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Commercial & Consumer
37th Floor
242 Exhibition Street
Melbourne Vic 3000
Australia

Telephone (03) 637 7700
Facsimile (03) 637 3241

22 June 1994

Mr Peter Bartlett
Minter Ellison Morris Fletcher
By Facsimile: 617 4666

Dear Peter

Special Rules for Arbitration of 12 Claims Referred to Telecom by Austel

I refer to our meeting at the TIO's office last Friday, 17 June 1994.

1. Rule 9.3

Telecom has reviewed rule 9.3 and agrees to delete this provision from the rules, provided that rules 4.8, 5.2, 5.4 and 9.2 are amended as marked up in the enclosed set of rules.

It is Telecom's view that these amendments simply expressly state what the arbitrator's powers to make directions pursuant to rules 4.8 and 5.4, already cover. Since these provisions only apply after a claimant is given an opportunity to remedy its default under the procedure, they would not affect bona fide claimants who lodge genuine claims. Telecom considers that expressing the amended rules in this way will act as a useful deterrent and safeguard against claimants lodging and pursuing claims which are not genuine.

2. Letter to the claimants which is to accompany the rules of arbitration

A draft letter to be sent to the relevant claimants with the rules of arbitration, is enclosed for your consideration and comment.

3. Timetable

A timetable for the commencement of the arbitrations is also enclosed. The proposed operation of the timetable is as explained in the draft letter to the claimants.

4. Pool of Arbitrators

I note that the pool of arbitrators to be used to conduct the arbitrations, is still to be finalised.

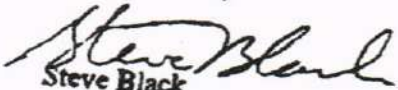
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Please contact me once you have had an opportunity to consider the above, in order to discuss finalisation of the rules.

Yours sincerely



Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

cc: Warwick Smith, TIO

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[Letter to Relevant Claimants re Special Rules of Arbitration]

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Dear X,

Special Arbitration Procedure

The TIO and Austel have established with Telecom a special arbitration procedure to assist the resolution of a small number of Telecom customer disputes. Your dispute is one of these.

The procedure has been designed to meet the following objectives:

- to operate in accordance with the principles of natural justice; ✓
- to allow the arbitrator to relax certain rules of law if necessary; ✓
- to resolve the disputes as quickly as justice to all the parties reasonably permits; and ✓
- to operate cost-effectively.

A copy of the relevant rules of arbitration are enclosed. You should read these rules very carefully. Briefly, from the date of commencement of your arbitration, you will have six weeks in which to submit a complete claim. Telecom will then have six weeks in which to submit a defence to your claim. You will then have up to three weeks in which to submit a reply if you wish. The arbitrator will then make a determination on the dispute. The arbitrator has certain discretions to vary the procedure in the interests of fairness, where appropriate. The arbitrator's award will be binding on you.

Arbitration is not compulsory or automatic. You have up to XX days in which to consider whether you wish to submit your dispute with Telecom to arbitration under this procedure. To submit your dispute to arbitration, you must send a completed application (see Schedule A of the Rules) to the TIO.

In order to ensure that the procedure operates effectively, the TIO and Austel have reached the following agreements with Telecom.

1. Timetable for arbitration

The commencement of arbitrations under this procedure will be determined according to a fixed timetable. Your dispute is currently scheduled for commencement starting XX.

You must send a completed application to the TIO by XX if you wish to preserve your priority in the timetable. If your application for arbitration is not received by then, your place in the schedule may be made available to another claimant and you may lose it. You will still be able to apply for arbitration under this procedure after XX, provided you apply before XX. In that case, you will be advised of the scheduled commencement date of your arbitration after your completed application is received.

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2. Documents Telecom will provide you without charge

In order to assist you in preparing your case for arbitration, Telecom has agreed to provide you without charge, within XX days of the commencement of your arbitration, all of the following records Telecom has on your telephone services which are the subject of your dispute with Telecom:

- (a) Fault histories available from Telecom's Leopard and Service Plus databases;
- (b) Call data records (to the extent that they exist);
- (c) Files of the Customer Services Manager handling your dispute; and
- (d) Individual reports prepared by Telecom's Network Operations, National Network Investigations and Commercial & Consumer sections, on your telephone services.

These records will be provided based on the telephone service numbers you set out in the application for arbitration as being the subject of the dispute. It is therefore important for you to specify each telephone service number which relates to the dispute, in your application for arbitration.

Telecom may, if it chooses, apply the exemptions set out in the Freedom of Information Act ("FOI Act") to the records it releases, as if they were documents being released under the FOI Act. Telecom has agreed that for each document from which information is deleted, it will provide to you details of the nature of the information deleted, the sections of the FOI Act relied upon, and Telecom's reasons for applying those exemptions. You will also be given a list of the documents exempted in total, which will contain the same details in respect of each of those documents.

Neither the TIO, Austel nor Telecom represent that these are all the documents which you will require for the preparation and conduct of your case. Whatever documents you choose to rely upon to prepare and conduct your case is a matter for you alone to decide.

Under the arbitration procedure, you will be able to ask the arbitrator to direct Telecom to provide you with any further relevant documents you require. The arbitrator would normally consider such a request after you have filed your claim, so that the arbitrator can determine the relevance of your request to your claim. You may also choose to apply to Telecom for any documents under the Freedom of Information Act, independently of the arbitration process.

If, after you have read and considered the enclosed rules, you wish to submit your dispute to arbitration under this procedure then you should send a completed application to the TIO as soon as possible, but in any case before XX.

Yours sincerely

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TIMETABLE FOR SPECIAL ARBITRATION

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Commencement of Arbitration: 20.07.94

1. "Lovey's Restaurant"
2. "Gourmet Revolution"
3. "Ralphies Pasta & Pizza"
4. "J & A Pine Products"

Commencement of Arbitration: 14.09.94

5. "Glenwaters Fish Farm"
6. "Nelson Bay Crabs"
7. "Dawson's Pest and Weed Control"
8. "Michael Weigmann Drafting Service"

Commencement of Arbitration: 09.11.94

9. "Barham Bridge Motel"
10. "Theresa Trzcianka's Hairdressing Salon"
11. "Bentineck Country House"
12. "Ringwood Lake Motor Inn"

Handwritten notes:
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**SPECIAL RULES FOR ARBITRATION OF 12 CLAIMS
REFERRED TO TELECOM-BY AUSTEL**

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1. Nature of the Procedure
 - 1.1 These Rules ("the Rules") provide an arbitration process (the "Arbitration") to resolve individual disputes ("the Dispute") between Telstra Corporation Limited ("Telecom") and the customers listed in Schedule C, which is designed to:
 - 1.1.1. operate in accordance with the principles of natural justice;
 - 1.1.2. allow the arbitrator to relax certain rules of law if necessary;
 - 1.1.3. resolve the dispute as quickly as justice to all the parties reasonably permits; and
 - 1.1.4. operate cost-effectively.
 - 1.2 The Arbitration will be subject to the Commercial Arbitration Act 1984 (Victoria), as amended ("the governing Statute"), except to the extent of any inconsistency with these Rules. The Arbitration will be administered independently by the Telecommunications Industry Ombudsman or his nominee ("the Administrator").
2. Application for Arbitration
 - 2.1 A customer listed in Schedule C who wishes to refer a Dispute to arbitration under these Rules ("the Claimant") must send to the Administrator a completed application form as set out in Schedule A ("Application").
 - 2.2 Upon receipt of an Application from the Claimant, the Administrator will forward the Application to Telecom. Upon receipt of the Application from the Administrator, Telecom shall sign and return the Application to the Administrator within seven days.
 - 2.3 Upon receipt by the Administrator of an Application signed by both parties, the Administrator will without delay:
 - 2.3.1 dispatch notice to both parties that the Arbitration will proceed;
 - 2.3.2 nominate a single arbitrator ("the Arbitrator") to hear and determine the Dispute from the pool of arbitrators established by Telecom and the Telecommunications Industry Ombudsman for the purpose of these Rules; and
 - 2.3.3 distribute notices to both parties confirming the nomination of Arbitrator.
 - 2.4 An application for arbitration under these Rules does not relieve a Claimant from any obligation the Claimant may have to pay Telecom any amounts which are due and which are not part of the Dispute, and Telecom does not waive any rights which it has to pursue payment of such amounts.
3. Commencement of Arbitration
 - 3.1 The Arbitration commences for the purpose of these Rules when the Application is received by the Administrator in accordance with rule 2.1. *the admin. so notified the parties in accordance with rule 2.1*
 - 3.2 Upon commencement of the Arbitration the parties will be deemed to have waived their respective rights to commence proceedings in any court or in any other forum in respect of the facts and matters the subject of the Dispute. Subject to the parties' appeal rights under the governing Statute, any decision made by the Arbitrator in respect of the Dispute pursuant to these Rules, including any decision to dismiss the Claimant's Claim, shall be full, final and binding on the parties.
4. Arbitration Process
 - 4.1 Subject to rule 6, the evidence tendered in the Arbitration will be by way of documents and written submissions only. All written evidence shall be in the form of a statutory declaration.
 - 4.2 The Claimant shall send to the Administrator, in triplicate, within six (6) weeks of receiving notice from the Administrator pursuant to rule 2.3.1 that the Arbitration is to proceed, the Claimant's Points of Claim and any written evidence and submissions in support of that claim together with all further documents that relate to any issue in that claim ("the Claim Documents"). The Points of Claim shall, with sufficient particularity, include:
 - 4.2.1 the identity of the Claimant or Claimants;

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- 4.2.2 the problems and faults in the telecommunications service which are alleged to have occurred, including the dates and periods over which such faults allegedly occurred;
- 4.2.3 particulars of any efforts which have been undertaken by the Claimant to draw Telecom's attention to the problems and faults the subject of the Dispute, together with particulars of any subsequent response from Telecom;
- 4.2.4 particulars of how loss has been caused by Telecom; and
- 4.2.5 the loss suffered and particulars of how that loss is calculated.
- 4.3 Upon receipt by the Administrator of the Claim Documents, the Administrator will immediately send a copy of those documents to the Arbitrator and Telecom.
- 4.4 Telecom shall send to the Administrator, in triplicate, within six (6) weeks of receipt of the Claim Documents, Telecom's Points of Defence and Counterclaim (if any) and any written evidence and submissions in support of that Defence and Counterclaim, together with all further documents that relate to any issue in the Points of Claim, Defence or Counterclaim ("the Defence Documents"). The Points of Defence shall, with sufficient particularity, state the following:
- 4.4.1 Telecom's answers to the allegations referred to in the Points of Claim; and
- 4.4.2 any affirmative defence which Telecom will seek to rely upon.
- 4.5 Upon receipt by the Administrator of the Defence Documents, the Administrator will immediately send a copy of those documents to the Arbitrator and the Claimant.
- 4.6 The Claimant may send to the Administrator, in triplicate, within three (3) weeks of receipt by the Claimant of the Defence Documents, a Defence to any Counterclaim made by Telecom and/or Reply to the Points of Defence (if any) together with any written evidence and submissions in support of that Defence or Reply and all further documents that relate to any issue in that Defence, Counterclaim, Defence to Counterclaim or Reply (the "Reply Documents"). Any such reply will be restricted to points arising in the Points of Defence, and may not introduce any new matters, points or claims.
- 4.7 Upon receipt by the Administrator of the Reply Documents, the Administrator will immediately send a copy of those documents to the Arbitrator and Telecom.
- 4.8 If the Claimant does not send to the Administrator the Claim Documents within the time allowed and does not remedy this default within two weeks after dispatch to the Claimant by the Administrator of written notice of that default, the Arbitrator may make directions in relation to the further conduct of the Arbitration as the Arbitrator considers appropriate having regard to all the circumstances, including dismissing the Claimant's claim and/or determining that the Claimant shall pay all or part of the administrative costs of the Arbitration to the Administrator.
- 4.9 If Telecom does not send to the Administrator the Defence Documents within the time allowed and does not remedy its default within two weeks after dispatch to Telecom by the Administrator of written notice of that default, then the Arbitrator may make directions in relation to the further conduct of the Arbitration as the Arbitrator considers appropriate having regard to all the circumstances, including a direction that the Arbitration will proceed and be decided by the Arbitrator by reference to the Claim Documents only.
- 4.10 Either party may, prior to the expiry of any of the deadlines specified in these Rules, request the Arbitrator (by writing to the Administrator) for an extension of time to meet a deadline. Subject to rule 4.12.1, no request for an extension made after the expiration of a deadline will be allowed. The other party will be notified of such request forthwith in writing by the Administrator and if there is any objection then the Arbitrator will be asked to give directions and the Arbitrator may make such direction as to the grant of further time as the Arbitrator deems appropriate in the circumstances.
- 4.11 The Arbitrator and Administrator shall conduct and progress the Arbitration as quickly as justice to all the parties reasonably permits.
- 4.12 The Arbitrator may in the Arbitrator's discretion (having regard to the objectives of the Arbitration set out in Rule 1.1):
- 4.12.1 vary rules 4, 5 and 6; and/or
- 4.12.2 seek a direction from the Administrator that, in order to assist the Arbitrator to make the Arbitrator's Decision, the Arbitrator may use an independent expert resource unit to examine documents, inspect premises or systems, or carry out other enquiries or research.

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Production of Further Documentation or Information, and Directions

5.1 Without limiting any rights the parties may have to obtain documents or evidence under the governing Statute, at any time after the commencement of the Arbitration, either party may send a request in writing to the Arbitrator to:

- 5.1.1 require the other party to produce further documents or information;
- 5.1.2 require the other party to provide further particulars of claim or defence; or
- 5.1.3 make directions generally in relation to the conduct of the Arbitration.

A request under this rule 5.1 must be supported by written reasons. A copy of the request and the written reasons shall be sent by the party making the request, to the Administrator and the other party at the same time that it is sent to the Arbitrator. The other party will be afforded an opportunity to make written submissions in relation to the request within such time as the Arbitrator reasonably prescribes.

5.2 If the Arbitrator reasonably believes that the further documents, information and/or particulars requested by a party under rule 5.1 is or are relevant to the Arbitration, or that the directions requested are appropriate (having regard to the objectives of the Arbitration set out in Rule 1.1), or if the Arbitrator requires any further documents, information and/or particulars to assist the Arbitrator to make the Arbitrator's decision, the Arbitrator will:

- 5.2.1 require the other party by a specified date, by notice in writing, to provide the further documents, information and/or particulars; and/or
- 5.2.2 require the parties to attend for directions,

provided that the Arbitrator may not require the production of documents protected by legal professional privilege or which are required to be kept confidential pursuant to any statute or any subordinate legislation.

5.3 A party receiving a notice from the Arbitrator pursuant to rule 5.2.1 will within such time as the Arbitrator has prescribed in the notice send to the Administrator in triplicate either:

- 5.3.1 the further documents or information and/or particulars, as the case may be, in which case the Administrator will immediately send a copy of those documents to the Arbitrator and the other party, and the other party will be afforded an opportunity to make written submissions in relation to them within such time as the Arbitrator reasonably prescribes; or
- 5.3.2 a reasonable explanation for non-compliance with the notice.

5.4 If either party does not comply with a notice from the Arbitrator pursuant to rule 5.2.1, the Arbitrator shall immediately stay the Arbitration until either the notice is complied with or the Arbitrator determines that the party receiving the notice has given a reasonable explanation for non-compliance. In the event that the notice is not complied with and no reasonable explanation is given for a period of four (4) weeks after the date specified in the notice for compliance, then the Arbitrator may make directions in relation to the further conduct of the Arbitration as the Arbitrator considers appropriate having regard to all the circumstances, including, if the Claimant is the party in default, dismissing the Claimant's claim and/or determining that the Claimant shall pay all or part of the administrative costs of the Arbitration to the Administrator.

6. Oral Hearings

6.1 Either party may send a request in writing to the Arbitrator for oral hearings to take place. A request under this rule 6.1 must be supported by written reasons. A copy of the request and the written reasons shall be sent by the party making the request, to the Administrator and the other party at the same time that it is sent to the Arbitrator. The other party will be afforded an opportunity to make written submissions in relation to the request within such time as the Arbitrator reasonably prescribes.

6.2 If the Arbitrator reasonably believes that a hearing requested by a party under rule 6.1 would enable new evidence or submissions relevant to the Dispute to be presented by a party to the Arbitrator in a manner that fulfills the objectives of the Arbitration as set out in rule 1.1 more effectively than would written submissions, or if the Arbitrator requires hearings to assist the Arbitrator to make the Arbitrator's determinations pursuant to rule 7, the Arbitrator will direct that an oral hearing take place.

6.3 If the Arbitrator directs an oral hearing to take place, the Arbitrator will, after consulting with the parties, advise the parties of a date, time and venue for the hearing.

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- 6.4 Any oral hearing will not be open to the public nor any other non-parties to the Arbitration save that the Administrator or his or her delegates shall be permitted to attend oral hearings in order to observe the conduct of the hearing, and any legal or financial advisers to the parties shall also be permitted to attend oral hearings, conduct hearings, and make submissions on behalf of the relevant party, provided that each individual adviser signs a confidentiality undertaking in the form set out in Schedule B and sends that confidentiality undertaking to the Administrator prior to receiving any Confidential Information.
- 6.5 Any oral hearing shall be limited to legal submissions and clarification of technical engineering issues already raised, cross examination of any deponents of sworn evidence filed in the Arbitration, and any reply to such cross examination.
- 6.6 All oral evidence given at a hearing shall be on oath or affirmation. A transcript of the oral evidence and submissions given at a hearing shall be made. The cost of the transcript shall be an expense of the Administrator incurred in relation to the Arbitration for the purposes of rule 9.

7. The Award

- 7.1 The Arbitrator will determine loss and Telecom's liability.
 - 7.1.1 In relation to loss the Arbitrator will make a determination:
 - 7.1.1.1 taking into account the documents, evidence and submissions submitted by the parties and, if applicable, any oral evidence presented to the Arbitrator by the parties;
 - 7.1.1.2 taking into account what proportion of the Claimant's demonstrated loss is attributable to faults or problems in the Claimant's telephone service and what proportion is not so attributable, and Telecom shall only be held responsible for loss attributed to faults or problems in the Claimant's telephone service; and
 - 7.1.1.3 giving due regard to the normal rules of evidence and legal principles relating to causation, subject to any relaxation which is required to enable the Arbitrator to make a determination on reasonable grounds as to the link between the Claimant's demonstrated loss and alleged faults or problems in the Claimant's telephone service, and to make reasonable inferences based upon such evidence as is presented by the Claimant and by Telecom.
 - 7.1.2 In relation to Telecom's liability if any, to compensate for any demonstrated loss on the part of the Claimant the Arbitrator will:
 - 7.1.2.1 take into account Telecom's legal liability (if any) to the Claimant including any contractual or statutory limitations on Telecom's liability, and any limitations on Telecom's liability to the Claimant as determined by Anset from time to time pursuant to section 121 of the Telecommunications Act 1991;
 - 7.1.2.2 give due regard to the normal rules of evidence and legal principles relating to causation, subject to any relaxation which is required to enable the Arbitrator to make a determination on reasonable grounds as to the link between the Claimant's demonstrated loss and alleged faults or problems in the Claimant's telephone service, and to make reasonable inferences based upon such evidence as is presented by the Claimant and by Telecom; and
 - 7.1.2.3 take into account any amounts paid or rebates granted to the Claimant by Telecom to date.
- 7.2 The Arbitrator will make an award ("the Award") according to the Arbitrator's determinations made pursuant to rule 7.1. The Award shall be compensatory and not punitive, and shall not include any heads of damage not recoverable at law. The Arbitrator's reasons will be set out in full in writing and referred to in the Award.
- 7.3 The Arbitrator will send copies of the Award to the Administrator and to each of the parties to the Arbitration.
- 7.4 Unless directed otherwise in the Award or the parties otherwise agree, within three weeks of dispatch to the parties of the Award, payment shall be made of any monies directed by the Award to be paid. Such payments shall be made by the party liable direct to the party entitled, and not through the Administrator. The Administrator shall be advised in writing by the party liable that such payment has been made.
- 7.5 The Award shall be final and binding on the parties, subject to the appeal provisions of the governing Statute.

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8. Confidentiality

8.1 For the purposes of these Rules, "Confidential Information" means information relevant to the Arbitration (including the subject matter and conduct of the Arbitration, the Claim Documents, Defence Documents, Reply Documents any other documents provided or oral evidence given in the Arbitration by either party, and any Award) other than:

- 8.1.1 information which at the time of disclosure to a party to arbitration is in the public domain.
- 8.1.2 information which, after disclosure to a party to the arbitration, becomes part of the public domain otherwise than as a result of the wrongful act of the party to whom the information was disclosed.
- 8.1.3 information which was received from a third party, provided that it was not acquired directly or indirectly by that third party from a party to the arbitration, of-
- 8.1.4 information properly obtained under the Freedom of Information Act 1982.

8.2 The Confidential Information shall at all times during the Arbitration be kept strictly confidential by the Administrator, the Arbitrator, and the parties to the Arbitration. A party may disclose Confidential Information to the party's legal or other advisers notwithstanding this rule 8.2 provided that the party has first ensured that every such individual adviser has signed a confidentiality undertaking in the form set out in Schedule B and has sent that confidentiality undertaking to the Administrator. If there is any disclosure of the Confidential Information by a party, then the Arbitrator may take such steps as the Arbitrator thinks appropriate including the dismissal of the Claimant's claim in the event of a disclosure by the Claimant.

8.3 The Confidential Information shall at all times be kept strictly confidential by the Administrator, the Arbitrator, and the parties to the Arbitration, provided that:

- 8.3.1 the Administrator or Arbitrator may provide copies of documents relevant to the Arbitration which are sent by the parties to the Administrator or Arbitrator respectively, to an independent expert resource unit, on the basis that the independent expert resource unit signs a confidentiality undertaking in the form set out in Schedule B and sends that confidentiality undertaking to the Administrator prior to receiving any Confidential Information;
- 8.3.2 the Administrator may retain copies of the Award and the documents relevant to the Arbitration which are sent by the parties to the Administrator, for the purpose of maintaining a precedent library for the sole and confidential reference of arbitrators in future arbitration cases; and
- 8.3.3 the Administrator may, after the Arbitrator has made an Award, publicly release general information to the effect that disputes have been fully and finally resolved applying the Rules, but the Administrator may not publicly release any information which is reasonably capable of identifying the parties to the Arbitration or the quantum of the Award, or of undermining in any way the determination of the Arbitrator.

8.4 Any party may seek injunctive relief or make a claim for any damages suffered as a result of any disclosure contrary to this rule 8.

9. Costs

9.1 Each party bears its own costs of preparing and submitting its case.

9.2 Subject to rules 4.8 and 5.4-5.3, the Arbitrator's fees and expenses and the Administrator's expenses in relation to the Arbitration ("the administrative costs of the Arbitration") shall be paid by Telecom in accordance with a separate agreement between the Administrator and Telecom.

9.3 ~~If the Claimant does not establish to the Arbitrator that the Claimant has reasonable grounds to bring the Dispute to arbitration under these Rules (having regard to the quantum claimed by the Claimant, the Award and any steps taken to resolve the Dispute including any settlement offer made to the Claimant by Telecom), the Arbitrator shall make a determination that the Claimant shall pay to Telecom all or any part of the administrative costs of the Arbitration and in such case that part of the administrative costs of the Arbitration shall be deducted from any monies payable by Telecom to the Claimant (if any) pursuant to the Award. In the event that the monies payable by Telecom to the Claimant under the Award are less than the administrative costs of the Arbitration, the Arbitrator may determine that the Claimant shall pay to Telecom all or any part of the difference.~~

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10. Notices

10.1 All documents letters and notices sent to a party, the Administrator or the Arbitrator in relation to these Rules shall be delivered by hand or sent by certified mail, courier or facsimile.

10.2 All documents letters or notices sent to Telecom in relation to these Rules shall be addressed to:

National Manager - Customer Response Unit
Telecom Australia
Level 8
242 Exhibition Street
Melbourne Victoria 3000.
Facsimile: (03) 634 8441

11. Liability of Administrator, Arbitrator and any Independent Expert Resource Unit

11.1 Neither the Administrator nor the Arbitrator shall be liable to either party for any act or omission in connection with the Arbitration save that the Arbitrator and the Administrator shall be liable for his or her own fraud or deliberate wrongdoing.

11.2 The liability of any independent expert resource unit used by the Arbitrator, for any act or omission on their part in connection with the Arbitration, shall be limited to \$250,000.00.

12. Return of documents

12.1 If either party has sent documents in support of its case to the Administrator or Arbitrator, that party may within six weeks of publication of the Award request the return of those documents, provided that nothing in this rule shall prevent the Administrator retaining a copy of documents for the purposes of maintaining a precedent library for future arbitrators, in accordance with rule 8.3.2. Subject to that, all documents relating to the Arbitration held by the Arbitrator will be delivered to the Administrator, and the Administrator may retain any documents relating to the Arbitration and may in due course dispose those documents in accordance with the Administrator's policies from time to time.

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TELECOMMUNICATIONS INDUSTRY OMBUDSMAN

STANDARD ARBITRATION RULES

OVERVIEW OF ARBITRATION

Rule 1

How Does Arbitration work?

These rules provide an informal and inexpensive Arbitration procedure as a method of resolving disputes between a Customer and a Carrier.

The object of the Arbitration is for the Arbitrator to make an Award.

While the Arbitration will primarily be by an exchange of documents and written submissions (See Rule 15), the Arbitrator can order that an oral hearing be held (See Rule 24), to allow the parties to also put their arguments in person.

The Arbitration is designed to:

- a) operate in accordance with the principles of natural justice;
- b) allow the Arbitrator to relax certain rules of evidence as needed;
- c) resolve the dispute as quickly as justice to all the parties reasonably allows; and
- d) operate with minimal cost to the Customer - the only cost to the Customer is the Customer's own costs of preparing his or her submissions for the Arbitrator (see Rules 6, 7, 10, 13, 14, 17 and 29).

Rule 2

Who controls the Arbitration?

The Telecommunications Industry Ombudsman (TIO) is responsible for the development of procedures, such as these rules, for the fair, just, economical, informal and speedy handling of complaints regarding telecommunications services.

The TIO is independent of governments, carriers, and other interested bodies. Representatives from consumer groups, small business, and all general and mobile telecommunications carriers are members of the TIO Council.

These rules are administered by the Telecommunications Industry Ombudsman (or a person he or she appoints) who is called the "Ombudsman" in these rules.

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Rule 31

Liability of the Ombudsman, the Arbitrator and any independent expert assistant or advisor to the Arbitrator.

The Ombudsman or the Arbitrator is not liable to either party for any act or omission in connection with the Arbitration. However, the Arbitrator or the Ombudsman is liable for his or her own fraud or deliberate wrong doing in connection with the Arbitration.

↙ The liability of any independent experts used by the Arbitrator is limited to \$250,000 for any act or omission on their part in connection with the Arbitration.

Rule 32

Return of documents

If either party has sent original documents to the Ombudsman or the Arbitrator, that party may request the return of those documents within six (6) weeks of being notified of the Arbitrator's Award.

Otherwise, the Arbitrator must deliver all documents relating to the Arbitration to the Ombudsman. The Ombudsman may keep any documents relating to the Arbitration as long as they remain confidential as set out in Rule 28, and may dispose of those documents, in accordance with the Ombudsman's policies, after one (1) year of the Arbitrator having given his or her Award.

The parties may retain those documents provided to them during the course of the Arbitration, but must be mindful of their obligations of confidentiality (see Rule 28), which continue to bind them even after the conclusion of the Arbitration.

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*David,
Relevant correspondence
as discussed yesterday/Today.
Simon.*



23 February 1994

COMMERCIAL AND CONSUMER
CUSTOMER AFFAIRS

37/242 EXHIBITION STREET
MELBOURNE
VICTORIA 3000
Australia

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

Mr Gordon Hughes
Hunt & Hunt
Level 21
459 Collins Street
MELBOURNE VIC 3000

Dear Mr Hughes

"Fast Track" Arbitration Procedure

I refer to your letter dated 21 February 1994 setting out your recommended amendments to the proposed procedure.

Subject to the following amendments and our agreement to the final wording of the procedure, Telecom is prepared to submit to the proposed procedure in respect of the "Fast Track" claims.

Clause 6

In relation to Ferrier Hodgson's suggestion that they be permitted as of right to be present at an oral hearing, if this suggestion is accepted then Telecom would also require its accountants to be present at such hearings. In the normal course of Telecom's business, accounting issues would be addressed by qualified accountants and therefore it is appropriate that, if Ferrier Hodgson are to be present to deal with accounting matters, then Telecom's accountants should also be present.

Clause 8

In relation to Ferrier Hodgson's suggested rewording of clause 8.2, the parties should retain the right to be able to make submissions in relation to any evidence considered at any inspection, and any findings of fact arising out of an inspection or other enquiry reached by the Resource Unit, and the wording of the clause should reflect this.

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Clause 9

Telecom agrees to your recommendation on the understanding that findings of fact will only be considered common between the cases with the agreement of all the parties concerned. However, Telecom reiterates that the disputes are independent and concern different customers operating different telephone equipment from different parts of the telephone network, and running different businesses. It is considered unlikely that findings of fact will be common between any of the cases.

Clause 10

- (a) Telecom agrees to the insertion of a reference to Clause 2(g) of the Fast Track Settlement proposal in the opening lines of Clause 10, conditional on a reference to Clause 2(f) also being included in that clause.
- (b) In respect of Clause 10.2.2, Telecom notes that this clause does not fully reflect Clause 2(f) of the Fast Track Settlement Proposal as the COT claimants have suggested. The words "unless the assessor is able to conclude that Telecom caused the loss claimed there will exist no basis for a claim against Telecom" should be inserted in Clause 10.2.2.

Clause 2(f) of the Fast Track Settlement Proposal was intended by the parties to evidence an agreement that the standard of proof for determining the extent of call loss would be based on reasonable inferences drawn from the existing evidence. Telecom agreed with the COT claimants that, because not all call losses and other problems reported by the claimants are documented, they should not have to be put to strict proof of each and every call loss. However, clause 2(f) does not imply, and Telecom did not agree that any relaxation of other general principles of law (including causation) would apply. This position is supported by Austel and the surrounding correspondence. In order to clarify this, clause 10.2.2 should be amended to reflect the above position.

- (c) In respect of Clause 10.2.3, I would appreciate your advice on what standards you intend to apply in relation to the arbitrations if this Clause is omitted.

In Telecom's view, generally accepted accounting principles, Australian accounting standards (to the extent they are applicable) and general principles of law (other than in relation to the issue of burden of proof as discussed above) must apply. Accordingly clause 10.2.3 should either be amended to reflect the parties' agreement in relation to burden of proof as discussed in this letter, or incorporated with clause 10.2.2.

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Clauses 16 and 17

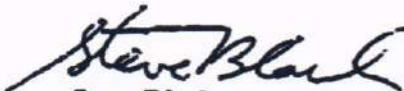
I note that the objection to Clause 16 has been withdrawn and no side agreement with Mr Bartlett or the arbitrator is proposed. Confidentiality is an essential requirement of the arbitrations. In order to ensure confidentiality is maintained, Telecom requires the following amendments to be made:

- (a) The words ", existence or subject matter" added after the word "conduct" in line 2 of Clause 16; and
- (b) The words "and any other documents provided in, or oral evidence given in, the arbitrations by either party" added after the word "Documents" in line 3 of Clause 17.

Clause 24

Telecom is of the view that Special Counsel and the Resource Unit should be accountable for any negligence on their part in relation to the arbitration process, given that these parties are acting in their capacity as experts. Therefore, this clause should not be amended so as to include an exclusion from liability for Special Counsel and the Resource Unit.

Yours sincerely



Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

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