

**CAV  
CHRONOLOGY  
LGE**

**Exhibit 128 to 180**



AUSTEL  
AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

94/0269

1 December 1994

Mr T Benjamin  
National Manager  
Customer Response Unit  
TELECOM

Facsimile No: (03) 634 8441

Dear Mr Benjamin

**CHARGING DISCREPANCIES RECORDED BY ALAN SMITH, SHORT DURATION  
CALLS ON 008 SERVICES AND ALAN SMITH'S ARBITRATION**

This letter is provided in response to your letter dated 11 November 1994 entitled  
**"Charging Discrepancies Recorded by Alan Smith and Issues Related to Short  
Duration Calls on 008 Services"**

I consider that the fundamental issue raised in your letter is your statement:

*If the information requested is provided to you outside of the approved  
Arbitration Rules, other parties to the Fast Track Arbitration Procedure may  
also seek information through you and expect answers in like manner. I  
believe that this will prove dysfunctional to an orderly and manageable  
arbitration process and could possibly lead to its breakdown. It would also  
involve Telecom in breaking its confidentiality undertaking under the Fast  
Track Arbitration Rules.*

My response to this statement is as follows. AUSTEL can not disregard issues of  
concern which come to our attention because these may be the subject of arbitration.  
I note that AUSTEL is not a party to the Fast Track Arbitration Procedures and is  
therefore not aware of the specific issues which have been raised in this process.  
Furthermore, under the Fast Track Arbitration Procedure there is a mechanism for  
dealing with the disclosure of confidential information, as follows:

*If there is any disclosure of any part of the subject matter or the conduct of the Procedure, the Confidential Information or the Arbitrator's award by either party, then the Arbitrator may take such steps as he thinks appropriate including the dismissal of the claim in the event of a disclosure by the claimant.*

If Telecom wishes to take up the issue of any disclosure of confidential information which may have occurred or which may in the future occur under the "Fast Track" Arbitration Procedure then this should be taken up with the Arbitrator of this Procedure. The Procedure itself has mechanisms for ensuring an "orderly and manageable arbitration process" is followed. If Telecom has concerns that the Procedure is becoming unmanageable for reasons of disclosure of confidential information then these should be raised with the Arbitrator, not AUSTEL. This general advice also applies to issues of disclosure of confidential information in the Arbitration Procedures for the "COT 12" and the pending General Arbitration Procedures to be administered by the TIO.

AUSTEL still requires an answer to the issues raised in my letter of 4 October 1994, and requests that an answer to all the issues be provided by 15 December 1994.

I note that your letter states that "Each of the questions put by you in your letter of 4 October 1994 will be answered as part of Telecom's defence to Mr Smith's claim lodged under the Fast Track Arbitration Procedure." As AUSTEL has not sought information and is not aware of any of the details of Mr Smith's claims under the Fast Track Arbitration Procedure, I was therefore not aware until I received your letter that Mr Smith has raised all of the specific issues identified in my letter. I suggest that in future Telecom not divulge information of this nature to AUSTEL on any matters raised by AUSTEL which are matters raised in arbitration. This in itself could be regarded as disclosing information which is confidential under the arbitration process.

In the current situation where it is possible that both parties to the Fast Track Arbitration Procedure have divulged information to AUSTEL which details issues raised in this Procedure I propose to take the following course of action. AUSTEL will write to the Arbitrator enclosing copies of correspondence on this matter. AUSTEL will seek confirmation from the Arbitrator that Mr Smith has raised the issues detailed in my letter. Should the Arbitrator confirm that these issues have been raised then AUSTEL will not provide a response to Mr Smith on them, as he will have received this response through the Arbitration Process. AUSTEL will inform Mr Smith of AUSTEL's actions in this regard. Should the Arbitrator fail to provide any information:

on whether these issues have been raised under arbitration, or deny that all these issues have been raised by Mr Smith, then AUSTEL will write to Telecom further on this matter. I note that under the Fast Track Arbitration Procedure the Arbitrator does not become involved in assessing the detail of the claimant's submission until Telecom has provided its response to that submission, therefore the Arbitrator may not be in a position to provide a rapid response to AUSTEL's letter.

I must emphasise that AUSTEL is not seeking to prejudice Mr Smith's arbitration. The issues raised by Mr Smith, however, concern matters which potentially affect a considerable number of Telecom's customers and it is on this basis that AUSTEL has taken up these issues. It is also the stated reason why Mr Smith raised these issues with AUSTEL in his 3 October 1994 letter, as he "Thought this information might be of concern to AUSTEL". In this context, I note that my 4 October 1994 letter also raises the concerns of another Telecom customer, Mr Jason Boulter, regarding the operation of his 008 service. In addition, concerns on the general operation of Telecom's 008 service have recently been raised with AUSTEL by the Federal Member for Wannan, Mr David Hawker. The issues raised by Mr Hawker will be the subject of a separate letter to Mr Steve Black, but information you provide in response to my 4 October 1994 letter may well form part of AUSTEL's response to Mr Hawker.

In summary, the issues raised in my 4 October 1994 letter are of concern to AUSTEL, and will remain of concern until Telecom provides a response to AUSTEL which AUSTEL considers allays this concern.

On another matter, thank you for your offer to provide information on the general principles of the operation of Telecom's 008 service. I would like to take up this offer once you have responded to the issues raised in this letter.

Yours sincerely



Bruce Matthews  
Consumer Protection



**F A X E**  
16.12.1994

16 December 1994

Customer Response Unit  
Commercial & Consumer

Level 37  
242 Exhibition Street  
Melbourne Vic 3000  
Australia

Telephone 03 634 2877  
Facsimile 03 632 3235

Dr Gordon Hughes  
Hunt & Hunt

By facsimile: (03) 614 8730

Dear Sir,

**Fast Track Arbitration Procedure - Smith**

Please find enclosed a copy of the following documents:

1. Letter dated 4 October 1994 from Austel to Telecom.
2. Letter dated 11 November 1994 from Telecom to Austel.
3. Letter dated 1 December 1994 from Austel to Telecom.

You will note from the correspondence that Austel has requested Telecom to provide information relating to charging discrepancies reported by Mr Smith for short duration calls on his 008 service. These issues form part of the subject matter of Mr Smith's claim under the Fast Track Arbitration Procedure.

In light of clauses 16-19 of the arbitration procedure which prohibit the disclosure of confidential information, Telecom is reluctant to provide Austel with this information.

You will note from Austel's letter of 1 December 1994 that Austel still requires Telecom to provide this information and states that "[it] will seek confirmation from the Arbitrator that Mr Smith has raised the issues detailed in [his] letter. Should the Arbitrator confirm that these issues have been raised then Austel will not provide a response to Mr Smith on them...and will inform Mr Smith of Austel's actions in this regard".

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Telecom wishes to comply with Austel's request for information and seeks your views as to whether you would consider the provision of this information to Austel has the potential to breach the Fast Track Arbitration Procedure. The question has also been raised of whether discussion between yourself and Austel on the content of the claim and defence in Mr Smith's arbitration might itself breach the confidentiality rules of the Fast Track Arbitration Procedure.

The simplest way forward may be for Mr Smith and Telecom and yourself to all confirm in writing that this information can be provided to Austel if this meets with your approval.

Yours faithfully,



**Ted Benjamin**  
National Manager  
Customer Response Unit

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In an oral hearing no cross examination of any witnesses is to be allowed. Legal representation of the parties shall be at the Arbitrator's discretion. If the Arbitrator allows one party to have legal representation then the other party may also have legal representation.

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

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

7. The Procedure will be as follows:-

7.1 The time limits for compliance referred to in this clause are subject to the overriding discretion of the Arbitrator and may be the subject of submissions by the parties.

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

7.2.1 the identity of the Claimant;

Dr Gordon Hughes  
Hunt & Hunt...  
Lawyers  
459 Collins St  
Melbourne  
3000

28 December 1994

facsimile 03 614 8730

Dear Dr Hughes

ARBITRATION - TELECOM

I enclose a Telecom internal document, F.O.I. No A13726

I am formally requesting the Arbitrator, Dr Hughes. To apply to Telecom for access, of all the raw data, associated with the Bell Canada testing at the RCM, PTARS at Cape Bridgewater.

CCS7, CCAS monitoring was functional at the time of these tests. The dates in question were, 5/11/93, 8/11/93, 9/11/93.

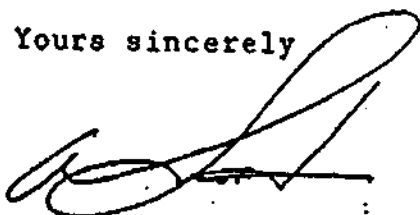
This request is very relevant to my assessing the accuracy of Telecom's defence documents.

I wish to once again inform the Resource Team, that Telecom have right through this Arbitration Procedure, denied me access to certain CCAS, CCS7, EOS, and Elmi raw data.

Telecom's conduct in this one matter alone, has severely disadvantaged my Arbitration Claim.

I await Telecom's response regarding the Bell Canada testing.

Yours sincerely



Alan Smith.



Dr Gordon Hughes  
Hunt & Hunt  
Lawyers  
459 Collins St  
Melbourne  
3000

28 December 1994

facsimile 03 614 8730

Dear Dr Hughes

ARBITRATION - TELECOM

In relation to my correspondence to your office today, ie: Bell Canada testing.

I would like the following request to be incorporated within this prior letter received.

I am now seeking from Telecom, all the working documents that was associated with this testing.

The documents sought consist of, Portland Exchange technician overtime sheets for the days where those personnel would have had to retrieve on a daily basis, all the information gained from the PTARS at Cape Bridgewater RCM. 5/11/93, 8/11/93, 9/11/93.

All working documents, to how this information was programed, read and deciphered allowing for Bell Canada to produce into written documentation.

A letter from Telecom NNI, stating the time in which is needed to decipher, CCS7, CCAS information accurately, so as to be correct in all form, which would allow this information to be viewed as a true assessment of data received.

This information sought by the Cape Bridgewater Holiday Camp, is vital to assess Telecom's defence of their Network during the Bell Canada testing period.

Yours sincerely



Alan Smith.



# Hunt & Hunt LAWYERS

**COPY**

**Partners**  
 David M. Scarlett  
 Edward S. Boyce  
 James G.F. Harrowell  
 Christine A. Galey  
 Gordon L. Hughes  
 Mark T. Knapman  
 Ian S. Craig  
 Peter J. Ewin  
 Wayne B. Cahill  
 Neville G.H. Debney  
 Grant D. Sefson  
 Charles Veevers  
 Andrew Logie-Smith  
 William P. O'Shea

**Consultants**  
 Kenneth M. Martin  
 Richard J. Kellaway

**Associates**  
 Shane G. Hird  
 John S. Molnar  
 Melissa A. Henderson  
 Francis V. Galichio

28 December 1994

Our Ref: GLH

Matter No: 5126886

Your Ref:

BY FACSIMILE 632 3235  
 Mr E Benjamin  
 C/- S Gill  
 National Manager  
 Customer Response Unit  
 Level 37, 242 Exhibition Street  
 MELBOURNE Vic 3000

Dear Mr Benjamin

## ARBITRATION - SMITH

I enclose copy facsimiles from the Claimant dated 28 December 1994 in which he requests me to apply to Telecom for access to specified information.

As you are aware, I have the power under clause 7.6 of the Fast-Track Arbitration Procedure to order the production of documentation.

Do you wish to make a submission in relation to Mr. Smith's request?

Yours sincerely

**GORDON HUGHES**

Encl.

cc A Smith, W Smith, P Bartlett, J Rundell

melbourne

sydney

sydney west

brisbane

canberra

newcastle

represented in

adelaide

darwin

11382377\_ACZF/CF

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 8711.

Facsimile: (61-3) 614 8730. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.

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TIO OFFICE

FAX NUMBER

**CAPE BRIDGEWATER HOLIDAY CAMP  
PORTLAND  
VICTORIA**

Dr Gordon Hughes  
Hunt & Hunt  
Lawyers  
459 Collins Street  
Melbourne 3000

6th January, 1995

**ARTIBRATION - TELECOM**

Dear Dr Hughes,

The following information, sought by the Cape Bridgewater Holiday Camp, is to substantiate incorrect details as presented in Telecom's Defence Documents. These requests are listed in point form:

- (a) All ELMI raw data tapes of monitoring of my phone lines from early May 1993 to July 1993.
- (b) All EOS data readings. This equipment was attached to my in-coming 267 267 line during 1993.
- (c) All ELMI raw data tapes which were released to Austel during the Austel monitoring.
- (d) All working notes from Dave Stockdale, NNT re the lock problems experienced on my 267 267 line on 9/8/93 by Mrs McGraw.
- (e) Telecom Defence Document File 5, Appendix 40, states "Test calls from Queensland - Portland"  
How many calls in all?

TRT between Ferntree Gully and Portland 807 calls.

TRT between Ballarat and Portland 300 calls.

All data associated with these calls, signed and dated by the on-duty technician, and his findings.

- (f) Telecom Defence Document File 5, Appendix 37, Telecom Minute, states that 11,000 errors per hour were measured. This was in the PCM system.

All documentation associated with these findings, accompanied by technicians' reports.

- (g) Telecom Defence Document File 5, Appendix 31 R01447, i.e.: obtained CCAS data via the VAX/VMS (Week ending 11th September).

All CCAS data showing these unanswered calls for the week ending 11th September and likewise the week ending 25th September.

- (h) Telecom Defence Document File 5, Appendix 31 K04410 states that 34,686 test calls were generated into various locations.

Full information on these test calls, data associated with where the end-to-end call terminate  
This data to have a technician's signature to the completed and finished test calls.

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*(Continued from page 1)*

(i) All CCS7 data for 1993 and to August 1994

All CCAS data for 1993 and to August 1994

All EOS data for 1993 and to August 1994

(i) Gordon Stokes, Portland Technician, states in his Witness Statement/Statutory Declaration, that a listening device was used for several months on my phone service.

Steve Black, Customer Response Unit, Telecom, has informed me that this was, and I quote from a Telecom internal letter, submitted in my Claim titled "Cape Bridgewater 2": "To check that incoming calls to the Portland exchange were successfully connected"

Mr Black stated that this device was for "fault finding only". I now seek all documentation, fault records etc. which were written or documented over these several months. These records must be accompanied by the author's signature, and must state the types of faults experienced when listening to these calls. This information is to include times, dates etc.

This information is very relevant to my claim.

(k) All CCAS, CCS7 Data which was used to determine the outcome of the Neat Testing at the Cape Bridgewater RCM PTARS 267 211. The dates of these tests are as follows:

|                     |                      |                 |
|---------------------|----------------------|-----------------|
| 23/10/93 to 4/11/93 | All days 9am to 10pm | 390 test calls  |
| 28/10/93 to 8/11/93 |                      | 1030 test calls |

CCS7 Call Statistics would have shown breakdown of calls, those which were effective and those which were not. This information is very relevant to my claim.

Accompanying this letter is a Telecom Internal Memo from Network Investigations. The third paragraph of this letter clearly states that there were files associated with faults on the lines to this business. I have not received these files under F.O.I. The only documents I have seen from NNI are the first released documents. I have not seen any great quantity of technical information.

Dr. Hughes, I also present a letter from Simon Chalmers, the Telecom Solicitor, addressed to Duncan Wallace (No. R11704, R11705). Again, there is mentioned in the third paragraph of this letter that Telecom have not provided all NNI working notes. This is a significant point to substantiate.

David Stockdale has indicated in his letter that it would require 5 - 6 days for him just to obtain some of Mr Smith's records and that locating and copying/printing the records is only part of the task.

I now ask Dr Hughes to view paragraph two of this letter. Mr Chalmers writes that if any records are not provided, not only could Telecom be in breach of the F.O.I. act, but Telecom may also, by hiding these records and by not complying with the F.O.I. act, be preventing themselves from using those documents in their own defence.

Dr Hughes, it appears that Telecom chooses not to release this quantity of NNI technical information; that they believe it far better to present their lies and their fabricated and manufactured F.O.I. documents, rather than the real thing.

*(Continued on page 3)*

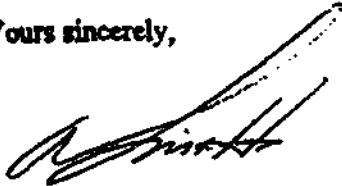
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*(Continued from page 2)*

As I understand it, under the Fast Track Arbitration Procedure, in my submission I can only address the documents actually presented. Is it a sad day when a Government-owned company can hide behind the rule "I show you mine, you show me yours".

These are the last set of documents I am asking the Arbitrator to access from Telecom, that is, if Telecom provide anything at all.

Yours sincerely,



Alan Smith

P S. I am now disadvantaged even further. It is the 6th January, 1995, and still my own Resource Team have not been provided with Telecom's defence on disk.

Customer Response Unit  
Commercial & Consumer

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

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

13 January 1995

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

facsimile: (03) 614 8730

Dear Dr Hughes

**Fast Track Arbitration Procedure - Alan Smith**

I refer to your letter dated 27 (sic) December 1994 enclosing a copy of a letter dated 28 December 1994 received from Mr Smith. I wish to comment as follows:

1. Mr Smith has requested the Arbitrator "to apply to Telecom for access, of all the raw data, associated with the Bell Canada testing at the RCM, PTARS at Cape Bridgewater". Telecom located some of Bell Canada International's working documents which were thought to be in the possession of Bell Canada International but which were later found to have been left with Telecom staff in Australia.

Those working documents, insofar as they related to Mr Smith's business and fell within the scope of his FOI request of December 1993 were provided to Mr Smith under cover of my letter dated 21 October 1994. Mr Smith has previously been informed (by letter dated 15 December 1994 from Telecom to Mr Smith) that, as far as I am aware, all Bell Canada International's working documents (including raw data) in Telecom's possession have already been provided to him.

2. Mr Smith has on numerous occasions requested Telecom to provide CCS7 call statistics dated 4 November, 5 November 6 November and 9 November 1993. (Letters dated 27 October and 3 November 1994) Extensive searches were carried out by Telecom in an attempt to identify these documents. Mr Smith was informed by letter dated 15 December 1994, that as far as I am aware, no such documents exist for the specific dates requested and therefore could not be provided to Mr Smith.

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Mr Smith has now requested CCAS and CCS7 call statistics for the dates 5 November, 8 November and 9 November 1993. Telecom has not denied Mr Smith access to these documents but is unable to provide documents which do not, as far as I am aware, exist for the specific dates requested by Mr Smith.

Yours faithfully



**Ted Benjamin**  
National Manager  
Customer Response Unit

6 September 1994

**Telecom**  
AUSTRALIA

Central Area  
Network Operations  
6/171 Roma Street  
Brisbane  
Australia

Ph (07) 857 3212  
Fax (07) 236 4247

Mr G. Kealey  
Bell Canada International  
Suite 800, 1 Nicholas Street  
Ottawa, Ontario, Canada, K1N 9M1

Gerry,

**N00005**

As you have been made aware through discussions with Mr K. Dwyer, an anomaly has been found in the test call records contained in the report "Bell Canada International Inc. REPORT TO TELECOM AUSTRALIA 1 NOVEMBER 1993".

Specifically, the start and finish times for the test run from Richmond digital exchange (RCMX), test line 03 428 8974, to Portland exchange, Cape Bridgewater RCM (CBWR) number range, test line 055 267 211, (detailed in section 15.23 of the report) are impracticable. The number of calls made during the test run could not have been completed within the time span shown and the test run would have clashed with other test runs performed within those times.

An examination of the test result summary forms filled out after the test runs (a copy of the relevant record forms is enclosed) reveals that the report details have been correctly derived from the summary forms.

This inconsistency in recording of times for a test run is not a fundamental flaw in the test results or the conclusions of the report, but the proper times of the run should be recorded if at all possible.

Discussions with a number of people assisting with the test call program during that period confirmed that considerable care was taken to avoid clashes of test calls to test answering bases and to ensure that test calling devices originated calls only to a single terminating test code during any test run.

From their recollections of events several points regarding the sequence of events have been brought together:

- The tests were initiated to provide extra data from test calls into the number ranges of the CoT customers connected to Devlin's Bridge exchange and Portland exchange. The data was to be added as an addendum to the report dated 1 November 1993.
- Testing began Wednesday 3/11/93. Traffic Route Testers (TRT's) in the NIB test room 7/35 Collins Street Melbourne originated calls, via test lines connected to Richmond exchange, to test answering bases at Portland exchange and Devlin's Bridge exchange. A portable TRT at South Yarra exchange was also used to originate calls to the same exchanges.

A63152

File CoT

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FOI RECEIVED  
26/5/95

- As Mr G. Kealey and Mr R. Baltais intended to travel to Portland exchange (via Warrnambool exchange) on Friday afternoon 5/11/93, they ensured that a TRT run from Richmond had finished and that a run from the South Yarra TRT had commenced satisfactorily before they left Melbourne at approximately 12.45 that day. They also arranged for test calls to begin from Bendigo exchange that afternoon, and made a call from Warrnambool exchange to South Yarra exchange late in the afternoon to ensure the South Yarra TRT had completed its test run program and stopped.
- No staff recalls or attendance were recorded or required at either South Yarra or Richmond exchange to attend to TRT's on Friday 5/11/93 or the weekend 6/11/93 & 7/11/93.

A complete examination of the times of the test calls from all the exchanges to the test lines at Cape Bridgewater and Devlin's bridge over the period from 3/11/93 to 9/11/93 shows that the only time the test run from the Richmond digital test line to the Cape Bridgewater 055 267 211 test answer base could have been made, without clashing with other test calls to the same test number, was between the afternoon of 3/11/93 and about midday of 4/11/93.

It appears that the details for the test run from the Richmond digital test line (03 428 8974) to Cape Bridgewater RCM (055 267 211) should have been recorded as beginning at approximately 4.18 pm on 3/11/93 (rather than 12.45 pm on 5/11/93) and finishing at about 12.45 pm on 4/11/93 (rather than 4.18 pm on 5/11/93), with other aspects of the test run remaining the same as previously recorded. These timings fit in with other test runs from the Richmond TRT line and with other test runs from other exchanges to the same line at Cape Bridgewater. They also provide a logical sequence in the overall test program and a reasonable average test call interval (43.9 sec. per call).

A table has been drawn up to show the test calls made over the period and is attached, showing the test run between the Richmond digital test line and the Cape Bridgewater test line in this logical time-slot within the overall test run program.

Could you please confirm whether or not this interpretation of the sequence of test runs matches with your recollections and personal notes, or whether there is any other way to correct the records of the test runs shown in the report.

N00006

Alan Humrich  
GENERAL MANAGER  
CENTRAL AREA

135

03 '95 03:01PM EMPLOYMENT CENTRE OTT

F.O.I. RECEIVED P.S. 26/5/95

AH

Humrich, Alan

From: Dwyer, Kevin  
 To: Humrich, Alan; Gamble, Peter  
 Cc: Baltais, Rudi; Killeen, Paul  
 Subject: re: Smith's query on BCI Tests  
 Date: 23 August 1994 10:03  
 Priority: High

Mr Smith is correct in the suggestion implied in his query that the test results recorded in the 'Addendum - Additional Tests' part of the BCI report to Telecom, 1 November 1993, are impracticable.

Specifically the tests:

from - Richmond Digital, RCMX, 03 428 T  
 terminating to - Cape Bridgewater 055 26 T shown in section 15.23 of the report is impractical as the number of calls recorded could not have been made within the times shown and would have clashed with other test runs performed during those times.

Unfortunately the TRT run results tabulations filled out by the BCI reps. following the tests, from which the report was prepared, have the same times and dates and run results as are printed in the final report. The error in recording must have occurred in the transcription from the rough notes to the test results data tabulation forms. None of the original rough notes which may have been made by the various people involved are now available.

I have spoken to Gerry Kealey, the Bell Canada international representative, Paul Killeen and Rudi Baltais of NNI, and to staff at South Yarra exchange to determine the actual sequence of testing during that period. Each had similar recollections of beginning the series of tests to Portland Exchange (the Cape Bridgewater RCM code range) and Devlin's Bridge exchange from TRTs connected to Richmond and South Yarra lines on Wednesday 3/11/93. As Rudi and Gerry intended to go to Portland to see the Exchange and RCM, travelling on Friday afternoon 5/11/93, they ensured that a TRT run from Richmond had ceased and that a run from South Yarra had commenced with no troubles before they left Melbourne at about 12.45 that day. They made a call from Warrnambool exchange to ensure the run from South Yarra was terminated, but have no notes to confirm the date and time of the call.

It appears that the TRT run details for the run from Richmond (428 T) to Cape Bridgewater RCM range (055 26 T) should have been recorded as beginning approximately 4.18 pm. on 3/11/93 and finishing at approximately 12.45 pm. on 4/11/93, other aspects of the run remaining the same as recorded.

These timings would fit in with the other test runs from the Richmond TRT line and with other test runs to the same terminating line at Cape Bridgewater. They also provide a logical test run sequence and a reasonable average test call interval (43.9 sec. per call).

A detail record of the test runs performed during the extended test period is shown in the table (BCINOV.DOC) below:

<< File Attachment: BCINOV.DOC >>

Kevin Dwyer  
657 3003

N00037

ht COT

BCI report  
(Consultant)

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A Ms Susan Peel from State Trustees wrote a letter to Smith stating that on 8 October 1993 she tried to call his 008 number and received total silence. Ms Peel says she was therefore forced to call Smith on "the ordinary telephone number". Testing of Smith's 008 number failed to reveal any problems and further investigations discovered that the State Trustees' PABX barred Ms Peel from making calls to 008 numbers. Smith was informed of the results of these investigations in a letter dated 4 November 1993 from Rosanne Pittard, General Manager, Commercial & Consumer Vic/Tas. There was no fault with the Telecom network (reference document 3.15).

**Conclusion** - This complaint was due to misdialling by Smith's caller.

Smith reported to John MacMahon of AUSTEL that his 008 bill included 4 calls made to him on 5 January 1994 from a Ms Burch of Portland. According to Smith, Ms Burch attempted to send a facsimile to CBHC on the wrong number (his 008 number to which no facsimile machine was attached instead of his 267 230 number). Smith stated that he did not receive the 4 calls he was billed for and was adamant that no calls with a facsimile tone were answered by him on that date.

An analysis of billing data and CCAS data by Telecom showed that each of the 4 attempts had been answered at CBHC. CCS7 data was available for 3 of the 4 calls in question which also indicated that each of these calls was answered. The fact that the three methods of monitoring all show these calls were answered can leave no doubt that each call was connected through to CBHC. Any incoming call answered on Smith's 008 line will be billed. Smith was billed due to mis-dialling by Ms Burch (reference document 3.30).

**Conclusion** - This complaint was due to a mistake by Smith's caller.

On 31 January 1994, Smith complained that he was getting busy tone when he attempted to call 03 287 7099 which was one of Mr Schorer's ISDN lines. An analysis of call data showed that the perceived problem resulted from Smith mis-dialling the number, having dialled 03 287 7009 instead of 03 287 7099. Smith was contacted by Tony Watson from Telecom's Fault Management & Diagnostic Group who informed Smith of his mis-dialling. Smith accepted this explanation. (reference document 3.39).

**Conclusion** - This complaint was due to misdialling by Smith.

On 27 April 1994 a fault report was entered in to Service Plus by Telecom's Mr Peter Gamble. Mr Gamble had been testing Smith's 267 230 (facsimile) number/line and discovered that the T200 telephone connected to 267 230 (together with Smith's facsimile machine which also had a handset) was not immediately releasing after Smith had hung up the handset. A Telecom technician who specialises in customer premises

equipment maintenance, Ross Anderson, therefore attended CBHC to inspect the T200 in question at 1:30 pm on 27 April 1994. Testing was conducted which confirmed that the T200 had problems releasing. Mr Anderson therefore replaced the T200 with another unit and the unit removed was subsequently analysed by Telecom Research Laboratories.

A brown sticky liquid substance which contained chemicals typically found in beer was found in the T200. This was causing the switch hook mechanism in the T200 to lock up. It is the customer's responsibility to ensure that foreign substances are not introduced into their CPE (reference document to 4.02 which includes detailed report of analysis of T200 which is also known as a TF200).

**Conclusion-** This complaint was due to a foreign substance in Smith's phone causing mis-operation.

On 27 May 1994 Ross Anderson attended CBHC in response to ring only once (ROO) complaints in relation to Smith's 267 267 and 267 230 (facsimile) lines. On arrival Ross noticed that Smith had a new Panasonic facsimile machine which he stated he had purchased in the previous week. Mr Anderson arranged for test calls to Smith's 267 267 line from Telecoms Fault Dispatch Centre in Ballarat. Several test calls were made with no problem being found (reference document 4.18 and Ross Anderson witness statement).

Smith told Mr Anderson that people were having difficulty in sending facsimile transmissions to his 267 230 line. While at CBHC Ross noticed that Smith's new facsimile machine was in "Auto" mode which means if an automatic facsimile machine called 267 230, Smith's machine would ring for 2 complete cycles, answer the call and receive the facsimile transmission automatically. In contrast, if a manually operated facsimile machine called 267 230, the caller would lift the handset attached to their machine, dial 267 230 and then wait to receive facsimile tones from Smith's machine before pressing transmit on their manual facsimile machine. However, when Smith's facsimile machine is switched to "Auto" mode it recognises such calls from manual machines as voice calls as it has not received the automatic tones as generated by automatic machines.

When Smith's facsimile machine is in "Auto" mode it may confuse a caller with manual facsimile machines and can lead to an incoming caller who is waiting for facsimile tone to prematurely hang up. In this case Smith may misunderstand this to be bursts of ring caused by Telecom's network as he would not receive a facsimile transmission. If the caller with a manual facsimile machine holds on for 30 seconds of ring in total when Smith's facsimile is in "Auto", Smith's facsimile will then change and transmit facsimile tones to the incoming caller. However, it is unusual to wait 30 seconds for facsimile machines to give facsimile tone and it is likely that an incoming caller with a manual facsimile machine will get frustrated before the 30 seconds of ring has elapsed and hang up prematurely (causing "bursts of ring")

|                  |   |  |                |
|------------------|---|--|----------------|
| <b>FAX FROM:</b> | <b>ALAN SMITH<br/>G. O. T.</b>  | <b>DATE:</b>                                 | <b>28.1.95</b> |
| <b>FAX NO:</b>   | <b>055 267 230</b>  |  |                |
| <b>PHONE NO:</b> | <b>008 816 822</b>  | <b>NUMBER OF PAGES (including this page)</b> |                |
| <b>FAX TO:</b>   | <b>DR GORDON HUGHES<br/>HUNT &amp; HUNT<br/>LAWYERS<br/>MELBOURNE</b> |  |                |

### ARBITRATION - TELECOM

Dear Dr Hughes,

I seek to have the following three documents included in my claim/submission.

The Resource Team would be well aware of my continued allegations regarding CCS7, CCAS and ELM1 data, and their in-effectiveness, when used in monitoring incoming calls to the PTARS at the RCM in Cape Bridgewater, as well as incoming calls to this business. Telecom's Defence Documents have shown written information only regarding test calls to the above outlets. They have not supplied raw ELM1 data tapes or CCS7 data statistics analysis of the supposed effective test calls to the locations mentioned.

Telecom is reluctant to provide this monitoring data to substantiate the test calls which they have stated were effective, within the guide-lines, and on a percentage basis. I believe it is imperative that the Resource Team view this reluctance as non-compliance. The Resource Team would also be aware by now that the information I have supplied in both submissions and also in my reply to Telecom's Defence Documents has shown, I believe, beyond all reasonable doubt, that Telecom's test calls and the statements by Telecom that incoming calls registered correctly has not been the case. I also believe my examples of incorrect charging have shown a hole in Telecom's technical monitoring.

I have labelled the three documents following as A, B and C. A is my latest 008 account which relates to my 055 267 267 number.

I received this account on the 25th January, 1995. For easy viewing I have indicated the appropriate points I wish to make with an arrow.

The 13th January, at 11.50am - 07443, an incoming call: conversation time 9.49 seconds.

Below 13th January. 11.57am - 03585, an incoming call: .42 seconds.

The obvious can be seen in those two examples. The Resource Team should question Telecom as to how a 9.49 second conversation period could be intercepted at 11.57am. Telecom's incorrect charging can be seen, once again, in that a 2.49 second conversation could actually have been a lockup, or the 11.57am incident did not transpire into a call which was answered by this business. We have two issues here that must be addressed by Telecom.

I ask for your patience in viewing 11th January at 03.49 - 05526. I have marked this with an 'O' for easy viewing. A conversation time of 13 seconds is shown. This 05526 number is in fact 055 267 204 (the house I now rent, next door). This call was an engaged call and I noted the time (my time) at 3.52. The following call at 3.50pm was activated and conversation took place.

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The day prior, on 10th January, there was a call at 09.43 from the same number. I believe this was an engaged signal also, however I did not make a note at the time.

Documents B and C. Please excuse the crosses and notes on these documents. This was done when previously assessing my submissions. I have included documents B and C to validate document A.

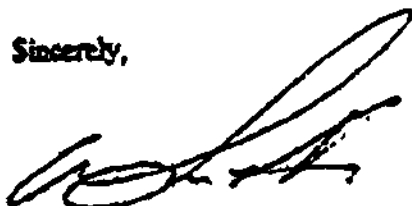
At the 8.2.94 at 20.03 we have an incoming unanswered call (document B) and a wait time of 4 seconds. This document has been ticked for easy viewing.

Document C (my 008 account) shows, on the same day (8.2.94) at 8.03 a call being charged for 9 seconds. My question to Telecom is "How is this so, if their monitoring equipment and technical data is correct?"

In conclusion, I believe that I have shown, both in previous submissions and with these three documents, that Telecom's processing of calls is flawed. Telecom must supply all raw data, ELM1 tapes, CCS7, CCAS and EOS data so that the Resource Team can view these three documents with supported material. I do not intend to drip feed the Arbitration Procedure, Dr Hughes, with information such as this on a regular basis, however, I believe that this latest example must be viewed as relevant material and the Resource Team must be supplied with this technical monitoring data.

I thank you for this time,

Sincerely,



Alan Smith.

23330 **A**

Office  
Use

**Itemised Call Details** *continued*

**Freecall 008/1800 calls** *continued*

|                            | Date                       | Time     | Origin | Destination      | Rate    | Min:Sec | \$            |
|----------------------------|----------------------------|----------|--------|------------------|---------|---------|---------------|
|                            | Answering number 055267267 |          |        | <i>continued</i> |         |         |               |
| 6-4                        | 06 Jan                     | 11:17 am | 05526  | 055267267        | Day     | 2:36    | 0.58          |
| 6-5                        | 07 Jan                     | 11:19 am | 05968  | 055267267        | Day     | 1:11    | 0.36          |
| 6-6                        | 07 Jan                     | 01:26 pm |        | 055267267        | Day     | 0:35    | 0.13          |
| 6-7                        | 07 Jan                     | 01:57 pm | 03680  | 055267267        | Day     | 0:21    | 0.11          |
| 6-8                        | 09 Jan                     | 08:20 am | 07443  | 055267267        | Day     | 0:43    | 0.29          |
| 6-9                        | 09 Jan                     | 01:06 pm | 09457  | 055267267        | Day     | 0:13    | 0.08          |
| 6-10                       | 09 Jan                     | 04:24 pm | 07443  | 055267267        | Day     | 2:41    | 1.09          |
| 6-11                       | 09 Jan                     | 06:54 pm | 05526  | 065267267        | Night   | 0:35    | 0.09          |
| 6-12                       | 10 Jan                     | 09:43 am | 05526  | 055267267        | Day     | 0:14    | 0.05          |
| 7-1                        | 10 Jan                     | 01:16 pm | 05221  | 055267267        | Day     | 2:06    | 0.65          |
| 7-2                        | 10 Jan                     | 06:57 pm | 05526  | 055267267        | Night   | 1:41    | 0.25          |
| 7-3                        | 10 Jan                     | 07:44 pm | 03889  | 055267267        | Night   | 10:23   | 2.18          |
| 7-4                        | 11 Jan                     | 08:07 am | 06526  | 055267267        | Day     | 1:09    | 0.26          |
| 7-5                        | 11 Jan                     | 09:27 am | 05526  | 055267267        | Day     | 0:51    | 0.19          |
| 7-6                        | 11 Jan                     | 02:15 pm | 05526  | 055267267        | Day     | 1:47    | 0.40          |
| 7-7                        | 11 Jan                     | 03:18 pm | 05     | 055267267        | Day     | 1:24    | 0.43          |
| 7-8                        | 11 Jan                     | 03:49 pm | 05526  | 055267267        | Day     | 0:13    | 0.06          |
| 7-9                        | 11 Jan                     | 03:50 pm | 05526  | 055267267        | Day     | 1:12    | 0.27          |
| 7-10                       | 12 Jan                     | 09:18 am | 06526  | 055267267        | Day     | 0:52    | 0.20          |
| 7-11                       | 12 Jan                     | 01:10 pm | 03480  | 065267267        | Day     | 0:30    | 0.18          |
| 7-12                       | 12 Jan                     | 02:32 pm | 05342  | 055267267        | Day     | 0:56    | 0.28          |
| 8-1                        | 12 Jan                     | 06:02 pm | 03162  | 055267267        | Night   | 0:30    | 0.11          |
| 8-2                        | 13 Jan                     | 11:44 am | 05526  | 055267267        | Day     | 2:25    | 0.64          |
| 8-3                        | 13 Jan                     | 11:48 am | 05526  | 055267267        | Day     | 0:45    | 0.17          |
| 8-4                        | 13 Jan                     | 11:50 am | 07443  | 055267267        | Day     | 8:49    | 3.99          |
| 8-5                        | 13 Jan                     | 11:57 am | 03585  | 065267267        | Day     | 0:42    | 0.22          |
| 8-6                        | 13 Jan                     | 01:54 pm | 05526  | 065267267        | Day     | 2:07    | 0.48          |
| 8-7                        | 13 Jan                     | 03:57 pm | 05     | 055267267        | Day     | 4:51    | 1.50          |
| 8-8                        | 14 Jan                     | 10:27 am | 05784  | 055267267        | Day     | 0:47    | 0.24          |
| 8-9                        | 14 Jan                     | 11:27 am | 05342  | 065267267        | Day     | 1:24    | 0.43          |
| 8-10                       | 15 Jan                     | 05:23 pm | 05341  | 055267267        | Economy | 0:35    | 0.08          |
| 8-11                       | 16 Jan                     | 03:26 am | 04     | 055267267        | Economy | 0:30    | 0.08          |
| 8-12                       | 16 Jan                     | 09:18 am | 03181  | 055267267        | Day     | 2:30    | 0.77          |
| <b>Total for 055267267</b> |                            |          |        |                  |         |         | <b>828.67</b> |

**Other Charges and Credits**

\$

For miscellaneous charges and credits on 19 Oct  
3 of 12 instalments on charges  
of 62.00

3-1

Telecom Australia holds PPS Reporting  
Exemption Approval No. RM32767i.

5.16

**139**

**Total other charges and credits**

**\$5.16**

*Cape Bridgewater Holiday Camp and Convention Centre  
Portland, Victoria, 3305*

**Dr Gordon Hughes,  
Hunt & Hunt,  
Lawyers,  
Melbourne.**

**15<sup>th</sup> February 1995**

**Dear Dr Hughes**

I refer you to my copied letters to you dated 2<sup>nd</sup> and 10<sup>th</sup> October 1994, with regards to my complaints against Telstra's verification tests carried out on my service 29<sup>th</sup> September last. In her statutory declaration Ms Cathy Ezard, complained that she believed Mr. Gamble did not correctly test the supposed test calls which should have connected to both our fax line and our incoming service line. My own declaration of these complaints was also forwarded to your office including my concern that my Kiosk phone was not correctly tested as well as my Gold Phone. My records show your office has yet to respond to those complaints.

During late June through to September 1994, it appeared my service had improved during this period with only a few complaints from customers. However, since that period Ms Ezard and I have received quite a few complaints that our phones seemed to be constantly engaged or the phone rings out even though one of us is in attendance. My previous letters to you in January 22<sup>nd</sup> and 26<sup>th</sup> also confirmed we were still experiencing problems with our service lines.

As you are aware the verification testing was prepared in consultation with Austel and was to form the basis for determining whether the CoT cases individual telephones service was operating satisfactory at the time of our arbitration. Our previous statutory declarations confirmed the testing was not conducted as they should have under the agreed testing process. As I have not received notice from you in regards to these declarations and my letters of January complaining of these faults that you find time to pass my comments onto Telstra for investigation purposes. I ask you to instruct Telstra to provide you and DMR, clarification as to why my phones are still not functioning, as they should.

Please find attached here supporting documents which confirm the continuation that both my 000 and fax service lines are still experiencing problems.

I thank you for your time.

Sincerely



Alan Smith



FAX FROM: ALAN SMITH  
C. O. T.

DATE: 3.3.95

FAX NO: 055 267 230

PHONE NO: 008 816 522

NUMBER OF PAGES (including this page)

FAX TO: DR GORDON HUGHES  
HUNT & HUNT  
MELBOURNE

Dear Dr Hughes,

I am presenting two documents that I believe are relevant to the presentation of my submissions and my reply to Telecom's Defence documents, both of which have already been tendered.

1. *Telecom document K02736* is a copy of my advertisement in the Geelong Advertiser on 27th February, 1993. In reference to this document I would ask you, and the Resource Team, to review Telecom's Defence Witness Statement, Ray Morris, at 11 and 12. I believe you will find that this particular saga, referred to in Ray Morris's statements, relates to an inadvertent error made by the Geelong Advertiser, where they advertised an incorrect 008 number. However, Telecom document K02736 shows clearly that my (055) 267 267 number was printed correctly.

I find Telecom's conduct alarming, not only in their Defence Document, but also the suggestion, made on 13th July, 1993 by Miss Roseanne Pittard, Telecom General Manager, Commercial, that Telecom use this "wrong number" information to build credibility on Telecom's side, hoping that Senator Boswell (political briefings) and Austel would produce adverse findings in relation to the way I run my promotions and advertising.

A copy of the information just supplied regarding political briefings can be found in my second submission C/B/H/C titled "Cape Bridgewater 1" on page 70.

2. *The second document*, which is very relevant to a matter that I am most concerned about, relates to Telecom's Defence surrounding beer alleged to have been found in my 267 230 phone.

In my second submission, "Cape Bridgewater Part 1" (already presented), the fifth page from the back is a copy of an E-mail memo from Peter Gamble to Bruce Pendlebury, dated Tuesday 26th April, 1994. As you will see in the first paragraph, Peter Gamble had already described accurately what the problem was with my 267 230 phone as a result of his discussions with Les Churcher. From the following paragraphs in this document, addressed to varying Telecom departments, we could assume that there had been a known heat problem, together with problems associated with moisture, at the RCM.

I am not sure whether both these discussions are related to the moisture problem in the Exicom phones as presented in my supporting evidence in reply to Telecom's Defence (titled "Brief Summary, Telecom Witness Statement, Conflicting Evidence Summary, TF200"). Again I find that I must use the word 'alarmed' in relation to many examples where Telecom have misled in their Defence Documents.

Dr. Hughes, how could Peter Gamble have such an assessment already worked out on 26th April, regarding this problem with my 267 230 phone, when the phone was not even collected from me until the following day, 27th April, 1994?

I also find it very alarming that Telecom did not issue any statements whatsoever regarding what they found on the 12th May, after the so-called forensic testing. Instead they waited seven months to spring their report. Had they told me of their findings on or around the date of 12th May, 1994, then they would have been obliged to allow me access to the phone and the material they used to gain this information.

I believe, as I have already stated in my reply to Telecom's Defence Documents, that Telecom must show not only the phone and original photos taken of the phone when it was given to the laboratories, but also all evidence used by the laboratories to derive this information.

Telecom Defence Document, Appendix 4 at 2, Telecom file note number K00934 is another example of the type of misleading statements made by Telecom: you will note that, on the day in question, 27th April, when this phone was picked up by Telecom, there is a statement made by DNF Waverley that, at 8.50am I told them I was tired and wanted to go to sleep. What I did convey to Waverley, however, was that I had been fighting an out-of-control fire from 8pm the previous evening until 8.30am that morning and that I would require three hours sleep before a Telecom representative called to test my phones (this information regarding the fire can be obtained from the Cape Bridgewater CFA log book).

I hope these two examples from Telecom, presented here, will be accepted as part of my claim.

Yours sincerely,

Alan Smith.

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### 5.8 *Faults Caused by Claimant*

(a) Telecom asserts that many of the claimant's reported "faults" were attributable to mis-operation of his telephone, cordless telephone, telephone answering machine and facsimile equipment. Examples are said to be leaving the phone off the hook or damaging the equipment by spilling a liquid into it.

(b) The claimant responds in the following terms:

"If the problem were the answering machine, then why did the problems continue after the answering machine had been removed for 12 months. Secondly, if the problem was me leaving the phone off the hook, then why is it that not all persons reported simply an engage signal. If the phone problem was caused by my misuse of the cordless phone, then why is it that all persons just did not receive the ring out situation."

(c) Telecom nevertheless maintains that most reported faults were attributable to mis-operation by the claimant or by his callers or to normal wear and tear on the equipment they were using.

(d) In this regard I have noted, for example, the statutory declaration by Ross Stewart Anderson, a Senior Technical Officer Grade 1, who concluded that specific fault allegations involving the claimant's answering machine, cordless phone and facsimile machine could only be attributable to operator error. I have also noted the statement by Humberto Lopes, senior Telecom Technical Officer Grade 2, to the effect that reported facsimile machine faults were attributable to customer error.

### 5.9 *Telecom's Level of Service*

(a) George Close states that whilst statistics obtained under FOI were "very limited", all statistics which were supplied "showed very high fault levels". He adds that "whilst we have no hard evidence that these fault levels were maintained throughout the 6 years, there is no certainty that the fault level was not higher."

(b) Telecom asserts that the level of service provided to the claimant "was equal to or better than those in other rural areas". Of the seven problems located prior to 11 December 1992, for example, one had "no effect" and the others "had a minimal impact". Specifically, the network upgrade program in Cape Bridgewater had been brought forward in response to the claimant's complaints, whilst a number of investigations revealed no fault.

### 5.8 *Faults Caused by Claimant*

(a) Telecom asserts that many of the claimant's reported "faults" were attributable to mis-operation of his telephone, cordless telephone, telephone answering machine and facsimile equipment. A simple example is said to involve the claimant leaving the phone off the hook.

(b) The claimant responds in the following terms:

"If the problem were the answering machine, then why did the problems continue after the answering machine had been removed for 12 months. Secondly, if the problem was me leaving the phone off the hook, then why is it that not all persons reported simply an engaged signal. If the phone problem was caused by my misuse of the cordless phone, then why is it that all persons just did not receive the ring out situation."

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(c) Telecom further asserts that, subsequent to the settlement on 11 December 1992, a number of "faults" reported by the claimant were



Customer Response Unit  
Commercial & Consumer

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

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

23 December 1994

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

By Hand

Dear Dr Hughes

Arbitration - Smith

I refer to Ferrier Hodgson's letter of 16 December 1994 addressed to you, which was copied to me.

Using the same paragraph numbers referred to in that letter I respond to the issues raised by Ferrier Hodgson as follows:-

- ii) The Statutory Declaration of Ross Marshall is not Ref 1. It is simply a Statutory Declaration which refers to Ref 1, 2, and 3. Consequently the documents are:-

Statutory Declaration of Ross Marshall

Ref 1 - An Introduction to Telecommunications in Australia

Ref 2 - Telecom Australia's Network Management Philosophy

Ref 3 - Glossary of Terms;

- vi) I enclose a copy of the witness statement of Ian Joblin together with the attachments "IAJ-1" and "IAJ-2". This copy is signed and dated. I note that the copy in Telecom's set of the defence documents is signed and complete and cannot understand how an unsigned copy went to you. Please accept my apologies for this.

Yours faithfully,

Ted Benjamin  
National Manager  
Customer Response Unit

A63860

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# FERRIER HODGSON CORPORATE ADVISORY

BY FACSIMILE: (03) 614 8730

16 December 1994

COPY

Dr Gordon Hughes  
Managing Partner  
Hunt & Hunt  
Level 21  
459 Collins Street  
MELBOURNE VIC 300

Dear Sir,

RE : Fast Track Arbitration - Smith

I refer to the above matter and acknowledge receipt by hand from you on 13 December 1994 of Telecom's defence documents (together with a copy of the covering letter to you from Mr Ted Benjamin of Telecom dated 12 December 1994).

The documents received are listed as they have been presented, and are as follows:

- (i) Telecom Australia Principal Submission.
- (ii) General Information Document:
  - (Ref 1) Statutory Declaration of Ross Marshall
  - (Ref 2) An introduction to Telecommunications in Australia
  - (Ref 3) Telecom Australia's Network Management Philosophy
  - (Ref 4) Glossary of Terms.

**Note**

The above description of Ref 1 to Ref 4 accurately describe the documents received, but differs from document title descriptions and references shown on the cover of bound folder and front piece of each document.

- (iii) Guide to considering Telecom's Defence Documents.
- (iv) Telecom Australia Legal Submission.
- (v) One bound volume of appendices to Telecom Australia Legal Submission (including 17 indexed appendices of defence material).

FERRIER HODGSON CORPORATE ADVISORY (VIC) PTY LTD  
A.C.N. 852 483 848

EXECUTIVE DIRECTOR, DOLLA GIBSON, JOHN SELAS  
LEVEL 21 100 WILLIAM STREET MELBOURNE VICTORIA 3000  
TELEPHONE 03 439 8895 FACSIMILE 03 639 8761  
LICENCED INVESTMENT ADVISORS

1/4/94



- (vi) Telecom Australia - Sworn Witness Statements (including 18 indexed separate statements).

Note

Appendix 18 being a Witness Statement of Ian Joblin (consulting Forensic Psychologist) is undated and not signed and the attachments "IAJ-1" and "IAJ-2" have been omitted.

- (vii) Telecom Australia briefing paper titled B004 "Alan Smith - Cape Bridgewater Holiday Camp Service History" (includes Statutory Declaration of Stephen Foster Black dated 12 December 1994).

- (viii) Telecom Australia - five volumes of appendices as follows:

- B004 Appendix File 1 - with 54 attachments
- B004 Appendix File 2 - with 54 attachments
- B004 Appendix File 3 - with 54 attachments
- B004 Appendix File 4 - with 54 attachments (note 41 to 50 inclusive are blank)
- B004 Appendix File 5 - with 54 attachments (note 50 to 54 inclusive are blank).

- (ix) Expert Witness Statement of Peter Neil Crofts (a Partner of Deloitte Touche Tohmatsu) on "Quantum of Claim" and a further Witness Statement of Robert Simon Taylor (a Partner of Deloitte Touche Tohmatsu) and Annexures A to G.

- (x) A diskette containing a soft copy of those spreadsheets annexed to the Expert Witness Statement of Neil Crofts which were prepared by Mr Crofts (Appendices A, B, C, D, E and G). Such copies are in Lotus 123, version 2.4.

We now await your further instructions in relation to this matter.

Yours faithfully,  
**FERRIER HODGSON CORPORATE ADVISORY**

**JOHN RUNDELL**  
Project Manager - Resource Unit  
Associate Director

cc: T Benjamin, W Smith, P Bartlett

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**Cape Bridgewater Holiday Camp and Convention Centre  
Portland, Victoria, 3303**

**Dr. Gordon Hughes  
Hunt & Hunt  
Lawyers  
Melbourne**

**10th January, 1995**

**Dear Dr. Hughes,**

A ruling regarding information associated with the Defence Documents being presented in this manner must be addressed. I had no intention of drip feeding information to the Arbitration Dr Hughes, once my final Submission had been presented.

It is now thirteen months since the first of four FOI applications was presented to Telstra and yet, even after all this time, Telecom have not supplied the material I have sought: NNI documentation, technician's diary notes, ELM1 raw data, CCS7, CCAS and EOS data and voice monitoring fault records. Very little of this information has been supplied under the Arbitration Procedure.

When reading Telecom's Defence and FOI documents it is apparent that they have referred to this documentation when compiling much of their defence. Mr. Arbitrator, you are wrong if you think that I am just holding the stage on these issues alone, without merit to their value

I have set out in this letter to show the significance of viewing the material and documentation that is currently missing. Cross-checking only the information which has been supplied still shows discrepancies and flaws in Telecom's test results and in their monitoring of customer's lines. If this can be shown using only limited material I'm sure the Resource Team can understand my frustration at not receiving the rest of the FOI material as sought under the FOI Act. This other material would have enabled me to substantiate even further, the inadequacies of Telecom's testing; the fabrication of files and test calls to establish an incorrect reading when Telecom technicians know different.

In my reply to Telecom's Defence Documents, which is titled "Brief Summary of Telecom's Witness Statements, Conflicting Evidence", under the heading of "Bell Canada and Next Testing", I show incorrect monitoring of calls into my business on 055 267 267. Telecom Documents 101312 and 101313 show that, from 3/9/93 to 12/10/93 Austel was supplied raw ELM1 tape data of these calls into my business. I have not received this data, however, my own calculations can be viewed by checking what is written in the graph/table as shown on document 101313. A total of 376 answered calls registered into this business during those five weeks mentioned. The C/B/H/C first Submission, 7/6/94 (ref 0433 to 0444) shows these calls were incorrect.

My calculations show 425 answered calls, not 376 as shown in the graph. The graph also shows no incoming answered calls of less than five seconds, yet my calculations show 158 answered calls within this five second period. My total unanswered calls are 7 instead of 8 as shown in the graph. With this letter I present a further example, marked 'A' - test calls 10/6/94 (8 test calls). If we look at 15.30.07 to 15.30.57, four test calls took place in 44 seconds, allowing for the answered calls. This did not allow for the setting up of the answered calls and the eight seconds these four calls took to be answered. We now have four test calls within a 35 second duration and this does not allow for the dialling pattern to be completed. These test calls were not conducted in an efficient manner by Telecom's own testing programmers.

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(Continued on page 2)

A63473



(Continued from page 1)

A further example, marked 'B', is a copy of my 003 account. Please note the following:

- 8/9/93 at 01.00 pm call time 1.36
- 9/9/93 at 02.41 pm call time 2.59
- 14/9/93 at 03.36 pm call time 0.46
- 14/9/93 at 03.46 pm call time 3.37

The C/B/H/C first Submission, 7/6/94, ref 0435 will show that these calls were not registered into the CCAS, yet I was charged for them.

The Resource Team will also note that these four calls were also part of the registered calls which were shown in the graph as 376 and my calculations were seen at 425. So here are a further four calls (that we know of). These examples here show clearly that the monitoring and testing at C/B/H/C RCM at Cape Bridgewater was not as we are lead to believe.

As further evidence of misleading conduct associated with Telecom's testing I refer the Resource Team to Telecom's Defence Document, Appendix J at 7. We have Bruce Fendlebury stating that he called me to ask if I was still using my cordless telephone on 30/4/93. He further states that I told him that I hadn't used it for some time. His written notes have confused him and, certainly, others who would view this document, as it appears as though I still had my cordless phone, even though it was returned in early April, 1993. He further states that several test calls by Gordon Stokes were made to Smith. The C/B/H/C first Submission, 7/6/94, ref 0389 shows no test calls to any business, even though Gordon Stokes claims these calls took place.

Telecom document marked K02643, hand written by Cris Doody, is further evidence of misleading and deceptive conduct by Telecom. If the Resource Team view page 13 of my second submission, titled "Cape Bridgewater Part 2" they will see a letter from Mark Ross. This letter states that the MELU fault, which we now know was a non-programmed line route to Cape Bridgewater, meant that 50% of all metropolitan Melbourne callers (clients of this business) were switched via this exchange. This route did not acknowledge 033 267 ... numbers and so the callers would only hear a continued RVA message "The number you are ringing is not connected".

Mr Mark Ross states in his letter that this fault was only for "two" days. On the following page in my second submission (page 14) we see another hand written letter addressed to Roseanne, MELU, RVA, somewhere between 9/2/ and 19/3/. Following this page there is a Telecom Minute and I quote from paragraph three the last two lines: "One would think that if the code was not in data at MELU prior to that date, then complaints would have been likely to have been received before March, 1992."

Mr Arbitrator, the document K02643 referred to above (author Cris Doody), states that it is likely that this fault began on takeover day to the new RCM. This takeover date was 19th August, 1991 and the fault continued to 19th March, 1992, a period of seven months. A letter written to me on 23rd November, 1992 (author Don Lucas), states that this MELU fault lasted for only three weeks. This letter was only written because I continued to refute that two day period claimed by Mark Ross. The letter from Don Lucas also states that 50% of metropolitan callers would use this route.

My reply to Telecom Defence Documents, appendix titled "Brief Summary, Telecom's Witness Statements, Conflating Evidence" under the heading "Appendix CI Melu" shows a Telecom document stating that callers to Cape Bridgewater, via MELU, would be 50%. Not 'may be', but fact.

Telecom Defence Document "Holiday Camp Service History" page 19, paragraph 4, states that 33% of callers, on average, would use MELU. Telecom, in a written Statutory Document, has even tried to play this down 17%. That statement in this Statutory Declaration is misleading and commercial deception, the conduct is unconscionable behaviour.

(Continued on page 2)

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*(Continued from page 2)*

My own letters from 1988, 89, 90 and 91, state that callers to this business had complained during that time of receiving continued voice announcements stating that the number they were ringing was not connected.

Dr. Hughes, and I address this also to all those who have read all my submissions and my reply to Telecom's Defence Documents. I firmly believe that Telecom has deliberately down-played this fault.

During my settlement period, and on the day of December 11, 1992, Telecom's Corporate General Manager, Commercial, Vic/Tas, misled me on this MELU incident as well as other issues. It has been shown, in my correspondence to Dr Hughes, that this same Australian lady chose to also deceive Telecom's own outside solicitors, Freshill Hollingsdale & Page, by stating that I had only complained of nine faults from 6th January 1992 to 9th August 1992. Nine times. Yet, in a Statutory Declaration regarding documents read by Ian Joblin, we see at least 34 complaints and also a number of "known" Telecom faults.

As a further indication of this misleading and deceptive behaviour by Telecom Corporate I present five Telecom documents, including my written FOI request to Telecom. The Telecom numbers are: K47562 to K47565 and R01623.

Regarding Document K47563, my initial request to Telecom on 21st December, 1992, we read that this request was not accompanied by the required \$30.00 application fee. I ask Dr. Hughes and the Resource Team to view Document R01623 (my FOI application), particularly the P.S. at the end.

I believe the author of the letter to Ms Fay Hothuzen, Department of Communications and the Arts was Paul Rumble, as this FOI document was obtained from his file. If this is so, then Mr Rumble has misled and deceived Ms Hothuzen. If this is not seen by the Commonwealth Ombudsman's Office as misleading and deceptive commercial conduct then it will at least show that Telecom will conjure words to defraud the general public.

The examples I have presented in this letter today must be viewed in the context in which they have been tabled. I am not of legal mind, however what I see is that Telecom would go, and has already gone, out of their way to down-play telecommunication faults, to confuse issues associated with these faults and; in an over-view of Telecom's witness statements and the History of the Cape Bridgewater Service, this Statutory Declaration is flawed.

If all this information can be obtained from the FOI documents that I have received, then the technical documents, files, diary notes of various technicians, including CCAS, CCS7, EOS, ELMI Raw Data Tapes would have shown so much more: faults, lies, cover-ups. Just to stop four individuals, members of COT from uncovering the truth.

Sincerely,



Alan Smith  
Cape Bridgewater Holiday Camp and Convention Centre  
Portland, 3305

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A63475



Partners  
David M. Scarlett  
Edward S. Boyce  
James G.R. Harrowe  
Christine A. Galley  
Gordon L. Hughes  
Mark T. Keppner  
Ian S. Crisp  
Peter J. Ewin  
Wayne K. Cahill  
Neville G.H. Dobne  
Grant D. Sifton  
Charles Vassart  
Audrey Leslie-Smith  
William P. O'Shea  
  
Counselors  
Kerwin M. Martin  
Richard L. Kellaway  
  
Associates  
Shane G. Hill  
John S. Meher  
Melissa A. Hender  
Franch V. Gallucci

1 February 1995

Our Ref: GLH  
Matter No:  
Your Ref:

BY FACSIMILE: 632 3235  
Mr E Benjamin  
National Manager  
Customer Response Unit  
Telecom Australia  
Level 37, 242 Exhibition Street  
MELBOURNE Vic 3000

Dear Sir

**ARBITRATION - SMITH**

I enclose copy letter received from the claimant dated 30 January 1995.

I am prepared to accept this letter as a supplement to the claimant's Reply. I would not accept further documentation from the claimant on this basis.

To the extent that the submissions of either party (or my own deliberations or enquiries conducted by the Resource Unit) suggest that relevant documentation has not been submitted, I have the right to request that information and, if necessary, issue a subpoena.

I emphasise I have not formed any view of the matters raised in the claimant's letter of 30 January 1995.

Yours sincerely

  
**GORDON HUGHES**

Encl

CC A Smith, W Smith, P Bartlett, J Rundell

malbo  
ydne  
ydne  
brlb  
caab  
new  
represented in  
adela  
term

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11598413\_GLH/RS

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 8711.  
Facsimile: (61-3) 614 8730. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbourne.

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*Continued from page 2*

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Sincerely,



Alan Smith  
Cape Bridgewater Holiday Camp and Convention Centre  
Portland, 3305

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A63475

(Continued from page I)

A further example, marked 'B', is a copy of my 008 account. Please note the following:

- 8/9/93 at 01.00 pm call time 1.36
- 9/9/93 at 02.41 pm call time 2.59
- 14/9/93 at 03.36 pm call time 0.46
- 14/9/93 at 03.46 pm call time 3.37

The C/B/H/C first Submission, 7/6/94, ref 0435 will show that these calls were not registered into the CCAS, yet I was charged for them.

The Resource Team will also note that these four calls were also part of the registered calls which were shown in the graph as 376 and my calculations were seen at 425. So here are a further four calls (that we know of). These examples here show clearly that the monitoring and testing at C/B/H/C RCM at Cape Bridgewater was not as we are lead to believe.

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(Continued on page J)

A63474

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**Cape Bridgewater Holiday Camp and Convention Centre  
Portland, Victoria, 3303**

**Dr. Gordon Hughes  
Hunt & Hunt  
Lawyers  
Melbourne**

**10th January, 1993**

**Dear Dr. Hughes,**

A ruling regarding information associated with the Defence Documents being presented in this manner must be addressed. I had no intention of drip feeding information to the Arbitration Dr Hughes, once my final Submission had been presented.

It is now thirteen months since the first of four FOI applications was presented to Telstra and yet, even after all this time, Telecom have not supplied the material I have sought: NNI documentation, technician's diary notes, ELM1 raw data, CCS7, CCAS and EOS data and voice monitoring fault records. Very little of this information has been supplied under the Arbitration Procedure.

When reading Telecom's Defence and FOI documents it is apparent that they have referred to this documentation when compiling much of their defence. Mr. Arbitrator, you are wrong if you think that I am just holding the stage on these issues alone, without merit to their value.

I have set out in this letter to show the significance of viewing the material and documentation that is currently missing. Cross-checking only the information which has been supplied still shows discrepancies and flaws in Telecom's test results and in their monitoring of customer's lines. If this can be shown using only limited material I'm sure the Resource Team can understand my frustration at not receiving the rest of the FOI material as sought under the FOI Act. This other material would have enabled me to substantiate even further, the inadequacies of Telecom's testing; the fabrication of files and test calls to establish an incorrect reading when Telecom technicians knew different.

In my reply to Telecom's Defence Documents, which is titled "*Brief Summary of Telecom's Witness Statements, Conflicting Evidence*", under the heading of "*Bell Canada and Neat Testing*", I show incorrect monitoring of calls into my business on 055 267 267. Telecom Documents 101312 and 101313 show that, from 3/9/93 to 12/10/93 Austel was supplied raw ELM1 tape data of these calls into my business. I have not received this data, however, my own calculations can be viewed by checking what is written in the graph/table as shown on document 101313. A total of 376 answered calls registered into this business during those five weeks mentioned. The C/B/H/C first Submission, 7/6/94 (ref 0433 to 0444) shows these calls were incorrect.

My calculations show 425 answered calls, not 376 as shown in the graph. The graph also shows no incoming answered calls of less than five seconds, yet my calculations show 158 answered calls within this five second period. My total unanswered calls are 7 instead of 8 as shown in the graph. With this letter I present a further example, marked 'A' - test calls 10/6/94 (8 test calls). If we look at 15.30.07 to 15.30.57, four test calls took place in 44 seconds, allowing for the answered calls. This did not allow for the setting up of the answered calls and the eight seconds these four calls took to be answered. We now have four test calls within a 35 second duration and this does not allow for the dialling pattern to be completed. These test calls were not conducted in an efficient manner by Telecom's own testing programmers.

(Continued on page 2)

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Her parting words were similar to "That's as far as I will go, Mr Smith it's up to you." Due to the stresses placed on me at the time, the fact that I felt that Telecom was threatening me with tying me up in legal action I took the settlement. I took this settlement because I believed Telecom at their word in respect to faults.

I now find that Telecom did have records of faults prior to June 1991. I find also that Telecom withheld documents from my hearing with Ms Pittard. I can also note the connotation of Ms Pittard's letter to Network Investigations, "I cannot comment on the variations between what Mr Smith was told on the settlement day and the contents of the Network files." I would state this, in closing, in respect to Ms Pittard's Statutory Declaration: I have been misled in not only the negotiations at the settlement in 1992, but I was also deceived in regard to my F.O.I. Application in 1992. How many unethical business transactions would Telecom expect me to swallow. When I showed that I had had enough I was cunningly transferred over to Freehill Hollingdale & Page where I was misled and deceived by them also. Perhaps, inadvertently, stress nearly won the day for Telecom. The fact that a fault report, via Freehill Hollingdale & Page Telecom's Response Unit, could take up to two weeks to get an answer mattered not to those in charge of Telecom Commercial. Breach of terms and conditions for the supply of a Telecom communication service has taken place.

Mr Arbitrator you would find that Telecom has been negligent in their dealings with my phone service and the actions of Ms Pittard in refusing me historical fault information prior to the settlement was not only negligent, misleading and deceptive, it was also unconscionable conduct. Mr Arbitrator you would also have to wonder about Ms Pittard's statement that I had unlimited use of a telephone and that she was aware that in her absence I made several telephone calls during the negotiation period. Was Ms Pittard that concerned about me that she had this telephone monitored?

#### **Statement Two - Ross Stewart Anderson**

I would address the following issues in respect to the defence statement of Mr Anderson.

147 A

- A. At point 4 Mr Anderson indicates that I took over telephone service 055 267267 on the 6 April 1988 at the Cape Bridgewater Holiday Camp from the previous owner. In fact, as I have previously stated at page 10 of my original letter of claim dated 12 June 1994 I took over Cape Bridgewater Holiday Camp in February 1988 and thus the telephone service.

I make mention of this due to my correspondence to Telecom in 1989, in part addressing the problems I had with Telecom in having them recognise my business as a commercial service. Refer documents 2104 to 2106 of the Cape Bridgewater Assessment Submission 7/6/94.

- B. At point 5, acknowledgment is made of faults on 1100 having been experienced. Previously Telecom have denied that any correspondence exists in regard to this reference document 1289 Cape Bridgewater Assessment Submission 7/6/94.

I now note at Section 25 of the Telecom defence document Appendix file number 5 they have managed to locate details of six faults in 1988 and two faults in 1989 for 055 267267. You will note the same document refers to fault on my Gold phone 055 267260 a month after installation in August 1988.

- C. At points 8, 9 and 10 a reference is made only to 1992 onwards. I am concerned about the accuracy of Telecom's statements about documentation in respect to the years prior to 1992 due to the above paragraph B.

Technicians from Portland certainly attended my premises on a myriad of occasions prior to this. Due to Mr Anderson's early statement at point 2 that he has been at Portland for twenty two years, I would request that you undertake inquiries to establish the technician's records of service for the Cape Bridgewater area prior to and during my time at Cape Bridgewater Holiday Camp. Surely Mr Anderson or Mr Bloomfield or other technicians could give evidence on oath as to the problem they have attended to with the Cape Bridgewater area.

147A



- D. Please refer to page 2/3 with a heading Answering Machine. I have previously explained the answering machine in my letter of claim document dated 12/6/94 at pages 45 to 46.

I do not agree with the account by Mr Anderson, at point 13 where he states that I did not have the Instruction Booklet because the answering machine had been given to me. I can say that I purchased the answering machine from Portland Bulk Store new and I now enclose the Instruction Booklet. If Mr Anderson had asked for the booklet he would have been provided with the same. I believe that Mr Anderson has fabricated this evidence to suit Telecom's defence.

The statements of Mr Anderson at point 11 also seem strange in that he would have a test call made, on his account, by Mr Crease for the length of thirty seconds on the first occasion prior to hearing any click. This would therefore suggest that he did not have any evidence before him at the time to even consider the answering machine as the problem. I would note that all of the test calls made to my premises have been short duration three, four, five ring calls and I believe Mr Anderson should be made to clarify his statement and to produce any contemporaneous notes in regard to his allegations.

- E. In regard to the cordless phone allegations at page 14 to 21 inclusive, I would simply deny the accuracy and substance of the same. I can state that I only had the cordless phone for a period of three months and during that time I had two different phones (at separate times) on the advice of Mr Ray Morris. I would refer you to F.O.I. document A09452 in regard to Loveys Restaurant (*another C.O.T. case*). It would appear Telecom are, as I have previously stated in my Letter of Claim dated 12/6/94 page 44, eager to place the fault on customer equipment.

In my submission you would put no weight on point 26 of the statement in relation to the Gold phone. This is uncorroborated, unqualified and not substantiated in the defence documentation.

147A

- F. I have not left my fax on auto simply due to the fact that I use 055 267230 for outgoing calls. My facsimile machines (two) have been both new and have been installed by professionals. The first facsimile machine was installed by Mark Ross of Telecom and the second machine was installed by Greg from Retravision in Portland. Mr Anderson states in relation to my facsimile line 055 267230 that Portland technicians have attended my premises on at least five occasions. Mr Anderson has neglected to mention his own difficulty in sending facsimiles whilst he attended at my business.
- G. Businesses at Cape Bridgewater. I would draw your attention to the matters at point 37 of Mr Anderson's statement which in my view are questionable.

I have made inquiries and established that none of the "alleged" commercial enterprises or business persons are in the Yellow Pages Directory of Telecom, as a Cape Bridgewater business.

Further, I would bring to your attention that Mr Anderson's "knowledge" at point 38 is questionable. Mr Anderson does not supply the service records and fault histories of these telephone numbers to support his statement. Unfortunately, I would suggest for Telecom, I have located in the defence documents, (please refer to Appendix 5 numbers 19 and 20), fault records that indicate a number of these services have experienced faults. In particular Mr Anderson's "personal friend", Mr Wilson, reported eight faults on both lines between January and March of 1994.

Mr LePage reported five faults between March and May of 1994. Mr Blacksell reported five faults between October 1992 and May 1994. Further, I find that the Seaview Guest House that opened in 1994 (267217) has reported five faults between March 1994 and July of 1994.

The records of faults only cover brief periods of time, that is 3 three month quarters of a period of three years from August 1991 until September 1994. Refer Appendix 4 number 30, Appendix 5 number 20, Appendix 3 number 46, Cape Bridgewater Submission Number Two reference AI Cobpack Adhoc Request.

147A

Therefore records of nine of these three month periods are missing. How many faults are there? You will note that my Submission of Cape Bridgewater Number Two shows thirty faults from 13 January 1992 to 14 August 1992. There are also sixteen faults shown between April and May of 1993.

You would note of course from reference 1145 of my Cape Bridgewater Holiday Camp Assessment dated the 12 June 1994 that on the 4 June 1993 Telecom have sixteen pages of faults between the 2 April 1993 and the 4 June 1993. The eight pages I have previously referenced above contain one hundred and sixteen faults with obviously nine of the twelve quarters missing. If we take into account that document 1145 shows sixteen pages for a two month period, then I would believe you would conclude that the equation would be that for every quarter there are one hundred and sixteen faults shown. The period of my claim is over six years therefore  $24 \times 116 = 2,784$  complaints from sixty seven to eighty consumers.

I believe you would conclude a serious doubt hangs over the statements by Telecom's senior "knowledgeable" technicians for the Cape Bridgewater area.

Mr Arbitrator I would refer you to Page 5 of Mr Anderson's statement with the title Incident with Portland to Cape Bridgewater RCM System Number One 8 March 1994. I would ask that you cross reference this particular incident with the Witness Statement of Mr Banks. At point 13 Mr Banks states that lightning affected the RCM at Cape Bridgewater in late November 1992. Mr Banks however fails to conclude that this fault appeared not to be fixed until late January 1993. I would refer you in this regard to Telecom Defence Appendix 1 at 11 documents D402 on the 9 February 1993. I would also point out in Mr Banks' statements he fails to mention that just seven days prior on the 2 March 1993 that he had found several problems with the RCM System Mr Smith was previously connected to. Mr Banks has not shown the above fault to be of much significance and I would ask the Resource Team to combine further evidence that the lightning strikes mentioned by Mr Banks and in this statement of Mr Anderson are significant. In this regard I would refer you to Telecom Defence document Appendix 5 at 32 at number R01447.

147A

This document states that on the week ending 11 September 1992 another lightning strike has damaged the PTARS.

In this regard Mr Arbitrator I would ask that the Resource Team pay particular attention to the article Can We Fix The Can Appendix Cape Bridgewater 2 Page 79 re lightning strikes. I would quote directly from this article:-

"Lightning strikes are being encouraged by our own actions. Our focus is on quickly getting to the fault rather than preventing the fault. As a result we are ensuring that we get hit by lightening far more often."

Mr Arbitrator apart from drawing the obvious conclusion that Telecom have had a serious problem with lightning strikes in the Cape Bridgewater area for the entire period of my claim, it would appear to be somewhat concerning that Mr Anderson pays particular attention to his statement in all eight pages, however when it comes to lightning he refers to one minor issue on the 8 March 1994, you will note that Mr Anderson is a person who has been with Telecom in Portland for 22 years. You would have to consider that there is a glaring breach of the duty of care or that there is negligence and misleading and deceptive conduct on the part of Telecom and its employees at Portland in not recognising the problems concerned.

Mr Arbitrator I would submit that this particular incident on page 5 of Mr Anderson's statement would have you wondering and would be one particular issue that your Resource Team would want to pay particular attention to. Not only can't Telecom acknowledge their problems but would like to remove the blame into the simplest category that they can. Mr Arbitrator as a result of what Mr Anderson is saying in regard to heat, cooling and moisture you would ask that your Resource Team examine the possibility that the Cape Bridgewater RCM was affected by moisture over the entire period of my claim. Due to the fact that it would appear that the RCM could not be properly sealed I would suggest that you would have to draw the appropriate conclusions based on what I consider would be necessary investigations into this aspect of Telecom's defence.

147A

Mr Arbitrator I would refer you to point 30 in Mr Anderson's statement and I believe that this again shows that Mr Anderson has an ability to not completely represent the true picture of events. Mr Anderson states he organised test calls from Ballarat to 267267 and I would point out that he failed to mention that these calls did not get answered. A note Ross Anderson states several test calls were made and the 267267 telephone rang. Ross Anderson was at my business. It would appear strange he didn't take the trouble to answer those seventeen test calls. Dr Hughes like the time with my answering machine and my cordless machine, things did not register correctly. I ask the Resource Team to check my 008 account for those seventeen test calls and note that I was charged for those calls yet the conversation time ranged from two seconds to five seconds.

Ross Anderson has clarified one thing in his statement, the telephone rang ok, he never mentioned he answered the test calls, how could he have a two second conversation or a five second conversation with a fellow Telecom technician.

I have continually complained to Telecom, Austel that I have been incorrectly charged for my phone service. This is just one of many incidents where there is proof yet still denied by the powers to be within Telstra.

### **Statement 3 - David John Stockdale**

I would argue that Mr Stockdale's assessment of RVA problems at points 9 through 12 inclusive is understating the problem. I refer you to pages 14, 15 and 16 of my Second Report of Cape Bridgewater. I doubt if Telecom really know the periods of this fault and I suggest investigations and evidence already presented in my Submission confirm recorded voice announcements throughout the period of my claim. It is interesting that Mr Stockdale mentions only one fault of substance was found to be a problem on my service. If this is the case then Rosanna Pittard, Telecom General Manager Commercial Victoria/Tasmania has badgered me into a settlement of \$80,000.00 for one fault of substance. Perhaps by this arrangement Ms Pittard has set a precedent. I consider that you would find throughout your investigations that I certainly had considerably more than one fault of substance.

147A

|            |           |     |     |     |       |       |  |  |           |      |
|------------|-----------|-----|-----|-----|-------|-------|--|--|-----------|------|
| A055267268 | 08-MAR-94 | NDT | CUS | LOU | ZR3HL |       |  |  | 09-MAR-94 | CBWR |
| A055267257 | 08-MAR-94 | NDT | REP | LOU | ZR3HL |       |  |  | 09-MAR-94 | CBWR |
| A055267268 | 10-MAR-94 | COS | FRQ | CUS | GOU   | ZR7J3 |  |  | 10-MAR-94 | CBWR |
| A055267217 | 10-MAR-94 | NDT | REP | GOU | ZR7J3 |       |  |  | 10-MAR-94 | CBWR |
| A055267204 | 09-MAR-94 | NDT | CUS | GOU | ZR7J3 |       |  |  | 10-MAR-94 | CBWR |
| A055267276 | 10-MAR-94 | NDT | CUS | GOU | ZR7J3 |       |  |  | 10-MAR-94 | CBWR |
| A055267275 | 09-MAR-94 | NDT | NRR | CUS | TPU   | ZR7J3 |  |  | 10-MAR-94 | CBWR |
| A055267237 | 09-MAR-94 | NDT | CUS | LOU | ZR7J3 |       |  |  | 10-MAR-94 | CBWR |
| A055267213 | 09-MAR-94 | NDT | CUS | GOU | ZR7J3 |       |  |  | 10-MAR-94 | CBWR |
| A055267265 | 09-MAR-94 | NDT | TEC | GOW | ZR7J3 |       |  |  | 10-MAR-94 | CBWR |
| A055267257 | 09-MAR-94 | NDT | FRP | CUS | GOU   | ZR7J3 |  |  | 10-MAR-94 | CBWR |
| A055267277 | 10-MAR-94 | NRR | CUS | GOW | ZR7J3 |       |  |  | 10-MAR-94 | CBWR |
| A055267260 | 10-MAR-94 | NDT | CUS | GOU | TANL  | C3D7H |  |  | 11-MAR-94 | CBWR |
| A055267246 | 11-MAR-94 | NDT | CUS | MSR | ZR7J3 |       |  |  | 11-MAR-94 | CBWR |
| A055267269 | 11-MAR-94 | NDT | CUS | MSR | ZR7J3 |       |  |  | 11-MAR-94 | CBWR |
| A055267277 | 11-MAR-94 | NDT | CUS | MSU | ZR7J3 |       |  |  | 11-MAR-94 | CBWR |
| A055267276 | 11-MAR-94 | NDT | FRP | CUS | MSU   | ZR7J3 |  |  | 11-MAR-94 | CBWR |

| FNN        | DATE_IN   | TR1 | TR2 | TR3 | ROT | FC1   | FC2 | FC3 | DATE_OUT  | EXCH |
|------------|-----------|-----|-----|-----|-----|-------|-----|-----|-----------|------|
| A055267275 | 11-MAR-94 | NDT | RCF | CUS | MSR | ZR7J3 |     |     | 11-MAR-94 | CBWR |
| A055267217 | 10-MAR-94 | NDT |     | REP | MSW | ZR7J3 |     |     | 11-MAR-94 | CBWR |
| A055267260 | 10-MAR-94 | NDT | DDO | CUS | PRW | ZR7J3 |     |     | 11-MAR-94 | CBWR |

|            |           |     |     |     |     |       |       |  |           |      |
|------------|-----------|-----|-----|-----|-----|-------|-------|--|-----------|------|
| A055267254 | 18-JAN-94 | ANC |     | CUS | GLW | G7SR9 |       |  | 19-JAN-94 | CBWR |
| A055267281 | 18-JAN-94 | NDT |     | TEC |     | G3CRH |       |  | 19-JAN-94 | CBWR |
| A055267280 | 18-JAN-94 | NDT | URG | CUS | GOU | TANL  | G3CRH |  | 19-JAN-94 | CBWR |
| A055267258 | 01-FEB-94 | NSY | ALL | CUS | LMW | G3CRH |       |  | 02-FEB-94 | CBWR |
| A055267271 | 07-FEB-94 | BNU | NDT | CUS | GEU | GRNT  | TAUJF |  | 08-FEB-94 | CBWR |
| A055267267 | 14-FEB-94 | BYO |     | OTH | BYO | Q     |       |  | 14-FEB-94 | CBWR |
| A055267267 | 14-FEB-94 | BNU | INT | CUS | GOW | TANK  | X1NRZ |  | 16-FEB-94 | CBWR |
| A055267282 | 16-FEB-94 | FLT | IPS | TEC | GN+ | OP27W |       |  | 19-FEB-94 | CBWR |
| A055267280 | 24-FEB-94 | NSY | ITR | CUS | LMW | G3CRH |       |  | 28-FEB-94 | CBWR |
| A055267280 | 01-MAR-94 | NDT |     | CUS | GOU | G3CRH |       |  | 01-MAR-94 | CBWR |
| A055267230 | 28-FEB-94 | NRR |     | CUS | XRG | X1B2Z |       |  | 02-MAR-94 | CBWR |
| A055267280 | 09-MAR-94 | NDT |     | REP |     | G3C7H |       |  | 09-MAR-94 | CBWR |
| A055267276 | 09-MAR-94 | NDT |     | CUS | GOU | ZR3HL |       |  | 09-MAR-94 | CBWR |
| A055267204 | 08-MAR-94 | NDT |     | REP | LOU | ZR3HL |       |  | 09-MAR-94 | CBWR |
| A055267258 | 08-MAR-94 | NDT |     | CUS | LOU | ZR3HL |       |  | 09-MAR-94 | CBWR |
| A055267213 | 08-MAR-94 | NDT |     | REP | LOU | ZR3HL |       |  | 09-MAR-94 | CBWR |

| FNN        | DATE_IN   | TR1 | TR2 | TR3 | ROT | FC1   | FC2 | FC3 | DATE_OUT  | EXCH |
|------------|-----------|-----|-----|-----|-----|-------|-----|-----|-----------|------|
| A055267237 | 09-MAR-94 | NDT |     | REP | LOU | ZR3HL |     |     | 09-MAR-94 | CBWR |
| A055267222 | 09-MAR-94 | NDT |     | CUS | LOU | ZR3HL |     |     | 09-MAR-94 | CBWR |
| A055267217 | 09-MAR-94 | NDT |     | REP | LOU | ZR3HL |     |     | 09-MAR-94 | CBWR |
| A055267260 | 09-MAR-94 | NDT |     | EMP | GOU | ZR3HL |     |     | 09-MAR-94 | CBWR |

|            |           |     |     |     |     |       |       |  |           |      |
|------------|-----------|-----|-----|-----|-----|-------|-------|--|-----------|------|
| A055267213 | 11-MAR-94 | NDT | INT | CUS | NSR | ZR7J3 |       |  | 11-MAR-94 | CBWR |
| A055267267 | 12-MAR-94 | ROO |     | CUS | NFW | X     |       |  | 13-MAR-94 | CBWR |
| A055267275 | 11-MAR-94 | NRR | NDT | CUS | LOU | GRNT  | ZROJF |  | 15-MAR-94 | CBWR |
| A055267293 | 10-MAR-94 | NDT |     | CUS | GOU | TANL  | G1HRH |  | 15-MAR-94 | CBWR |
| A055267268 | 16-MAR-94 | COS | FRQ | CUS | NFW | X     |       |  | 17-MAR-94 | CBWR |
| A055267260 | 19-MAR-94 | NDT | NRR | CUS | PRW | ZR7J3 |       |  | 19-MAR-94 | CBWR |
| A055267280 | 19-MAR-94 | NDT |     | CUS | LOU | G3C2H |       |  | 19-MAR-94 | CBWR |
| A055267271 | 19-MAR-94 | NDT |     | CUS | LOU | ZR7J3 |       |  | 21-MAR-94 | CBWR |
| A055267213 | 19-MAR-94 | NDT |     | REP | LOU | ZR7J3 |       |  | 21-MAR-94 | CBWR |
| A055267204 | 19-MAR-94 | NDT |     | REP | LOU | ZR7J3 |       |  | 21-MAR-94 | CBWR |
| A055267269 | 19-MAR-94 | NDT |     | CUS | GOU | ZR7J3 |       |  | 21-MAR-94 | CBWR |
| A055267224 | 19-MAR-94 | NDT |     | CUS | GOU | ZR7J3 |       |  | 21-MAR-94 | CBWR |
| A055267211 | 24-MAR-94 | ALL | OKY | EMP | GOW | Z3BNN |       |  | 24-MAR-94 | CBWR |
| A055267213 | 23-MAR-94 | NDT | NRR | CUS | XHU | ZR7J3 |       |  | 24-MAR-94 | CBWR |
| A055267269 | 22-MAR-94 | CCO | FRQ | CUS | XTC | ZR7J3 |       |  | 24-MAR-94 | CBWR |
| A055267275 | 22-MAR-94 | NDT | INT | CUS | GOW | ZR7J3 |       |  | 24-MAR-94 | CBWR |
| A055267265 | 23-MAR-94 | NDT | INT | CUS | GOW | ZR7J3 |       |  | 24-MAR-94 | CBWR |
| A055267271 | 23-MAR-94 | NDT | NRR | CUS | XHU | ZR7J3 |       |  | 24-MAR-94 | CBWR |

| FNN        | DATE_IN   | TR1 | TR2 | TR3 | ROT | FC1   | FC2   | FC3 | DATE_OUT  | EXCH |
|------------|-----------|-----|-----|-----|-----|-------|-------|-----|-----------|------|
| A055267253 | 23-MAR-94 | NDT |     | CUS | GOW | TAUJF | GKCRF |     | 24-MAR-94 | CBWR |
| A055267267 | 29-MAR-94 | NRR |     | CUS | XHU | X1NRZ |       |     | 29-MAR-94 | CBWR |

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|              |           |     |     |     |       |           |           |           |      |
|--------------|-----------|-----|-----|-----|-------|-----------|-----------|-----------|------|
| A055267268   | 21-MAY-94 | BYO | OTH | BYO | Q     | 01-JUN-94 | CBWR      |           |      |
| A055267267 ← | 15-JUN-94 | ROO | CUS | XRC | XINXZ | 16-JUN-94 | CBWR      |           |      |
| A055267230 ← | 14-JUN-94 | ROO | CUS | XRG | XINXZ | 16-JUN-94 | CBWR      |           |      |
| A055267267 ← | 23-JUN-94 | ROO | CUS | XRW | XINXZ | 24-JUN-94 | CBWR      |           |      |
| A055267239   | 30-JUN-94 | CTK | CUS | GOW | ZRAJF | 30-JUN-94 | CBWR      |           |      |
| A055267267 ← | 01-JUL-94 | NSF | OGC | CUS | XRW   | XENNN     | 01-JUL-94 | CBWR      |      |
| A055267267 ← | 11-JUL-94 | ROO | NRR | CUS | XRW   | XINNN     | 11-JUL-94 | CBWR      |      |
| A055267280 ← | 11-JUL-94 | EZC | EPF | CUS |       | TANCC     | 11-JUL-94 | CBWR      |      |
| A055267230 ← | 11-JUL-94 | NSF | CUS | FZW | XINNN |           | 12-JUL-94 | CBWR      |      |
| A055267295   | 15-JUL-94 | BAO | CUS | XOW | X1TH6 |           | 18-JUL-94 | CBWR      |      |
| A055267241   | 18-JUL-94 | BYO | OTH | NFW | N     |           | 19-JUL-94 | CBWR      |      |
| A055267230 ← | 25-JUL-94 | NSF | CUS | FZW | XINZ1 |           | 25-JUL-94 | CBWR      |      |
| A055267217   | 28-JUL-94 | NDT | CUS | LOU | GMTRF |           | 29-JUL-94 | CBWR      |      |
| A055267217   | 29-JUL-94 | NRR | REP | GOU | TANNC |           | 01-AUG-94 | CBWR      |      |
| A055267267 ← | 20-AUG-94 | NSY | CUS | NFW | J     |           | 20-AUG-94 | CBWR      |      |
| A055267267 ← | 22-AUG-94 | NSY | ICC | CUS | XNU   | X1NT      | TANNN     | 23-AUG-94 | CBWR |
| A055267271   | 12-SEP-94 | NDT | CUS | GOU | ZR3JU | ZR4JU     |           | 13-SEP-94 | CBWR |

290 rows selected.

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18/11/02

**Mr Alan Smith**  
**Cape Bridgewater Convention Centre and Holiday Camp**  
**Blowholes Road**  
**Cape Bridgewater. Vic 3305**

**Re. Casualties of Telstra.**

**Dear Alan**

I am writing to you following viewing the Channel 9 Sunday Program on 3/11/02. After viewing the Sunday program, I realised the similarities your business and others had with Telstra some ten years ago with the similarities our building business had, when we lived at Bridgewater.

During a period of time between the late 1980s and early 1990s we had a considerable amount of difficulty with our phone. The problem with our phone line was although we could ring out to people, people couldn't ring through to us. They appeared to receive an engaged signal. We weren't aware of the problem until business friends and relations in Portland stated that they had tried on several occasions to ring us but couldn't get through. We were aware of the times when they rang as we were home at the time. The calls never rang through to our house.

During this period of time I was on a call talking to a councilor. She believed that the conversation we were having was being bugged, or listen into, and so we immediately ceased the call. At the time I was having difficulty with Kalari Transports and I believed they were involved. They were stopping us from building our house on the farm.

Our phone problem had such a negative effect on our building business over a period of time that our work dried up and our business shut down. Our business had been running successfully for several years prior to the phone problem. I ended up having to find alternative employment on wages and now live and work in Adelaide with my family. It has taken us several years to financially recover from the business closing and we are just starting to break even today.

During that period of time I may have complained to the Telecom Ombudsman but as it was some time ago I cannot fully recall. About three to four years ago (just before I left Portland) I received a call from the Victorian Police Fraud Squad inquiring about Telstra, the difficulties we had with Telstra and a Portland Telecom Technician by the name of Anderson. The police officer did not go into detail as to what he was investigating.

It now appears that after watching the Sunday program, we were possibly one of the 'Casualties of Telstra'.

If you have any information that would bring us up to speed on this issue or a contact list for assistance or advice could you please forward the information to the address noted below.

**Yours faithfully**



**Barry Sullivan**  
**27 Shelley Avenue**  
**NETLEY SA 5037**

**Mobile 0407 352 527**  
**AH (08) 8371 1313**

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*Cape Bridgewater Holiday Camp and Convention Centre  
Portland, Victoria, 3305*

Mr John Wynack  
Director of Investigations  
Commonwealth Ombudsman's Office  
1 Farrell Place  
Canberra  
ACT 2601

30th January, 1995

Dear Mr Wynack,

Even at this late date Telecom are still withholding documents requested under my FOI applications.

I do not wish to drip-feed the Arbitrator, Dr Gordon Hughes, with letters asking for this document and that document etc., however, I originally asked Telecom for fault history on my service and documents to substantiate my complaints back in June, 1992. Telecom then wrote to me on 3rd July, 1992 stating that no records or data existed prior to June 27, 1991. This has since been proven to be a lie. This information was withheld to disadvantage me during the lead-up to a settlement procedure on 11th December, 1992.

Telecom are still playing the same game. A document titled "*Difficult Network Faults - PCM Multiplexer Report*", which is attached, confirms that there are documents from before June 27, 1991. The first paragraph of this document relates to complaints on file since 1987; I have not seen these files. The last paragraph of this same document states that records show that the "*Siemens A735 Loop Multiplexers never failed on the Cape Bridgewater trunk and this is supported by the probability of failure statistics.*" Again, I have not received this documentation.

These are just two examples where Telecom have withheld documents. There are many other issues and requests for data that the Arbitrator, Dr Gordon Hughes, is addressing in the Arbitration Procedure.

I would be obliged if the Commonwealth Ombudsman's Office would request that Telecom supply the information mentioned above. I would also like to draw attention to a copy of a letter, addressed to Ms Jill Cardiff, Senior Assistant Commonwealth Ombudsman, received 18th December, 1992. Page two of this letter, states that on 28/7/92, a PTARS was installed at the customer's premises. Paragraph two goes on to say that 34,686 calls were made to this PTARS:

1. Telecom have refused to provide this data  
and
2. Telecom has stated that a loss of some 106 network faults transpired.

This statement by Telecom is incorrect. A document gained under FOI shows, in a graph/table, that the network loss was, in fact, 1,569 call losses.

This same document, in paragraph three, states that on 29/9/92 a CCAE was connected to my incoming line, generating from the RCM at Cape Bridgewater. Page 3 of this letter, in the first paragraph, states that no call losses were experienced at the customer's premises: this statement is incorrect. Attached please find a FOI document, a Telecom local report, which is from the actual tapes taken from this CCAE machine. The hand written notes are from Telecom technicians at Portland. These show that not all intended calls were arriving at my business. Again, these are only examples (tapes from this machine). I have further tapes which can be forwarded if need be, to substantiate my claim.

In conclusion to this segment, Telecom knew of failed calls: they also knew of a much greater fault loss, that is, if those calls did generate into my business via the PTARS unit, supplied by Telecom. At no time did I see raw data evidence, or was I shown any information of this testing procedure. Either

way, Telecom have fabricated a fault finding to the Ombudsman's Office. 106 faults compared to 1,569 faults is certainly some kind of discrepancy.

If I might return to page two of the letter to Ms Jill Cardiff: Telecom states that on 2/10/92 a faulty register was found and fixed five days later. This is again incorrect. The fault was detected on the 2/9/92 and fixed only some 35 days later.

Mr. Wynack, I further table five documents received through my FOI requests. These documents are numbered by Telecom K47562 to K47565 and R01623. I consider the letter to Ms Fay Hothuzen to be misleading and deceptive when it is viewed in conjunction with my letter to Mr Holmes (R01623). Telecom was prepared to mislead even the Department of Communications and the Arts.

We have faults down-played on the 2/9/92 by 30 days, we have deceptive and misleading statements to Ms Jill Cardiff, and now also to Ms Fay Hothuzen. It appears that Telecom will stop at nothing, just to starve C.O.T. and its members from gaining the truth.

I have presented these examples in this letter as evidence of Telecom Corporate's disregard for those who challenge their integrity.

I thank your office and your officers, who have shown that democracy is alive in some Government Departments.

Most respectfully,

Alan Smith  
Cape Bridgewater Holiday Camp and Convention Centre  
Portland, 3305

**Conclusion 3.3.1**

During the Part A period Telecom undertook a thorough investigation of CBHC's service involving thousands of test calls. These investigations identified the following conditions where action was required.

| Date       | Condition                                | Effect Incoming CBHC Service                 | Period Lasted | Condition Intermittent | Impact Smith's Service                                  |
|------------|--|--|---------------|------------------------|---|
| 28/6/1991  | Final selector                           | Yes  | 3 days        | Yes                    | Minimal   |
| 4/3/1992   | MELU data                                | Yes  | 16 days       | No                     | Minimal: est. 35 calls                                  |
| 2/8/1992   | NNI Congestion                           | Yes  | < 1 day       | Yes                    | Minimal   |
| 28/9/1992  | Software Condition                       | Yes  | 1.5 hours     | No                     | Minimal   |
| 7/10/92    | Register 34                              | Yes  | < 6 days      | Yes                    | Minimal: affected only 1.5% of all calls from Portland  |
| 8/10/1992  | Cable                                    | Yes  | unknown       | No                     | Minimal: (only calls to or from 1 of 4 local customers) |
| 21/11/1992 | Lightning strike damage to RCM equipment | No evidence to indicate - no CBHC complaints | 4 days        | No                     | No evidence to indicate                                 |

From the table above it is noted that:

- none of the conditions located specifically effected Smith's service;
- only 6 of the 7 conditions had any impact on Smith's service; and
- of the 6 problems located all had a minimal impact upon Smith's service.

"Congestion could have been experienced by callers due to a combination of the two faults indicated above and the volume of test calls being generated by Telecom to locate faults. I understand that some of your customers expressed this condition as 'getting busy tone' when you were not using the telephone."

## 2.8 RCM 1 Failure due to Lightning Strike 21 November 1992 Affected Service for Four Days

\* A lightning strike on 21 November damaged the Cape Bridgewater RCM equipment: Telecom received 22 customer complaints from CB customers for No dial tone, No ring received, noisy. No complaint was identified from CBHC, however RCM 1 was affected, and this was the unit CBHC services were on. The condition affected services for 4 days, before restorative action was taken, which may have been less than successful, refer 2.9.

## 2.9 Various Call Problems for 50-70 Days

Network 'reception' breaks during STD calls - (reported 6 January 1993 - fault occurred two-to-three weeks prior to this).

Believed to be network problems (ref B004 1/4), and occurring in RCM 1 - RCM 1 was reporting a large number of degraded minutes--i.e., minutes in which error ratio is worse than 1 in  $10^{-6}$  (ref B004 1/4 internal letter of 12 July 1993 reporting on this matter).

Problems had been occurring for some time (such as, clicking, breaks in transmission, and callers not getting through). Mr Smith's services (with the exception of the Goldphone) were transferred to RCM systems 2 and 3 on 24 February 1993. Mr Smith's services were affected for at least 50 days (probably 70 days) whilst the RCM problems were tracked down. Telecom initially investigated CAN with NFF, but subsequent investigations 'revealed 4 problems with the CB RCM' - i.e., it was a network problem (refer to the copies of correspondence dated 12 July 1993, and further system difficulties occurring early in 1994 - 2.21.).

Telecom Pair Gains Support expert group (E-mail of 5/3/93 from RM) found on RCM 1:

"Major problem, faulty termination of resistors on bearer block protection" - this is believed to be protection against lightning strikes, and the problem could have been in place since the repair due to the strike of 21 November, and "another (problem) caused by non modification to channel cards" - that is, modification to correct design faults (as detailed in Work Specifications) had not been carried out.

K01173

9/2/93

↓  
I contacted Don Bloomfield (Portland Customer ops.) to discuss Alan Smith's problems. It is his opinion and this is supported by data retrieved from OPAS that there were problems in the RCM caused by a lightning strike to a bearing in late November. The problems (damaged PCB's etc.) appeared to be resolved by late January and fault reports for the past 2 weeks. Don believes

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and 7 October 1992, with the effect being that a small percentage (2.5% of Portland area traffic) to CBHC was affected;

- damage was caused to Cape Bridgewater RCM equipment by a lightning strike on 21 November 1992, resulting in a variety of complaints which affected services for 4 days before restorative action was taken. The restorative action "may have been less than successful"; ✓
- the claimant's services were affected for at least 50 days (probably 70 days) in early 1993 whilst RCM1 problems were tracked down and work specifications to correct known design faults were carried out;
- there is evidence that in March 1993, because Warrnambool AXE was under provided with call supervision devices ("CL-Blocks"), calls would drop out after one burst of ring during high traffic periods. This affected calls sourced from this area, estimated to be in the order of 10% of Cape Bridgewater Holiday Camp traffic;
- on 29 March 1993, all Cape Bridgewater services were off the air for 9 minutes due to a software fault in Portland AXE Exchange;
- between 3 April and 5 June 1993, network faults caused a range of problems;
- there is evidence of problems arising from a Malicious Call Trace (MCT) facility placed on the claimant's line in May 1993. Although normally used by Telecom to assist customers in identifying unwelcome callers, the MCT was placed on the claimant's service at the Portland exchange in an attempt to determine who was calling the claimant so that this information could be matched against complaints. David John Stockdale states that Telecom "inadvertently caused a fault ourselves as part of implemented testing procedures", that is, the MCT. Problems arising from this process included the fact that calls could not be made or received for a 90 second period following hang-up. This problem existed until early August 1993;
- there is evidence that congestion on the Warrnambool to Portland Exchange route may have caused "false busies" between March 1993 and April 1994;
- there is evidence that calls from coin operated pay phones connected to the Portland AXE104 would drop out on answer when calling a 008 number between June and August 1993. This condition affected calls to CBHC 008 number from pay phones in the Portland area and calls from the gold phones to 008 numbers;

2.3 Some Calls Wrongly Directed to Recorded Voice Announcement (RVA) for 16 Days, March 1992

In response to complaints from Mr Smith and others from CB, Telecom checking indicated that due to a data entry error on the Melbourne Windsor Trunk exchange (MELU) all calls through this exchange to CB (at least 33% of Melbourne and interstate traffic) were directed to RVA for at least 16 days and possibly longer. ↙

There are some inconsistent statements on this situation:

Ref: Mr D Lucas, Area Manager - Special Products letter to Mr A Smith 23 November 1992.

"This fault affected incoming STD calls from Melbourne to CB for a period of up to 3 weeks prior to fault being fixed. The maximum impact on your incoming STD calls from Melbourne would have been up to 50%."

Ref: Telecom Australia B004 Alan Smith - CBHC Services History [p 18]

"Whilst it was initially thought that the problem may have existed for a 6 week period, subsequent investigations confirmed its existence for a total of 16 days (refer witness statement of Hew MacIntosh and David Stockdale)."

and

"However, it is estimated that the MELU problem would have resulted in 33% of callers from Melbourne (or passing through Melbourne e.g. from South Australia) to all customers in the 055 267 XXX number range receiving RVA."

The Telecom report further suggests "callers could have reached CBHC by adopting one of the following methods,"

- a) 'redialling' (with no comment that the probability of failure was again at least 33%)
- b) "contacting an operator" - i.e. STD has been ineffective.

Mr Smith's estimate of call distribution is that 60% of calls to CBHC originate from the affected areas, all of which had a 33% probability of failure. This in effect failed at least 20% of CBHC business traffic with mis-direction to RVA for the period of the fault. The number of callers who may never have redialled is unknown.

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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



**FAXED**  
13/4/95



Office of Customer Affairs  
Commercial & Consumer

Level 37  
242 Exhibition Street  
Melbourne Vic. 3000

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

13 April 1995

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

By facsimile: (03) 614 8730

Dear Dr Hughes

Arbitration - Smith

Attached is a copy of a facsimile from Peter Gamble of Telecom to David Read of the Resource Unit dated 31 March 1995. It is being made available to you for your information and in case you consider Mr Smith should be provided with a copy.

Yours faithfully

Ted Benjamin  
Group Manager  
Customer Affairs

Attach: copy of facsimile from Peter Gamble

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AG3328

Facsimile



To David Read

From

Peter Gamble  
Manager, Engineering  
and Technical Support

Commercial & Consumer  
Customer Affairs

Facsimile 08 364 5335

File

19/22 Exhibition Street  
Melbourne  
VIC 3000  
Australia

Company Lane  
Telecommunications

Date

31 March, 1995

Telephone (03) 204 5566  
Mobile 018 325 292  
Facsimile (03) 204 5571

Location 181 Fullarton Rd,  
Dulwich, SA

Total Pages 1

**FAXED**  
31/3/95

Visit to Portland and Cape Bridgewater

Dear Mr Read

This is to confirm our recent telephone discussions regarding your visit to Portland and Cape Bridgewater Exchanges on Wednesday 5th April 1995. I am arranging for relevant staff to be present to explain to you the operation and testing procedures for the Cape Bridgewater RCM.

I am also following up your question regarding the increase of CL individuals at the Warrnambool AXE Exchange during March 1993.

I understand that you also wish to visit Mr Alan Smith's premises and assume that you will contact Mr Smith directly to make the necessary arrangements.

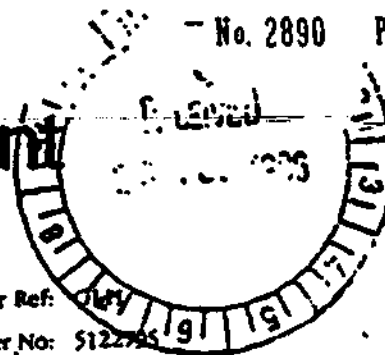
Assuming that your travel arrangements are as previously discussed, I will meet you on arrival at the Portland airport at 9.40 am on Wednesday and transport you to the various sites. Should there be any additional requirements or difficulties with these arrangements, please do not hesitate to contact me either on (03) 204 5566 or 018 325 292.

Peter Gamble

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A63329

**Hunt & Hunt**  
LAWYERS



Our Ref: 01/96  
Matter No: 5122795

Partners  
Edward M. Scarlett  
Edward S. Boyce  
James C.F. Mather  
Gordon L. Hughes  
Mark T. Knapman  
David P. Connor  
Ian S. Craig  
Peter J. Eoin  
Peter G. France  
Jerril M. Ughwade  
Wayne B. Cahill  
Neville C.J. Debra  
Grant D. Sofron  
Charles Vevert  
William P. O'Shea  
David G. Watts

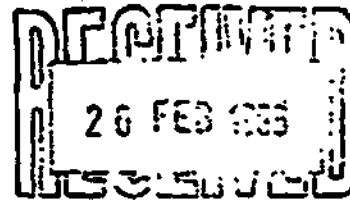
Consultants  
Kenneth M. Martin  
Richard L. Kellerman  
Andrew Jenkins

Associates  
Shane C. Hird  
John S. Walker  
Melissa A. Strickland  
Frances V. Gault  
Julia P. Smith  
Michael S. Carrick

Incorporating  
Francis Abourel I

16 February 1996

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.

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.

Melb  
Syd  
Sydney  
Brisb  
Canber  
Newcas  
Perth  
Adelaid  
Darwin

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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)

**Telecom**  
AUSTRALIAOffice of Customer Affairs  
Complaints & ConcenerLevel 27  
242 Exhibition Street  
Melbourne Vic. 3000Telephone (03) 634 2977  
Facsimile (03) 632 3236

12 April 1996

Dr Gordon Hughes  
Hunt & Hunt  
Lawyers  
Level 21  
459 Collins Street  
MELBOURNE VIC 3000**BY COURIER**

Dear Dr Hughes

Arbitration - Smith

I refer to your facsimile of 7 March 1996 and the attached facsimile letter of 3 March 1996 from Mr Smith.

In relation to the "second document" referred to at paragraph 2 of the Claimant's facsimile I advise that Telecom is prepared to make available the further data being sought by the Claimant. That further data consists of:-

1. the telephone in question;
2. a report titled "Technical Report TF200 Customer Complaint"

A copy of the Technical Report is enclosed. As you will see there are two authors of that report and each author is available to provide a statutory declaration regarding the report if you so require.

The telephone can be provided to you if you so require.

Yours faithfully

Ted Benjamin  
Group Manager  
Customer Affairs

Encl: Technical Report

A63339

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FAX FROM: ALAN SMITH  
C. O. T. DATE: 17.4.95

FAX NO: 056 267 230

PHONE NO: 008 818 522 NUMBER OF PAGES (including this page) 10

FAX TO: DR GORDON HUGHES  
HUNT & HUNT  
LAWYERS  
MELBOURNE

Dear Dr Hughes,

I refer to Mr Benjamin's letter of 12th April, 1995, addressed to Dr Gordon Hughes, points 1 and 2.

I believed when I asked the Arbitration Procedure to access, from Telecom, all written, original notes regarding the TF200 (267 230) that this would include all original report notes and the contents of the TF200 report, however, all I received from your office, by courier, was a copy of the report, in printed form, which had already been viewed in Telecom's Defence documents.

Included with this letter are five faxes: three are copies of photos taken of my TF200 when it arrived at Telecom laboratories; the other two speak for themselves.

In Telecom's TF200 report it is stated that my phone was received by the laboratories in a somewhat dirty condition. When viewing the three photocopies attached you will wonder, I am sure, how one photo of the TF200 appears to be more discoloured to the others. Presumably they were taken on the same day.

I am asking the Arbitration Procedure to access the negatives of the three photos concerned and that copies of these negatives be sent, not only to the Arbitration Procedure, but also to the address on the fax included with this letter. I do not, however, require these results to be included in my claim, therefore holding up the deliberation period.

I believe that you will understand my concern when you take into consideration the late FOI material, presented by Telecom on 23rd December, 1994, after my final submission had been completed and submitted to your office and the fact that these documents included a fault logged on 6/7/93 - a similar fault to the one in question in the TF200 report. When you also take into account that it was not until some nine months after the 6/7/93 that Telecom (on the 28/4/94) decided to take this TF200 to their laboratories for testing.

The fact that Telecom has stated in this report that the TF200 arrived in a somewhat dirty condition causes me to wonder. Considering that the Telecom report states that the TF200 in question was manufactured in the 13th week of 1993, if the first reported fault was made on the 6/7/93 (24 weeks into 1993) I note that this only allows a period of 11 weeks from the time of manufacture for this 'somewhat dirty condition' to occur on this occasion.

If the photocopying in this TF200 report was impaired in any way, by incorrect lighting, texture etc, Telecom should have advised of this fault. They did not.

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These photos show vastly different colour variations in the same elevation shot of the label which was stuck to the keypad of the TF200 in question. My doubt is now substantiated since Telecom did not address these photos, other than to state that my phone was received in a dirty condition.

Dr Hughes, I am raising this issue as an Australian, not just because I am part of this Arbitration Procedure. It is imperative that the negatives of these photos be made available, via courier, to your office immediately as well as being forwarded to Mr Westwood.

*I again state emphatically that I do not wish this decision, either way, to interfere with your deliberation.*

Sincerely,

cc Mr Ted Benjamin, General Manager, Customer Response Unit, Telecom  
Mr Bartlett, Solicitor, Miner Ellison Morris Fletcher.



Alan Smith



APR 16 '95 12:04

# FORENSIC DOCUMENT SERVICES PTY LTD

A.C.N. 063 306 132

THE SCIENTIFIC EXAMINATION OF QUESTIONED  
DOCUMENTS AND HANDWRITING

## PRINCIPAL LABORATORY

P.O. Box 543,  
QUEANBEYAN, NSW 2620 Australia.  
Telephone: (06) 2383443, 2383310  
Mobile No: 018 622773  
Facsimile: (06) 2383407  
DX: 24308 Queanbeyan.

## SYDNEY LABORATORY

9 Ivy Street,  
CHIPPENDALE, NSW 2006.  
Australia.  
Telephone: (02) 3103037  
Facsimile: (02) 3193002

# FACSIMILE

Our ref:  
Your ref:

DATE: 16-4-95  
TO: Alan Smith.

TIME: 1200

FACSIMILE NUMBER: 0552672

ATTENTION:

FROM: Paul Westwood

RE:

PLEASE ADDRESS ALL CORRESPONDENCE TO:

Principal Laboratory

Total number of pages including this page:

The information in this facsimile transmission is confidential and may be the subject of legal professional privilege. The confidentiality attaching to this facsimile transmission is not negated by reason of the fact that this document has been transmitted to the incorrect number.

*Confidentiality undertaking follows*



Schedule E

Confidentiality Undertaking

TO: The Administrator - Fast Track Arbitration Procedure  
Telecommunications Industry Ombudsman  
Ground Floor, 321 Exhibition Street  
Melbourne, VIC 3000

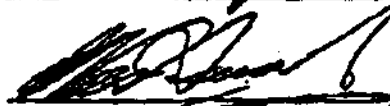
I, Paul Davison Westwood [print full name]  
of 7 Bingley Way Waverley NSW [print address]  
2628

acknowledge that I may receive or become aware of confidential information relating to the "Fast Track" arbitration procedure (defined in clause 16 of the Fast Track Arbitration Procedure as the "Confidential Information") and therefore I hereby undertake and acknowledge to each of the Administrator, the Arbitrator, the Claimant and Telecom Australia (as defined in clauses 1 and 3 of the Fast Track Arbitration Procedure) at all times that:

1. I shall not divulge any Confidential Information to, or permit it (whether by act or omission) to come into the hands of or be or become available to, any person or persons other than in accordance with clause 2 hereof.
2. I shall not use any Confidential Information for any purpose other than as I am directed to use it by the Arbitrator, the Claimant, or Telecom Australia as the case may be, in the course of providing services to that party.
3. I shall take all reasonable steps as I may be advised to take by the Administrator and/or the Arbitrator, to cause and ensure that any Confidential Information is kept in the strictest confidence.
4. I shall return all documents containing Confidential Information which I receive, and all copies thereof, to the party who provided me with such documents, within 6 weeks of publication of the Arbitrator's award.
5. These undertakings shall have full force and effect and shall operate at all times hereafter notwithstanding that I may subsequently cease to provide services to the Arbitrator, the Claimant, or Telecom Australia as the case may be.

Dated Sixteenth day of April 1995

Signed by the person whose )  
name and address are inserted )  
above, in the presence of )

  
Signature

  
Signature of Witness

Allen John HART  
Full name of Witness

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C

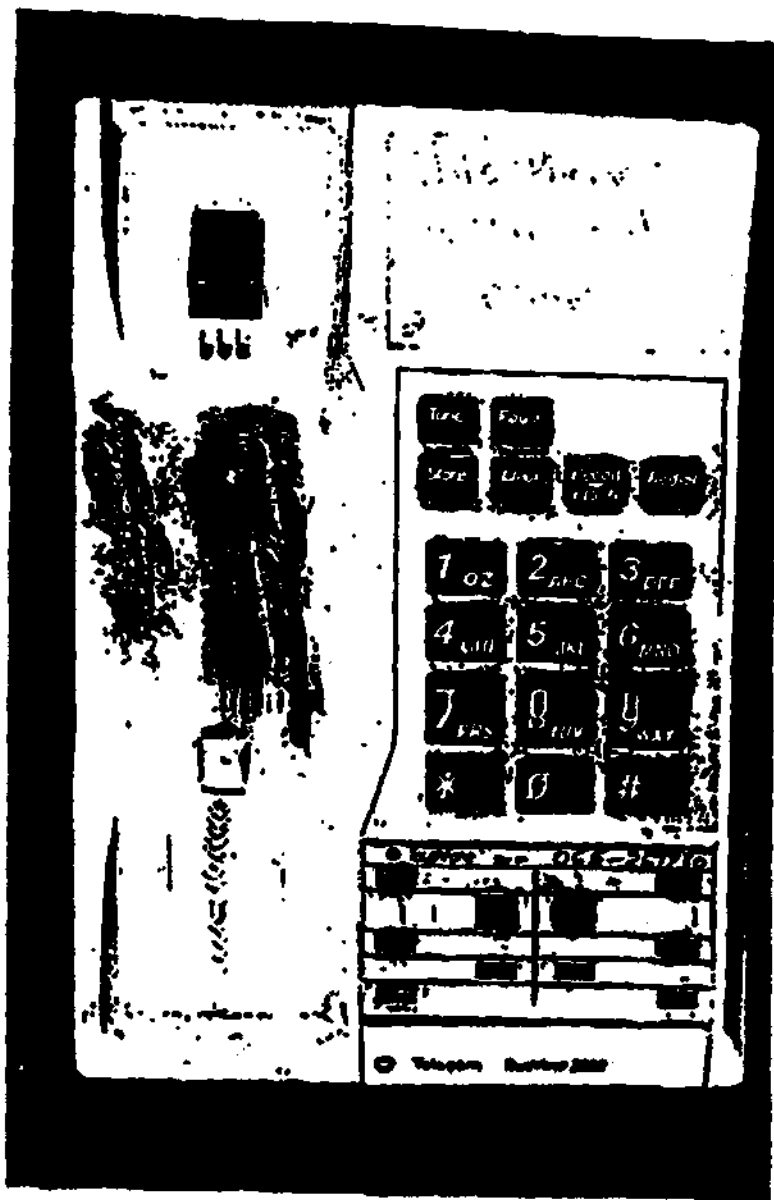


Photo 2. Front view with handset lifted indicating engraved markings on case

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Photo 4. Close-up of engraved information on case



Photo 5. Close-up of label stuck to case above keypad

**A**



Photo 4. Close-up of engraved information on case

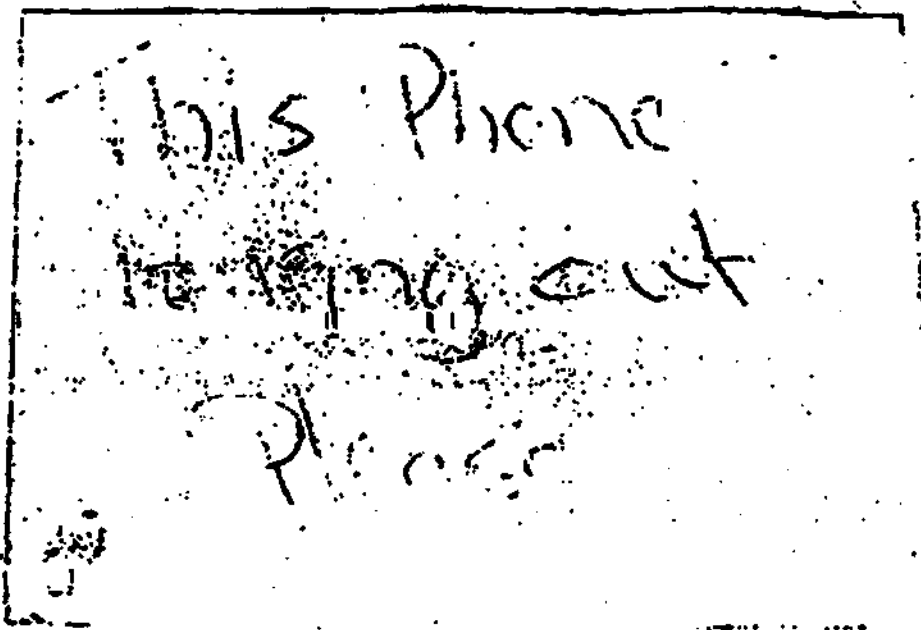


Photo 5. Close-up of label stuck to case above keypad

**A**



# FERRIER HODGSON CORPORATE ADVISORY

STRICTLY PRIVATE & CONFIDENTIAL

BY COURIER

18 April 1995

*Pia  
11/4/95  
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 25 148 WILLIAM STREET MELBOURNE VICTORIA 3000  
TELEPHONE 03 629 8855 FACSIMILE 03 629 8561

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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. || What

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.





Telecommunications  
Industry  
Ombudsman

March 9, 1995

Warwick L Smith LLB  
Ombudsman

Mr. Alan Smith  
Cape Bridgewater Holiday Camp  
Blowholes Road  
RMB 4408  
CAPE BRIDGEWATER VIC. 3306

By facsimile: (055) 267 230

Dear *Alan*,


Re: Resource Unit - Technical Support

As the executive of DMR Group Australia Pty. Ltd. is unavailable to provide locally based technical assistance, I propose to utilise the services of Mr. David Read and Mr. Chris Soutter of Lane Telecommunications (based in Adelaide) who are suitably qualified and independent.

Messrs. Read and Soutter will assist Mr. Paul Howell of DMR Group Inc. (Canada) in the technical assessment under the Fast Track Arbitration Procedure. Mr. Howell the principal technical advisor to the Resource Unit will be in Australia within two weeks. The technical enquiries will commence on Thursday 16th March, 1995.

Could you please confirm with me in writing that you have no objection to this appointment so the matter can proceed forthwith.

Yours faithfully,

  
Warwick L. Smith  
Ombudsman

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

**TELECOMMUNICATIONS INDUSTRY OMBUDSMAN - FAST TRACK  
ARBITRATION PROCEDURE**

The following documents for the "Smith" Arbitration were sent by courier to Mr Paul Howell of DMR Group Inc. (Canada) on 21 March 1995:

Letter of Claim (SM1) ↓  
George Close Report dated 5/7/94 (SM8) ↓  
George Close Report dated August 1994 (SM9) ↓  
Telecom Defence Witness Statements  
Telecom Defence B004 Service History  
Telecom Defence B004 Appendix File 1  
Telecom Defence B004 Appendix File 2  
Telecom Defence B004 Appendix File 3  
Telecom Defence B004 Appendix File 4  
Telecom Defence B004 Appendix File 5  
Telecom Australia      REF 1 - Statutory Declaration of Ross Marshall  
                            REF 2 - An Introduction to Telecommunications in Australia  
                            REF 3 - Telecom Australia's Network Management Philosophy  
                            REF 4 - Glossary of Terms

I hereby acknowledge receipt of the above documents.

.....  
Paul Howell  
DMR Group Inc.

.....  
Date

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## FERRIER HODGSON CORPORATE ADVISORY

By Facsimile: 0015 1 514 866 0423

10 APR 1995

5 April 1995 ↓

Mr Paul Howell  
Director & Vice President  
DMR Inc (Canada)  
1910 Clinton Avenue  
MONTREAL H3S1L1  
CANADA

COPY

P.A.

Dear Sir,

RE : Telecommunications Industry Ombudsman - Fast Track Arbitration -  
Resources Unit

I acknowledge receipt of your facsimile dated 3 April 1995. I now comment in relation to your facsimile accordingly:

1. Cape Bridgewater - Smith

I note that you are currently reviewing the documents. Time is of the essence in relation to the Smith arbitration, and Mr David Read of Lane Telecommunications Pty Ltd ("Lanes") has been undertaking a detailed review of the documentation. It is envisaged that he will have a draft report completed by Friday, 7 April 1995. I propose that he should fax this report to you for your review. ① ↓

We are under extreme pressure by the Telecommunications Industry Ombudsman and the Arbitrator to have a decision completed on Smith by Easter (14 April 1995). Accordingly, when you visit our office on 13 April 1995, it would be appreciated if you could review and sign off the Smith technical report on that day.

To expedite matters, I enclose a copy of a draft memo prepared by David Read from Lanes, which has been presented informally to the Ombudsman and to the Arbitrator to provide an outline of the technical report that is being prepared. This document will form the basis of the draft report of which will be faxed to you by Friday, 7 April 1995. ② ↓

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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- (d) in granting extensions of time and permitting amendments and the late submission of supplementary material, I have taken account of a variety of considerations including the fact that:
- the claimant is not legally represented;
  - the claimant was for some time during the course of these proceedings pursuing under FOI material allegedly in the possession of Telecom which he considered to be of relevance to the arbitration; and
  - neither party appeared to be prejudiced by the extensions;
  - I considered it essential that both parties had the opportunity to place all relevant material before me, regardless of the time frame set out in the arbitration agreement;
- (e) a further source of delay was a request for further particulars and a request for production of documents by Telecom following the initial submission of the claim. Given the amount being claimed, coupled with the fact that the claim documentation had not been prepared with legal assistance, I considered this request to be justified;
- (f) because of difficulties experienced by the claimant in complying fully with the request for further particulars and the request for production of documents, a hearing was convened at my office on 11 October 1994 in order to clarify the information being sought and to establish a time frame for its production;
- (g) the defence documentation was submitted on *[date]* and was subsequently supplemented by additional material;
- (h) on 24 January 1995 I received material comprising the claimant's reply to Telecom's defence. This material was the subject of subsequent amendment;
- (i) pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit", comprising Ferrier Hodgson, Chartered Accountants, and DMR Group Australia Pty Ltd, to conduct such inquiries or research as I saw fit;
- (j) on 21 February 1995, by which time I was satisfied that the submission of all relevant material by both parties was complete, I instructed Ferrier Hodgson (and, through them, DMR) to conduct certain inquiries on my behalf;
- (k) on 1 May 1995, I received a technical report and on 3 May 1995 a commercial report from the Resource Unit, each of which assisted me

- (b) I have acquiesced in a number of requests for extensions of time for compliance with these deadlines;
- (c) the claim documentation was initially submitted on 15 June 1994 and was subsequently supplemented by additional material;
- (d) in granting extensions of time and permitting amendments and the late submission of supplementary material, I have taken account of a variety of considerations including the fact that:
- the claimant is not legally represented;
  - the claimant was for some time during the course of these proceedings pursuing under FOI material allegedly in the possession of Telecom which he considered to be of relevance to the arbitration;
  - neither party appeared to be prejudiced by the extensions; and
  - I considered it essential that both parties had every reasonable opportunity to place relevant material before me, regardless of the time frame set out in the arbitration agreement;
- (e) a further source of delay was a request for further particulars and a request for production of documents by Telecom following the initial submission of the claim. Given the amount being claimed, coupled with the fact that the claim documentation had not been prepared with legal assistance, I considered this request to be justified;
- (f) because of difficulties experienced by the claimant in complying fully with the request for further particulars and the request for production of documents, a hearing was convened at my office on 11 October 1994 in order to clarify the information being sought and to establish a time frame for its production;
- (g) the defence documentation was submitted on 13 December 1994 and was subsequently supplemented by additional material;
- (h) on 24 January 1995 I received material comprising the claimant's reply to Telecom's defence. This material was the subject of subsequent amendment;
- (i) pursuant to paragraph 8 of the arbitration agreement, I had power to require a "Resource Unit", comprising Ferrier Hodgson, Chartered Accountants, and DMR Group Australia Pty Ltd, to conduct such inquiries or research as I saw fit. By consent of the parties, the role of DMR Group Australia Pty Ltd was subsequently performed jointly by DMR Group Inc. and Lane Telecommunications Pty Ltd;

- (j) on 21 February 1995, by which time I was satisfied that the submission of all relevant material by both parties was complete, I instructed the Resource Unit to conduct certain inquiries on my behalf;
- (k) on 30 April 1995, I received a technical report and on 3 May 1995 a financial report from the Resource Unit, each of which furthered my understanding of the issues in dispute;
- (l) both parties were provided with an opportunity to comment on the contents of the reports I received from the Resource Unit and both availed themselves of that opportunity.

2.2 In all, I have read in excess of 6,000 pages of documentary evidence submitted by the parties.

### 3. Overview

3.1 I do not intend summarising all the evidence submitted in connection with this claim. Any omission of a reference to any facts or evidence should not be interpreted as a failure on my part to take those facts or that 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 is a chef by occupation and is now 51 years of age. In December 1987 he purchased as a going concern the Cape Bridgewater Holiday Camp, commencing occupancy in February 1988. The camp included a homestead, an old church and a number of cabins which had a combined capacity to sleep in excess of 100 people.
- (c) Cape Bridgewater is 20 kilometres 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 mix 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

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 Laue's Telecommunications, Mr Alan Smith, the claimant, and Mr Peter Gamble, 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.

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**(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

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## Holiday camp still plagued by phone and fax problems

By BILL MELDRUM

THE telecommunications problems which plagued former Cape Bridgewater Holiday Camp operator Alan Smith have continued to beset current owner Darren Lewis.

Mr Smith is a founding member of the Casualties of Telstra (originally known as Casualties of Telecom), formed in 1993.

Members of the group have been involved in a long-running feud with Telstra after having incurred income loss because of various phone faults.

Following pressure being brought to bear by the media and the Opposition, Telstra and Federal Communications Minister Richard Alston announced an Australian Communications Authority inquiry into new material supplied by one of the COT members, Queensland businesswoman Anne Garms.

Mr Lewis said this week he had experienced several problems with the phone and fax service since taking over the Cape Bridgewater Holiday Camp late last year.

"We've had instances where we will press the hash 10 star and get nothing, only to do the same a few days later and receive details of a phone call made to us three or four days earlier," he said.

"People will also ring through to us, only to have the phone ring out, yet we are in and at our end the phone is not ringing.

"Often you don't know there is a problem until someone tells you to get your phone fixed."

He said Telstra staff had been friendly and had been trying to resolve the problem.

"Telstra admits there is a fault and they are trying hard to solve it," he said.

"We will be happy once the problem is fixed.

"We are in the accommodation business and people trying to find accommodation tend not to wait when they are seeking somewhere to stay, they will move on to the next place."

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28 January 2003

COPY



Telecommunications  
Industry  
Ombudsman

John Pinnock  
Ombudsman

Total Pages: 19

Dear

**LEVEL 3 COMPLAINT**

TIO reference: 02/101638-1 - Mc Kenzie

The Telecommunications Industry Ombudsman (TIO) has received a complaint against Telstra Corporation from Mr & Mrs Darren & Jenny Lewis regarding telephone number 0355267267.

The TIO has raised this complaint at level 3 because of the complexity of the complaint and likelihood that extensive testing may be required. Mr & Mrs Lewis have advised the TIO that they have an on-going complaint with Telstra Corporation in relation to their telephone service and have as yet been unable to resolve this matter. The TIO has invested time assessing Mr & Mrs Lewis' correspondence and believes that further investigation is warranted.

Mr & Mrs Lewis claim in their correspondence attached:

- That they purchased the Cape Bridgewater Coastal Camp in December 2001, but since that time have experienced a number of issues in relation to their telephone service, many of which remain unresolved.
- That a Telstra technician "Mr Tony Watson" is currently assigned to his case, but appears unwilling to discuss the issues with Mr Lewis due to his contact with the previous Camp Owner, Mr Alan Smith.
- That on 27 September 2002 "Ian" advised him that an EMG was causing the faults at the local exchange and that a technician would be sent out to fix this.
- That on 28 September 2002 "Renea" advised him that that the local exchange could only handle a certain amount of traffic, that there was nothing that Telstra Corporation could do about the problem and that this problem was not new to Cape Bridgewater.
- That Telstra Corporation advised him on 26 November 2002 that the phone extension wiring was laid too shallow and was not installed correctly, thus it believed that Telstra Corporation had not installed that wiring. Mr Lewis also claims that it was suggested that the line had been tampered with.
- That Mr Alan Smith had provided him with documents confirming that Telstra Corporation did all the cabling and wiring in question.
- That the phone problems have decreased dramatically since Telstra Corporation rewired the business on 9 December 2002 and disconnected the phone alarm bell, however he is still



↑

**DRAFT**

↓

28 April 1995

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

By Facsimile: 614 8730

Dear Gordon

Fast Track Arbitration - Smith

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

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

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

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

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

Could you please contact me to discuss.

Yours sincerely

Warwick L Smith  
Ombudsman

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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.

ENTERED  
15/5/95

**Hunt & Hunt**  
LAWYERS

Partners  
David M. Scobie  
Edward J. Royce  
James C.F. Harrowell  
Christine A. Carter  
Gordon L. Hughes  
Mark T. Knopman  
Ian S. Craig  
Peter J. Egan  
Wayne B. Cahill  
Neville C.M. Dobner  
Grant D. Selten  
Charles Veivers  
Andrew L. G. Smith  
William P. O'Shea

Consultants  
Kenneth M. Martin  
Richard J. Kellaway  
Andrew Jenkins

Associates  
Shane C. Hird  
John S. Molnar  
Melissa A. Handerson  
Francis V. Galichio  
John D. Moran

5 May 1995

Our Ref: GLH

Master No: 5126886

Your Ref:

Mr Alan Smith  
Cape Bridgewater Holiday Camp  
RMB 4408  
CAPE BRIDGEWATER  
Portland Vic 3305

Dear Mr Smith

**ARBITRATION - TELECOM**

I refer to your telephone message of 4 May and your facsimiles of 4 and 5 May 1995 and advise I do not consider grounds exist for the introduction of new evidence or the convening of a hearing at this stage.

I reiterate that any comments regarding the factual content of the Resource Unit reports must be received by me in writing by 5.00 p.m. on Tuesday 9 May 1995.

Yours sincerely

**GORDON HUGHES**

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

Melbourne  
Sydney  
Sydney W  
Brisbane  
Canberra  
Newcastle  
Adelaide  
Darwin

L69483

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FAX FROM: ALAN SMITH  
C. O. T. DATE: 4.5.95

FAX NO: 055 287 230  
PHONE NO: 006 816 522 NUMBER OF PAGES (including this page)

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FAX TO: DR GORDON HUGHES  
HUNT & HUNT  
LAWYERS  
MELBOURNE

Dear Dr Hughes,

Under the Arbitration Rules regarding late information I am requesting you to view this attached material as valid evidence to support my loss; to quantify a comparison to a business similar to that of the Cape Bridgewater Holiday Camp.

I note that when Sue Hodgkinson, accountant with Ferrier & Hodgson's Resource Team, visited my business, comments were made in regard to a business similar to Cape Bridgewater Holiday Camp. I mentioned then that I had some knowledge and past records regarding the value of Rumbug School Camp in Gippsland. This is the Camp for which I originally helped purchase equipment as well as helping to set the camp up in running order. Ms Hodgkinson stated that, as this Camp is not now up for sale, we could not use this as an example.

Mr Arbitrator, this Camp is, in fact, coming up for sale on Wednesday of next week. I have attached the documents I have at hand (these are past records).

I believe, since Ferrier Hodgson used the Camping Association of Victoria (CAV) in part assessment of their response to my accountant's report, that they should have perhaps asked for a comparison of the return and value of a similar venue to Cape Bridgewater Holiday Camp. On Thursday 4th May, 1995 I contacted National Business and Commercial for such a comparison (National Business and Commercial is the CAV's accredited agent). Boomerang Holiday Ranch, Daylesford was suggested as one camp and Rumbug was another. I believe Ferrier Hodgson should have at least made a comparison to Rumbug. After all, if we take the figures at hand in their 1991/92 return, it is perfectly valid to believe that I could very well be in the same position as Rumbug today, had I had a phone service in proper working order from the day I purchased Cape Bridgewater.

I believe this is a very valid request, one which will be added to the response accompanying Derrick Ryan's reply to the Ferrier Hodgson Report.

Sincerely,

Alan Smith.

You must understand how I feel as a man of practical experience with little knowledge of the pen. Even though under extreme stress, I believe I should have been given a chance to explain these points to Ferrier Hodgson. I hope you take this letter in trust and accept this concern as constructive.

Sincerely,

Alan Smith



FAX FROM: ALAN SMITH  
C. O. T.

DATE: 5.5.95

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,

A lawyer of your qualifications and expertise is no doubt considered by your peers to be an above-average barrister/lawyer. If you were to take up a practice in a town, within 18 months you would have built that practice into a very sound, well respected and established business through your knowledge of the finer points of the law.

Another solicitor of the same age, also a very respectable man, however a man with less expertise than yourself, would not necessarily be able to create the same credibility in the same town over the same 18 months because word of mouth recommendations would not occur at nearly the same rate.

An industrial caterer/chef, a man with a diploma in Hotel/Motel Management, Alan Smith, moves into a business such as the Cape Bridgewater Holiday Camp. My expertise in my field has been shown and documented in both my submissions. I have never professed to be a good man with words, however I consider I am above average in the catering business.

The Resource Team have not taken into consideration the *CREDIBILITY* associated with my expertise: they have calculated only on a flat rate, using a calculator and accountancy figures - a mathematical exercise. The fact that I was never given a chance to establish a business because of the telephone problems from day one, means that I have been unable to substantiate what I could, or could not, have done to establish Cape Bridgewater Holiday Camp. There has to be a middle of the road equation between a man with expertise in the catering field and one without this expertise. All the Resource Team has done is follow the Camping Association Victoria (CAV) ruling.

I have made it known to Sue Hodgkinson that there is a wide variety of camps - some with a high occupancy rate (Rumbug and others) and some with a mediocre occupancy rate, even with a reliable phone service. My conclusion is: where did the Resource Team draw the middle line between a camp with a high occupancy rate and a manager of some expertise, and a camp operator who has the camp just for the lifestyle? The Resource Team have only used an overall stab in the dark as a result of a conversation with a CAV officer. They did not actually visit any other camps to substantiate what can be done by two different operators with two different camps.

In my response to Derek Ryan's reply to Ferrier Hodgson's report I have attached six copies of faxes sent to the Cape Bridgewater Holiday Camp, showing six different camps with a varied occupancy rate and different types of establishment. These were obtained two or three weeks ago to substantiate my views and were sent to Sue Hodgkinson of Ferrier Hodgson.

page no. 1

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also in Ballarat. You have other documentation - that same lady in Ballarat, she couldn't ring the camp; there's documentation that this number is no longer connected. What I'm trying to say is I have lost one business, I have lost two businesses. Now, I can verify it. I can't verify that through stress I have lost a certain amount of documentation - this is where I'm ending it now - and that's why I have brought in the taxation bureau to be able to show the people here I have nothing to hide. I have already had people in - and the Commonwealth Development do a complete look at how stressed I have been and they have experienced the problems too and so has Steve Black. He has been on the phone and he has heard, "This number is no longer connected," and he said he was going to forward me a letter but he hasn't done that.

Okay, thank you?---So here are the documents.

Wait a minute. I want to hear a submission from Telecom, if they want to make one, in relation to putting further documentation into evidence at this stage.

MR BLACK: I'm a little unclear as to what the documents are. I assume they're documents of a list of names of the singles club. That's why I think you said?---Lists of names of people.

Are they documents supporting bookings or - - -?---Well, these people booked in as a club, right?

But do they actually list bookings made into the holiday camp?

---No.

They are just the names and addresses of the actual people who - - -?---And people that rang me, right, or people that - it was given me - that have tried to ring me. I

then rang them and we were trying to get people to come to the camp. Now, there were times that I went down to Ballarat and picked these people up or there were times I had a bus company bring them to Portland. They were actual bookings but some wasn't because I couldn't get the volume - - -

Some are names and addresses?---That's right.

Some people did book in, some didn't. Some reflect people who rung you about telephone problems?---That's right - no, no. There are points where I put - as you will see in the Ballarat Courier, for 4 months I ran a full ad, for 4 months, a large ad, and instead of getting 30 people, I ended up with five and six and seven people. It wasn't worth going down. It wasn't until about three groups later that we find out that these other people who had tried to ring me from Ballarat couldn't, and so therefore - and this is in your own documentation too. So what I'm trying to say is, I tried to set something up but once again, I had a hurdle, again in two areas with two people trying to use them as bases, right? They even couldn't - and that's some of their stuff.

But do those documents support that or do those documents just have names and addresses?---I mean, they support - I mean, I didn't just come and write them last night. They support evidence that people did - these people. Now, if you wanted to ring - and there are names of schools - but if you wanted to ring - the thing is, this is what I'm frightened of. You ring a certain number - what I'm trying to do is show I'm honest. Now, I know we're in an arbitration process. I'm trying to show you that I did record stuff, but it's not diary notes. It's

where people have tried - these people, right, have come into the business or have tried and over - in the end, you just give up.

THE ARBITRATOR: Okay, leave it at that please. Telecom, any submission one way or another in relation to that information?

MR BLACK: No, I can't necessarily see the relevance of them unless they support original documentation.

THE ARBITRATOR: It's for me to say, but in any event, it is my view that I don't think that it's going to advance your claim. I understand the significance that you attach to them but the fact is that from my point of view in assessing the claim, it is nothing more than a list of names?---Right.

So I don't think it's going to take you any further. So I think that you don't stand to gain anything by putting them in and given their sensitivity, I suggest that you keep them?---Right.

Thank you, all of you, for coming along.

(To witness) Mr Smith, thank you for speaking nonstop for 5 hours. I know it's a strain. You have got a big week ahead of you. We really want you to work this week, but it's in your interests because you will earn yourself a rest by the weekend?---Right.

Okay?---I wonder if I could get that signed by you.

You don't need to actually sign that because you read it into the evidence whilst you were on oath and that's the same effect as a statutory declaration?---Right.

I will now conclude this hearing, thank you.

<(THE WITNESS WITHDREW)

ADJOURNED 1.42 PM

.SC Smith 11/10/94

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A. SMITH

L69345

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|               |              |           |   |       |      |
|---------------|--------------|-----------|---|-------|------|
| 04 OCT 01.20P | Maroochydore | 074434022 | D | 0:30  | 0.44 |
| 04 OCT 02.24P | Brisbane     | 078925040 | D | 6:32  | 3.39 |
| 04 OCT 03.20P | Melbourne    | 032877099 | D | 0:24  | 0.26 |
| 04 OCT 03.22P | Melbourne    | 036903322 | D | 0:25  | 0.26 |
| 04 OCT 04.24P | Brisbane     | 078925040 | D | 5:55  | 3.08 |
| 04 OCT 04.31P | Maroochydore | 074434022 | D | 19:23 | 9.81 |
| 04 OCT 05.02P | Melbourne    | 032877099 | D | 3:13  | 1.23 |
| 04 OCT 05.06P | Melbourne    | 036148711 | D | 5:11  | 1.91 |
| 04 OCT 05.12P | Maroochydore | 074434022 | D | 9:03  | 4.64 |

CONTINUED

DETAILS OF CALL CHARGES

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ACCOUNT NO.

PHONE SERVICE 055-26 7230

055-26 7267 626

19 DEC 1994

CALLS

| DATE   | TIME   | PLACE     | NUMBER    | RATE | MIN/SEC | AMOUNT |
|--------|--------|-----------|-----------|------|---------|--------|
| 04 OCT | 05.33P | Melbourne | 036903322 | D    | 0:07    | 0.16   |
| 04 OCT | 05.34P | Melbourne | 036969369 | D    | 3:08    | 1.20   |
| 04 OCT | 06.01P | Melbourne | 032877099 | N    | 1:34    | 0.48   |
| 04 OCT | 06.03P | Melbourne | 032877099 | N    | 1:18    | 0.42   |
| 04 OCT | 06.21P | Melbourne | 036327700 | N    | 1:05    | 0.37   |
| 04 OCT | 07.49P | Melbourne | 038893543 | N    | 14:47   | 3.52   |
| 04 OCT | 08.10P | Brisbane  | 078925040 | N    | 0:17    | 0.21   |
| 05 OCT | 08.09A | Melbourne | 038761254 | D    | 0:37    | 0.33   |
| 05 OCT | 08.10A | Melbourne | 038761853 | D    | 0:49    | 0.40   |
| 05 OCT | 09.06A | Melbourne | 032877099 | D    | 0:07    | 0.16   |
| 05 OCT | 09.06A | Melbourne | 032877099 | D    | 6:53    | 2.50   |
| 05 OCT | 12.31P | Scarsdale | 053428357 | D    | 8:01    | 2.89   |
| 05 OCT | 02.41P | Brisbane  | 078925040 | D    | 8:12    | 4.22   |
| 05 OCT | 02.51P | Brisbane  | 078923739 | D    | 1:33    | 0.89   |

CONTINUED

DETAILS OF CALL CHARGES

PAGE 18

ACCOUNT NO.

PHONE SERVICE 055-26 7230

055-26 7267 626

19 DEC 1994

CALLS

| DATE   | TIME   | PLACE     | NUMBER    | RATE | MIN/SEC | AMOUNT |
|--------|--------|-----------|-----------|------|---------|--------|
| 05 OCT | 04.14P | Melbourne | 032877099 | D    | 12:15   | 4.36   |
| 05 OCT | 04.50P | Melbourne | 032877099 | D    | 0:37    | 0.33   |
| 05 OCT | 04.51P | Melbourne | 036503185 | D    | 0:16    | 0.21   |
| 05 OCT | 04.54P | Brisbane  | 078925040 | D    | 9:28    | 4.85   |
| 05 OCT | 06.42P | Melbourne | 036345736 | N    | 23:26   | 5.50   |
| 05 OCT | 07.10P | Melbourne | 032877099 | N    | 0:17    | 0.17   |

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# 1: A Letter From D. M. Ryan – Corporate

In December 1996 Mr Derek Ryan wrote the following letter to Ms C. English at the Consumer Law Centre - Victoria.

## D M RYAN CORPORATE

DMR

D M Ryan Corporate Pty Ltd  
40 Market Street  
Melbourne  
Victoria 3000  
Australia

A.C.N. 063 884 045  
Facsimile (03) 629 4598  
Telephone (03) 629 4277  
Mobile 018 636 107

23 December 1996

Ms C English  
c/o Consumer Law Centre Victoria  
11th Floor  
300 Flinders Street  
Melbourne  
Vic 3000

Dear Caitland,

Re: Alan Smith

I have been working as an independent forensic accountant for Alan Smith for approximately 2.5 years and during that time Alan has kept me informed of the weekly developments in relation to his arbitration case and the subsequent events as they have unfolded.

I am an independent professional I find it extremely difficult to take sides in this dispute without impairing my independence.

Up until now I have not aired my views to any person other than the four original COT case individuals however I cannot sit and do nothing while I see the basic democratic principles of this country breaking down before my own eyes.

This whole fiasco should and must be disclosed in a public forum to ensure that these events will never occur again.

I was in America when the Watergate investigations were on television and the events which have occurred in Australia in relation to the COT cases is very similar to Watergate. It is not so much the original act as the cover up which has taken place since that time that is my greatest concern.

From my knowledge of Alan Smith and the Cape Bridgewater Holiday Camp & Convention Centre I believe that the events may be summarised as:

1. Alan bought the camp in early 1988 and his advertising and marketing plans were not attracting the responses which he, or anyone else, would have expected.
2. The problems were in the Telstra network configurations for his area. This problem is also common to most other rural areas where there had been growth in the population without an upgrading of telephone exchange equipment.
3. Telstra knew of the problems and how to solve them however they refused to publicly admit that there were any problems so that they could defer capital expenditure in the rural areas.

4. Telstra is one of Australia's largest companies and it has assumed a position of community respect as most individuals have no knowledge of telecommunications technology. Individuals believe that Telstra technicians would not lie or deceive them as there is nothing to be gained. For this reason the word of a Telstra technician is taken to be gospel and if a technician states that there is nothing wrong with your service then that must be the case.
5. Telstra used their position to bluff most individuals into believing that their service was operating efficiently and effectively. When this was disputed or fought in any way then it was Telstra's policy to fight the accusations for as long as possible to tire and eventually wear down the opponent. This process was in a financial, time and personal commitment perspective. After a long drawn out battle a small compensation settlement would be offered as a once off settlement to close the case. Generally by this stage the claimant was so frustrated that he would accept the settlement rather than pursue the matter through the courts.
6. The same strategies were pursued by Telstra in their fight against the COT cases. The only difference was that Austel had been incorporated and that it took an interest in the matters raised and after an investigation it issued a report dated April 1994.
7. As a result of this study an investigation had to be conducted and Telstra worked behind the scenes to coerce and manipulate the COT cases into accepting the arbitration process which Telstra thought would benefit Telstra the most.
8. The rules of the arbitration were framed against the COT cases and they became legalistic and proof had to be obtained to support all assumptions. This was contrary to Austel's original objective of having a four month non legalistic arbitration process whereby the COT cases would be given the benefit of the doubt in the quantification of their losses.
9. The arbitrator has not, in my opinion, acted fairly and honestly in carrying out his duties and I believe that he has been unduly influenced by Telstra. Many breaches of the arbitration rules have occurred and in recent months we have witnessed senior people taking early retirement from Telstra rather than face the possibility of a law suit for lying under oath or for lodging information which they knew was false and misleading.
10. I reviewed the arbitrators award after it was issued and I found a major error of logic in the main calculation of losses performed by Ferric Hodgson Corporate Advisory (Vic) Pty Ltd on behalf of the arbitrator. I responded to the arbitrator in a report dated 9 May 1994 and to this date I have never had a telephone call, letter or a request for a meeting in respect of the matters which I raised in this report.
11. In my opinion the arbitrators award is incorrect and improperly based on figures which would not have been representative of the figures of the Cape Bridgewater Camp had it not been for the telephone problems.

The arbitrator has placed the burden of proof on Alan Smith to quantify his losses rather than to take a global picture and to work from a position (which Austel had determined) of stating that there were telephone problems and thereafter quantifying what the business would have been generating had it not been for those problems.

12. The question of costs is another area in which the arbitrator has erred. It was Austel's intention that the professional costs of claim preparation would be treated as a consequential loss and form part of the claim and the arbitrators award. If this was not the case then how could the COT cases afford to have their claims prepared by professionals with the relevant experience. These costs were not included in the arbitrators final award.

I have now been advised that the matter of the professional advisers costs may be reviewed and that a percentage of the original amounts which were invoiced may be paid as "reasonable costs". This position is ludicrous as the costs were consequential to the arbitration, they were professional rates and they should be paid in full. I would be prepared to accept a discounted fee if the same discount principles were also applied to the legal and accounting advisors to the Arbitrator and to Telstra.

Telstra has used its position of dominance, its financial strength and its network of employees to deceive, exploit and suppress the COT members and those who have supported them for their own corporate benefit.

They have attempted to prolong the fight so that the COT members become bankrupt or suffer from a physical and/or mental breakdown and then have to stop their action against Telstra.

I do not believe that one of Australia's leading corporations should be permitted to act in the above manner and the sooner this form of corporate thuggery is exposed the better.

The above is a lay persons perspective of the Alan Smith case and I believe that the whole truth will only be unveiled in a court of law or in a parliamentary inquiry

I would be pleased to discuss the above with you at a mutually convenient time should you so wish.

Yours sincerely



Derek Ryan



# DMR CORPORATE

DMR

DMR Corporate Pty Ltd  
40 Market Street  
Melbourne  
Victoria 3000  
Australia

A.C.N. 063 564 045  
Facsimile (03) 9629 4598  
Telephone (03) 9629 4277  
Mobile 018 635 107

6 December 1995

Senator R Alston  
Level 2, Suite 3  
424 St Kilda Road  
Melbourne  
Vic

Dear Senator Alston,

## Re: Casualties of Telecom ("COT") - A Smith

Over the last 2 years I have acted as an independent accountant for Alan Smith and I prepared the independent assessment of his losses and damages which formed part of his submission to the arbitrator, Dr G Hughes.

In response to accounting documents and evidence submitted to the arbitrator, he appointed Ferrer Hodgson Corporate Advisory (Vic) Pty Ltd ("FHCA") to support him in assessing the losses and damages.

The FHCA report was inaccurate and incomplete. I have since been advised by a staff member of FHCA that a large amount of information was excluded from their final report at the request of the arbitrator. This has left the report in an incomplete state and it is impossible for anyone to re-calculate or understand how the FHCA loss figures were determined. This effectively meant that it was impossible to challenge the assumptions, calculations and the time periods used in the FHCA report.

After receiving a copy of the FHCA report I responded with a letter dated 9 May 1995 and a copy of that letter is attached for your information. I have never been provided with a response or any further details in respect of this letter.

I consider that a grave miscarriage of justice has occurred in relation to the A Smith arbitration and that without a full and open inquiry it may be impossible to ever determine how the arbitrator's award was calculated.

Yours sincerely

Derek Ryan

177A

**COPY**

**Telecommunications  
Industry  
Ombudsman**

20 December 1995

John Pinnock  
Ombudsman

Mr Derek Ryan  
DM Ryan Corporate Pty Ltd  
40 Market Street  
MELBOURNE VIC 3000

Dear Mr Ryan

**Re: Mr Alan Smith**

Mr Anthony Hodgson of Ferrier Hodgson Corporate Advisory has passed on to me a copy of your letter to Senator Alston dated 6 December 1995.

In that letter you state, among other things, that *"I have since been advised by a staff member of FHCA that a large amount of information was excluded in their final report at the request of the arbitrator"*.

I have been informed by Ferrier Hodgson Corporate Advisory that it is not in fact the case that a large amount of information, or indeed any information, was excluded from the Resource Unit's report at the request of the Arbitrator.

You have not indicated which FHCA staff member advised you that this had occurred, nor provided sufficient further information to substantiate your assertion that a conversation in such detail took place between you and the FHCA staff member. Please do both.

It concerns me that rash and incorrect assertions and allegations concerning Mr Smith's arbitration procedure are being widely circulated, particularly by Mr Smith himself.

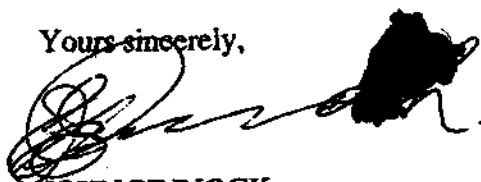
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*"... providing independent, just, informal, speedy resolution of complaints."*

When such assertions or allegations are able to be rebutted by reference to earlier correspondence, or other records, they do no credit to those making those assertions or allegations.

It is not my role, nor do I have the time or resources, to rebut each incorrect assertion or allegation being made by Mr Smith. I have on numerous occasions explained to Mr Smith why I am unable to engage in continuing correspondence with him in relation to his arbitration. The fact that I do not so engage should not in any way be taken as acquiescence in relation to any of those assertions or allegations.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Pinnock', with a dark ink blot to its right.

JOHN PINNOCK  
Ombudsman

cc: Mr Alan Smith

1778

9 May 1995

Dr G Hughes  
c/o Hunt & Hunt  
Level 21  
459 Collins Street  
Melbourne  
VIC 3000

Dear Dr Hughes,

**Re: A Smith and Telecom**

We have received a copy of the Ferrier Hodgson Corporate Advisory (Vic) Pty Ltd ("FHCA") report and Alan Smith has requested that we provide you with our comments on the report.

After making the following general comments we will follow the format of the FHCA report to assist you in relating our comments to that report.

**General Comments**

1. The FHCA report does not include any detailed workings so we have endeavored to recalculate the FHCA figures given their assumptions and the base figures which were included in our report dated 21 June 1994.

These recalculated figures are included in Appendix A.

Our recalculated figures are still higher than the FHCA figures and we are unable to determine the reasons for this.

2. We believe that the FHCA report contains many inaccuracies, misinterpretations and in the main area of loss quantification it is simply **WRONG**.

The main calculation of loss has been considerably understated by an error of logic.

The error of logic appears to arise from the fact that FHCA reduce the total bed capacity by the night utilization of 48% (to give available bed capacity) and FHCA then apply the bed occupancy rates to the available bed capacity. It is incorrect to reduce the total bed capacity by both of these factors.

Appendix F 1

Loss of Capital Value

|                                   | Low            | Medium         | High           |
|-----------------------------------|----------------|----------------|----------------|
| Loss of profits - occupancy       | 297,328        | 462,648        | 627,969        |
| Loss of profits - rates           | 174,888        | 228,797        | 282,708        |
|                                   | 472,216        | 691,445        | 910,676        |
| Average loss of profits per year  | 79,784         | 108,038        | 142,293        |
| Three times lost profit and rates | <u>221,351</u> | <u>324,115</u> | <u>426,879</u> |

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# DMR CORPORATE

DMR

DMR Corporate Pty Ltd  
40 Market Street  
Melbourne  
Victoria 3000  
Australia

A.C.N. 063 564 045  
Facsimile (03) 9629 4598  
Telephone (03) 9629 4277  
Mobile 018 635 107

22 December 1995

Mr J Pinnock  
Telecommunications Industry Ombudsman  
321 Exhibition Street  
Melbourne  
VIC 3000

Dear Mr Pinnock,

Re: Alan Smith

Further to your letter dated 20 December 1995 I respond to your request as follows:

1. The Ferrier Hodgson Corporate Advisory (Vic) Pty Ltd ("FHCA") report was dated 3 May 1995 and I received a copy of the report on 5 May. After discussions with Alan Smith it was decided that I should reply to the report as soon as possible.

I worked all day Saturday and Sunday with Alan Smith trying to interpret the FHCA report. After this work I considered that the report was incomplete as the calculations of the FHCA loss figures were not included in their report.

2. On 8 May 1995 I telephoned FHCA and spoke to John Rundell and requested a meeting to discuss how the FHCA loss figures were determined. He was reluctant to talk to me at that time however we set a tentative date of 17 May 1995 for us to discuss this matter again. I have a note in my diary for the 17 May 1995 - John Rundle - Ferriers -604 5188.

My response to the FHCA report was lodged on 9 May 1995.

On 17 May I telephoned John Rundell and he stated that he was unable to discuss anything with me until the appeal period had expired. During that telephone conversation I told him that I was unable to recalculate the FHCA figures and that I felt that the report was deficient in that regard. He then stated that he understood my problems and that FHCA had excluded a large amount of information from their final report at the request of the arbitrator.

To the best of my recollection the above facts are exactly as they occurred.

Yours faithfully

Derek Ryan

1783

John W Rundell  
95 Dandy Street  
BRIGHTON VIC 3186

**Private & Confidential**

Mr John Pincock  
Ombudsman  
Telecommunications Industry Ombudsman  
315 Exhibition Street  
Melbourne VIC 3000

**COPY**

13 February 1996

Dear John

**Fast Track Arbitration Procedure - Alan Smith**

**Other matters: D M Ryan letter of 22 December 1995**

I acknowledge receipt of your letter of 23 January 1996, enclosing a copy of a letter dated 22 December 1995, which you received from Mr Derek Ryan. I have reviewed his letter and refute that the statement that FHCA had excluded a large amount of information from their final report "at the request of the arbitrator".

I did advise Mr Ryan that the final report did not cover all material and working papers.

The Ferrier Hodgson report was prepared for the arbitrator and was provided as part of the Fast Track Arbitration to Mr Ryan and Mr Smith for comment and they did so in writing to the arbitrator.

I am surprised that it is only now some 8 months since my telephone calls with Mr Ryan that this matter has been raised with you.

**Contact with Mr Derek Ryan**

For your information, I now outline the details of my limited discussions with Mr Ryan.

1. On 8 May 1995, I received a telephone call from Mr Ryan and at the time Ms Susan Hodgkinson was in my office. The discussion was cautious and I was unwilling to meet with Mr Ryan at that time. I suggested that I would be happy to meet with him after the appeal period for the Smith arbitration had passed, but only to discuss the information required and preferred approach in relation to other claims. I felt this may be useful as Mr Ryan had advised me that he voted for a number of other COT

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claimants and also I knew Mr Ryan professionally from his time as a partner of Touche Ross.

2. Further, on Thursday, 18 May (not 17 May 1995, as dated by Mr Ryan) I received two pager messages from Mr Ryan. I then returned his call early afternoon by mobile phone. I do not have a file note record of this call as I was in a car at Tyab on the Mornington Peninsula. I do not believe that I made the statement he has attributed to me. From my recollection of the call, Mr Ryan was attempting to make me commit to statements, which I was unwilling to comment on. Unfortunately, I can provide no further details of this call.

**Other Matters**

Further, I wish to advise that I am most concerned by the fact that Mr Smith engaged a private investigator, who visited me at my home on 27 December 1995, with the intention of discussing matters associated with the Ferrier Hodgson report. I find such an intrusion into my privacy and home (and also the tape recording of our discussion without advice) highly unusual and inappropriate.

As you may be aware, I have contacted the Brighton CIB in relation to:

- 1. damage to property at my home
- 2. the actions of Mr Smith impersonating me and pursuing me via the use of a private investigator.

You should be aware that the Brighton CIB intend to interview Mr Smith in relation to criminal damage to my property, but regard the matter of his impersonation and tape recording and telephoning me at home as civil matters.

Could you please provide a copy of relevant correspondence sent to Mr Smith advising him not to make contact with members of the resource unit to assist the police in their investigations.

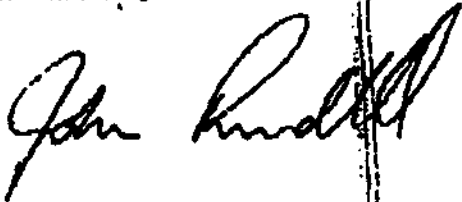
You should also be aware that as a result of the actions by Mr Smith in contacting me at home. I have reluctantly found it necessary to install a private and silent telephone line at home. Although, Telstra offered to provide this without charge, I would not accept that and will be paying the cost on my account.

May I take this opportunity of wishing you and your staff all the best for 1996, and I trust that you will shortly receive resolution of these outstanding fast track arbitration's.



Please do not hesitate to contact me directly at KPMG should you wish to discuss any matters associated with these arbitrations. My direct line is 9288 5457.

Yours faithfully



John W Rendell

cc

Ms Susan Hodgkinson  
Project Manager  
Resource Unit  
Ferrier Hodgson Corporate Advisory

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11 July 1994

COMMERCIAL AND CONSUMER  
CUSTOMER AFFAIRS

37/242 EXHIBITION STREET  
MELBOURNE  
VICTORIA 3000  
Australia

Telephone (03) 632 7700  
Facsimile (03) 632 3235

**F A X E D**  
...1.7...1.94

Mr Warwick Smith  
Telecommunications Industry Ombudsman

Facsimile No. 277 8797


Dear Mr Smith

The purpose of this letter is to confirm our discussion of 7 July 1994 at which Telecom outlined a proposal to provide confidential information to the arbitrator subject to the confidentiality provisions of the Rules of Arbitration governing the claims of the four COT claimants.

As discussed, it is proposed that Telecom will provide to the arbitrator a series of confidential reports which the arbitrator may then make available to the four COT claimants subject to the confidentiality provisions of the Rules of Arbitration. It is understood that, if the arbitrator makes this information available to the COT claimants, they will be required to keep the information confidential and return all copies of such documents and material to Telecom at the end of the arbitration.

Telecom will also make available to the arbitrator a summarised list of information which is available, some of which may be relevant to the arbitration. This information will be available for the resource unit to peruse. If the resource unit forms the view that this information should be provided to the arbitrator, then Telecom would accede to this request. It is recognised that this information may then be made available to the four COT claimants, subject to the confidentiality provisions of the Rules of Arbitration.

Yours faithfully

  
Steve Black  
GROUP GENERAL MANAGER  
CUSTOMER AFFAIRS

179 B K54215

NT BY:HUNT & HUNT

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

MELBOURNE OFFICE~

61 3 277 8797;# 2



# Hunt & Hunt

LAWYERS

12 May 1995

Our Ref: GLH

Matter No:

Your Ref:

BY FAX: 277 8797

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

Partners  
David M. Scarlett  
Edward S. Boyce  
James G.F. Harrowell  
Christine A. Colley  
Gordon L. Hughes  
Mark T. Knapman  
Ian S. Craig  
Peter J. Ewin  
Wayne B. Cahill  
Neville C.H. Deacon  
Grant D. Selton  
Charlot Veevers  
Andrew Leslie Smith  
William P. O'Shea

Consultants  
Kenneth M. Martin  
Richard J. Maloney  
Andrew Julliani

Associates  
Shane C. Hind  
John S. Melnar  
Melissa A. Henderson  
Carmie V. Galichio  
John D.F. Morris

Dear Warwick

### FAST-TRACK ARBITRATION PROCEDURE

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

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

In simple terms, my observations are as follows:

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

\_\_\_\_\_ melbourne \_\_\_\_\_  
 \_\_\_\_\_ sydney \_\_\_\_\_  
 \_\_\_\_\_ sydney west \_\_\_\_\_  
 \_\_\_\_\_ brisbane \_\_\_\_\_  
 \_\_\_\_\_ canberra \_\_\_\_\_  
 \_\_\_\_\_ newcastle \_\_\_\_\_



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ENT BY:HUNT & HUNT

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

MELBOURNE OFFICE->

61 3 277 8797:8 9

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

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

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

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

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

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

Yours sincerely

  
GORDON HUGHES