the premises.

MR WYNACK: No, there's no need to do that. Perhaps you can contact me some time later and let me know. So I'm quite happy for that - - -

MR McMAHON: All right. But the other thing I'd say - and sure, I appreciate the timing element in - but these conditions that are set out in the proposed procedure were also incorporated in the public COT report as to what the procedure that Telecom was proposing.

MR WYNACK: Well, I haven't looked at the report - the AUSTEL report - and the reason is that the Ombudsman's investigation here is confined to a complaint about Telecom's processing of an FOI request. The questioning I'm engaging in here now is necessary because of statements made - conflicting statements made as to what the expectations of the parties were in regard to the provision of documents prior to the formal processes being agreed with Dr Hughes, which occurred ultimately in April but commenced on 3 February.



If I could just depart from that for the moment, has AUSTEL been involved in seeking to speed up the provision of documents by Telecom by any means or is that just - once the agreement was reached did you bow out then?

MR McMAHON: I think there have been a number of occasions on which we have mentioned to the Telecom personnel that the COT cases were alleging they were having difficulty in getting it and my recollection is we probably made reference to that in one or two letter to Telecom. But again because we were - it was outside our jurisdiction you know we didn't make a big issue of it and indeed when the - when some of the COT cases have complained to us you know we've said, "Well, there's a very limited amount that AUSTEL can do about it. It's not within its power but you could well take the case to the Ombudsman's office."

MR MATTHEWS: Can I add a comment to that as well, and that is in our report - one of the recommendations in our report that goes to Telecom's treatment of FOI applications and I think the recommendation said something along the lines that Telecom should increase the resourcing of its FOI area and improve the treatment of FOI applications, so in a sense that's a general pressure that we put on Telecom to hurry up the process.

MR WYNACK: What was the date the report was issued, the AUSTEL report?

MR MATTHEWS: The final report was April - I can't remember the date in April, but April 1994. The draft report was produced in March 1994 and Telecom received their copy of that at that time.

MR WYNACK: So that observation was made by AUSTEL notwithstanding that there was in place then, or about to become in place, an arbitration process which enabled the arbitrator to make directions that Telecom provide documents?

MR MATTHEWS: It was a general statement. It didn't necessarily apply to the four COT cases. It was just a general statement.

MR McMAHON: But, yes, I mean to say you know some of the suggestions made were that FOI was not dealt with when the - when the person with that responsibility went on holidays. You know, nobody filled in for him. Whether that's right or wrong I don't know, but that was the suggestion made and I've never heard it denied. So you know - and I think that's part of the background to the recommendation that Bruce identified there.

MR WYNACK: Are you aware whether Telecom had indicated that they would not provide documentation other than under FOI? I mean, if the claimants could obtain documents through other processes, why would it be necessary to use the FOI Act and why would there be such emphasis on FOI by both AUSTEL and the COT complainants? I mean, Ms Garms put her claim in under FOI on the day I think, or soon after the day she signed the fast track settlement proposal.

MR McMAHON: Well, Mrs Garms has had FOI you know claims in the past and she's had years ago - you know that's just the path they've run down. I mean, I don't know that anybody amongst the COT cases has got any documentation other than with an FOI request and I don't think a simple request is - leads you anywhere.

MR WYNACK: Is it true that the COTs needed to obtain documents - some documentation from Telecom in order to submit the claims, and to the assessor under the proposal agreed to in November?

MR McMAHON: Well, I would think so, yes. I mean to say, the whole emphasis of the fast track settlement proposal is that there should be a case establishing the extent of loss. Now, the individuals could have had some personal diary of telephone difficulties but you know the nature of the complaints that they were dealing with meant that - in particular I guess it was instances where people were ringing them but their phone wasn't ringing. And so you know by maintaining a diary of their own, they would never know of such instances or the frequency and extent of them. You know and the other cases were people ringing but the phone being engaged when it wasn't, and again they wouldn't know that. So the Telecom documents of exchange performance, testing, you know, were really essential to get a comprehensive picture and certainly one that would have due weight before an objective assessor. So, yes, very important to be able to establish a case.

MR HINDS: So Telecom would understand that the documentation was essential.

MR McMAHON: Absolutely.

MR HINDS: Regardless of how it was to be provided to them.

MR McMAHON: Yes.

MR WYNACK: For the moment, if I can just leave that, there is some question as to what information was provided to AUSTEL. Part of Mr Schorer's Freedom of Information application referred to documents

provided to AUSTEL and some other people in the period prior to the date of his FOI application which was 24 November; he specified that date. And we were interested to ascertain whether AUSTEL has a record of the documents of Telecom which it examined in the 12 months prior to November 1993.

MR McMAHON: No, we would not.

MR WYNACK: How did you examine documents during your investigation?

MR McMAHON: We - we firstly put a direction on Telecom to make available to us all relevant documentation. The - Telecom came and said, "Look you know these are live documents that we're working on, etcetera. Rather than flood you and disrupt ourselves, would it be acceptable to you that we establish a room at Telecom headquarters in which we assemble all relevant documentation that you have sought? Where there are additional folios going onto those files you know we will continue to put them on so that you have the advantage of seeing any additional material that's coming on." And the chairman agreed to that, that we would have full access to all documentation in a viewing room in Telecom and so our personnel went over there and were able to assess - access them and where they saw material that they wanted to copy and to consider and put on - back on our record here, they took copies at the time.

MR WYNACK: So when you wanted additional information, that is, information which your people perhaps couldn't find in the viewing room, how would you go about accessing that? Would you write to Telecom or

MR McMAHON: Yes, well, you know the rules were essentially that everything relevant was to be there. So everything should be there. You know, where we did seek additional material - we might have got a clue to its existence from examining the files - yes, we did write to Telecom and ask them can they provide us with something specific in addition.

MR WYNACK: And presumably their response would be in writing and would say they're now in the viewing room, or would they deliver them to you, or was the viewing room generally regarded as the - - -

MR McMAHON: Yes, you know my recollection is there were a couple of documents which involved them in processing some material and drawing up some additional charts which they forwarded to us eventually. Other things - if it was a file to which we saw references being made in the

view room but we couldn't locate it, we asked them for it and that was made available in the viewing room.

MR WYNACK: In the viewing room. So it may well be accurate to say that all of the information provided by Telecom to AUSTEL in connection with that investigation was provided in the viewing room.

MR McMAHON: That is essentially the case, yes. You know, I would say that's certainly 99 per cent.

MR WYNACK: I listed five documents in my note to you? Do they mean anything to you, those - - -

MR McMAHON: Certainly do. The first two and the last two are the same.

MR WYNACK: That's supplementary into exchange network. That's - it's not a - it suggests another name for the one report.

MR McMAHON: Yes.

MR WYNACK: And were they in existence prior to - - -

MR McMAHON: Well, the first - let's say the Telecom submission to AUSTEL - I mean, I can't say anything as to the date that it came into existence. It was made available to AUSTEL as Telecom's main submission. On the day we received it we never had any access to a preliminary draft or anything like that. It came to us in November. The other two documents that you list there, again we never saw any preliminary draft. They came to us with a - under covering letter dated 7 January.

MR WYNACK: 7 January what year?

MR McMAHON: '94.

MR WYNACK: That was - right, so the first you saw them was 7 January but you don't know when they were created?

MR McMAHON: No, but I mean let's say the - you're talking about the BCI supplementary inter-exchange network. Now, the - that was a matter of conducting some traffic tests in a range of exchanges and the document itself shows that they were - that the tests were run in December. So presumably they were run in December and the report assembled and prepared in late December, early January.

MR WYNACK: Those were the reports of the BCI tests. Did you ever examine the raw data on which those reports were based?

MR McMAHON: I don't believe so. I mean, it was - those reports were essentially reviewed by the technical people in AUSTEL. Yes, the background was BCI had undertaken some technical tests and the COP cases themselves and AUSTEL's technical people had some reservations about them and as a result of those reservations Telecom had BCI do those supplementary tests and the rotary hunting tests. So my recollection is that those reservations were reservations which arose from viewing the original report rather than the technical data itself, you know, the detailed technical data.

MR WYNACK: Do you have the date on which you received that Telecom submission?

MR McMAHON: We would have, yes.

MR WYNACK: It's critical for me to know whether or not it was before or after 24 November.

MR McMAHON: Right, yes.

MR MATTHEWS: We should be able to give you that today before you leave.

MR WYNACK: Yes, okay then, Bruce, if that's convenient. I don't think I need ask you any other questions, except perhaps recently you wrote a very short note to Ann Garms - - -

MR McMAHON: To Ann Garms, yes.

MR WYNACK: Yes, 14 April.

MR McMAHON: Right.

MR WYNACK: And it said, "This letter is to confirm that the fast track settlement proposal drafted by AUSTEL and signed by Telecom on 18 November and by you on 23 November refers to an assessment process and an assessor and makes no reference to arbitration or to an arbitrator." What prompted that - - -

MR McMAHON: A request from Mrs Garms, "Would you give me such a letter?"

MR WYNACK: I see.

MR McMAHON: So she phoned me up, asked me would I give her such a letter and it was simply a confirmation of fact.

MR WYNACK: Had there been any other requests from the COT case people in recent times for similar confirmations about the nature of the fast track settlement proposal?

MR McMAHON: I don't think so. I don't have a recollection of it. I mean, certainly there's always been some concern, I mean, that so many - almost signings of various documents and you know they've been frightened by various aspects of them such that they - at the end they jumped and wouldn't sign this type of thing. And this has been an issue with them for a long time, whether they were going into an assessment process or an arbitration process, and the - when they were taken through - when they made their own views known and when they were taken through the way the proposal was shaping up, it was just that it was in terms of an assessor. The final documentation made reference to arbitration, but essentially gave them an assessor.

MR WYNACK: What involvement did AUSTEL have with Dr Hughes in developing the arbitration rules?

MR McMAHON: I don't know that it had any. Indeed, when Hughes' appointment was announced, there was some question as to whether he you know would want a briefing from AUSTEL as to the background of the case. To my knowledge he didn't seek that and it was very much the chairman's point of view that he wasn't going to offer or put himself forward unless there was some wish from Hughes to know of it, and I don't know - I don't know that they ever met. I've certainly never met him.

MR WYNACK: Well, thank you, John. Have you got any questions regarding any of those things?

MR HINDS: No, I don't think I have.

MR WYNACK: Would you like to add anything, John, to expand on anything you've said?

MR McMAHON: No.

MR WYNACK: Well, in that case perhaps we can terminate the interview. It's now 5 to 4. Thank you very much.

**INTERVIEW CONCLUDED**

FAXED



Telecommunications Industry Ombudsman ACN 057 634 787  
Ground Floor, 321 Exhibition Street, Melbourne, Victoria, 3000  
Telephone: 61 3 277 8771 Facsimile: 61 3 277 8797

Telecommunication  
Industry  
Ombudsman

## Facsimile Cover Sheet

TO: PLB  
Company: Makers  
Fax: 9677 4621

FROM: PAD  
Company: TIO  
Fax: 9277 8797

Date: 22.6.95  
Pages: 1 (including cover sheet)

Comments: Sorry to be so demanding on your first day  
back . . . .  
Jeter,

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 Arbi. His position  
is not to open the can of worms, but would  
like to discuss strategy with you.  
Regards. Pa. 496



FAX FROM: ALAN SMITH  
C. O. T.

DATE: 20.6.95

FAX NO: 055 267 230

PHONE NO: 008 816 522

NUMBER OF PAGES (including this page)

FAX TO: DR GORDON HUGHES  
HUNT & HUNT  
LAWYERS  
MELBOURNE

Dear Dr Hughes,

Included with this fax are a number of documents:

- a. Copy of a letter I wrote to you on 15th August, 1994.
  - b. Copy of a letter I wrote to Mr Kransnostein of Telecom, dated 28/8/94
  - c. Copy of a letter from Mr Rumble, Telecom Response Unit, dated 13/9/94
- A. Paragraph six of this letter asks you, through the Chair of the Arbitration Procedure, to access Raw data etc. to do with the Bell Canada Testing.
  - B. This letter asks Mr Kransnostein for assurances that ALL the Bell Canada Testing information which is available has been sent to me under the FOI Act.
  - C. Paragraph five of Mr Rumble's letter states that it appears that the letter I wrote to Mr Kransnostein relates to my request to Telecom for all the raw data associated with the Bell Canada Testing.

Paragraph six of Mr Rumble's letter states that there has been NO direction from the Arbitrator to supply any Bell Canada International documents to Alan Smith.

Dr Hughes, my letter of the 15/8/94, referred to in point A above, is in fact asking you to access this Bell Canada documentation one month before the letter from Mr Rumble, yet Telecom states that you did not seek a direction from Telecom for access to this information.

Right through the Arbitration procedure I have sought for this information because there has been continual conflict between Telecom and me regarding the validity of this testing, I am now left wondering: did you in fact request this data? If you did, then Telecom has wilfully withheld this information and once again they have lied in the Arbitration Procedure.

As a layman I can only ask a polite question: Did you ask for this Bell Canada information that I sought some 8 months prior to the handing down of the results of the Fast Track Arbitration Procedure?

Also included with this fax are three other documents, marked 1, 2 and 3. I received this information on 26/5/95, after the deliberation and your findings. These are, of course, just a few of the documents that show I was right from the very beginning of the Fast Track Settlement Proposal and Fast Track Arbitration Procedure. I knew all along that the Bell Canada Testing was flawed. Had I received this type of information as a result of my FOI requests, in the

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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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COPY



Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

September 12, 1995

Mr. Ted Benjamin  
National Manager, Customer  
Response Unit  
Telstra Corporation  
37th Floor, 242 Exhibition Street  
MELBOURNE VIC. 3000

By facsimile: (03) 9632 3235

Dear Ted,

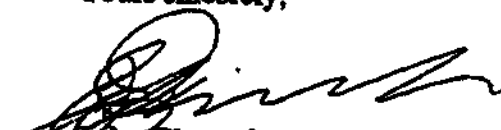
Re: Alan Smith : Supply of Documents under FOI

I refer to your letter of 7 September 1995.

I acknowledge your responses to the questions raised at points 1 and 2 of my letter of 25 August. Could you please provide evidence of these release dates?

You have also responded that Documents N00005, N00006 and N00037 were first supplied to Mr. Smith under FOI on 26 May, and that they were not made available prior to that date. Could you please clarify why this is so?

Yours sincerely,

  
John Pinnock  
Ombudsman

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

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TOTAL P.06



DEPARTMENT OF  
COMMUNICATIONS  
AND THE ARTS

Our Reference

**FACSIMILE**

To: Mr John Pinnock  
Telecommunications Industry Ombudsman  
Phone number: 1800-062-058  
Facsimile number: 1800-630-614

From: Toni Ahkin  
Phone number: (02) 6271 1509  
Facsimile number: (02) 6271 1850  
Date: 22 January 1998  
Number of pages: Cover + 4

(GPO Box 2154 Canberra ACT 2601 Australia. Telephone (02) 6271 1000 Facsimile (02) 6271 1901 Email [deaf@dca.gov.au](mailto:deaf@dca.gov.au))

Mr Pinnock

Further to our recent phone conversation I am forwarding Telstra's transcript of its meeting with Alan Smith, held on 14 January 1998 concerning his claim of overcharging on his 1800 number.

Mr Smith has undertaken to provide further documentation to Telstra.

*Wally,*  
*Please see \* over page.*  
*Do you know anything about that?*

*JA*  
*22/1*

*John*  
*I spoke to Tony Pinnock. The meeting*  
*was at Schoen's, not TPO. (Franklin?). He*  
*will tell Tony.*  
*Wally 24/1*

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**FILE NOTE***Legal and Professional Privilege Applies - Telecom Confidential*

**FILE:** MR ALAN SMITH  
**FROM:** LYN CHISHOLM  
**SUBJECT:** BILLING DISPUTE 1800 TELEPHONE SERVICE  
**DATE:** 16 JANUARY, 1998

On 14 January, 1998, Lyn Chisholm and Phil Carless of Telstra's Customer Response Unit met with Mr Smith to examine documentation in relation to his complaints lodged with the Minister's Office and the Telecommunications Industry Ombudsman regarding his 1800 telephone service.

Mr Smith in these complaints had made general allegations with regard to overcharging of the 1800 telephone service, however, Telstra had not received any supporting documentation along with his complaints.

In telephone discussions with Mr Smith, I advised him that in order for Telstra to address his claims, documentation supporting his complaints would need to be forwarded to allow Telstra to fully investigate the matter.

Mr Smith raised concerns with regard to the matter and the Arbitration and I advised that I would be investigating any instances he put forward since the conclusion of the Arbitration. Mr Smith stated that he had evidence of instances that spanned through the Arbitration and that the problem was not addressed in the Arbitration and further that the same instances continued after the Arbitration.

I suggested that we meet so that Telstra could view the documents he was referring to and work at resolving the matter from there.

**Meeting Notes 14 January, 1998****Present at Meeting**

Lyn Chisholm - Telstra            Alan Smith - Cape Bridgewater Holiday Camp  
Phil Carless - Telstra            Ray Whitworth - Observer

Alan Smith explained that he had attempted to have this matter addressed in his Arbitration and via Austel and the Ministers office for quite some time. He believes that this issue was not addressed in his Arbitration although Telstra had given an undertaking to Austel in November, 1994.

I explained to Alan that it was my understanding that at the time Austel wrote to Telstra, the Arbitration was in process and that Telstra had written back to Austel and the Arbitrator that it believed the matter would be addressed in the Arbitration.

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I then explained to Alan that Telstra had replied to the letter from Austel dated 4 October, 1994 and to further letters from Austel on this matter dated 1 December, 1994 and 3 October, 1995, and in this provided a response to his complaints of charging discrepancies and short duration calls on the 1800 telephone number.

Mr Smith put forward two copies of the Lanes Resource Unit reports. One that had been forwarded to him as part of the Arbitration and one that had been obtained from Dr Hughes's office by mistake when he collected his Arbitration documents.

In what appeared to be a "Draft" of the Lanes report, a paragraph appears relating to Mr Smith's billing complaints, that an addendum report was to be provided at a later date otherwise the report is complete.

Mr Smith stated that the issued report did not include the addendum report nor did it make any reference to his 1800 complaints.

Further Mr Smith produced various printouts of CCAS data in comparison with his Telstra accounts. In many instances the calls add up however, in some cases there appeared to be differences in the duration of the call times.

Mr Smith also provided Telstra accounts that showed an overlap in the time of calls.

Mr Smith stated that there were also discrepancies in details taken by the Commonwealth Ombudsman. He advised that he had asked the Commonwealth Ombudsman to only use the 1800 telephone number when contacting Mr Smith. In the Assessment Documentation for Mr Smith's claim for compensation for FOI matters, Mr Smith states that there is a large discrepancy between the number of calls listed by the CO as being made to Mr Smith and the number of calls he had been charged for on the 1800 account.

I note that the examples given by Mr Smith at the meeting spanned the period of the Arbitration and after the conclusion of the Arbitration.

I advised that Telstra had not seen copies of his examples and had not been able to clearly respond to his complaints without being able to examine the documentation he had put forward at the meeting.

Mr Smith advised that he had provided all details to the TIO office, I responded that we may not have seen all the documentation he had put forward and that the TIO at this point had not raised a formal dispute or complaint regarding the matter.

I advised Mr Smith that I would seek copies of any additional information that they may have with regard to his complaint.

Mr Smith advised that he would provide me copies of all documentation that he had with regard to the 1800 number and copies of the documentation he had produced at the meeting. Mr Smith advised that he would provide this material to me during the week beginning 19 January, 1998.

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I advised that once Telstra had received the information, further investigation could be carried out in the matter.

Mr Smith again enquired about the matter of the Arbitration. I again advised that I would be examining the documents with regard to complaints after the Arbitration, and that a further response with regard to the Arbitration would be provided.

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94/0269

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

11 October 1994

Mr Peter Gamble  
Manager, Engineering and Technical Consultancy  
Customer Response Unit  
TELECOM

Facsimile: (03) 634 9930

Dear Peter


### ISSUES CONCERNING SERVICE VERIFICATION TESTS

Following on from your telephone conversation today with Mr Cliff Mathieson, I confirm that AUSTEL requires a written statement from Telecom detailing the deficiency of the current testing process for the "Call Continuity / Dropouts to Neighbouring LIC" test contained in the Service Verification Tests (SVT). This statement should also detail the action Telecom intends to take to address this deficiency.

AUSTEL notes that the SVT results so far provided by Telecom are inconclusive because they do not comply with the required outcome of Section 6.3.2 of the SVT. Confirmation that calls were held for 40 seconds does not confirm these calls would have been held for the required 120 seconds.

On another matter, I understand Mr Bruce Matthews wrote to you on 29 September 1994 following up AUSTEL's earlier request for a copy of test data produced by Telecom in conducting the SVT. I also understand that the nature of the data required by AUSTEL was further confirmed in subsequent conversations with Mr Matthews and Mr Mathieson. As noted in these conversations, the required data is that produced in performing section 6.3 of the SVT, and should identify the date and time of day test calls were made from each origin, and the technology type of the originating exchange. As AUSTEL's review of the SVT will take place in November 1994 this data is required as soon as possible.

Yours sincerely

  
Norm O'Doherty  
General Manager  
Consumer Affairs

cc Mr Steve Black

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AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

94/0269

16 November 1994

Mr S Black  
Group General Manager  
Customer Affairs  
TELECOM

Facsimile No: (03) 632 3241

Dear Steve

### SERVICE VERIFICATION TEST ISSUES

The recent SVT results for Mr Alan Smith raise some issues on which AUSTEL requests clarification, as follows.

- The letter provided to Mr Smith informing him of his SVT results notes that the Public Network Call Delivery Tests relevant to his 008 service used a 1-800 number that simulated the routing of his 008 services. AUSTEL is seeking confirmation from Telecom that the network equipment utilised on calls to the 1-800 number is the same as that which would have been used by calls to Mr Smith's 008 service (with the exception of the termination number).
- The Call Distribution Tables on pages 12 and 14 record that the total calls made to each number are in excess of 600. AUSTEL requests that Telecom detail the process which determines the "1st 500" calls under test 6.3, given that a combined total of over 600 calls have been made from multiple origins.

I would also like to take this opportunity to formally confirm three issues raised at our recent meeting of 9 November 1994.

- (1) Telecom will provide AUSTEL with the detailed individual call data (ie. time of day & origin of call) which has been the subject of previous correspondence from AUSTEL. This data was originally requested by AUSTEL on 25 August 1994. As discussed at our meeting, the data is

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required by AUSTEL as part of our review of the SVT, and will be required by the consultant assisting AUSTEL in this review. (Please note that call data for all the test calls is required, not just the data for the first 500 calls). AUSTEL requires this data by 23 November 1994. The provision of this data by this date is essential to the effectiveness of AUSTEL's review of the SVT.

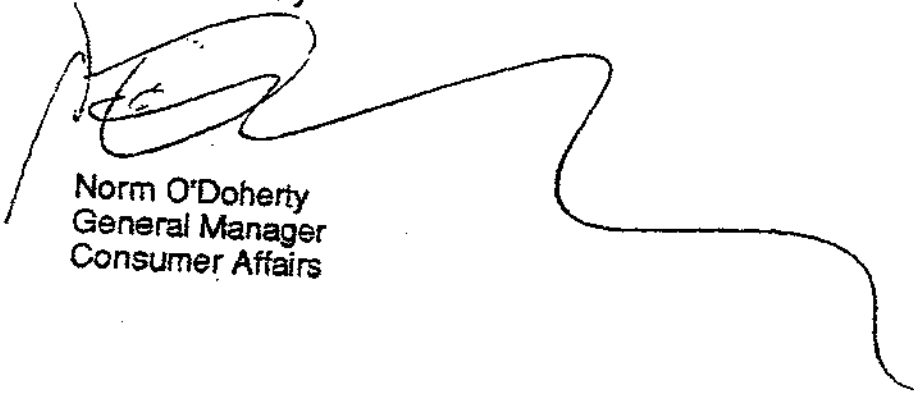
- (2) In the near future Telecom will conduct the "Demonstration Tests" on the services of customers for whom the SVT have been completed. AUSTEL notes that the SVT were conducted a considerable time ago on some of these customer's services. Although these tests are not part of the SVT, this data will be used by AUSTEL in our review of issues related to the SVT. The results from the "Demonstration Tests" will also be provided to our consultant, and AUSTEL requires some of these test results by 23 November 1994.
- (3) That Telecom will shortly provide, as requested in AUSTEL's letter of 11 October 1994, a statement on:

*the deficiency of the current testing process for the "Call Continuity / Dropouts to Neighbouring LIC" test contained in the Service Verification Tests (SVT). This statement should also detail the action Telecom intends to take to address this deficiency.*

This statement will be provided to AUSTEL's consultant as part of the review of the SVT, and is required by 23 November 1994.

The three matters detailed above have been all been outstanding for some time. I would be grateful if you could address your personal attention to ensuring the required information is provided to AUSTEL by the date requested.

Yours sincerely



Norm O'Doherty  
General Manager  
Consumer Affairs

28 Rowe Street  
North Fitzroy  
Vic 3068  
Tel: 9486 3136  
Fax: 9489 4452

Dear Sir,

### Casualties of Telecom (COT Cases)

I am writing this in support of Mr Alan Smith, who, I believe has a meeting with you during the week beginning 17 July.

I first met the COT Cases in 1992 in my capacity as General Manager, Consumer Affairs at Austel. The "founding" group were Mr Smith, Mrs Ann Garms of the Tivoli Restaurant, Brisbane, Mrs Shiela Hawkins of the Society Restaurant, Melbourne, Mrs Maureen Gillan of Japanese Spare Parts, Brisbane and Mr Graham Schorer of Golden Messenger Couriers, Melbourne. Mrs Hawkins withdrew very early on, and I have had no contact with her since then.

The treatment these individuals have received from Telecom and Commonwealth government agencies has been disgraceful, and I have no doubt that they have all suffered as much through this treatment as they did through the faults on their telephone services.

One of the most striking things about this group is their persistence and enduring belief that eventually there will be a fair and equitable outcome for them, and they are to be admired for having kept as focused as they have throughout their campaign.

Having said that, I am aware that they have all suffered both physically and in their family relationships. In one case, the partner of the claimant has become quite seriously incapacitated; due, I believe to the way Telecom has dealt with them. The others have all suffered various stress related conditions (such as a minor stroke).

During my time at Austel I pressed as hard as I could for an investigation into the complaints. The resistance to that course of action came from the then Chairman, Mr Robin Davey. He was eventually galvanised into action by ministerial pressure. The Austel report looks good to the casual observer, but it has now become clear that much of the information accepted by Austel was at best inaccurate, and at worst fabricated, and that Austel knew or ought to have known this at the time.

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TEL NO.

16 Jul 95 7:32 P.01

After leaving Austel I continued to lend support to the COT Cases, and was instrumental in helping them negotiate the inappropriately named "Fast Track" Arbitration Agreement. That was over a year ago, and neither the Office of the Commonwealth Ombudsman nor the Arbitrator has been successful in extracting information from Telecom which would equip the claimants to press their claims effectively. Telecom has devoted staggering levels of time, money and resources to defeating the claims, and there is no pretence even that the arbitration process has attempted to produce a contest between equals.

This has increased the stress levels and feeling that there may be no hope of an equitable outcome, and I have observed the general health of all claimants declining noticeably over the last eight or nine months in particular.

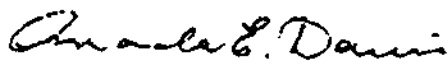
Because I'm not aware of the exact circumstances surrounding your meeting with Mr Smith, nor your identity, you can appreciate that I am being fairly circumspect in what I am prepared to commit to writing. Suffice it to say, though, that I am fast coming to share the view that a public inquiry of some description is the only way that the reasons behind the appalling treatment of these people will be brought to the surface.

Even if the remaining claimants receive satisfactory settlements (and I have no reason to think that will be the outcome) it is crucial that the process be investigated in the interests of accountability of public companies and the public servants in other government agencies.

I would be happy to talk to you in more detail if you think that would be useful, and can be reached at the number shown above at any time.

Thank you for your interest in this matter, and for sparing the time to talk to Alan.

Yours sincerely



Amanda Davis

15 July '95

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Alan Smith  
Cape Bridgewater Holiday Camp  
Blowholes Road  
RMB 4408  
Portland 3305  
Victoria, Australia.

30/7/98

Phone: 03 55 267 267  
Fax: 03 55 267 230

Mr Wally Rothwell  
Deputy Ombudsman  
TIO's Office  
Melbourne

Dear Wally,

It is already clear from the information I have previously provided to your office that not all my claim documents reached Telstra's defence unit. If Democracy is still alive in Australia under the present Liberal Coalition Government, and in the interests of Natural Justice, then a full enquiry must be launched into how my faxed claim documents were received at Dr Hughes's office and if they all arrived as intended.

Your office has already been provided with supporting documents from the Occasional Office, Chrissy Hawker's Secretarial Service and Robert Palmer, Author. All three of these people have received blank pages, documents with extended pages or badly disfigured pages from my fax over the period they have worked for me. The statement from the Occasional Office has been provided in the form of a Statutory Declaration.

A copy is now attached of a four page letter dated 25/5/95 to Sue Hodgkinson of Ferrier Hodgson Corporate advisory (FHCA). Please note that the pages are clearly numbered 1 to 4. The second attachment is a copy of three pages marked "extended page 1.1, extended page 1.2 and extended page 3.1". These first two of these pages are copies of part of the original letter which I sent to Sue Hodgkinson via Dr Hughes office by fax on 25/5/95 at 02.10pm. The alarming thing about this letter is that it seems that only 1% of the original pages reached the Arbitrator's office. Further, and even more alarming, the page marked "extended page 3.1" was not part of my claim at all. This raises the question of who this document belongs to or who it came from and this leads to the inevitable conclusion that someone else's claim is probably incomplete.

I have left these three pages stapled in the original condition - as they were returned to me from Dr Hughes's office after the completion of my Arbitration, as part of my own documents.

page 1

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Not only is the identification information from my fax missing from these documents, including the date and time sent, but there is no identification for the third page either.

I have continually alerted your office to my belief that not all my claim documents were being seen by the parties they were intended to be seen by, including DMR and Lanes, and Telstra's defence unit. Although this letter to Sue Hodgkinson was sent after my Arbitration was completed (11/3/95) and therefore could not have been used as evidence to support my claim, the way in which they were received (or only partly received) at the Arbitrator's office supports my allegations that not all the claim documents that I faxed to the Arbitrator during my Arbitration actually reached his office.

As a matter of national justice, the TIO's office should demand an answer from both Telstra and the Arbitrator: they should be required to explain where the remaining 2 1/2 pages of the fax to Sue Hodgkinson went and, even more importantly, who the page marked "extended page 3.1" actually belongs to.

I now demand an explanation from your office as to why not all my claim documents arrived at the Arbitrator's office, thereby leaving Telstra in the lucky position of not having to address the missing documents.

Under the circumstances I also demand that I be supplied with a full and comprehensive list of all my claim documents that the TIO's Legal Counsel, Peter Bartlett of Minter Ellison, received from the Arbitrator during my Arbitration so that I can compare this with my own list of what Dr Hughes received and uncover how many ended up the same way as the Sue Hodgkinson fax noted above.

Mr Pincock continues to state that I can only have these matters addressed in the Supreme Court of Victoria but what he has forgotten is that, before the COT four signed for this Arbitration, Senator Richard Alston, Senator Ren Boswell and the four of us were assured by the then TIO, Warrick Smith, that these four COT Arbitrations would be non-legalistic and fast-tracked. This can be confirmed by referring to Hansard reports during 1994 and 1995. Because of this I stand firm in my belief that these matters fall under the jurisdiction of the Administrator of my Arbitration - Mr Pincock. The TIO's office has a duty of care to ensure that the "extended page 3.1" is returned to its rightful owner so that person can re-submit the claim document as a 'complete document' for both DMR / Lanes and Telstra to address.

The example of this fax to Sue Hodgkinson is further evidence showing that the Telstra Network was faulty, the very reason we COT members were in Arbitration in the first place. The whole situation was made worse by the fact that we were forced to use this faulty network to lodge our claims.

Because of this evidence the TIO's office must intervene and instigate an enquiry into how many of my claim documents were lost when they were sent by fax and how many documents were lost by other member's of COT when they lodged them by fax. This enquiry must now proceed as a matter of urgency.

I await your immediate response.

Sincerely,



**Alan Smith**

copies to:

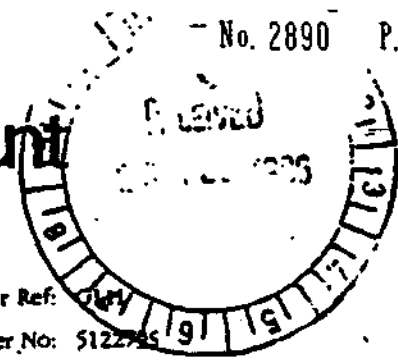
**Amanda Vanstone, Minister for Justice, Canberra**

**Daryl Williams, Attorney General, Canberra**

**The President of the Institute of Arbitrators Australia**

**The President of the Law Institute, Melbourne.**

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 David G. Watt

Consultants  
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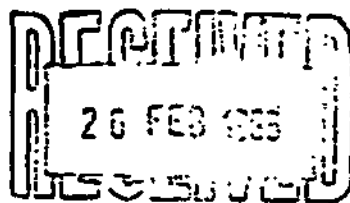
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 Michael S. Carril

Incorporating  
 Francis Bourne & Co.

16 February 1996

Our Ref: 0147  
Matter No: 5122745

Mr L E James  
 President  
 Institute of Arbitrators Australia  
 Level 1, 22 William Street  
 MELBOURNE Vic 3000



Dear Mr James

### COMPLAINT - ALAN SMITH

I acknowledge receipt of your letter dated 18 January 1996.

It is difficult for me to comment on a number of the matters raised by Mr Smith because of the confidentiality which surrounds not only his own claim but also numerous related claims which are still current.

#### Smith's Letter of 15 January 1996

There is no evidence of which I am aware to suggest that the arbitration rules were not followed or that either party was denied natural justice.

Mr Smith's recollection and interpretation of events surrounding the commencement of the arbitration in April 1994 are incorrect. He makes reference to the involvement of Peter Bartlett of Messrs Minter Ellison. I am enclosing a letter from Mr Bartlett to the Telecommunications Industry Ombudsman (the administrator of the arbitration procedure) dated 17 January 1996 which is self explanatory. I do not believe it is necessary for me to add more.

Melbourne  
Sydney  
Sydney  
Brisbane  
Canberra  
Newcastle  
Perth  
Adelaide

Mr Smith's assertion that the technical report of an expert witness has not been signed is incorrect. A copy of the signed cover letter to the document, dated 30 April 1995, is attached.

The assertion that another expert witness attached to the Resource Unit, John Rundell, deleted material from his report at my request is incorrect and misconceived. The allegation was first raised in a letter from Mr Smith's accountant, Derek Ryan, to the Telecommunications Industry Ombudsman, dated 22 December 1995. In this regard, I enclose copy of a letter from Mr Rundell (now of KPMG) to the Telecommunications Industry Ombudsman dated 13 February 1996 which addresses the allegation. Again I do not believe it is necessary for me to add more.

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Document - "One Example of Incorrect Statements"

Mr Smith forwarded you a document headed "One Example of Incorrect Statements Made by the Technical Unit Attached to the FTAP". I am not convinced that this document contains any allegations to which I need respond. I note, nevertheless, some suggestion that evidence was ignored at an oral hearing. If, in paragraph (b), Mr Smith is referring to the oral hearing which took place on 11 October 1994, the transcript reveals no reference to "four exercise books" as he claims. Reference is made to "diaries" which contained evidence of complaints and these were in fact placed into evidence.

D M Ryan Letters

I have noted the two letters from D M Ryan Corporate dated 6 December and 22 December 1995. I have already commented on one of the letters above. Apart from being inaccurate, they reveal a misunderstanding by Mr Ryan of the arbitration agreement. He does not appreciate the unique role given to the "Resource Unit" comprising Ferrier Hodgson Corporate Advisory and DMR Group Inc (Canada). Perhaps Mr Ryan was not adequately briefed by Mr Smith in this regard.

Letter to Senator Evans

Mr Smith provided you with a copy of a letter to Senator Gareth Evans dated 4 January 1996. I presume you require me to comment on those aspects of the letter which reflect upon my conduct as an arbitrator.

The letter to Senator Evans is littered with inaccuracies. Some examples are:

- contrary to Mr Smith's assertion on page 3, his 24,000 (*sic*) documents were all viewed by me, Ferrier Hodgson Corporate Advisory, DMR Group Inc. (Canada) and Lane Telecommunications Pty Ltd in accordance with the arbitration procedure. Mr Smith was provided with a list of documents in a technical report from the Resource Unit dated 30 April 1995. This list summarised the major documents culled from the 24,000 documents and upon which the findings of the technical experts were based;
- Mr Smith's assertion on page 4 that a technical expert, Mr Read, refused to discuss technical information at his premises on 6 April 1995 is correct - in this regard, Mr Read was acting in accordance with his interpretation of my direction which prohibited him from speaking to one party in the absence of the other party at any site visit;
- if, on page 5, Mr Smith is disputing that I worked in conjunction with the Resource Unit throughout the weekend of 29 to 30 April 1995, he is incorrect;

the remainder of the letter deals with matters which have either been addressed above or which are generalisations of little or no relevance to my conduct as an arbitrator.

### Smith's Letter of 18 January 1996

I have noted Mr Smith's letter to you dated 18 January 1996. This does not raise any matter which is not dealt with above.

### Comment

I sympathise in many respects with Mr Smith. This level of sympathy was reflected in my award and the reasons which accompanied the award. In essence, Mr Smith suffered financially and emotionally as a result of investing in a business which was in some respects, and to some extent, poorly serviced by Telstra.

Mr Smith was previously awarded a sum of money by Telstra in an out-of-court settlement. Telstra agreed to reopen his claim and submit his grievances to a dispute resolution process which ultimately took the form of an arbitration. I was asked by the Telecommunications Industry Ombudsman if I would act as arbitrator, and both parties subsequently acquiesced. As a result of the arbitration, Mr Smith was awarded further compensation.

I awarded Mr Smith a sum substantially less than the amount he was claiming and substantially less than the amount which Derek Ryan apparently led him to believe he would recover. It was, nevertheless, a sum in excess of the damages recommended by Ferrier Hodgson Corporate Advisory in its capacity as an independent financial expert witness.

It seems Mr Smith can only rationalise the result of the arbitration by retrospectively finding fault with the agreed procedure, by alleging a "conspiracy" between me and Telstra and by asserting that I have overlooked relevant information contained in the 24,000 documents to which he refers. Put simply, he is wrong.

I consent to you disclosing this letter to Mr Smith, save that I do not consent to the disclosure of the attached correspondence from third parties.

Yours sincerely



GORDON HUGHES

Encl.

cc J Pinnock (Telecommunications Industry Ombudsman)

in understanding the bases for dispute between the parties on a range of issues;

- (l) both parties were provided with an opportunity to comment on the contents of the reports I received from the Resource Unit.

2.2 In all, I have read in excess of 5,000 pages of documentary evidence submitted by the parties.

2.3 Although the time taken for completion of the arbitration may have been longer than initially anticipated, I hold neither party and no other person responsible. Indeed, I consider the matter has proceeded expeditiously in all the circumstances. Both parties have co-operated fully.

It was really meant to say that

### 3. Overview

3.1 I do not intend summarising all the evidence submitted in connection with this claim. Any omission in these Reasons of a reference to any facts or evidence should not be interpreted as a failure on my part to take those facts or evidence into account. This part sets out an overview of the dispute only.

#### 3.2 Overview of Claim

- (a) The claimant alleges that defective telecommunications services provided by Telecom have damaged his business and caused his health to suffer.
- (b) The claimant, a chef by occupation and now 51 years of age, purchased as a going concern the Cape Bridgewater Holiday Camp in February 1988. The camp included a homestead, old church and a number of cabins which had a combined capacity to sleep in excess of 100 people.
- (c) Cape Bridgewater is 20 miles from Portland. The claimant regarded the area as a significant tourist attraction and says there was no documented evidence of any decline or predicted decline in tourism at the time of the purchase.
- (d) The former owner of the business now lives in India and has not provided evidence on behalf of either party in these proceedings. I know relatively little about the state of the business or the state of the telephone system used by the business as at the time of the purchase or beforehand. In any event, the claimant says he contemplated improving the existing facilities and hence the quality of clientele, thereby increasing revenue and profits.
- (e) The claimant asserts that the ongoing viability of the business was to a significant extent dependent upon his ability to take telephone bookings. He states that he first became aware of a problem with his telephone system about two months after he moved in. He was alerted to the problem by the poor response he received to a vigorous

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.

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# FERRIER HODGSON CORPORATE ADVISORY

STRICTLY PRIVATE & CONFIDENTIAL

BY COURIER

18 April 1995

*Pia  
19/4/95  
we to discuss*

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

Dear Sir,

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

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

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

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

Smith

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

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

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD  
A.C.N. 052 403 040

EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SELAK  
LEVEL 25 140 WILLIAM STREET MELBOURNE VICTORIA 3000  
TELEPHONE 03 629 8855 FACSIMILE 03 629 8361

LICENSED INVESTMENT ADVISER

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

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

#### Garms

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

#### Gillan/Valkobi

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

#### Resource Unit (including Technical Support)

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

I also advise that Mr Paul Howell, Director of DMR Inc Canada arrived in Australia on 13 April 1995 and worked over the Easter Holiday period, particularly on the Smith claim. Any technical report prepared in draft by Lanes will be signed off and appear on the letterhead of DMR Inc. Paul Howell anticipates completing the Smith technical report by the end of April. 11 W/L

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.

necessarily mean an improved performance it would be an action different from that undertaken to date.

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This willingness to consider a different approach ceased when D. Campbell advised G. Schorer on 23 September 1992 that the proposed testing regime is also a necessary prelude to the suggestion that your members be moved to different exchanges. It should be noted that in the cases of \_\_\_\_\_ and \_\_\_\_\_, each was subsequently moved to another exchange with AXE technology in late November 1992, and that R. Davey advised D. Campbell on 13 January 1993 that both customers claimed to have experienced an increase in calls from from 300% to 500%.

In view of the above information, the validity of the insistence of further testing as a precondition to moving to a new exchanges is questioned.

Information contained within the Performance Report of Selected Exchanges (based on TROB dated from 1 January 1991 to 30 September 1992) revealed the following for the North Melbourne "329" exchange -

- 67.4% calls were effective for the 329 -0 number range
- 39.4% calls were effective for the 329 -7 number range

This indicates that all of the Golden Messenger auxiliary lines are located in high traffic ranges. In view of this information Telecom's reluctance to move Golden Messenger to an AXE exchange, even if only to try a new approach as suggested by G. Schorer, is not understood. Moving Golden Messenger to a more modern exchange would have not only enabled the spread of auxiliary numbers throughout the entire exchange number range to minimise exposure to congestion at the exchange, thereby overcoming one of the major problems with the existing ARE exchange, but also could have relieved congestion on that exchange for other customers.



16/11



# FERRIER HODGSON CORPORATE ADVISORY

BY COURIER

Our Ref: A14

15 November 1995

Mr John Pinnock  
Telecommunications Industry Ombudsman  
TIO Limited  
321 Exhibition St  
MELBOURNE VIC 3000

Dear Sir,

**RE : Telecommunications Industry Ombudsman - Resource Unit  
Fast Track Arbitration - Alan Smith**

---

We refer to your letter dated 9 November 1995 with the attached facsimile from Mr Alan Smith dated 8 November 1995, and your recent conversations with Ms Susan Hodgkinson of this office concerning the above completed arbitration.

You have asked us to provide clarification of the issue raised by Mr Smith relating to the deletion of references to a potential addendum on possible discrepancies in Smith's Telecom bills in the final Technical Evaluation Report. We have spoken to Lane Telecommunications Pty Ltd ("Lanes"), who acted as Technical Consultants to the Resource Unit in the above Arbitration, and they have provided the following comments in relation to the issue raised by Mr Smith:

*"At a late stage of the Arbitration process, at the time of preparation of the Technical Evaluation Report, there was discussion about billing issues which had been raised by Mr Smith. A draft of the Technical Evaluation Report therefore included reference to the billing matters, which it was thought might require further work beyond the time of issue of the Report.*

*The primary matter concerned Mr Smith's bills for outgoing calls from Cape Bridgewater. Mr Smith had observed that there was a discrepancy between the call durations of STD calls on his bills and the durations shown by Telecom's call recording equipment connected to Mr Smith's line (in the Customer Access Network).*

*Discussions were held with Telecom (Mr Peter Gamble) in Mr Smith's presence during the visit to Cape Bridgewater in April 1995, which provided the following information:*

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD  
A.C.N. 052 403 040

EXECUTIVE DIRECTORS: DOUG CARLSON, JOHN SELAK  
LEVEL 25 140 WILLIAM STREET MELBOURNE VICTORIA 3000  
TELEPHONE 03 629 8855 FACSIMILE 03 629 8361

PAPHCAD73LETTERSLET25.DOC  
16 November, 1995

LICENSED INVESTMENT ADVISER

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- For outgoing calls on a normal customer exchange line, the caller notes the answer of the called party by cessation of the ring tone and the answering voice. However, there is no corresponding physical (electrical) signal on the caller's line (CAN side of the exchange) for the call recording equipment to register that an answer has occurred. Consequently, timing of the call recording equipment is configured to allow a fixed time to answer (say 30 seconds) from the time the caller lifts the handset, or from the completion of dialling, until it assumes that answer has taken place. Thus the overall measured duration of the call from lifting to replacement of the handset is reduced by this fixed amount to give the (assumed) nominal conversation time.
- Billing on the other hand is based on signals recorded at the caller's exchange, including a physical signal to indicate called party answer. Thus the billing duration is precise.
- At an individual call level, there will therefore be discrepancies between the two sets of call duration records except where the actual and assumed times to answer are the same.
- Lanes considered and accepted this technical explanation from Telecom as plausible, and believe Mr Smith also understood and accepted it. Consequently, as the discussion appeared to have resolved this matter, it was not included in the formal Technical Evaluation Report.

A second matter involved 008 calls. Again, this matter was current at a late stage (April 1995) of the Arbitration process. This matter concerned possible overlap in the records of 008 calls made to Mr Smith, and for which he was billed. However, Lanes and DMR Group Inc concluded that the level of disruption to Mr Smith's overall service was not clear, and that it was unlikely that further work would clarify the matter to the extent that it would have a measurable effect on the Arbitrator's determination. The matter was discussed in Section 2.23 of the Technical Evaluation Report, and an assessment of "Indeterminate" was reached.

*As no further progress was likely to be made on these matters, the formal version of the Technical Evaluation Report did not leave the billing issue open."*

I trust that the above advice from Lane Telecommunications clarifies the issue raised by Mr Smith regarding the Resource Unit's Technical Evaluation Report.



If you have any further queries please do not hesitate to contact the writer or Ms Susan Hodgkinson on (03) 629 8855.

Yours faithfully,  
**FERRIER HODGSON CORPORATE ADVISORY**

A handwritten signature in cursive script that reads 'John Rundell'.

**JOHN RUNDELL**  
Project Manager  
Associate Director

cc Dr Gordon Hughes, Hunt & Hunt  
Mr Andrew Crouch, Lane Telecommunications Pty Ltd  
Mr Paul Howell, DMR Group Inc

2.22 All services for CBHC were lost for 3 hours due to an exchange data programming error. Such major impact due to an operational error is deemed a less than reasonable level of service.

ASSESSMENT - Service was less than reasonable.

2.23 Continued reports of 008 faults up to the present. As the level of disruption to overall CBHC service is not clear, and fault causes have not been diagnosed, a reasonable expectation is that these faults would remain "open".

ASSESSMENT - Indeterminate.

3. About 200 fault reports were made over December 1992 to October 1994. Specific assessment of these reports other than where covered above, has not been attempted.

## 5 Summary

CBHC telephone services have suffered considerable technical difficulties during the period in question. Telecom, certainly initially fully concentrated on the CAN/CPE elements, and if they were 'intact', faults would be treated as NFF (No Fault Found). As can be seen from the above, faults did exist that affected the CBHC services, causing service to fall below a reasonable level and apart from CPE problems, most of these faults or problems were in the Inter Exchange Network.

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2.17 The Resource Unit concludes that there may have been some peak period congestion over a period of up to 12 months (30 March 1993 to April 1994) between Warrnambool and Portland. The Resource Unit concludes on page 36 of the Technical Report that the extent of the congestion is unknown. It is submitted that any impact on the Claimant's service would have been minimal and then only during periods of peak traffic (see page 61 of the B004 Report and the letter dated 27 April 1995 to the Arbitrator from Ted Benjamin).

2.19 The Resource Unit refers to complaints of call problems between June 1993 and March 1994 for which no faults were found. There is, however, no evidence of "real faults" that may have had an impact on the Claimant's telephone service.

2.20 The Resource Unit refers to complaints of a single caller which were investigated. No fault was found and there is no evidence of any fault that may have had an impact on the Claimant's telephone service.

2.23 The Resource Unit refers to complaints relating to the Claimant's 008 service. Although the Resource Unit would have preferred such complaints to have been left "open", there is no evidence of any "real fault" which may have had an impact on the Claimant's telephone service. \*

2.24 The Resource Unit notes the number of complaints between December 1992 and October 1994 and states that there were "problems quite evidently caused by mis-operation or misunderstanding of the CPE". Such misoperation or misunderstanding is evidence of an effect on the Claimant's telephone service for which, the Resource Unit recognises, Telecom is not responsible.

**A reasonable level of service was provided**

2.21 The Resource Unit refers to an intermittent problem with the Claimant's Goldphone for 11 days in March 1994. This would only have had a minimal effect on the Claimant's telephone service and could not have affected his business.

**Other**

2.11 The Resource Unit refers to cordless telephone difficulties which were outside Telecom's area of responsibility.

L69065

510

Commercial & Consumer  
Customer Response Unit

Level 37  
242 Exhibition Street  
Melbourne VIC 3000  
Australia

Telephone (03) 634 2977  
Facsimile (03) 632 3235

27 April, 1995

Dr Gordon Hughes  
Hunt and Hunt  
Lawyers  
Level 21/459 Collins Street  
MELBOURNE VIC 3000

Dear Dr Hughes

Arbitration - Smith

Further to the discussion at Cape Bridgewater on Wednesday 5th April 1995, between Mr David Read, of Lane's Telecommunications, Mr Alan Smith, the claimant, and Mr Peter Cramble, of Telecom, Telecom provides the following clarifications requested by Mr Read.

- 1) **Cape Bridgewater RAX configuration:** confirmed as 5 incoming, 5 outgoing circuits and 8 final selectors during discussions with staff at Portland.
- 2) **MELU Trunk Exchange Configuration:** A sketch of the trunking arrangements has been prepared and a copy is attached for your information (Attachment 1).
- 3) **Failure of test calls on 2nd August:** A comment in the NNI Report (document reference K02558) notes that the Hamilton - Portland route "autoblocked". This appears to be the only information available on this topic. A copy of this document is attached for your information (Attachment 2). This matter is also referred to in the witness statement of Mr. David Stockdale at paragraph 12 on page 3 and in the Briefing Paper B004 at page 21. Attachment 2 also appears in the Appendix to the Briefing Paper at 5.16.
- 4) **Failure of 50% of Test Calls due to set up errors:** A further page in the above mentioned NNI Report (document reference K02559) notes that the problem related to the long holding time of the PTARS. This appears to be the only information available on this topic. A copy of this document is attached for your information (Attachment 3).
- 5) **Work Specifications relevant to RCM's:** There are only two mandatory modifications / enhancements for RCM's:  
(a) SCU / 08 & PAU / 09 software upgrades - an EPROM replacement to eliminate faults in the RCM including False Ring Trip and VF drop-out.

(b) SCU / 09 software upgrade - an EPROM replacement which replaced SCU / 08 and rectified a fault which causes delayed ring trip on SSU cards. This condition caused a burst of ring current to be heard by the customer after the handset was lifted.

Both of these Work Specifications were issued in 1991. Should you require further clarification on this matter please do not hesitate to contact me.

- 6) The billing actions relating to the 132 minute "008" call: The processes have been discussed with the staff handling "008" billing enquiries. When a complaint regarding the excessive length of a call is received, then the matter would be investigated. It is expected that such an investigation would have found that "last party release" (or the Malicious Call Trace facility) was active. The effect of "last party release" is that the call is not cleared until the called party hangs up. As the billing for a "008" call is also tied to this event, an excessive call charge could result from a delay in the called party hanging up. Previous bills for the service would also be examined. Assuming that this call was a "unique" event, then it is likely that a rebate would have been allowed on this call.
- 7) Trunking changes and congestion on the WBOX to PORX route between March 1993 and April 1994: The attached brief report, table and graph have now been prepared. These show that there was only minimal congestion during this period on this route (Attachment 4).

During the discussions at Cape Bridgewater and in response to a question from Mr Read, Mr Alan Smith stated that the first cordless phone was only connected for two weeks. However, subsequent reference to various papers show that D Bloomfield attended the Cape Bridgewater Holiday Camp on 18 February 1993 and found the ring switch of the cordless phone was turned off. Ross Anderson attended the campsite on 12 March 1993 and also on 23 March 1993 with reference to the cordless telephone. The reference to these dates in the Briefing Paper B004 is at pages 64 and 65.

Should you have any queries on any of the above responses, please do not hesitate to contact me.

Yours faithfully



Ted Benjamin  
National Manager  
Customer Response Unit

**FACSIMILE TRANSMISSION**

**PAUL J COSGRAVE**  
Barrister  
Owen Dixon Chambers West  
Room 6, Level 5  
525 Lonsdale Street  
MELBOURNE VIC 3000  
Telephone (03) 9608 7687  
Secretary (03) 9608 7953  
Facsimile (03) 9608 8776

DATE: 18 NOVEMBER 1998

TO: MR GRAHAM SCHORER

FAX NO: 9287 7001

FROM: PAUL J COSGRAVE

FAX NO: (03) 9608 8776

NOTE: IF YOU DO NOT RECEIVE 2 PAGES (INCLUDING THIS ONE),  
PLEASE TELEPHONE SENDER ON (03) 9608 7953

REMARKS:

Draft letter follows.

**IMPORTANT**

The contents of this facsimile including any attachments are privileged and confidential, intended only for the use of the addressee above. If you are not the intended recipient, any dissemination, copying or use of the information is strictly prohibited. If you have received the document in error, please advise me by telephone immediately and then destroy the document.

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**[DRAFT LETTER]**

Dear Mr Burnside

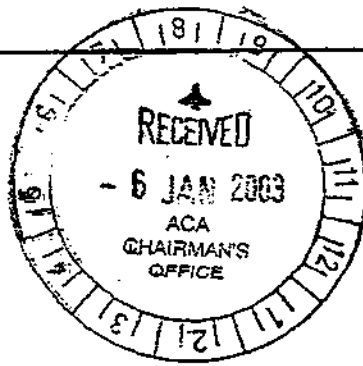
**Re: Telstra Corporation Limited v. G. Schorer & Ors.**

We act on behalf of Mr Graham Schorer and a number of other entities which he manages or controls.

On 17 November 1998, we received a copy of the letter dated 16 November 1998 sent to you by Messrs Freehill Hollingdale & Page, solicitors for Telstra Corporation Limited ("Telstra"). At the hearing before Mr Justice Gillard dealing with the appointment of an arbitrator, our client sought, but was not granted, additional time in which to respond to Telstra's voluminous material regarding whether or not an arbitrator should be appointed immediately. Our client would not, in the circumstances, wish you to assume that the facts pertaining to the dispute are necessarily as set out in the supporting affidavit filed by Mr Benjamin of Telstra. Our client takes issue with a number of matters raised by or relevant to that affidavit.

We now have a copy of your letter to Freehill Hollingdale & Page dated 16 November 1998 in which you ask for a copy of the material filed at court. Before you decide whether to accept the appointment as arbitrator, we would ask that either you convene a meeting with the parties or you allow our clients the opportunity to give you additional material pertinent to your decision.

Yours faithfully,



Alan Smith  
Seal Cove Guest House  
RMB 4409  
Cape Bridgewater  
Portland, 3305  
Phone: 03 55 267 170  
Fax: 03 55 267 265  
Email: capesealcove@hotmail.net.au

23<sup>rd</sup> December 2002

~~Mr Tony Shaw  
Chairman  
ACA  
P O Box 13112  
Law Courts  
Melbourne 3000~~

→ Dr. Kellaher, Mr. Haydon

*For your consideration. Might need to get a better copy - second page is not legible in parts.*

*Brishton  
31/1/03.*

*Roslyn, John  
have another  
copy of fa  
now. E*

Dear Mr Shaw,

Please find attached a copy of Telecom FOI document Folio H36178 (1993) regarding problems with their 1800 service. During 1993 I raised much of the information in this internal Telstra document with both AUSTEL and Telstra, to no avail. Further, on 8<sup>th</sup> April 1994, in front of a number of other COT members; John MacMahon and Cliff Matthieson of AUSTEL asked me to send them any relevant information I might receive under FOI, during my arbitration, which showed that Telstra were still incorrectly charging my 1800 number for short duration and RVA calls. ACA archives will show that I forward on to you a number of the documents I received from Telstra confirming this systemic 1800 RVA billing fault.

Although I was not aware of it at the time, during my arbitration, AUSTEL wrote to both Telstra (the defendants) and Dr Hughes (the arbitrator), asking if I had raised with Telstra the 1800 short duration and RVA call faults I had raised with AUSTEL. In this correspondence, AUSTEL stated that, if these faults had not yet been raised as part of my claim, then AUSTEL would address them 'in the public domain'. AUSTEL commented on the seriousness and the ongoing ramifications of 1800 RVA issue in two separate letters, the first on 4<sup>th</sup> October 1994 to Telstra and again on 16<sup>th</sup> December 1994, to Dr Hughes. In response, Telstra wrote to AUSTEL on 11<sup>th</sup> November 1994, stating that I HAD raised the 1800 faults and adding that Telstra would address them under arbitration.

I have recently learned that, on 3<sup>rd</sup> October 1995, five months after my arbitration, AUSTEL alerted both Telstra and John Pinnock (TIO) to the fact that, although I had raised the billing issues as part of my arbitration claim, in October 1994, the 1800 RVA and short duration calls had still not been addressed by Telstra. On 15<sup>th</sup> November 1995 John Rundell of Ferrier Hodgson Corporate Advisory (FHCA), the arbitration resource unit, advised the TIO that FHCA had instructed DMR and Lanes, the arbitration technical resource unit, NOT to address the 1800 billing faults I had raised as part of my claim. Documents since received under the TIO Privacy Policy Act 2002 confirm that FHCA knew that Telstra had written to AUSTEL on 11<sup>th</sup> November 1994, noting that they would address these issues (see above).

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The main issue here is that, regardless of Mr Rundell's instructions to ignore the 1800 RVA and short duration faults raised in my claim, these serious issues were never addressed, either by my arbitration or later, as promised, by AUSTEL (in the public domain).

In the document, dated 16 October 1995, Telstra used Mr Anderson's Witness Statement, signed by Mr Anderson (one of Telstra's Portland employees), to claim that the 1800 RVA faults and short duration faults were not a problem. It had been stated that Mr Anderson lied in this Witness Statement. Telstra's intention to use Mr Anderson's Witness Statement to hoodwink AUSTEL, is clear from this letter to AUSTEL.

In the document, dated 16 October 1995, which is referred to at the beginning of this document, titled "Serious Problems with the 1800 Service", it is stated that the problems were within the 1800 service. It is also stated that Telstra used Mr Anderson's Witness Statement to hoodwink AUSTEL into believing that there were no 1800 service problems. Delays or short duration faults were not a problem. The document also states that we remember that Telstra had previously written to Telstra on 16 October and 16 November 1994, asking for a plan which they intended to implement to solve the problems in the 1800 Verification process. Telstra did not implement the plan. Telstra still used the deficient 1800 service to support their position in my arbitration claims, even though they had been told by AUSTEL to stop using the deficient service in their testing at Cape

Telstra's friends and associates have written to me over the years, asking me to help them with their 1800 service problems. Many of these mentioned this problem in their letters. I have received documents from the ACA's (Australian Communications Authority) which confirm that the 1800 service from early 1993 to 1994 was not working properly. Telstra's arbitration solicitors wrote to me and stated that Telstra was not charging for the 1800 service.

Telstra states: "Bruce is not just on a fault by Telstra, but on a fault by Telstra, and we should be actively promoting 1800 in our advertising." Why did Telstra not promote this service, when they knew the faults were occurring regularly? The 1800 problem was combined with a long delay of up to 10 minutes. They also knew that most (if not all) customers would not wait for twenty minutes for a call to connect and would therefore hang up. Telstra should have been responsible for the fault was rectified.

Telstra was defending the 1800 service in my arbitration, on the grounds that the problems did not exist, when they had already admitted that the 1800 service was a nation-wide problem. The document, dated 16 October 1995, which was provided to the TIO by Telstra, only mentions the 1800 service. It does not mention the 1800 service. I also had a copy of a file note from Telstra's Lynn Christine, acknowledging that the

ATTACHMENT (B)

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# Cape Bridgewater Camp

PORTLAND Ph: 03 5526 7267 Fax: 03 5526 7265

"Country - Get - A - Ways"

*A friendly place to meet a friend,  
to bring a friend, for social club activities*

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BEACHES, SAFE SWIMMING AND SURFING.

*Visit our newest attraction - The Cape Bridgewater Seal Colony*



0150

May 18, 2001

18 MAY 2001

Ms Kirsten Musgrove  
FOI Coordinator  
Australian Communication Authority  
P.O. Box 78  
Belconnen ACT 2616

**Attention Ms Kirsten Musgrove**

Dear Ms Musgrove

It appears once again that my attempt to receive information sought under the FOI Act 1982, has eluded me due to bureaucratic defective administration. I have recently been informed by international observers from the UN that Australia is considered close to the bottom rung when it comes to Human Rights issues.

I have copied a letter herewith addressed to Freehill Hollingdale & Page, Telstra's arbitration defence lawyers in my Fast Track Arbitration Procedure. This letter is most appropriate considering it is now over seven months since I first requested information from the ACA under the *freedom of information Act*.

I await your response as to when you believe I will receive the information sought.

Sincerely

  
Alan Smith

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**ALAN SMITH**

From: Belconnen, Canberra

16 May 2001

Freehill Hollingdale & Page  
P O Box 128a  
Collins St  
Melbourne 3001

Re: Telstra arbitration  
Smith, Cape Bridgewater Holiday Camp 1994/5

Dear Sir/Madam,

The recent media coverage of legal matters relating to the Timothy McVeigh case in the USA raises very similar important issues in relation to my arbitration with Telstra. As I am sure you are aware, in the McVeigh matter, his execution was delayed because a box of some 3000 documents was discovered in the FBI archives. None of these documents had been provided to McVeigh's legal counsel during his trial. It seems that this was an oversight rather than an intentional attempt to disrupt McVeigh's defence, but the similarities with my case certainly bear looking at. I therefore ask that your organization consider the following issues taken from my arbitration. These examples clearly show that documents which I sought under the discovery process of my Fast Track Arbitration, via my arbitrator, were withheld from me, either by Telstra or their defence counsel, during my arbitration.

1. On 28 December 1994, because I refuted the dates shown in Telstra's defence document titled "*Bell Canada International Addendum Report Cape Bridgewater*", I fixed an official request to my arbitrator asking him to seek, from Telstra, under the arbitration discovery process, all CCS7 data and other information which supported the Bell Canada testing in November 1993. The Victoria Police Major Fraud Group and the Commonwealth Ombudsman's Office have each been supplied with copies of this letter.

On 23 January 1995, my arbitrator wrote to me, confirming that Telstra considered they had no further information of relevance in their possession (refer copy attached).

On 24 January 1995, I responded, within the twenty-four period stipulated, confirming that the information I had originally requested under the arbitration discovery process had still not been supplied by Telstra.

Further, I now have FOI documents which confirm that, before Telstra used the Bell Canada report addendum to support their defence, Telstra's arbitration technical consultant, Mr Peter Gamble, was fully aware that the test results included in the report were impracticable.

2. On 12 December 1994, as part of their defence, Telstra submitted a twenty-nine page technical report. This report stated that, after a Telstra technician had collected a TF200 touch-phone from my office on 28 April 1994, their laboratory testing had found the 'locking up' fault which I had reported on 27 April 1994, had been caused by spillage into the casing of the phone. Telstra's research unit later allegedly

identified the 'spillage' to be beer, which was reported to still be 'wet and sticky' when the phone arrived at their laboratory. I refuted this report since the actual testing had not taken place until 10 May 1994 and, to make matters even worse, as Telstra's own archival records now confirm, I had complained about this same fault numerous times since August 1993. Clearly spillage of beer could not stay 'wet and sticky' for this length of time, inside a telephone.

Telstra would not supply me with copies of their laboratory working notes so I could see how they had come to this conclusion, even though I requested these documents under the arbitration discovery process.

The Victoria Police Major Fraud Group, and the Commonwealth Ombudsman's Office have since been supplied with information which I received under FOI, on 28 November 1995 (six months after my arbitration had been deemed to be completed). This FOI information confirms that Telstra's laboratory file notes did exist at the time that I requested the documentation under the discovery process. What is even more alarming is that Telstra's laboratory technicians had added hand-written notes to the file note in question. These notes confirmed that their own testing showed that beer inside the casing of a TF200 touch-phone dried out within twenty-four hours. Since they had my phone in their possession for fourteen days BEFORE they started their testing, how could they possibly state in their defence that the beer was then still wet and sticky when their own investigations proved otherwise? These file notes clearly show that someone within Telstra either introduced the beer into the phone themselves, before it reached the laboratories, or the technical laboratory personnel knowingly fabricated the TF200 report.

Since Freshill Hollingdale & Page were Telstra's lawyers in my arbitration, I am now asking if you will follow the precedent set by the FBI in America and alert my arbitrator and the Telecommunication Industry Ombudsman's Office (who were administrators to my arbitration) to the fact that discovery documents were withheld during my arbitration. These actions perverted the course of justice - if I had been given the opportunity to examine these discovery documents during the arbitration process, I would then have had grounds to request that the arbitrator investigate the irregularities in Telstra's defence.

I await your response,

Sincerely,

Alan Smith

Copies to:

*Detective Sergeant Richard Watkins, Major Fraud Group, Victoria Police*

*Mr John Wynack, Commonwealth Ombudsman's Office*

*Ms Susan Campbell, Faculty of Law, Monash University, Clayton, Victoria.*

*Federal Bureau of Investigations*

*11000 Suite 1700 Wilshire Boulevard, Los Angeles, California, 90024-3672, USA*

Alan Smith  
RMB 4408, Cape Bridgewater  
Portland 3305  
Phone 55 267267 Fax 55 267 265

Tony Shaw  
Chairman of the ACA  
Level 13, 200 Queen Street  
Melbourne Vic 3000

4 July, 2001

Dear Mr. Shaw

I draw your attention to the fact that,

- Austel (now the ACA) has always been a party to the Fast Track settlement proposal: Fast Track arbitration procedure and Special Arbitration administered by the TIO.
- The workings of the dispute resolution process used between Telstra and its customers administered by the TIO are of public interest and concern to the Senate. To date the Senate's concerns have resulted in a Senate inquiry and a Senate recommendation.
- The conduct of Telstra and others participating in this dispute resolution process are the subject of the Victorian Police Major Fraud Group investigation. The Major Fraud Group's are committed to continue the investigation for the purpose of prosecuting those who have committed criminal acts.

My June 2001 letter to your office, provided ACA the Telecommunications Regulatory Authority with evidence of Telstra's unlawful actions in withholding of requested discovery documents during my arbitration Fast Track Arbitration Procedure and the conduct of the TIO Administrator refusal to address these issues.

The enclosed letter of July 2001 addressed to David Hawker MP contains attachments consisting of documentary evidence of Austel/ACA's knowledge of Telstra's conducting defective Verification Testing Procedures which Telstra used in a legal process as evidence of network performance at the same time the Regulator was covertly overseeing the process.

Austel/ACA in its role as Regulator did inform Telstra of the deficiencies in the Telstra-devised and conducted verification testing procedures prior to Telstra submitting the known deficient test results as arbitration evidence of alleged network performance in my arbitration (with the Regulator's knowledge), is a serious matter.

For the Regulator to allow this crime to remain unreported to the appropriate authorities And the Regulator's failure to advise the party who was the victim of the crime makes the Regulator accessory to this Telstra crime.

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For the Regulator to withhold from the public its knowledge of systemic problems existing within the Telstra Network and Billing Software resulting in numbers of Telstra customers being overcharged and incorrectly charged for actual calls and failed call attempts has compromised the Regulators integrity and made AUSTEL/ACA an accessory to a public crime perpetrated on Telstra's uniformed customers.

The documentary evidence of Austel/ACA's knowledge of these crimes was recently supplied to me under a "freedom of information" FOI request. (Refer to attached Example of Evidence sourced from Austel/ACA's the Australian Telecommunication Regulator own archives.

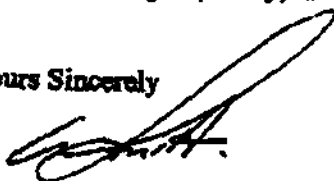
Similar Austel/ACA archive documentation received by me under FOI further confirms that Austel/ACA are again fully aware that Telstra knowingly used another set of deficient/impracticable test results during their defence of my arbitration as evidence to support alleged network performance into Cape Bridgewater.

I am formally lodging an official complaint with you Mr. Shaw, as Chairman of the Board of the Australian Communication Authority, and charge you with the responsibility to initiate an investigation into the irregularities I have drawn to the Regulators attention including:

- the existence of systemic network and billing software problems within the Telstra Network which results in
- short duration calls
- B Party not receiving calls or facsimiles
- Overcharging A Party for time-metered calls
- Incorrectly charging A Party for unsuccessful calls
- Double-charging A and B Party for successful calls

I will appreciate receiving your personal written response by C.O.B. Friday 13 July 2001 as to its action plan, if any, the Australian Communications Authority intends to take.

Yours Sincerely



Alan Smith

cc Director of Investigations, Mr. John Wynack, Commonwealth Ombudsman's Office.  
Detective Sergeant Richard Watkins Victoria Police Major Fraud Group  
Mr Steven Smith Shadow Minister of Communications Parliament House Canberra  
Senator Vicky Bourne Australian Democrats, Spokesperson for Communications  
Interested and concerned Senators.



2 August 1996

Mr D Hambleton  
Group Manager Regulatory  
Telstra Corporation Ltd  
Locked Bag 4350  
MELBOURNE VIC 8100  
FACSIMILE NO: 9663-1218

Dear Mr Hambleton

**CHARGING FOR SHORT DURATION AND UNANSWERED CALLS**

I refer to publicity on the above issue in recent months and our ongoing liaison with Telstra since the issue was first raised in 1994.

I am now seeking a range of information to facilitate consideration of the substance, incidence and nature of complaints regarding short duration and/or unanswered calls. Certain of this information relates to statistics required to be furnished under section 5.4 of Licence Declaration No. 2 of 1991. I understand that Telstra's complaint management support system, CICERO, contains a sub-category which enables it to separately record complaints relating to short duration calls (SDC).

**Complaint data concerning short duration calls**

You are asked to provide AUSTEL with the following complaint data concerning short duration calls for the latest available twelve month period:

- (a) the total number of SDC complaints received by Telstra;
- (b) the percentage of the total number of billing complaints which concern SDC;
- (c) the number of SDC complaints relating to IDD Calls;
- (d) the number of SDC complaints concerning STD calls;
- (e) the number of SDC complaints relating to 008/1800 services,
- (f) the total number of 008/1800 services currently in operation, and
- (g) the number of SDC complaints relating to mobile services (if possible, disaggregated into digital and analogue technologies).

10142<sup>007</sup>

*Dr Kelloha*

*Please arrange response.*

*(Note he is seeking a reply by 13/7)*

Alan Smith  
RMB 4408, Cape Bridgewater  
Portland 3305  
Phone 55 267 267 Fax 55 267 265

Tony Shaw  
Chairman of the ACA  
PO Box  
Belconnen  
ACT 2616

*AS*  
*5/7*

4 July, 2001

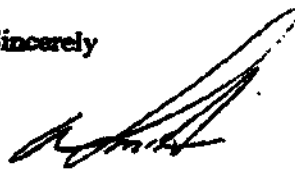
Dear Mr. Shaw

I refer you to the following faxed 8 pages including my letter addressed to yourself now dated 4 July 2001.

Please note that I have already sent the original letter to your Melbourne office by registered mail not dated. Would you please inform your Melbourne office when they receive this correspondence to date this information 4 July 2001.

Please except my apologies for this error.

Sincerely



Alan smith

*Mr Neil  
Pls acknowledge by 13/7.  
We need to discuss.  
Laf.*

*Gina,  
has ackn info  
including a  
video!*

*Bye*



Your comment on the view included in recent newspaper reports that the problem has its highest incidence at older exchanges would also be appreciated.

Please advise whether the incidence of SDCs is known to be higher in particular charge zones. If so, please supply details for any zone where the incidence of SDC as a proportion of long distance calls is greater than 20% over a period of say one month or more.

#### Traffic study data concerning short duration calls

In relation to Telstra's advice of 16 October 1995 ( Mr Steve Black ) that some 12% of all long distance calls are valid calls of less than 15 seconds:

- (a) what is the current proportion of 'long distance' calls under 15 seconds;
- (b) does the 'long distance' category detailed include IDD calls; and
- (c) what proportion of 'long distance' calls are between 1-5 seconds, 6-10 seconds, and 11-15 seconds.

#### Telstra complaint handling practices concerning short duration calls

Telstra's advice quoted above stated that STD and IDD SDCs of 6 seconds or less are not charged to the caller. Please advise:

- (a) Is this practice confidential; and
- (b) the procedures which Telstra normally adopts when a customer complains of a short duration call, including the process of investigating the validity of the customer's complaint.

#### Advice to customers on how the duration of a call is measured

The advice quoted states that the billing system for 008/1800 services records the length of the call as the time between the called party picking up the phone and the caller hanging up at the end of the conversation and that this billing practice is no different from a normal call.

As these call measurement practices are relevant to the duration of the call which may appear on a customer's bill, please advise what advice Telstra provides to customers or has made publicly available on:

- (a) the commencement of the billing period of a 'normal' call; and
- (b) the completion of the billing period of a 'normal' call.

**AUSTEL**  
AUSTRALIAN  
TELECOMMUNICATIONS  
AUTHORITY

Melbourne  
Victoria 3004  
Tel: (03) 9828 7300  
Fax: (03) 9820 3021  
Free Call: 1800 335 526  
TTY: (03) 9829 7490

94/0289 -10

12 July 1995

Taits Solicitors  
PO Box 311  
WARRNAMBOOL 3280

Facsimile (055) 61 4567

Attn Mr Ezzy

Dear Sir

**Re: ALAN SMITH - CAPE BRIDGEWATER HOLIDAY CAMP**

This letter responds to your correspondence dated 29 June 1995 (your reference Mr Ezzy:7:18) in relation to your client Mr Alan Smith. Mr N Tuckwell, Chairman, AUSTEL, has requested that I reply on his behalf.

The tests to which you refer were neither arranged nor carried out by AUSTEL. Questions relating to the conduct of the tests should be referred to those who carried them out or claim to have carried them out.

Yours faithfully



Cliff Mathieson  
General Manager  
Carrier Monitoring Unit

cc Mr A Smith  
Facsimile (055) 267 230

**Results of studies on the causes of short duration calls**

I acknowledge Telstra's recent advice of continuing difficulties in work to facilitate the Short Duration Call /customer perspective study first referred to in August 1994 and the hope that some progress on the support platforms would be made in June 1996.

Apart from this study—of which we would wish to be appraised—the letter of 16 October stated that Telstra proposed to undertake the following work in relation to short duration calls in the context of the possible existence of fault conditions:

- (a) technical research and testing with a focus on the customer access network; and
- (b) internal research involving overseas telcos.

Please advise the outcome of these studies.

Could I have your response by 23 August 1996 please. I would be pleased to discuss or clarify any of the issues raised in this letter.

Yours sincerely

John MacMahon  
General Manager  
Consumer Affairs

The attached 008/1800 account dated 18/8.96 is my own Telstra billed account for that period shown. I have enclosed this Telstra account and marked the date of July 23<sup>rd</sup> with an arrow for the following example.

- 1) At 09:12am, 09:14am, 09:14am, and 19:19am, we see 'four' short duration calls registered as having originated from 06257.

All four calls originated from the Commonwealth Ombudsman Office Canberra. I have since contacted John Wynack, Director of Investigations (COM) where he has informed me that at NO time did he make 'four' quick repetitive phone calls on July 23<sup>rd</sup> 1996. I.e.: speak to my office for 15 seconds, then putting the phone down only to ring yet again to speak for a further 12 seconds, then putting the phone down once again only to ring yet again to speak for a further 10 seconds, then only to put the phone down for the third time to yet again ring for a fourth time to speak for 9 seconds only.

I have used this one of several short duration call examples shown here that continued past the date of Telstra's deficient Verification Testing at Cape Bridgewater 29 October 1994 because the Commonwealth Ombudsman's Office is impartial and beyond reproach.

As you know full well both Austel/ACA and the TIO.s office, is aware that Telstra continued to wrongly bill my business for this type of incorrect charged call after my arbitration was to have addressed and rectified these faults. To date neither the ACA or the TIO have correctly investigated my valid claims.

Telstra and the TIO to date have still not offered any type of reimbursement to compensate for these wrongly billed accounts.

**Telstra Bill**

Telstra Corporation Limited  
ACN 051 775 558 / ABN 33 051 775 558

**Tax Invoice**



Account number

**776 7288 200**

Bill number

**T 879 374 997-9**

Date of issue

**23 Jul 01**

Bill enquiries

**13 2000**

Opening Balance

\$197.30

We received

\$197.30cr

Balance

\$0.00

Total of this bill

\$343.43

Total amount payable

**\$343.40**

Payment to be made by

**07 Aug 01**

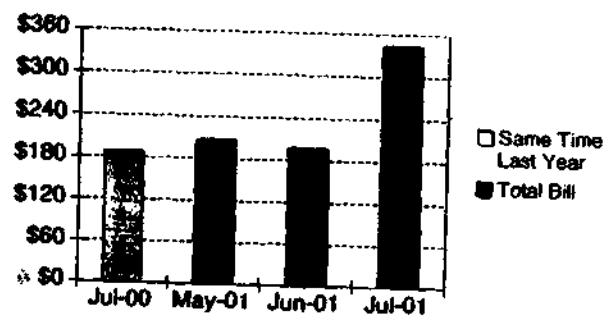
CAPE BRIDGEWATER HOLIDAY CAMP  
RMB 4409 CAPE BRIDGEWATER RD  
PORTLAND VIC 3305

**Item Account Summary Your Reference 03 5526 7265**

Item	Account Summary	Your Reference	Excl GST \$	Incl GST \$
475	• Usage charges	to 18 Jul	283.17	311.49
476	• Service and equipment	to 18 Aug	29.04	31.94
			<b>\$312.21</b>	
			<b>\$31.22</b>	
<b>GST in this bill</b>				
<b>Total of this bill (including GST)</b>			<b>\$343.43</b>	<b>\$343.43</b>

**Calling Patterns Compared With Last Bill**

Local Calls	up by	\$17.91
STD Calls	up by	\$128.97
Calls to Mobiles	up by	\$4.98



250	22 Jun	03:37 pm	Melbourne	0396140811	Day	2:15	0.82
249	22 Jun	03:40 pm	Melbourne	0396140811	Day	0:37	0.38
248	22 Jun	03:48 pm	Melbourne	0392877001	Day	0:50	0.44
326	22 Jun	07:41 pm	Melbourne	0395681824	Economy	16:33	3.14
348	23 Jun	09:03 am	Melbourne	0398668498	Economy	0:39	0.34
288	23 Jun	09:45 am	Melbourne	0398898928	Economy	35:22	6.44
343	23 Jun	05:05 pm	Melbourne	0398761254	Economy	10:12	2.01
298	23 Jun	05:59 pm	Melbourne	0398761853	Economy	1:36	0.51
297	23 Jun	06:00 pm	Melbourne	0398761254	Economy	3:12	0.78
340	23 Jun	07:39 pm	Melbourne	0398761853	Economy	0:50	0.37

06:00 103-005

**516**

Continued page



Item **STD Calls - Itemised** continued

**STD calls** continued

	Date	Time	Place	Number	Rate	Min:Sec	Incl GST \$
	<b>Telephone Service 03 5526 7265 continued</b>						
156	04 Jul	04:43 pm	Melbourne	0399636988	Day	1:03	0.50
157	04 Jul	04:45 pm	Melbourne	0399636988	Day	0:41	0.41
367	04 Jul	06:59 pm	Melbourne	0395681824	Multi Rate	0:54	0.44
293	05 Jul	04:42 am	Canberra	0262195200 ←	Economy	4:44	1.05
354	05 Jul	05:32 am	Hamilton	0355721141	Economy	4:35	0.68
185	05 Jul	09:36 am	Buderim	0754453198	Day	6:29	1.93
184	05 Jul	10:10 am	Melbourne	0392877001	Day	0:41	0.40
258	05 Jul	10:34 am	Buderim	0754453199	Day	0:34	0.38
257	05 Jul	10:36 am	Buderim	0754453198	Day	1:45	0.68
256	05 Jul	11:08 am	Melbourne	0392877099	Day	0:30	0.35
126	05 Jul	01:36 pm	Melbourne	0396420800	Day	1:22	0.58
125	05 Jul	01:51 pm	Warmambool	0355627727	Day	16:05	2.96
154	05 Jul	06:12 pm	Melbourne	0392877001	Day	1:04	0.50
155	05 Jul	06:13 pm	Melbourne	0392877099	Day	7:44	2.26
180	05 Jul	06:33 pm	Melbourne	0392877099	Day	18:57	2.97
176	06 Jul	07:50 am	Melbourne	0392877001	Day	1:49	0.69
272	06 Jul	09:10 am	Melbourne	0392877099	Day	0:09	0.26
273	06 Jul	09:11 am	Melbourne	0395852636	Day	0:20	0.31
92	06 Jul	12:06 pm	Melbourne	0392877099	Day	8:31	2.47
93	06 Jul	12:24 pm	Melbourne	0394491346	Day	0:36	0.38
90	06 Jul	12:25 pm	Melbourne	0396420800	Day	15:36	2.97
302	07 Jul	12:12 pm	Melbourne	0398898928	Economy	18:20	3.45
294	08 Jul	10:29 am	Melbourne	0398761853	Economy	1:06	0.41
291	08 Jul	03:27 pm	Melbourne	0395681824	Economy	22:56	4.25
244	09 Jul	01:37 pm	Canberra	0262773410	Day	4:18	1.35
246	09 Jul	01:41 pm	Brisbane	0732810077	Day	6:22	1.91
245	09 Jul	01:49 pm	Melbourne	0396140800	Day	5:52	1.77
192	09 Jul	02:49 pm	Melbourne	0392877099	Day	1:18	0.57
325	10 Jul	06:02 am	Melbourne	0392877001	Economy	6:10	1.31
148	10 Jul	07:37 am	Melbourne	0398668498	Day	27:51	2.97
206	10 Jul	08:28 am	Melbourne	0398761853	Day	1:16	0.56
208	10 Jul	09:48 am	Hamilton	0355719180	Day	3:10	0.78
209	10 Jul	09:52 am	Melbourne	0392877001	Day	0:31	0.36
231	10 Jul	01:30 pm	Melbourne	0396140811	Day	1:50	0.70
232	10 Jul	01:33 pm	Melbourne	0396140811	Day	1:17	0.57
229	10 Jul	01:35 pm	Melbourne	0396140811	Day	1:43	0.68
227	10 Jul	01:37 pm	Melbourne	0396140800	Day	3:03	1.02
230	10 Jul	01:40 pm	Melbourne	0396140811	Day	1:28	0.60
228	10 Jul	01:47 pm	Melbourne	0396140811	Day	0:52	0.45
233	10 Jul	02:09 pm	Melbourne	0396425459	Day	0:33	0.36
174	11 Jul	08:36 am	Melbourne	0392877001	Day	1:03	0.49
191	11 Jul	10:18 am	Melbourne	0392877099	Day	19:43	2.97
253	11 Jul	12:27 pm	Melbourne	0396425459	Day	0:50	0.44
101	11 Jul	12:58 pm	Melbourne	0392877001	Day	1:22	0.58
138	11 Jul	03:34 pm	Melbourne	0392877099	Day	0:30	0.35

516

0000 000000

## STATEMENT

Of Des DIREEN

NAME:	Des DIREEN
ADDRESS:	
OCCUPATION :	
TELEPHONE :	

1. My name is Des DIREEN and my address and contact details are known to Mr Bob Hynninen.
2. In September 1995 I commenced employment with Telecom Australia which later changed its business name to the Telstra Corporation. I was originally employed as an Investigator attached to the Special Services Unit within Telecom Investigations which was later to become Telstra Protective Services. Over the next twelve years I was promoted to the roles of Senior Investigator and then Principal Investigator.
3. My duties over the years included initiating and conducting investigations involving all types of fraudulent activity against Telecom/Telstra as well as the unlawful use of the Telephone network. I was also very heavily involving in assisting Law Enforcement Agencies such as the Victorian, NSW and Queensland Police Task forces set up to investigate SP Bookmaking throughout those states which involved the use of Telephone Landlines as well as the Mobile phone network.
4. In April 1997 Telstra was downsizing its staff and offering redundancy packages. I applied and was granted a package leaving the company after completing just short of twelve years service.
5. After leaving Telstra, I am not sure of actual dates but it was either late 1997 or early 1998, I received a call from a person who I know as Rod KUERIS. Rod was working as a Detective Sergeant at the Victoria Police Fraud Squad, St. Kilda Road, Melbourne. I can recall that at the time, Rod was investigating criminal behaviour allegations directed against Telstra. The allegations, which related to 'Perverting the Course of Justice', were initiated by a group of complainants who called themselves Casualties of Telstra (COT Cases).



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Statement by Dae DIRREEN  
Page 2 of 4

6. At the time when Rod called me, I had left Telstra. He called me and asked me to meet him at his private address in Coburg, Victoria. He told me at the time that he was reading reports submitted by Telstra that related to his investigation. He had trouble deciphering the acronyms, abbreviations etc. that were in the report. He knew of my background as an investigator with Telstra and that I could assist him.
7. I attended at his house in Coburg. It was either on a Saturday or a Sunday. I can remember that it was on a weekend.
8. When I got there and during general talk, he stated that he believed that his phones were being 'bugged'. He seemed to be quite distressed at the time. He said that his phone was making clicking noises, the same noises that were occurring on the phones at the Fraud Squad.
9. I said to him that we should do a quick drive around to find out where the nearest pillar or telephone line pit was to his home because if what he was telling me, was true, it was possible that his telephone line could be being tapped from that location and his telephone conversations monitored. He told me that he thought there was pillar down on a corner about two hundred (200) metres away. We left together and when we got to the corner, a plain van was present and a male person was replacing the cover to the pillar. The male then got into his van and left.
10. We then drove to the main exchange in Sydney Road, Brunswick. There were two other vehicles at the exchange as well as the same van. These vehicles were in behind the exchange compound and were not marked with the company logo which indicated that they were not technician's vehicles.
11. It was unusual to have any vehicles at exchanges on weekends unless there was repair work being conducted by technical crews, but as I said all these vehicles were <sup>not</sup> marked with the Telstra logo..
12. From what I observed on this day, and applying the knowledge that I gained during my twelve years at Telstra, I have no doubt in my mind that the phones at Rod KUERIS's home address were possibly being interfered with.
13. Rod had also informed me that he believed that the phones at the Fraud Squad were also being monitored. He stated that the clicking noises were constantly being heard while using the phones.



Statement by Des DIBBEN  
Page 3 of 4


14. Rod also stated that he believed that all of his actions and meetings were pre-empted by Telstra. He stated that he thought it was possible that someone from Telstra was monitoring his calls.
15. This belief was later reinforced by what happened after this event.
16. A few weeks later on a Saturday morning Rod had to go to Tullamarine Airport to meet one of the complainants in his investigations, Anne GARMES. He called me early on this day and stated that he believed that he was being followed and wanted me to help him verify this.
17. Rod was going to meet Anne GARMES at Tullamarine Airport in the Ansett Departure area on the 1<sup>st</sup> floor. He was driving his private car to the airport. I arranged to meet Rod at Kellor Park Drive, East Keilor. I sat off his car as he drove past. I then followed him at a reasonable distance to the Ansett Departure Area Cafeteria on the 1<sup>st</sup> floor.
18. I met him outside the Cafeteria, and he pointed out Anne GARMES and her husband who were already there and then pointed out a male person sitting near them who he said he recognised as being a person who was following him around Melbourne. This guy was reading the paper. When this person realised that we had noticed him, he left. Rod appeared angry and distressed by this.
19. I also know that these occurrences were causing problems with Rod's family life. I believe that Rod left the police force not long after these events.
20. Finally, I would like to say that while I was working at Telstra and it would have been the early nineties I had cause to travel to Portland in western Victoria in relation to a complaint involving suspected illegal interference to telephone lines at the Portland telephone exchange.
21. As part of my investigation, I first attended at the exchange to speak to staff and check the exchange log book which was a record of all visitors to the exchange and a record of work conducted by the technical officers.
22. When I attended at the exchange, I found that the log book was missing and could not be located. I was informed at the time by the local staff that a customer from the Cape Bridgewater area south of Portland was also complaining about his phone service and that the log book could have been removed as part of that investigation. I was not told about this complaint prior to travelling to Portland and when I made inquiries by telephone back to



Statement by Des DREEN  
Page 4 of 4

Melbourne I was told not to get involved and that it was being handled by another area of Telstra. I later found out that the Cape Brigewater complaintant was a part of the COT cases.

Signature:

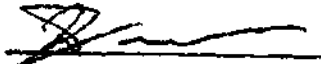


Date:

10/08/06

I hereby acknowledge that this statement is true and correct and I make it in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury.

Signature:



Date:

10/08/06

Acknowledgment made and signature witnessed by me at MELBOURNE on 10/8/06  
at 5.15 am/pm

Signature:



Name:

P. J. SPENCE

Title:

SENIOR INVESTIGATOR

# STATEMENT

Of Bob HYNNINEN

<b>NAME:</b>	Robert Thomas HYNNINEN
<b>ADDRESS:</b>	Unit 4, 79 Mimosa Road, Carnegie Victoria 3163.
<b>OCCUPATION :</b>	Public Servant – Australian Taxation Office
<b>TELEPHONE :</b>	(03) 9285 1570

1. My full name is Robert (Bob) Thomas HYNNINEN. I currently reside at Unit 4, 79 Mimosa Road, Carnegie, Victoria.
2. I had been previously involved in an arbitration process with Telstra. I was part of a group known as the Casualties of Telstra (COT Cases).
3. I can recall that during the period 2000/2001 I had arranged to meet Detective Sergeant Rod KUERIS from the Victoria Police Major Fraud Squad at the foyer of Casselden Place, 2 Lonsdale Street, Melbourne. At the time, I was assisting Rod with his investigation into alleged illegal activity of Telstra against the COT Cases.
4. Rod and I would occasionally meet in the city to discuss the progress of his investigation.
5. I met Rod at about mid – morning. I observed him seated on a sofa in the foyer near the right side of the entrance. I approached him and sat down next to him. When I did this, I noticed that he appeared to be distressed and red in the face.
6. Rod then stated that he wanted me to follow him to the left side of the foyer. When we did this he then directed my attention to a male person seated on a sofa opposite our seat. He then told me that this person had been following him around the city all morning. At this stage Rod was becoming visibly upset and I had to calm him down.
7. This male then noticed that we were both looking at him and got up and left the building.
8. Rod kept on saying that he couldn't believe in what was happening to him. I had to again calm him down.

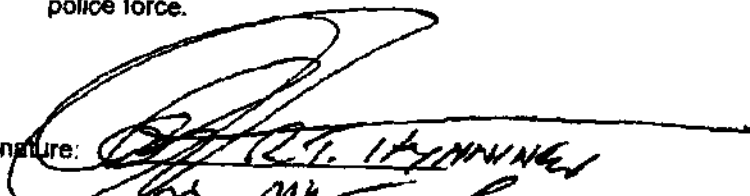


Statement by Bob Hynninen  
Page 2 of 2

- 9. When I spoke to Rod on a number of occasions at the Fraud Squad, he stated that he believed his office phones were being monitored by Telstra. He said that they were continually making clicking noises.
- 10. He told me that he had complained to senior management about the problem.
- 11. Over time, I believed that this investigation had caused a number of health problems with Rod. It also had an affect on his marriage.
- 12. Rod called me during the latter part of 2001 to inform me that he has resigned from the police force.

Signature:

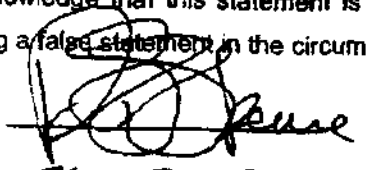
Date:

  
81 AUG 2006

I hereby acknowledge that this statement is true and correct and I make it in the belief that a person making a false statement in the circumstances is liable to the penalties of perjury.

Signature:

Date:


  
8/8/2006

Acknowledgment made and signature witnessed by me at MELBOURNE on 8/8/2006  
at 1.40 am/pm

Signature:

Name:

Title:

  
R. J. SPENCE  
SENDS INVESTIGATOR  
RLA

Distribute to	<input type="checkbox"/>
Copy of Fax	<input type="checkbox"/>
OSG Managers	<input type="checkbox"/>
OMG Managers	<input type="checkbox"/>
Circuitry	<input type="checkbox"/>
All N/Ops Board	<input type="checkbox"/>
Retention 215	<input checked="" type="checkbox"/>
Return Original to	<input type="checkbox"/>
ADAM 1/26/94	
for	<input type="checkbox"/>
Filing	<input type="checkbox"/>
Action	<input type="checkbox"/>

Telecom Australia

Warnambool OMG  
118 Kerok Street  
Warnambool  
Victoria 3280

To *MIKE STOKES*

From *ROSS SMITH*

Fax No.

Company

Telephone (055)

Division

627557

Date

Fax

611398

No. pages

*MIKE*

*This is a note from Gordon Stokes, if you want me to type up some info, please advise me asap.*

*The information regarding the telephone numbers called by this customer following this incident are available from Network Investigation and my information was verbal for Gordon Stokes.*

*Ross Smith*

K03273



All CB services off the air for 9 minutes due to a software fault in the Portland AXE exchange.

2.15 Period 3rd April - 5 June 1993 - Network Faults Causing a Range of Problems  
Some Calls Lost

- 3 April 1993 - CBHC has difficulties calling Heywood, fault found in Warrnambool - Heywood exchanges affecting all callers to Heywood ('line signalling failures on circuits between the Warrnambool AXE and Heywood ARK exchange - ref B004 Service History, p58).
- 5 June 1993 - Callers from Sebastopol having difficulty calling CBHC - fault in Sebastopol exchange, "which would have resulted in customers calling STD destinations from Sebastopol intermittently experiencing 'no progress'". (ref - B004 Services History, p59).

2.16 Malicious Call Trace (MCT) on Two Lines Causes Slow Cleardown of Calls:  
MCT was placed on 267 267 and 267 230 - 26 May 93

The MCT provides a Calling Line Identification (CLI) facility for calls originating from modern exchanges and a 'last party release' facility for calls from older exchanges; in the latter case it (MCT) effectively removes the protection of an incorrect hang-up. The effects are covered in the witness statement of Mr David Stockdale of 8 December 1994.

- (i) Telephone 'dead' for a period of 1.5 minutes after hang up.

"17. During NNI's second investigation of Mr Smith's service, we inadvertently caused a fault ourselves as part of implemented testing procedures. This fault arose from the use of the 'malicious call trace' facility ('MCT'), that was placed on Mr Smith's service at the Portland Exchange in an attempt to ensure more detailed data relating to Mr Smith's incoming calls. The additional information (specifically Calling Party number information) was required so that we could more accurately match possible problem calls against his fault reports. Mr Smith knew this form of testing was being undertaken, as we had discussed it with him.\* During the period that malicious call tracing was in place, when Mr Smith received calls from exchanges that can only provide limited detail regarding the A party number and hung up his telephone, there was a 90 second period after he hung up that the Exchange controlling the call believed that his call was not over. (Limited call details can occur for exchange technologies such as step by step. This is known as Partial Calling Line Identification, Partial CLI). As a result, if parties attempted to call Mr Smith within this 90 second period, they would not be able to do so. Likewise, if Mr Smith attempted to make calls during this 90 second period, his phone would appear to be 'dead' with no dial tone.

M34207

519

Commonwealth of Australia  
STATUTORY DECLARATION  
Statutory Declarations Act 1959

I, ~~Darren Lewis~~ <sup>DARREW</sup> William Lewis  
OF 1721 Blowhole rd Cape Bridgewater vic  
Make the following declaration under the Statutory Declarations Act 1959

The following chronology can be supported by documentation which I have on file.

**PHONE & FAX PROBLEMS**

1. I purchased the Cape Bridgewater Holiday Camp (now Cape Bridgewater Coastal Camp) December 2001.
2. Within a week or so of taking over the business from Alan Smith, friends and new clients were stating they could not get through to us on successfully on the phone.
3. By mid 2002, my wife Jenny and I realised we were having major problems with in-coming calls and our out-going faxes were a major problem.
4. From discussions with the previous owners Jenny and I now fully understood that we had inherited some of the phone and fax faults Mr Smith had been reporting for some time.
5. Letters from us to our local Federal Member of Parliament, the Hon David Hawker, Speaker in the House of Representatives, led to Telstra visiting our business to investigate these continuing problems.
6. In November 2002, after Telstra realised there was in fact a Telstra related problem and not (customer related equipment) they informed us that the new wiring they were installing was worth thousands of dollars but not to worry as Telstra would pick-up the cost.
7. After Telstra rewired the business including disconnecting a Telstra installed faulty phone alarm bell, we were informed Telstra had found other problems and believed who ever had installed the wiring had done an unprofessional job.
8. Internal Telstra documentation provided to me by Allan Smith confirmed Telstra themselves had done the wiring.
9. Jenny and I noticed that although our incoming-call rate had more than doubled once this rewiring had taken place Telstra was still unable to provide a satisfactory reason as to why we were still having problems.
10. Telstra connected fault finding equipment called Customer Access Call Analysis (CCAS) to 55-267267 business line.
11. This CCAS data recorded numerous faults that could not be explained by the (Level Three) Telstra fault managers. Hand written notations on some of these CCAS data sheets, confirm even the Telstra technicians themselves were aware of the ongoing problems.
12. By 2004, with the problems not resolved I again sought help through the Hon David Hawker.
13. Correspondence from Mr Hawker in August 2004, confirms Telstra had advised him that the local un-manned exchange was soon to be upgraded.
14. From 2004 until most recently still no upgrades.
15. In August this year we contacted Mr Hawker's office regarding the ongoing problems and advised his staff we have no real alternative but to sell the business.
16. Because we were with AAPT and it appeared they had no control over the faults being experienced we changed back to Telstra.

D Lewis

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17. From Tuesday to Thursday evening (August 2006), Telstra technicians were present at the Holiday Camp and surrounding area attempting to locate and fix the problems they had experienced themselves.
18. During this three day period even Telstra's own technicians couldn't understand why their own fault testing equipment was malfunctioning.
19. Telstra informed us we had what is commonly known in technical words as (a line in line lock-up rendering our business phone useless until the fault is fixed.

The technicians then in hook up consultation with outside office guru's did a fault graph reading on our 55 267267 line with the outcome that their office technical staff stated words to the affect the reading was impossible (couldn't be correct). It was then that the local technician became quite annoyed when the technical guru insinuated that the equipment the local tech was using must be faulty. The local tech then informed the technical guru that there was nothing wrong with the equipment at all.

It was then that the local technician informed me that as strange as it might seem he believed that because our business was on optical fibre and was so close to the Beach Kiosk (junction box) this could very well be part of the problem. Apparently either under powering over powering was also an issue He realised that after testing all the other optical fibre outlets with his testing equipment and still reached this impossible reading (according to the technical guru), he would have to move us off the fibre.

It was on this note that the technician informed me that although it was a backward step he was going to investigate the possibility of moving the business off the optical fibre and back on to the 'old copper wiring'.

After investigating this possibility our business was then moved back onto the 'old copper wiring'. The above is more evidence of the continuation of the phone and fax problems my wife and I inherited when we purchased our business.

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

DECLARED at Portland in the

State of Victoria this

day of Fourth day two thousand ) D. Lewis

and Sept 06  
Before me [Signature]

Stuart Graham Harrison  
Constable of Police 34273.  
Portland Police Station  
Clunely Street Portland.

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**WAL. R. HUNT, M.A., LL.B.**  
**SOLICITOR**

CONSULTANT:  
F. J. R. HUNT, B.A., LL.B.

YOUR REF.  
OUR REF.

98/136:FJRH:egd

**HUNTS'**  
**SOLICITORS AND CONSULTANTS**

MITCHELL HOUSE  
358 LONSDALE STREET  
MELBOURNE 3000  
(CNR. ELIZABETH & LONSDALE STREETS)

PHONE: 9670 5694  
FAX: 9670 6598

10 February, 1999

Mr G Schorer  
G M (Melbourne) Holdings Pty Ltd  
P O Box 313  
NORTH MELBOURNE VIC 3051

Dear Sir

As requested, we advise that this office uses a facsimile machine being a Ricoh Fax 3000L Serial No. A06 41000464 purchased on 24 February 1995.

We further advise that the telephone line to which the facsimile machine is connected namely 9670 6598 has been converted to Faxstream without any action by us or Godfrey and Godfrey with whom we share this facsimile and telephone line.

We will advise you shortly, after perusal of the Telstra (Telecom) accounts, as to when we believe the telephone line was changed to Faxstream.

Yours faithfully

  
HUNTS'

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IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL LIST

No. 2082/98  
F. 4951

IN THE MATTER of an Arbitration  
under the COMMERCIAL ARBITRATION ACT

BETWEEN:

**TELSTRA CORPORATION LIMITED**  
(ACN 051 775 556)

Plaintiff

- and -

**GRAHAM SCHORER and others**

Defendants

**AFFIDAVIT**

Date of document:	4 November, 1998
Filed on behalf of:	The First Defendant
Prepared by:	
HUNTS'	Solicitors code: 183
Solicitors	Fax 9670 6598
358 Lonsdale Street,	Tel: 9670 5694
MELBOURNE VIC 3000	Ref: 98/133 Wm. RH

I, **GRAHAM SCHORER** of 493 Queensberry Street, North Melbourne in the State of Victoria, Company Director, make oath and say as follows:-

1. I am the Managing Director of Golden Messenger, a division of G.M. (Melbourne) Holdings Pty. Ltd. Golden Messenger ("Golden") conducts a transport agency business. The business was established in January 1966. The business was purchased in 1973 and I have conducted it since that time. The nature of the business is such that it is totally dependant upon a functional telephone service in order to obtain and retain business.
2. Over a number of years, I experienced considerable problem with the telephone system at the business: the problems took various forms but the net effect was

*John...*  
**522-A** *Robert...*

that clients and prospective clients were unable to get through on the telephone to place instructions with the company for the collection or delivery of documents, packages and the like.

3. A group of claimants was formed, each of whom is a "Casualty Of Telecom" as a result of experiencing in their business the adverse consequences of a telephone system which did not function properly. These claimants became known as the "COT cases". Negotiations have been conducted directly and indirectly with Telstra since August 1992 with a view to obtaining redress for the significant losses experienced by these claimants of whom I am one. Initially in November 1993, Telstra agreed with Austel and the remaining foundation COT claimants (commonly referred to as COT 4) that the matter should proceed by way of commercial assessment. The thrust of the agreement at that time was to resolve the parties differences informally and inexpensively by the use of commercial assessment. Telstra unilaterally withdrew from the commercial assessment agreement and required claimants including myself to proceed by way of commercial arbitration. I agreed to this under protest and under duress in circumstances where the then Telecommunications Industry Ombudsman ("TIO"), Warwick Smith and his legal counsel to TIO, Peter Bartlett of the solicitors Minter Ellison, advised me that Telstra was threatening not to participate at all in any negotiation process with claimants including myself unless it was conducted pursuant to the arbitration process which Telstra required. At that time I had insufficient money to conduct a lengthy opposed hearing on the matter. In addition, I did not wish to upset the decision-makers at Telstra because I required their goodwill in order to achieve any form of financial settlement.
4. The so-called "fast track procedure" which was meant to be used in respect of the resolution of the COT cases has moved at a dawdling pace. Points of claim and defence have been exchanged together with additional particulars. However, the process has become bogged down with respect to my inability to discover relevant documents from Telstra. I strongly maintain that Telstra has refused to

*John P. Jones*  
*Barrett*

produce many relevant documents. In so acting, Telstra is aware that it rather than its customers has relevant documentation regarding faults in the telecommunications system which it operates. Without those documents, it is difficult for claimants such as myself to fully detail and prove their claims in a process that relies upon documents.

5. I seek to adjourn the hearing of this application to a date no earlier than March 1999. The application is made for the following reasons:
  - (a) the harm to my business;
  - (b) the harm to my health;
  - (c) the harm to my marriage;
  - (d) the deliberations of the Senate Select Committee;
  - (e) the investigations of the Victorian Police Major Fraud Group into Telstra's and others conduct.
  
6. At present, I do not have the time to devote to the work necessary to deal with the claim by Telstra.
  
7. The major client of my business that currently contributes approximately 1/3<sup>rd</sup> of the company's turnover is Westpac Banking Corporation ("Westpac"). Westpac is extremely significant to the business because of the permanent work which it creates and its supportive role in providing a positive cashflow. Westpac pays its account each week. I have held the account for Westpac work since 1974 with the exception of one year.
  
8. In recent times, Westpac has taken over the Bank of Melbourne. The initial integration of the banks for the purposes of my company's work in collecting and delivering bank documents was 17 August 1998. By that time, I had to have established all the necessary internal procedures for the collection system to function smoothly. The collection and delivery service must not only be cost effective but must fit in with the workload at relevant branches of the bank and also the bank's data processing centre. For example, there is no point in the bank

*[Handwritten signature]*  
*[Handwritten signature]*

having 50 processing personnel ready to process cheques and other bank documents if the documentation has not been collected and delivered. In the months of June and July 1998 I was engaged to a significant extent in sorting out the re-structure. Westpac initially sought to make these arrangements itself. However, its consultant lacked the necessary experience and its suggested method of operation was impractical. I had to re-structure the same to make it both practical and cost-effective. After the expanded system was introduced, fine tuning was required.

9. Westpac is about to undergo a further re-organisation to the extent that, having conducted the merger, the number of branches in Melbourne is to reduce from approximately 277 to 164 as of close of business Friday, 20 November 1998. It should be noted that as a result of this current re-structure all Westpac branches will have their trading hours extended to 5.00pm each working day. For this reason, the process must be done again and I will be required to establish new procedures in terms of routes and timing for the collection and delivery of bank documents. The new arrangements are scheduled to commence on 23 November 1998. On 2 November 1998 I delivered some of the material to Westpac and the balance of the new procedures will be sent to Westpac head office in Sydney on Wednesday, 4 November 1998. Westpac officers have told me that the bank wishes to give its branches a minimum of 14 days notice of the new arrangements.
10. On the basis of my previous experience, I would expect that the head office of the bank will have objections to some of my suggested procedures and that changes will have to be made in the next few weeks. Again on the basis of my experience, I would expect that, as is happening at the moment in relation to the changes made in August, fine tuning of the new route and timing procedures will be required over the coming months.

*[Handwritten signature]*

*[Handwritten signature]*



11. Because of Westpac's significance to my business and to its continued profitability and operation, I must concentrate my energies on servicing the needs of that client.
12. I have had many open discussions in recent years with my Telstra Case Manager of Arbitration, Miss Lyn Chisholm. In recent discussions, I have explained to Miss Chisholm the significance of Westpac to my business and the nature and timing of the substantial work commitments which I had in relation to the August and November changes required by Westpac as a result of its take-over of the Bank of Melbourne.
13. As a result of the stress I have experienced in dealing with Telstra regarding my claims against it, my health has suffered. I have developed poor sleeping habits and suffer from general stress. I have consulted a behavioural psychologist about once per week since 1995. Again, I have explained these matters to Miss Chisholm in my discussions with her.
14. The on-going nature of the dispute and what I perceive as Telstra's abuse of power has also caused difficulties in my marriage and with my children. My children have expressed to me their anger both at Telstra in trying to destroy me and the business and their anger at me in my preoccupation in trying to achieve a resolution of my claim. Since approximately June 1989 I have been in a de facto relationship with Elizabeth Beltrano. Since about June 1996 we have experiencing problems in our relationship as a result of the dispute with Telstra and the effect it has had on me. In the last three or four months, the problems have intensified and Elizabeth has now threatened to leave me. We are about to commence sessions with a marriage counsellor. Again, Lyn Chisholm is aware of the above matters regarding my children and Elizabeth through my discussions with her, however she is not aware that Elizabeth has threatened to leave me.

*[Handwritten signature]*  
*[Handwritten signature]*

15. A Senate Select Committee has established a working party and giving it terms of reference in connection with aspects of the dispute between the COT cases and Telstra. The working party was established prior to 21 October 1997. It comprises the Commonwealth Ombudsman as Chair of the working party, Mr John Wynack, myself and Ann Garms as claimants and Mr John Armstrong, a Telstra lawyer. The working party has dealt in particular with the issue of Telstra failing to produce relevant documents to claimants such as myself either pursuant to the arbitration procedure or pursuant to Freedom of Information legislation. The working party is endeavouring to obtain documents for claimants and to report on those documents which are withheld and those which are said to have been mislaid or destroyed. The working party, which was initially established for a month or two, has had its term extended on a number of occasions. The working party is due to report to the Senate Select Committee by 6 November 1998. I expect the imminent report to the Senate to say that Telstra has withheld more than 75% of documents which on the basis of an independent assessment have been regarded as reasonable and relevant to the claimants cases. Mr John Fitzsimons, an engineer who formerly worked with Telecom, and is now an engineer consulting with The Ambidji Group, has been retained to provide independent technical assessment and advice to the working party. He considered the requests for documents made by the claimants and decided which requests for documents were reasonable and relevant. Telstra accepted his appointment and his assessment of which documents should be produced. However, it has failed to produce more than 75% of such documents. During the major period of mine and the other COT members disputes the Telstra network mainly consisted of Ericsson hardware and software. During the Senate working party Telstra has not provided one Ericsson document and correspondence to or from Telstra. I expect that the Senate Committee will make findings and recommendations in relation to the provision of documentary evidence by Telstra.

*[Handwritten signature]*

*[Handwritten signature]*

16. In the course of dealing with the COT cases including my own, Telstra has filed a substantial amount of evidence by way of statutory declarations. It has become apparent that in a number of cases, Telstra has sought to use as evidence documents which appear to have been deliberately altered. On the basis of this material, the Victorian Police Major Fraud Group in Melbourne has recently begun conducting an investigation into the conduct of various parties employed by or associated with Telstra with a view to bringing charges for, inter alia, perjury, fraud and conspiracy.

17. In the above circumstances, I submit that it is inappropriate for the Court to make any orders of the kind set out in Telstra's summons. My experience of the last few years has lead me to the view that if the arbitration is to continue, it should be before a person who understands how Telstra works and has a solid background in telecommunications matters. Moreover, because as I contend, there are substantial grounds for doubting that the existing arbitration process should proceed at all, it would waste time and money to force the parties to continue with the flawed process. This, I suspect, would not concern Telstra but in my present financial and personal circumstances, it is a matter of considerable concern to me.

*Graham Schorer*  
*GM*

18. For these reasons, I ask that the Court adjourn the further hearing of the summons to a date to be ~~fixed~~.

**SWORN by GRAHAM SCHORER)**

at Melbourne this *4<sup>th</sup>* day of )  
 November 1998. )

*Graham Schorer*

Before me:.....

*William Richards Nunt*

WILLIAM RICHARDS NUNT  
 Solicitor  
 339 Lonsdale Street Melbourne  
 A current practitioner under the  
 Legal Practice Act 1999

**SOLICITOR**

**HUNTS'**  
SOLICITORS AND CONSULTANTS

CONSULTANT:  
F. J. R. HUNT, B.A., LL.B.

MITCHELL HOUSE  
358 LONSDALE STREET  
MELBOURNE 3000  
(CNR. ELIZABETH & LONSDALE STREETS)

ASSOCIATE:  
J. R. P. HUNT, B.A., LL.B.

YOUR REF. **WRH.DF**  
OUR REF.

PHONE: 9670 5694  
FAX: 9670 6598

29 June 1998


Mr Alan Smith  
Capebridgewater Holiday Camp  
RMB 4408  
PORTLAND VIC 3305

Dear Mr. Smith,

There are enclosed six sheets of paper which are the material received by fax from you this morning. I have numbered each of the pages at the bottom in ink and signed my name on the two blank pages.

There is a seventh separate page which is a read-out from our fax machine as at quarter to three this afternoon.

Yours truly,



**HUNTS'**

*(SENT TO THE TIO.)*

522-B

⑤ BRAB

② BRWA

(MANUAL) ....

DATE	START TIME	REMOTE TERMINAL IDENTIFICATION	TIME	RE-SULTS	MODE	TOTAL PAGES	PERSONAL LABEL	FILE NO.
TRANSMISSION								
JUN 26	02:42PM		00'33"	OK	ESM	01		
	03:07PM		01'28"	OK	SM	02		023
	03:30PM	0355267230	03'46"	OK	SM	07		005
	03:34PM		00'31"	OK	ESM	01		009
	04:28PM		05'35"	OK	SM	06		010
	05:18PM		00'57"	OK	SM	01		014
JUN 29	09:09AM	96083016	00'49"	OK	ESM	02		023
	09:36AM		01'16"	OK	ESM	03		024
	09:38AM		00'28"	OK	ESM	01		025
	10:50AM		00'27"	OK	ESM	01		026
	02:16PM	61	00'27"	OK	ESM	01		029
	02:52PM	COMBANK IB	00'33"	OK	ESM	01		031
	03:08PM	CBA FIN MARKETS	00'32"	OK	ESM	01		033
	03:18PM		00'43"	OK	ESM#	02		034
	03:18PM		00'35"	OK	ESM#	02		036
	03:20PM		00'45"	OK	ESM	02		037
	03:33PM		00'54"	OK	ESM	02		035
RECEPTION								
JUN 26	01:37PM		00'42"	OK	ES	01		
	02:20PM		01'29"	OK	S	01		098
	02:23PM		00'56"	OK	S	01		099
	02:27PM		01'44"	OK	S	02		100
	02:45PM		02'36"	OK	S	03		002
	03:19PM		00'48"	OK	ES	01		004
	03:20PM		00'48"	OK	ES	01		006
	03:22PM		01'01"	OK	ES	03		007
	03:42PM		00'26"	OK	ES	01		008
	04:23PM		01'49"	OK	ED	03		012
	04:35PM		00'58"	OK	ES	02		013
	04:37PM		05'10"	OK	S	05		015
	05:07PM		00'53"	OK	ES	01		016
	05:50PM		00'55"	OK	S	01		019
JUN 29	10:11AM		00'35"	OK	ES	01		021
	10:31AM		02'16"	OK	S	04		027
	12:00PM		00'36"	OK	ES	01		028
	02:42PM		01'43"	OK	ES	04		030

TX:016754

RX:014657

E)ECM >)REDUCTION S)STANDARD @)FORWARDING M)MEMORY C)CONFIDENTIAL #)BATCH  
 D)DETAIL F)FINE \$)TRANSFER P)POLLING

# SERVICE DIFFICULTIES

- Fault history - registered re 17A'S

Check with Peter post 12/16

- Cutover to Rcm when? - Likely length of MELU problem

- Chris Doady

- likely 50% via MELU path

- Destination that go via MELU every xxx in vic.

- Mark Ross 370211

- Compensation + why?

- additional how much?

- when we identified fault.  
Mark Ross spoke with Bruce Watson  
Legal guy in QCM, & Mr. Ron Demme  
legal support services.

- He sent receipts for about 2/3000  
Mark only used the ones current  
to the time of loss of service.

- never asked. Mark regarding  
advertising in the underground.

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K02643





Telecom Australia

Minute

File 0607921 Subject Problems with Cape Bridgewater Customer  
055 267267  
95 / 0603 - 01

Phone (053) 334411 From MIKE ROBINS

To Graeme Davies 75

Graeme,

It is my understanding of the sequence of events:-

- Aug 91 - Cutover from RAX to RCM when? - approx 7/8 ins. -  
50% maximum
- Customer Complaints re N.R.R.
  - 16/3/92 - Customer Complaints can't be called
  - 17/3/92 - Problem found at MEL U which would have caused any customer parenting or trunking through MEL U (where digital trunking was used) to have a call failure Customer 053 267267 would not have been able to be rung.

The trunking arrangements for Vic and Interstate is such that MEL U is only one of these major trunk exchanges, other's are Bendigo, MEL Q, Ballarat, Morwell or Moolap (Geelong). If the call was switched via any of these other exchanges, it would have been successful.

The problem does not appear, as first thought, to be a data production error, rather a fault condition quite specific in nature, causing a problem to this code only.

.../2

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

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

↘ *An exact period that this data error was effective for is difficult to obtain but analysis of MELU information indicates that the data change was in place for approximately 6 weeks.*<sup>48</sup> ↙

- 101 In mid 1993 a briefcase containing file information was inadvertently left at Mr Smith's premises during a visit by Telecom National Networks Investigation personnel, and Mr Smith subsequently viewed the contents of his file, which contained the 5 February 1993 report. Mr Smith noticed the discrepancy in the duration of the MELU RVA problem, and alleged to AUSTEL that he had been mis-advised on this issue by Telecom. Telecom responded to AUSTEL stating that the 6 week period identified in this report was an error, and that the earlier 3 week estimate was correct.<sup>49</sup>
- 102 AUSTEL has also viewed some documentation relating to the period the data error at MELU was causing RVA on calls to Cape Bridgewater. The circumstantial evidence indicates the problem may have occurred for only 3 weeks, but no precise or definitive duration of the problem can be ascertained from the available data. A more accurate assessment of the duration of the problem would

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<sup>46</sup>30

<sup>47</sup> 694 - Hew Macintosh for Manager - NNI - 28 August 1993

<sup>48</sup> NNI file - front page

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undoubtedly have been assisted by a much earlier examination of the problem.<sup>50</sup>

- 103 It is apparent from Telecom's documentation that no investigation of the duration of the MELU data error problem would have been initiated without the persistence of Mr Smith's complaints on the matter. It also follows that no investigation was intended into the circumstances which led to the error occurring. The lack of this process raises serious questions about Telecom's ability to ensure such errors are not repeated.

- 104 The assessment provided to Mr Smith that up to 50% of STD calls from Melbourne to the Cape Bridgewater Holiday Camp would have been affected by the MELU RVA problem appears to be accurate.

### **Conclusion**

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

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

- 107 Complaints of RVA have been received from callers using public payphones trying to contact the Cape Bridgewater Holiday Camp.<sup>51</sup>

<sup>49</sup>Need to identify document which makes this claim

<sup>50</sup>Documentation shown and discussed with Cliff Mathieson on 17/2/94.

<sup>51</sup>see 18a - Macintosh to Exchange Managers.

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faulty which would effect on average 12.5% of all local to local traffic and 12.5% of all incoming to Cape Bridgewater traffic. The duration was not clear and although Telecom thought the fault might have lasted only 2-3 days, the Report notes "the fault could have occurred intermittently for some weeks prior, before becoming a hard fault". Again testing of the claimant's CAN and CPE resulted in an NFF report and again this was attributable to the fact that the tests were generally conducted out of the busy periods. Reading of the exchange congestion meters should have highlighted the situation;

- RCM - The change in the exchange configuration on 21 August 1991 relieved the line congestion problem from Portland to Cape Bridgewater (although subsequently congestion may have occurred in other links). The claimant experienced consistent problems with the RCM system, however. The Report notes that "this system had a track record of problems individually, and the RCM system components were the subject of several design corrections (Work Specifications)". These issues were likely to cause a range of problems reported by the claimant over the period August 1991 to February 1993 when the claimant's services were transferred off RCM1, whereupon service improved;
- in March 1992, Telecom checking (in response to complaints by the claimant) indicated that due to data entry error on the Melbourne Windsor Trunk Exchange, all calls through this exchange to Cape Bridgewater (at least 33% of Melbourne and interstate traffic) were directed to RVA for at least 16 days and possibly longer. The effect was that unsuccessful callers to Cape Bridgewater Holiday Camp who were minded to persist would have to redial (although the probability of failure was again at least 33%) or bypassing STD and contacting an operator. Given the claimant's estimate of 60% of calls originated from the affected areas, all of which had a 33% probability of failure, the Report estimates that at least 20% of Cape Bridgewater Holiday Camp business traffic with direction to RVA failed because of the fault;
- there is evidence that on 2 August 1992, Telecom NNI Section Testing locked up all circuits from Hamilton to Portland for approximately 1 day. This would have provided congestion/busy to 90% of callers to CBHC;
- there is evidence that all calls from Cape Bridgewater were blocked on 28 September 1992 for 1.5 hours;
- there is evidence that one of the 40 registers in the Portland ARF minor switching centre was faulty for 5 days, between 2 October



Our Reference 4/26-61  
Your Reference

Subject PORTLAND - CAPE BRIDGEWATER PCM HBER

Phone (03)481 9566

From D. Johnson / R. Kerry

To

COUNTRY DIVISION  
External Plant Manager - Geelong  
OIC - Telephone Exchange - Portland  
Atten Peter Taylor

P.O Box 959, Geelong 3220  
27-29 Tyers Rd, Portland

TRANSMISSION MEASUREMENTS TEST REPORT

Summary of Test No: 91/679  
Date of Test: July, 1991

Transmission Measurements was requested by local installation staff to assist in the elimination of high bit error rates occurring in the transmission of 2Mbit digital data streams on the second PCM system in the Portland - Cape Bridgewater PCM route.

When the 'A' direction of system 2 was initially tested, approximately 11000 errors per hour were measured. In the 'B' direction, approximately 216 errors per hour were measured, 72 errors per hour is the specified number allowable. It was found that when the third PCM system was turned off, zero errors occurred in the 'A' direction of the second system, but errors still occurred at the same rate in the 'B' direction.

The initial design of the PCM regenerator housing layout was done with the intentions that only 2 PCM systems to Cape Bridgewater would be used and with the stipulation that all regenerator housing must be located at existing load coil locations. To fall within this criteria, PCM design standards had to be relaxed, with pairs selection carried out using the Barrage Tester.

TPH 0511 Transmission Design of 2/Mbit Line Systems in Junction Networks states that for a 20 pair cable no more than 2 PCM line systems are allowable, and that section length between regenerator housings be no more than 1500m long. In the Cape Bridgewater PCM route most sections are well in excess of 1500m.

To overcome the above mentioned problems and to enable a third system to operate, the following steps were taken:-

In regenerator section 6 - 7 a new 'A' direction pair for system 2 was selected, being changed from pair 10 to 7.

In regenerator 7 - 8, two new pairs were selected for system 2, being changed from 10 and 18 to 7 and 15.

Internal Memo



To [Redacted]

From David Polson  
Technical Manager

Subject Cape Bridgewater RCM's

Date 24 March 1994

File

Attention [Redacted]

K00942

Consumer CAN Design and  
Construction Tas/Vic  
CAN Technologies

PO Box 115 Ballarat Vic 3353  
122 Armstrong St Sth Ballarat 3350

Australia

Telephone 053 334499  
International 61 53 334499  
Facsimile 053 332539  
Mobile 018 503 892  
Pager 016 530 726

Following a request from Service Delivery for assistance at Cape Bridgewater late on 19-3-94 I arrived at Portland early Sunday morning on the 20-3-94. There was a problem with RCM system no 1 between Portland and Cape Bridgewater the previous day. Ongoing problems were experienced by customers since 8-3-94 on RCM number 1. The problems were normally of a very short duration and had often cleared by the time staff arrived on site.

It appeared that the line system was intermittently failing for short periods of time (15 seconds or so) and then coming back up. The systems are all on copper bearers with 10 regenerators on them. The RCM's are fitted with auto power feed restart cards, and the alarms are inputted to AMS. Occasionally on a failure the channel cards would loose their programming and flash. No alarm indication is given for this. The SCU fail light at Cape Bridgewater and AIS at Portland would also be up, although this was not consistant ar for a long period of time. The SCU and all common cards had previously been changed by local staff.

We were able to duplicate the SCU fail light coming up with a short bearer break on a test model, and was assumed we were experiencing intermittent line system failure on the system. The original installation was for 2 RCM's with 9 regenerators and supervisory filters for each direction of transmission. When a third system was required, considerable difficulty was experienced in getting the third system working, to such an extent that an additional regen was installed between locations 8 & 9.

With a suspect line system we proceeded to do a trios test when all traffic was off, after having advised Network Management. We could not see any regens. Suspecting faulty supervisory pairs a regen was opened and pairs tested, only to find the regen housings were connected to pairs 5 & 6 and the terminal supervisory connected to pairs 11 & 12. This explained our failure to find any regenerators. With this changed at the terminals to pairs 5 & 6 we could see all regens except the extra one installed between 8 & 9. On investigating this cause the supervisory pairs at this location were on pairs 11 & 12. This was rectified enabling the testing of each regenerator. If the line system failed we should now be able to localise the fault. The original

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acceptance test results show filter testing at Portland (location 00) and Cape Bridgewater (location 10). In our testing no reading was obtained at 00 and the reading for location 10 was the regenerator and not the Cape Bridgewater terminal as shown on the test sheets. RCM terminal regenerators do not have the TX and Rx monitor points extended for supervisory filter purposes. All of this added to the difficulties in identifying the fault with the supervisory system.

It must be noted that the faulty supervisory system does NOT effect the bearer performance but is used as a maintenance tool if the line system is faulty.

During the Sunday and Monday that I was in attendance the system did not fail, although it was out of service for short periods (approx 1-2 minutes) for trios testing.

With further investigation it appeared one of our problems may be more temperature related, as when the remote end was not opened for some time, that appeared to be when we had the failures. This would also explain why no failures occurred when I was there with the door open for a large proportion of the time on Sunday and Monday. Another SCU was obtained and installed in system 1 on 23-3-94. The unit replaced has obviously been repaired and may indeed be suspect. Further testing will be done on this unit, especially with elevated temperatures.

Additional testing has confirmed that the replaced SCU was indeed faulty. No other problems have been experienced since the SCU was replaced on the 23-3 94

Danid Polson- CAN Technology - Ballarat

Ross Anderson - Service Delivery - Portland

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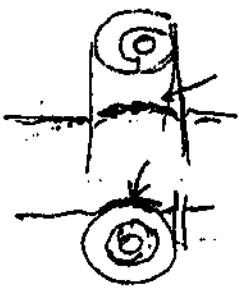
26/5/94

Residue in Touchyphone 200  
for Doug Kiehn

Beer residue beerres.dt 256 scan  
(dried overnight) at RT m. diamond (single)  
100 x 100 um approx.  
Av. purge.

Beer residue beereslg.dt  
not completely dried

bram, viscous lip. fine lg.dt  
ee phone



beeresgl.dt = beerresin + glycerol + N.O.

glycerol = glycerol.dt

coffee.dt (internal)  
1 + 1 teaspoon coffee + sugar  
(sucrose).  
- white

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copy from original  
Laboratory notebook  
of Doug Kiehn  
24/5/94 A64535



"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."

On 11/10/88 Telecom wrote to Golden Messenger advising that after extensive investigation, reports and discussions that claims of problems with the system were not able to be substantiated.

The Final Report dated 17/11/89 on Golden Messenger advises of significant problems with the Flexitel System.

On 19/6/90 Golden Messenger advised Telecom of continuing problems and frustrations in obtaining appropriate action from Telecom and of business losses suffered as a result of such continuing problems, and enclosed a statement of claim to be filed in the Federal Court.

on 6/7/90 Telecom advised -

My enquiries have revealed that following the installation of the Flexitel system in July 1987 a number of difficulties were experienced with the operation of the system. These were due either to incorrect operation of equipment by your staff or incorrect programming and dimensioning of the system. In order to overcome these difficulties Telecom provided customer training and upgraded the facilities of the Flexitel system.

In the circumstances, Telecom considers that it has met its obligations in regard to the provision and maintenance of the Flexitel system and accordingly does not believe that compensation is warranted.

Telecom Minute of 29/1/88 states that it appears customer sold equipment which failed to meet his needs.

Telecom Minute of 30/3/88 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 27/4/88 and 5/1/92.

Telecom Minute of 22/9/92 states that the Australian Government Solicitor had advised Telecom that Golden Messenger is likely to be successful in establishing that Telecom engaged in misleading and deceptive conduct contrary to the Trade Practices Act and that the consequence of lost calls or

calls not getting through was likely to lead to an immediate loss of business in relation to that call and potential loss of future business from the customer.

Documentation reviewed did not provide evidence of misleading advice to take legal action which was then unreasonably extended. Letter of 10/8/93 from Golden Messenger states that -

Golden's solicitor advised Golden of the potential cost of daily appearance in the Federal Court stating new rules required Golden to pay all council fees in advance, and as he was aware of Golden's current financial position he couldn't in all conscience advise Golden to continue with the action when he knew Golden would have to borrow the full amount from their bankers to fund the Federal Court Action.

What is evident from the above findings is that immediately after the installation of the system, Telecom knew of major deficiencies with the system and that the system's deficiencies were confirmed by Telecom's technical staff. Telecom was also aware from 29/1/88 that the Flexitel System would not meet the customers operational requirements and that internal legal advice of 30/3/88 confirmed that the customer had a case against Telecom. Despite all this information available within Telecom, Telecom maintained that the system was working satisfactorily and adopted this approach in dealings on this settlement issue.

- Telecom had conducted extensive testing
- Cape Bridgewater Holiday Camp frequently reported problems with the quality of telephone service
- both the camp and Telecom were receiving confirmation of reported problems from other network users
- major faults were identified more through persistent reporting of problems by customer than through testing of the network
- customers in the Cape Bridgewater area were also complaining of similar problems

26 The chronology of significant events demonstrates that Telecom conducted extensive testing and Telecom rectified faults without delay when faults were identified. It is clear, however, that -

- Cape Bridgewater Holiday Camp was exposed to significant network problems over an extended period of time
- Telecom testing did not detect all of the network problems affecting Mr Smith.

27 As is discussed under allegation in more detail throughout this document, Telecom's failure to adequately identify Mr Smith's network problems challenges the basis of Senior Telecom Management's approach to the resolution of Mr Smith's complaints and his claims for compensation. Documents which highlight a categorical reliance on testing over customer perception are-

- Telecom Group Managing Director, Commercial and Consumer's letter to the COT spokesperson on 23 September 1992 which advised that "At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards"<sup>17</sup>
- A Telecom Minute of 28 October 1992 from the General Manager, Telecom Commercial Vic/Tas to the Group Managing Director, Commercial and Consumer which

17 Locate Quote from Smith re number of contacts?????????

18-179 - Garms

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

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

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

##### **Introductory Comment**

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

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

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## ***Exhibit 532***

### **ARBITRATORS COPY**

Page 2, second paragraph (three lines) discusses billing issues

Page 3, fourth paragraph (two lines) discusses billing issues

Page 3, fifth paragraph (one line) confirms report not complete

## ***Exhibit 533***

### **ALAN's COPY**

Page 1, second paragraph (one line) no mention of billing issues

Page 2, fourth paragraph missing

## ***Exhibit 534***

### **ARBITRATORS COPY**

Page 27, showing all the claim and defence documents read up to the date of 30<sup>th</sup> April 1995.

## ***Exhibit 535***

### **ALAN's COPY**

Page, 40, showing 14 more claim documents read up to the date of 30<sup>th</sup> April 1995.

## RESOURCE UNIT TECHNICAL EVALUATION REPORT

Mr. Alan Smith of Cape Bridgewater Holiday Camp.

30 April 1995

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### 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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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.

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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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## Sources of Information

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

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

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

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

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

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2.22 All services for CBHC were lost for 3 hours due to an exchange data programming error. Such major impact due to an operational error is deemed a less than reasonable level of service.

ASSESSMENT - Service was less than reasonable.

2.23 Continued reports of 008 faults up to the present. As the level of disruption to overall CBHC service is not clear, and fault causes have not been diagnosed, a reasonable expectation is that these faults would remain "open".

ASSESSMENT - Indeterminate.

3. About 200 fault reports were made over December 1992 to October 1994. Specific assessment of these reports other than where covered above, has not been attempted.

## 5 Summary

CBHC telephone services have suffered considerable technical difficulties during the period in question. Telecom, certainly initially fully concentrated on the CAN/CPE elements, and if they were 'intact', faults would be treated as NFF (No Fault Found). As can be seen from the above, faults did exist that affected the CBHC services, causing service to fall below a reasonable level and apart from CPE problems, most of these faults or problems were in the Inter Exchange Network.

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- a range of callers making 'test calls' on behalf of CBHC confusing the real operational picture during the later parts of 1994 (Mr Smith believes these tests would not have caused confusion).

#### 4. Impact Assessment

An assessment of the impact of faults on the CBHC telephone service is made here, based on the criterion of whether the particular fault did or did not cause the level of service to drop below a reasonable level.

1.1 (i) Over the order of three years, the probability of congestion due to network dimensioning during the busiest hour of the week was around 12% in many instances, and around 6% on average during that busiest hour. 1-2% would be normal.

ASSESSMENT - Service was less than reasonable.

1.1(ii) Capacity of 8 locally terminated calls for up to 66 customer services may have been reasonable network dimensioning for the area at the time, although the limited capacity may well have contributed to the congestion (false busies) reported. In the absence of other explanations for the false busies, a reasonable expectation would have been that the capacity should have been increased within a shorter period than 3½ years.

ASSESSMENT - Service was less than reasonable.

1.2 A hardware fault affecting an average 12.5% of all local to local and incoming traffic was detected, and persisted for at least 2 - 3 days. While such a fault can be expected to happen, reasonable service relates to the time taken to return the service to normal. For this degree of service loss, a reasonable expectation would be repair within less than 2 days.

ASSESSMENT - Service was less than reasonable.

#### 2.2 Problems with RCM 1.

These problems continued with RCM 1 for 18 months. For a range of problems (ultimately attributable specifically to one of three parallel systems, each servicing different customers) to persist for 18 months is deemed unreasonable.

ASSESSMENT - Service was less than reasonable.

2.3 A reasonable expectation of service would be that errors of this type (data entry) would be quickly detected through confirmation testing or checking at or immediately after the data entry, with traffic impact of much less than 16 days.

ASSESSMENT - Service was less than reasonable.

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2.4 Reports related to a small number of calls incorrectly receiving RVA. Since considerable network testing was done on at least one of these calls, with NFF and no subsequent similar pattern of reports, reasonable service may have been achieved if appropriate advice was given to the customers, and the fault remained 'open' and not cleared.

ASSESSMENT - Indeterminate

2.5 Testing by the group within Telecom who were responsible for the investigation of the most complex network faults (NNI) caused severe lockup of circuits and therefore congestion for 1 day.

The lockups were accidental and avoidable.

A reasonable expectation would be that if and when testing is necessary, it does not cause major detriment to general service provision, and, test teams (eg. NNI) understand and monitor the impact of their testing.

ASSESSMENT - Service was less than reasonable.

2.6 Software fault for about 1½ hours. As all service was lost for this period.

ASSESSMENT - Service was less than reasonable.

2.7 2.5% of the traffic from the Portland area to CB failed for 5 days, due to 1 of 40 shared devices in the Portland exchange failing. Based on Mr. Smith's estimate on another matter, less than 40% of CBHC incoming traffic originates from this area. Therefore on average, less than 1% of total traffic to CBHC was affected.

ASSESSMENT - Service was on the margin between reasonable and less than reasonable.

2.8 RCM 1 failure due to lightning damage. Lightning damage to communications equipment would be expected from time to time in this area. Reasonable service relates to the time taken to return the service to normal. A reasonable expectation would be repair within less than the 4 days actually taken.

ASSESSMENT - Service was less than reasonable.

2.9 Evidence of problems with services on RCM 1 had been sufficient to cause Telecom to move the CBHC services away from RCM 1 to RCM 2 and 3. Later when the RCM equipment was examined by Melbourne staff, evidence of severe error levels had accumulated on the counters in the transmission equipment (particularly RCM 1). After corrective action, these severe error levels were no longer accumulating.

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M34213

A reasonable expectation would have been that given the poor quality of service on RCM 1, the diagnosis of its fault(s) would have been achieved in less than the 50 -70 days it took before the CBHC services were moved off RCM 1, and any work specifications associated with design faults would have been performed at the earliest possible time (ie. 1991 rather than 2 years later).

ASSESSMENT - Service was less than reasonable.

2.11 Problems with the cordless phone were not strictly a responsibility of Telecom, although local Telecom staff appeared to be involved in the operation of the units in an endeavour to assist Mr Smith.

ASSESSMENT - Cordless unit(s) caused a level of problems during a 3 month period which were "outside" Telecom's area of responsibility.

2.12 Incorrect programming by Telecom meant that callers to the CBHC 008 service were actually connected to a fax machine from some time in the January - February 1993 period. It appears that the 008 service had worked for some time before the fax machine was connected (ie from December 1, 1992 to some time in January 1993), without the error being detected but, at the time of connection of the fax machine, the error became obvious.

It is unclear how long the diagnosis took after the fax machine was connected, and it is also unclear who was responsible for testing that the services were working correctly when the fax machine was installed.

ASSESSMENT - Indeterminate

2.13 Some calls to CB from Warrnambool area were lost during high traffic periods due to incorrect dimensioning at the Warrnambool exchange. It is not possible to be definitive on the actual impact. As there was a known solution to this problem, a reasonable expectation would be that the fault was detected and corrected as soon as it began to have a significant impact on calls. It is not clear when this point was reached.

ASSESSMENT - Indeterminate.

2.14 All services were lost for 9 minutes due to an exchange software fault. A reasonable expectation would be that the whole exchange would not go "off the air" at all.

ASSESSMENT - Service was less than reasonable, although only to a minor extent.

2.15(a) 3 April 1993 - All calls to Heywood were affected by line signalling failure on circuits to Heywood exchange.

ASSESSMENT - Service was less than reasonable.

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2.15(b) 5 June 1993 - Intermittent "no progress" on calls from Sebastopol to STD destinations. As CB is remote from Sebastopol, and traffic from Sebastopol to CB would normally be small, this condition would not reduce the overall level of service to CBHC to "less than reasonable" provided it was not present for more than a few days.

ASSESSMENT - A reasonable level of service was provided.

2.16 Use of the MCT facility was not understood by Mr Smith, thus some call symptoms occurred which appeared to be real faults.

Reasonable service would have included explaining to Mr Smith's full satisfaction the function of this test facility. This apparently did not happen.

ASSESSMENT - Service was less than reasonable.

2.17 Some peak period congestion occurred over a period of 12 months. It is unclear how significant the level of congestion was.

ASSESSMENT - Indeterminate.

2.18 June-August 1993. No pay phones in Portland areas could call 008 services (including CB) for seven weeks. As this was a fault with quite specific symptoms, a reasonable expectation would be that such a fault would be corrected in less than the time actually taken.

ASSESSMENT - Service was less than reasonable.

2.19 In these report cases, no fault was found. A reasonable expectation, particularly considering the previous history of the CBHC services, would be that either the cause would ultimately be found and explained, or the faults would remain "open" ie. not cleared or completed. It appears that neither of these outcomes occurred. Nevertheless, it is unclear what the impact on the CBHC services was.

ASSESSMENT - Indeterminate.

2.20 This fault appeared to be confined to a single occasion (though affecting 5 call attempts). A reasonable expectation would be that this fault remained "open".

ASSESSMENT - Indeterminate.

2.21 Intermittent effects on the Goldphone resulted in it being removed from RCM 1 11 days after the potential cause (lightening strike damage to RCM1). At the time of removal, the actual equipment fault had not been found, although testing was continuing.

This seems to have been a reasonable action and timescale under the circumstances.

ASSESSMENT - A reasonable level of service was provided.

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M34215



Facsimile Message



Telecom Australia

Corporate Solicitors Office  
7/470 Collins Street  
Melbourne, Vic. 3000

To Rosanne Pittard  
 Fax No. 562 1926  
 Company Telecom - Commercial Vic/Tas Telephone (03) 606 6950  
 Division General Manager Fax (03) 629 1748  
 Date 15 March 1993  
 No. pages 15 (including cover sheet)

Re: **AOTC ats GM (Melbourne) Holdings Pty Ltd**

Dear Rosanne,

I refer to our telephone conversation of 12 March 1993 and advise that I have received the following reports from Freehill Hollingdale & Page for our consideration:

1. Investigator's Report and enclosing letter from Equity Investigators.
2. Report from Duesburys concerning a preliminary assessment to be used in the calculation of the amount which AOTC proposes to pay into court.

Freehills have suggested that we meet today to discuss the amount to be paid into court. Could you please contact me if you are available for such a meeting?

I apologise for the state of the handwritten statement in the Investigator's Report. However, I only have a facsimile copy to send to you at this time. I will request a better copy from Freehills for our future consideration.

Kind regards,

*Denise McBurnie*

Denise McBurnie  
Solicitor

✓ No adjournment  
 ✓ Neil Hamilton  
 ✓ Phil/A/ Neville W.  
 ✓ Max Date - Inker & Paul Miro  
 ✓ Neil Hamilton  
 ✓ Beckett Now

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C05313

*Folwell - Esch...*

*What does he want to do with the money across  
 keep the money of availability*

*ISP N letters had nice*

DMFAX/1

FILE: SUBJECT: GM (Melbourne) Holdings Pty Ltd -  
v- AOTC

PHONE: (03) 606 6950 FROM: Denise McBurnie

FAX: (03) 629 1748 DATE: 8 April 1993

TO: Rosanne Pittard  
General Manager  
Commercial Vic/Tas

Rosanne,

I refer to the above matter, and enclose for your attention and information, the following documents:

1. Account for professional costs and disbursements from Freehill Hollingdale & Page for work conducted on this matter up to 22 March 1993. I also enclose a copy of the covering letter from Russell Berry.
2. Copy of letter sent from Duesburys to Freehills.
3. Copy of a letter sent by Ian Row to the Australian Government Solicitor, in response to letter and account sent by Mr Richard Boughton, AGS (copies also attached).

I have been advised by Freehills that in addition to Duesburys' account, they are yet to receive accounts from senior and junior counsel and the private investigators.

Could you please attend to payment of the enclosed account. As indicated in Russell's covering letter, please don't hesitate to contact either him or Andrew Moyle if you wish to discuss the account.

Regards,

*Denise McBurnie*

DENISE MCBURNE  
SOLICITOR

R20084

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*\**

RECORD OF CONVERSATION BETWEEN CONSTABLE TIMOTHY DAHLSTROM AND  
MR ALAN SMITH (CONTINUED) PAGE 6

in which you don't mention the name of the bus service, and you're asking for a guarantee of your phone service?

A. That's right.

Q29. And again you've shown on this document that handwritten onto the document is the actual name of the bus service? \*

A. I think this is the worst out of the lot of them, because at no stage, I mean it was only a small charter but I, I kept this one very, very clear and there's no way in the world that I disclosed who it was. Because let's face it, I'm not saying anyone else would've got this contract, it was only a small charter but the point is I mentioned it in the letter form that I wanted a, a guarantee so that I could tell this gentleman, because the same person experienced problems with my phone, and I thought well at least I can do the right thing if I can give him a guarantee then, you know, then he could guarantee to his people that yeah okay, we can, we can do the service. A handwritten note is the name of the bus company on the right hand side which, it's just. \*

Q30. And had you been making calls to the bus company around that time, or to the owner?

A. Oh yes, yes, yeah, yeah.

Q31. And that handwritten note just for the purpose of the tape is O'Meara is the name?

A. O'Meara and actually that same fellow did send a letter prior, prior to that, that he'd experienced problems with my phones, prior. So there is a letter in Telecom archives and I have a copy, where he actually sent a letter complaining about getting through to Cape Bridgewater. \*

Q32. Right. All right so we'll just, you've also said that there are other documents there, although they're not directly relating to the live monitoring issue they show that the malicious call face been set up on your line without your knowledge.

A. That's right.

Q33. And those documents you say clearly that the malicious call trace has affected the service

FREEDOM OF INFORMATION ACT 1982  
(COMMONWEALTH)  
DOCUMENT HAS BEEN RELEASED  
UNDER THE FOI ACT 1982  
THE AUSTRALIAN FEDERAL POLICE

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1997  
COMPLAINTS AND  
SERIAL



R.M.S. 4402 CAPE BRIDGEWATER, VIC, 3208  
 TELEPHONE: (059) 887287.

10-9-92



Mark Ross  
 Customer Service Manager  
 Commercial-Country Victoria  
 P.O. Box 299  
 Ballarat.  
 Fax-053-3491776

cc -  
 -G...  
 -F...  
 O'NEILL

Dear Mark

I will keep this letter short and direct and to the point as you are well aware of my telecommunication problems.

While at the South West Tourism promotion campaign in Melbourne early this week, I was approached by the proprietor of a bus charter company to tender for a very lucrative tourism venture starting next year. How ever with fairness to the many people who would be involved with this proposition I would have to be able to guarantee them I have a reliable phone service.

This company has over many months tried to contact me without such success hearing an engaged signal constantly before making contact, and they are well aware of my past problems. I have explained I am under the assumption my telecommunication problems are now over or at least just about rectified which I hope is the case.

If Telecom would now guarantee me an efficient service I can pursue this tender, could you Mark or your Victorian Divisional Manager write me a short note confirming this guarantee. I am counting on this venture to not only give me a much needed occupancy boost but an awareness of our local tourism outlets.

I would need this letter know later than 18th of September as offers of interest must be in by then, if this could be arranged I would be obliged.

Respectfully

Alan Smith

George 15/4

FREEDOM OF INFORMATION ACT 1982  
 2/COMMONWEALTH  
 DOCUMENT HAS BEEN RELEASED  
 UNDER THE FOI ACT BY  
 THE AUSTRALIAN FEDERAL POLICE

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PROTECTED

34-02-02 10:02 003 20100  
3-2-94

Mr Michael Lees,  
Minister for Communication,

3-2-94

Canada,  
A.C.T

Dear Mr Lees,

To date these past few days, I have registered a statutory declaration and sent it to both Telecom and Austel. This was written in relation to my experience of getting an engaged signal from Golden Messenger number 008 816522 in coming telephone service. This service has 30 in-coming lines. If this service had been fully engaged due to customer demand, Mr Schorer, spokesperson for C.O.T. would be dancing with joy. However, this is not the case. His customers are repeatedly complaining about his lines being engaged.

Also, these past days I have likewise received a statutory declaration from a Mrs Velthuyzen who tried to ring this business, to no avail. After ringing seven times and receiving an engaged signal, she rang again only to hear an announcement that the number she was calling was not connected, she was ringing my correct number, 008 816522.

It is also ironic that in the past days, on mistakenly sending me a fax on my 008 number, the Portland Tourist Office could not get this fax through. We accept this as human error as, after four tries the officer realised her blunder and faxed the information through on the correct fax number 055 267230. I received the fax. However, on receiving my phone bill I have been charged on my 008 account for four phone calls from The Tourist Office even though these calls were not received.

Also, these past few days, I ended up getting a fax from St George Bank, saying, sorry we were so late in informing you that the loan you were after to pay your F.O.I. payment was so late. We have tried to ring your telephone number only to get a dead line.

Also these past days, I sent a fax to my accountant who I owe money too as well, 7 faxes. My fax has registered them as being sent, however he only received two?

Also these past few days Telecom themselves have tried to send me a fax to no avail. An employee of Telecom had to ring me to check if the number she was ringing was correct, it was.

Likewise these past few days my solicitor has also sent me a five page fax, I only received two pages. Along with my accountants fax, these documents were very confidential and private.

I now ask the Minister, Mr Minister, for five years, we four businesses C.O.T. Ms Maureen Gillen, Ms Anne Garms, Mr Graham Schorer and myself have between us 31 years of plagued telecommunication problems. We have the proof, we have the evidence of an inadequate telephone system to all four members. We believe we

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have enough evidence that our phones have been illegally tapped. We all have lost much, health, revenue and partners due to the stress over these years associated with our business having to be run without the same privileges as our fellow competitors.

In the case of Anne Garms and Maureen Gillen, both these Australians have lost their businesses, I, along with Graham Schorer are close to losing ours, all through a phone service not fit for the purpose.

I ask for your immediate response.

I believe that Telecom is now interfering with the due process of my faxes, if this is not so, then I request you to obtain an alternative answer.

I also have evidence of Telecom knowing that this service has been faulty for many years. The government of this day, pledges a level playing field for all Australians. If this is so, what happened in our cases?

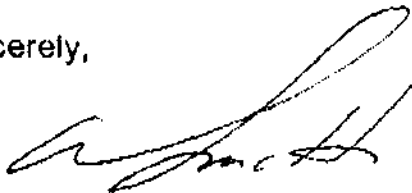
I demand a fax today on the question I have raised. Are my faxes being illegally interfered with?

I find it alarming when the Group General Manager Consumer Affairs of Telecom rings me at work at 9:47pm last night and talks for 15 minutes about associated telecommunication faults.

We have accepted this "Fast Track" from Telecom to C.O.T. However on applying under F.O.I. I am amazed that the costs to receive this information is \$3,042.00, for some 9,400 pages, and I was told that I had no telecommunication faults. I believe for public interest sake, my files, along with the files of the other members of C.O.T should be made available at no fee.

I await for your response by fax.

Sincerely,



Alan Smith, C.O.T. Casualties Of Telecom,  
Cape Bridgewater Holiday Camp,  
Portland, 3305.  
Phone: 055 267267 or 008 816522  
Fax: 055 267230.

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"A" ←

I informed [redacted]  
03 [redacted] of this on 15-10-92.



MR Smith has complained  
that on the 13-10-92 he  
received incoming calls

at 1.20:

1.40 ✓

2.00

3.00 ✓

"

17/15

and no ~~one~~ was there when he  
answered the calls. - (He drops out  
on answer?)

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We had the Elm disconnected at the  
RCM and was install way it at MR Smith's  
house. The CCAs. showed no evidence of above

The information in this document is interesting, bearing in mind the two 'guarantees' of September 1992, and the fact that Telstra knew that at least one fault had been occurring for 8 months.

Although I had the 'guarantees', I continued to complain about the faulty phone service, particularly call-drop-outs when, part-way through a conversation, the line would simply go dead, and about short duration rings when the phone would ring once or twice and then stop — with no-one there if we picked up the receiver. Finally, in October of 1992, Ms Pittard arranged for two testing machines (called 'Elmi' machines - refer Glossary) to be installed; one at the local un-manned exchange at Cape Bridgewater and another at my office. These two machines were set up to work in conjunction with each other.

On 13th October I complained of four calls that had dropped out, at 1.20, 1.40, 2.00 and 3.00 and a single time when I had answered the phone to find a dead line. The Telstra technicians found, as they had in many instances before, no faults that they could detect.

I continued to work at getting my business running successfully and, at the same time, kept trying to sort out the continuing phone problems.

Two years later, in 1994, as part of a bundle of documents sent to me in response to one of my FO requests, I discovered two documents relating to the problems I had encountered on 13 October 1992. The first was a hand-written file note stating "We had the Elmi disconnected at the RC (exchange) and were installing it at Mr Smith's house and the CCAS showed no evidence of abo (not receiving ring) 1.20, 1.40, 2.00 and 3.00." (refer Glossary for definition of CCAS)

INCOMING	ANSWERED
END SEIZURE	13.40.40
CONVERS.TIME:	000675
SEIZURE :	13.29.25
DATE :	1992-10-13
NUMBER OF RINGS:	08
RINGING:	13.29.13
13.40.40 H-ON	000001
13.29.25 H-OFF	000001
13.29.23 R	
13.29.22 R	
13.29.20 R	
13.29.19 R	
13.29.17 R	
13.29.16 R	
13.29.14 R	
13.29.13 R	

INCOMING	ANSWERED
END SEIZURE	15.04.03
CONVERS.TIME:	000172
SEIZURE :	15.01.11
DATE :	1992-10-13
NUMBER OF RINGS:	14
RINGING:	15.00.50
15.04.03 H-ON	000001
15.01.11 H-OFF	000001
15.01.09 R	
15.01.08 R	
15.01.06 R	
15.01.05 R	
15.01.03 R	
15.01.02 R	
15.01.00 R	
15.00.59 R	
15.00.57 R	
15.00.56 R	
15.00.54 R	
15.00.53 R	
15.00.51 R	
15.00.50 R	

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IN THE MATTER OF an arbitration pursuant  
to the Fast Track Arbitration Procedure dated  
21 April 1994

Between

ALAN SMITH

Att  
7.  
Claimant

and

TELSTRA CORPORATION LTD  
trading as  
TELECOM AUSTRALIA

Telecom

### WITNESS STATEMENT OF PETER HENRY GAMBLE

I, PETER HENRY GAMBLE of 8/242 Exhibition Street, Melbourne in the State of Victoria, solemnly and sincerely declare and affirm as follows:

#### EMPLOYMENT DETAILS

##### Introduction

1. My name is Peter Henry Gamble, of 8/242 Exhibition Street, Melbourne. I obtained a Bachelor of Science (Technology) degree, specialising in electronics engineering, from the University of New South Wales in 1968.
2. In December 1965 I joined the then PMG's Department as an assistant technician and was promoted to an engineering position on graduation. Since then I have held a number of engineering positions, before being promoted to executive level in 1985. I am currently the Manager, Engineering and Technical Consultancy, Customer Affairs Group. My current work includes the management of a small team of engineering and technical staff who are investigating and analysing complaints received by Telecom from customers who are in dispute with Telecom, providing assistance to regional staff on these issues and supervision of the Service Verification Test process. Attached hereto and marked "PHG - 1" is a copy of my resume.
3. During my career with Telecom, I have undertaken a number of engineering, business, marketing and management training courses. I have been using computers to assist with my work since completing a one year course at post graduate level in computing in 1967. This has included the development of a number of sophisticated data processing, forecasting, modelling and data base systems.

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Response Unit, have been developed by Telecom in conjunction with AUSTEL and have been approved by AUSTEL as the basis upon which a telephone service at the Service Delivery Point may be considered to be operating satisfactorily at the time the tests were conducted. The Service Verification Tests measure:

- selected electrical parameters of the customer access network
- the ability of the exchange to deliver calls to the Service Delivery Point
- the capability of the network to successfully connect calls from various network origins to a Line Interface Circuit adjacent to the customer's service, simulating the customer's line and line interface connection.

35. The service under test is compared with a required set of outcomes as detailed in G 001. When the required outcomes are met, the service to that customer will be considered to be operating satisfactorily at the Service Delivery Point by both Telecom and AUSTEL.
36. Prior to initiating the test, I discussed the typical incoming call profile of Mr Smith's service with him, noting in particular several areas where callers had had difficulty in contacting him. I also confirmed with him that his three telephone lines would be measured as part of the Customer Specific Line Tests (Section 6.1) and that the Public Network Call Delivery Tests (Section 6.3) would include a 1 800 number (1 800 numbers replace 008 numbers), the routing of which would mimic his 008 number. The Customer Line Hunt Group Tests were not relevant as Mr Smith does not have a line hunt group.
37. The Customer Specific Line Tests were conducted on 29th September 1994. I was present on the Camp Bridgewater Holiday Camp site while these tests were being carried out and observed a number of the tests being conducted by the National Network Investigations Staff. Also present were two of my staff, Mr Bruno Tonizzo, a Principal Telecommunications Technical Officer Grade 2, who has been involved as an observer at all of the SVTs conducted to date, and Mr Colin Roberts also a Principal Telecommunications Technical Officer Grade 2, who participated in the discussions that I had with Mr Smith on that occasion. We also visited the Portland Exchange and the Cape Bridgewater RCM site. The Public Network Call Delivery Tests were conducted from 17th September 1994 to 24th September 1994. The report from National Network Investigations, dated 21st October 1994 and containing the detailed results of all of the tests, was forwarded to Mr Smith on 8th November 1994. (Ref 4.35 4.40)
38. The service passed all of the Customer Specific Line Tests and the two Public Network Call Delivery Tests that were carried out. One Call Delivery Test was carried out to a number (055 267 266) close to his service number and achieved a success rate of 100%. The second was carried out to a 1-800 number, which simulated the routing to his 008

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↙

number, achieving a success rate of 99.8%. Both of these results are above the level established for call connection at the individual customer level. The service is therefore considered to be operating satisfactorily.

#### Overall Conclusion

39. In addition to the routine maintenance and investigations carried out by the Network Operations and service delivery Technical staff, I have conducted a series of detailed tests and analysis of data pertaining to Mr Smith's service, the Cape Bridgewater RCM and the Portland AXE104 exchange.
40. The detailed CAN analysis and measurements conducted in November 1993 showed that the CAN was within the design specifications examined and was generally satisfactory with the exception of insulation resistance, where the results were inconclusive. It is noted that there were no consistent complaints by Mr Smith during the November 1993 to May 1994 period relating to noise or crosstalk which would have been evident with low insulation resistance. Further measurements in May 1994 confirmed that the insulation resistance was satisfactory. In my opinion the insulation resistance did not have an impact on the service Mr Smith was receiving.
41. The analysis of the call data, sampled from actual traffic, and the fault reporting data showed that the performance of the Cape Bridgewater RCM and the Portland AXE104 was satisfactory during the period over which the data was collected.
42. The customer dialling study which documents customer dialling errors shows some possible explanations for the incidents that Mr Smith has experienced. It should be noted that the types of customer dialling errors documented are exhibited by all customers and affect all customers.
43. The SVT, carried out in September 1994, showed that the service passed the Customer Specific Line Tests and the Public Network Call Delivery Tests. Accordingly, the service was deemed to be operating satisfactorily at that time.
44. My overall conclusion based on the analysis of the selected performance parameters outlined above is that for the periods covered by these investigations (which commenced in July 1991 and concluded in September 1994), Mr Smith's service met appropriate performance levels and therefore appeared, in my opinion, to be operating satisfactorily.

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AND I MAKE this solemn declaration conscientiously believing the same to be true and correct.

DECLARED at Melbourne  
in the State of Victoria  
this 12<sup>th</sup> day of December 1994.

*Peter H. Grant*

Before me:

*Chris McLeod*

**CHRISTOPHER MARK McLEOD**  
Freestill Hollingdale & Page  
101 Collins Street, Melbourne  
A Solicitor holding a current  
Practising Certificate pursuant  
to the Legal Profession  
Practice Act 1958.

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STOPDATE = (1994-09-30) ?  
 EXCEPTIONS-ONLY = (NO) ?  
 DATACHANNEL = (2) ?

UNSORTED DATA FROM MASS STORAGE

DIRECTORY	CALL CLASS	TIME	NUMBER DIALLED /RING/OPERATOR	WAIT	CONVERS. TIME	METERING
	DE	1940929 00:52:00	OPER: AUTODUMP			
	LETE					
	LOG					
	LOG	1940929 00:52:00	OPER: AUTODUMP			
	OUT					
	WAR	1940929 00:52:17	DATACHANNEL DISC			
	NING		ONNECTED, ERROR			
			ID.: 97, PARAMET			
			ERS: 2,0			
267230	OAQ	1940929 07:48:22	032851770	!00:32!	!00:00:29!	
267230	OAQ	1940929 08:24:06	038761853	!00:28!	!00:00:43!	
267230	OAQ	1940929 08:26:09	038761853	!00:31!	!00:00:37!	
267230	OAQ	1940929 08:27:27	038761254	!00:27!	!00:00:41!	
267267	IA	1940929 08:47:29	RINGINGS: 6	!00:08!	!00:24:49!	
267230	OAQ	1940929 09:12:31	038761254	!00:27!	!00:00:01!	
267230	OAQ	1940929 09:21:52	038761254	!00:32!	!00:00:30!	
267211	OUQ	1940929 09:27:51	267298	!00:18!		
267230	OAQ	1940929 09:27:47	0175	!00:23!	!00:00:23!	
267230	OUQ	1940929 09:28:34	036704672	!00:16!		
267230	OUQ	1940929 09:28:52	036704672	!00:15!		
267230	IU	1940929 09:32:43	RINGINGS: 2	!00:05!		
267230	IU	1940929 09:33:04	RINGINGS: 2	!00:04!		
267267	IA	1940929 09:30:57	RINGINGS: 4	!00:05!	!00:06:13!	
267230	OAQ	1940929 09:40:54	036704672	!00:27!	!00:09:57!	
267211	IA	1940929 10:06:10	RINGINGS: 4	!00:05!	!00:00:49!	
267260	OAQ	1940929 10:06:00	267211	!00:29!	!00:00:45!	
267260	OAQ	1940929 10:10:58	1818	!00:27!	!00:01:19!	
267211	IA	1940929 10:12:01	RINGINGS: 2	!00:03!	!00:01:00!	
267211	OUQ	1940929 10:14:19	267260	!00:04!		
267260	OUQ	1940929 10:13:44	1818311344033113	!00:50!		
267260	OUQ	1940929 10:16:21	081231	!00:25!		
267260	OAQ	1940929 10:17:24	1818	!00:24!	!00:01:12!	
267211	IA	1940929 10:18:18	RINGINGS: 2	!00:03!	!00:00:44!	
267267	IA	1940929 10:47:23	RINGINGS: 6	!00:09!	!00:00:52!	
267211	OAQ	1940929 10:56:16	038423040	!00:25!	!00:01:38!	
267260	OAQ	1940929 10:49:14	1	!04:10!	!00:07:04!	
267211	IA	1940929 10:59:58	RINGINGS: 8	!00:12!	!00:01:23!	
267211	IA	1940929 11:01:43	RINGINGS: 2	!00:02!	!00:01:15!	
267260	OAQ	1940929 11:00:55	1818311344038924	!00:54!	!00:01:12!	
267230	OAQ	1940929 11:07:04	232111	!00:26!	!00:00:44!	
267230	OAQ	1940929 11:12:57	1818311344038924	!00:58!	!00:00:37!	
267211	IA	1940929 11:13:47	RINGINGS: 4	!00:05!	!00:00:43!	
267267	IU	1940929 11:32:24	RINGINGS: 12	!00:20!		
267267	IA	1940929 11:33:08	RINGINGS: 8	!00:10!	!00:00:47!	
267267	IA	1940929 11:35:29	RINGINGS: 4	!00:06!	!00:01:12!	
267267	OAQ	1940929 11:40:22	1818311344038924	!00:55!	!00:00:24!	
267211	IA	1940929 11:41:10	RINGINGS: 6	!00:09!	!00:00:26!	
267230	IA	1940929 11:50:39	RINGINGS: 30	!00:44!	!00:02:04!	
267267	IA	1940929 12:03:43	RINGINGS: 8	!00:11!	!00:00:50!	
267230	OAQ	1940929 12:08:25	1818311344038924	!01:05!	!00:00:41!	

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267211 ! IA !940929 12:10:55! RINGINGS: 2 !00:03!00:00:53!
267230 ! OAQ !940929 12:10:12!1818311344038924!00:54!00:00:47!
267267 ! IA !940929 12:14:03! RINGINGS: 4 !00:05!00:00:36!
267211 ! OAQ !940929 12:14:01!267267 !00:22!00:00:25!
267211 ! OUQ !940929 12:17:57!267267 !00:17!
267267 ! IU !940929 12:18:00! RINGINGS: 10 !00:16!
267267 ! IA !940929 12:19:03! RINGINGS: 4 !00:06!00:00:03!
267211 ! OAQ !940929 12:19:00!267267 !00:23!00:00:02!
267211 ! OUQ !940929 12:23:45!267267 !00:23!
267267 ! IU !940929 12:23:49! RINGINGS: 14 !00:22!
267267 ! IA !940929 12:25:03! RINGINGS: 2 !00:03!00:00:59!
267211 ! OAQ !940929 12:24:59!267267 !00:24!00:00:41!
267267 ! OAQ !940929 12:26:43!231722 !00:28!00:01:22!
267267 ! OAQ !940929 12:28:33!234780 !00:25!00:01:25!
267267 ! OAQ !940929 12:30:25!231722 !00:27!00:03:05!
267267 ! OAQ !940929 12:48:43!231722 !00:32!00:00:51!
267267 ! IA !940929 12:56:05! RINGINGS: 4 !00:04!00:00:26!
267267 ! IA !940929 13:05:33! RINGINGS: 10 !00:14!00:02:46!
267267 ! IA !940929 13:08:47! RINGINGS: 9 !00:13!00:05:56!
267230 ! OUQ !940929 13:36:54!267267 !00:07!
267267 ! IU !940929 13:36:59! RINGINGS: 2 !00:04!
267230 ! OUQ !940929 13:40:47!1818311344038924!00:53!
267230 ! OUQ !940929 13:41:43!1818311344038924!00:38!
267230 ! OAQ !940929 13:42:23!1818311344038924!00:54!00:01:06!
267230 ! IA !940929 13:44:44! RINGINGS: 4 !00:04!00:01:54!
267230 ! IA !940929 13:47:18! RINGINGS: 10 !00:14!00:03:38!
267260 ! OAQ !940929 14:05:25!036903322 !00:34!00:00:09!
267260 ! OAQ !940929 14:06:37!1818311344038924!00:54!00:01:46!
267260 ! OAQ !940929 14:09:36!1818311344038924!00:47!00:00:09!
267230 ! OAQ !940929 14:08:54!036148711 !00:31!00:01:11!
267230 ! OUQ !940929 14:11:01!074434022 !00:17!
267260 ! OAQ !940929 14:12:07!032877099 !00:25!00:00:02!
267267 ! IA !940929 14:10:51! RINGINGS: 10 !00:14!00:05:17!
267260 ! IA !940929 14:16:01! RINGINGS: 8 !00:10!00:00:20!
267230 ! IA !940929 14:16:41! RINGINGS: 10 !00:13!00:02:28!
267267 ! OAQ !940929 14:15:38!078925040 !00:26!00:15:01!
267230 ! IA !940929 14:39:09! RINGINGS: 6 !00:08!00:00:09!
267260 ! OAQ !940929 14:39:50!036903322 !00:29!00:00:04!
267260 ! IU !940929 14:40:18! RINGINGS: 11 !00:19!
267230 ! IA !940929 14:40:50! RINGINGS: 4 !00:05!00:00:41!
267267 ! IA !940929 14:41:21! RINGINGS: 4 !00:05!00:00:12!
267230 ! OAQ !940929 15:07:49!074434022 !00:31!00:00:20!
267230 ! OAQ !940929 15:13:23!032877099 !00:22!00:01:26!
267230 ! OUQ !940929 15:15:11!062497444 !00:29!
267267 ! OAQ !940929 15:15:41!062567777 !00:28!00:07:00!
267267 ! IA !940929 15:31:10! RINGINGS: 4 !00:06!00:00:07!
267230 ! OAQ !940929 15:23:21!008335526 !00:31!00:11:27!
267267 ! OAQ !940929 15:35:24!036903322 !00:33!00:02:24!
267230 ! OUQ !940929 16:01:20!032778777 !00:22!
267267 ! IA !940929 16:06:08! RINGINGS: 6 !00:07!00:05:21!
267267 ! IA !940929 16:14:09! RINGINGS: 6 !00:08!00:00:16!
267230 ! OAQ !940929 16:24:10!032877099 !00:24!00:00:39!
267267 ! IA !940929 16:39:15! RINGINGS: 6 !00:09!00:46:18!
267230 ! OAQ !940929 18:02:07!057841375 !00:27!00:02:00!
267230 ! OAQ !940929 18:05:20!053428357 !00:27!00:00:29!
267230 ! OAQ !940929 18:06:35!053428591 !00:29!00:04:54!
267267 ! IA !940929 20:33:41! RINGINGS: 7 !00:10!00:04:15!
!LOGIN!940930 00:50:15! OPER: AUTODUMP!
!SET !940930 00:50:12! OPER: AUTODUMP!
!TIME !

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