

Golden Messenger**Allegation (1)****BRIEF**

The original COTs were advised that Telecom could not settle until the telephone problems had been resolved and a service at normal network standards provided. This is especially clear in the Smith settlement. Question whether others () stopped reporting faults to promote settlement.

For each of the 10 clients - is this relevant

- identify documents
- what were the undertakings
- relevance of findings in Level 1
- post-settlement service level

in light of the views by Golden Messenger that its problems stemmed from -

- being attached to ARE exchanges
- network congestion
- difficulties in integrating differing technologies

which by their very nature may only present themselves on an intermittent basis.

- Telecom has employed its statutory immunity prior to July 1991 as a negotiating instrument in its dealings with Golden Messenger
- Telecom has not adopted a proactive approach in dealing with settlement matters.

Golden Messenger

Allegation (i)

FINDINGS

On 26 August 1992 the COTs put forward the following two questions to Telecom -

- Question 1 Is Telecom prepared to restore its telephone services of our foundation members within 28 days from today at no cost to the foundation members?

- Question 2 Is Telecom prepared to resolve the issue of financial compensation for the foundation members within 28 days from today by way of an independent arbitrator?

Telecom responded by suggesting that it appoint an internal project manager to review each case.

The negotiating point for Telecom was Mr D Campbell, Group Managing Director Commercial and Consumer and Mr G Schorer, in his capacity as COT spokesperson, was the negotiating point for COT.

On 11 September 1992 D Campbell was forwarded a technical report from Victoria Region Network Investigation and Fault Management and Diagnostics areas within Telecom. This report was supported by the General Manager, Telecom Commercial Vic/Tas.

This brief two page report drew the following conclusions -

- Various network faults were found which would have influenced the customer's service. All these problems were corrected by 25 October 1988.

- It is evident by the fault reports from the customers since 24 October 1988 that the system and the network are now operating at an acceptable standard.

The Telecom Victoria regional technical staff expressed strong views as to the validity of the continuing faults claimed by the Victoria COTs and maintained that network services were performing satisfactorily. Two key indicators of these views held by regional technical staff were -

- Telecom Minute from General Manager, Telecom Commercial Vic/Tas to Group General Manager, Consumer and Commercial of 28 October 1993 which advised of serious concerns that the technical experts had in conducting further testing, and their view that extensive testing has already been performed and that

all indicators other than the customers own comments are that the telephone services are performing satisfactorily.

- Telecom Minute from National Manager, Planning and Development to Managing Director Commercial of 26 November 1992 which advised that (for Golden Messenger) there are no outstanding technical issues with this customer excluding those associated with the installation of his new AT&T PABX.

The record of conversation, prepared by D Campbell, of the meeting of 15 September 1992 between himself and G. Schorer reveals that -

- Regional Telecom people appear convinced that there were no problems beyond normal
- COT customers left no doubt that they viewed the situation quite differently and in some cases found the service totally unsatisfactory
- D Campbell recommended further testing, including the placement of Telecom staff in COT customer premises, to get a more accurate perception of the customer's problems and undertake monitoring to positively identify the extent and type of problems
- G. Schorer was of the view that it was important to fix the problem even if it meant "bypassing the problem" and suggested that Telecom should try unique solutions and indicated that all COT customers should be moved to other exchanges
- G. Schorer stated that if Telecom would put his new number in the next Yellow Pages he would waive any claims to loss of business due to number change and he would not want Telecom to pay for any special advertising other than an RVA on his old number
- D. Campbell reminded G. Schorer that until the cause of the problems was known there was no certainty that service would improve by relocating to another exchange

Telecom appear to have considered the request for relocating to new exchanges and D. Campbell's letter to G Schorer of 16 September 1992 sets out the following three key items as outcomes of their meeting of 15 September 1992 -

- Telecom to move quickly to finalise their understanding of the problems
- COTs to advise of possibility of Telecom providing people to work with COT members in their businesses to obtain first hand exposure to the problems on a continuous basis

- G. Schorer to discuss with (COT) members willingness to consider being reassigned to another exchange - which might involve a number change in an attempt to quickly improve the quality of service and whilst this in itself does not necessarily mean an improved performance it would be an action different from that undertaken to date. Telecom to assist financially with advertising as well as with recorded voice announcement to old number

COT expressed the view that their service problems were due to two factors -

- network congestion
- the age of the exchanges to which they were connected

Letter of 22 September 1993 from G. Schorer to D. Campbell advises that COT have no objections to further testing, but request immediate connection to AXE exchanges in the same charging zone. Letter also states that COT cannot accept that Telecom need to do further testing to be satisfied that problems have been experienced.

Letter of 23 September 1993 from D. Campbell to G. Schorer incorporated the following statements -

- The key problem is that discussion on possible settlement cannot proceed until the reported faults are positively identified and the performance of your member's services is agreed to be normal
- we cannot move to settlement discussions or arbitration while we are unable to identify faults which are affecting these services. At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards
- the proposed testing regime is also a necessary prelude to the suggestion that your members be moved to different exchanges

The approach stated by D. Campbell in the aforementioned letter was subsequently reaffirmed on the following occasions -

- Telecom letter of 14 October 1992 from D. Campbell to G. Schorer
- Telecom letter of 21 October 1992 from D. Campbell to G. Schorer
- Telecom letter of 6 January 1993 from D. Campbell to G. Schorer which advised that as a suitable process of comprehensive testing was not agreed the offer of arbitration was withdrawn and stated that he did not feel that further talking would be beneficial, suggested that COT's recourse is further negotiations or the courts.

Reaction of COTs to the above approach was that COT members did not accept precondition of testing prior to moving to more modern and different exchange equipment. COTs were prepared to allow Telecom to do as much testing as it needs to in order to try and locate exchange faults, but their business operations should not be jeopardised. These views were contained in the letter of 23 December 1992 from G. Schorer to D. Campbell.

Record of conversation of 13 January 1993 between R. Davey (AUSTEL) and Blount (AOTC) reveals -

- Blount indicated that AOTC wanted to make tests and that the complainants did not want them to do that. As a result of this there was no substantial material upon which AOTC might resolve the difficulties
- Davey advised of comments received from _____ and _____ that their call rates had increased between 300% to 500% since moving to a new exchange

No information was available on Telecom files or correspondence received from G. Schorer on the specific makeup of the further testing proposed by D. Campbell.

D. Campbell did not appear to indicate how his proposed testing would differ from previous testing. This is a particularly important issue as Golden Messenger has continued to report a wide range of problems since 1987 and it would appear that existing testing has not resolved the problems. Whilst D Campbell's purpose for the further testing was clearly outlined in his minute of 26 October 1993 to Holmes - "to try and break the deadlock between our Commercial staffs views that there were no problems outside normal network failures and the COT members views that performance was much worse", his proposed methodology was not contained in any documentation or record of discussions. The effectiveness of the proposed testing was questioned by Telecom's own technical experts.

No evidence was found of a structured and co-ordinated approach to demonstrate how this proposed further testing would specifically address the problems claimed by Golden Messenger (and the other COTs). In view of

- the strong views of Telecom regional technical experts that the network was operating satisfactorily
- the absence of any specific methodology to be followed for the proposed further testing thereby creating a situation where these same experts would conduct the same testing procedures that led them to forming the view that the system was operating satisfactorily

it is doubtful that the proposed further testing would identify the causes of claimed faults that have been frequently reported since 1987.

In his letter of 23 September 1992 Mr Campbell states that -

"at this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards"

It should be noted that on 11 September 1992, one day after receiving a technical report (referred to earlier) the General Manager, Telecom Commercial Vic/Tas advised the authors of the technical report that -

Mr Graeme Schorer of Golden Messenger is reported to have told a Telecom Representative that he is still losing 50 calls per day and that there was some improvement in May 1992, coincident with a change in dial tone. This is the sort of claim we normally treat seriously. It is the first I heard of it. Could you please re-open your investigation and even instigate some additional testing if necessary.

The General Manager, Telecom Commercial Vic/Tas advised D. Campbell on 14 September 1992 that the investigation was re-opened and that the claimed loss of 50 calls per day had staggered them. There is no documentation to show that the re-opened investigation into G. Schorer's claim of losing 50 calls per day, had been finalised.

Whilst the Telecom Regional technical experts had reported that there were no outstanding technical problems with Golden Messenger and that the network was performing satisfactorily, Golden Messenger was regularly reporting faults as confirmed by monitoring information provided by Telecom. A summary of reported faults for the period 29 July 1992 to 8 September 1993 is located on the Golden Messenger monitoring file. Internal Telecom documentation reveals that considerable testing has been conducted since 1 November 1989 and that these tests indicated the network was performing satisfactorily. Missing in any of the documentation within the Telecom files is how the testing was structured to address the problems reported, and in particular, the claims that these problems were being caused by network congestion, being connected to an ARE exchange and having a network comprising differing technologies and computer systems. This appears to be the core of the differing views put forward by the Telecom technical experts and the COT customers.

D. Campbell appeared to be willing to consider the request put forward by G. Schorer on 15 September 1992 to move COT customers to different exchanges. In his letter of 16 September 1992 D. Campbell requested G. Schorer to discuss with COT members their willingness to be reassigned to another exchange in an attempt to quickly improve service, and stated that whilst this in itself does not necessarily mean an improved performance it would be an action different from that undertaken to date.

This willingness to consider a different approach ceased when D. Campbell advised G. Schorer on 23 September 1992 that the proposed testing regime is also a necessary prelude to the suggestion that your members be moved to different exchanges. It should be noted that in the cases of _____ and _____, each was subsequently moved to another exchange with AXE technology in late November 1992, and that R.

Davey advised D. Campbell on 13 January 1993 that both customers claimed to have experienced an increase in calls from 300% to 500%.

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

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

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

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

Golden Messenger**Allegation (ii)****BRIEF**

Failure to keep clients advised - general concerns expressed by COTs etc. and Fortitude Valley clients that outcome of monitoring, investigations, etc. are not made available to them

- contrast with set informal procedures and Morris Report
- any statements on file.

GOLDEN MESSENGER**FINDINGS - ALLEGATION (ii)**

Documentation obtained during a search of Telecom files reveals that prior to August 1988 Telecom was aware that -

- the trunking of IDN originated traffic to North Melbourne caused severe congestion in the IDN exit route from Footscray Node to North Melbourne
- failures with components of ARE exchanges were identified
- an additional number in the 329 7000 group, which the customer formerly had, could not be connected due to congestion.

and that a network investigation had commenced into the faults reported by Golden Messenger over the preceding two years. However, on 11 October 1988, Telecom advised Golden Messenger as follows -

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

As you are aware extensive investigations, reports and discussions, I confirm that Telecom cannot accept your allegations and claims. In Telecom's view, all reasonable efforts to inquire into your complaints have been unable to substantiate the allegations and claims.

In the circumstances, Telecom now demands immediate payment of all outstanding charges, namely -

Telecom Flexitel	\$46,977.00
Exchange Lines	\$10,809.11
Total	\$57,786.11

Accordingly, I confirm that unless the amount of \$57,786.11, being the outstanding charges due to Telecom, is received not later than 4.30 pm on 12th October 1988 Telecom will institute legal proceedings to recover the outstanding charges without further notice. To this end I have placed the matter in the hands of W J Lawrence, Debt Recovery Agency.

On 31 October 1988 the Supervising Engineer - Network Investigations wrote to the Manager, Business Communications Services North (Victoria) and

advised of the following regarding the service received by customers off North Melbourne Exchange -

- it was revealed that between 5 and 14% congestion was being experienced and that this congestion related to two different underlying conditions -
 - the number of CL blocks were inadequate which resulted in the immediate congestion tone
 - a particular FIR at North Melbourne was experiencing repeated failures. This resulted in revertive signalling failures causing a time out and thus the delayed congestion tone.
- the IDN exit route from Footscray Node to North Melbourne was increased from 37 circuits to a total of 111 circuits, and that this could be further increased in the near future.

On 18 January 1989 Network Investigation Section were advised by Metro Design North that the IDN exit from Footscray would be increased to 200 circuits by May 1989 to meet expected traffic levels.

No record was found where Telecom acknowledged that major network problems did exist and that these could have caused the problems/faults experienced by Golden Messenger.

On 17 November 1989 Network Investigation Section issued the Golden Messenger - FINAL REPORT. Findings within this report contained the following -

- there was congestion on the IDN exit route from Footscray Node to North Melbourne
- under dimensioned CL and PD individuals at Footscray Node were causing congestion
- faults were also found with various exchanges in the network which affected the grade of service received by Golden Messenger.

This report concluded that several network conditions influenced the customer service and that problems found had been rectified. The following extract from this report is particularly noteworthy -

The faults found and corrected were not based on customer reports to 1100 or 1109, rather by employing indicators such as REA page data, ICM and AXE end of selection tracing. In actual fact the reports to 1100 were frequent and recurring but did not address the problems frequently reported as BWF.

This extract indicates that faults were reported on a frequent and recurring basis during the investigation, but that the causes of the faults were not found by using routine fault reporting mechanisms.

No record was found of Telecom advising Golden Messenger of the findings contained within the report. Of particular interest is that the findings of the report confirm the views expressed by G Schorer, at the time, that Golden Messenger was affected by exchange problems and network congestion.

From late November 1989 to 26 August 1992 little documentation was found in the files presented by Telecom and the next significant documented event occurred on 26 August 1992. On 26 August 1992 a meeting took place between members of COT, representatives of Telecom and two representatives from AUSTEL as observers. The meeting covered a wide range of issues with the two key issues being -

- COT members were still dissatisfied with the level of service and that they continued to experience problems
- COT members had not received satisfactory service from Telecom over a lengthy period of time and that as a result of this COT members had suffered business losses, personal stress and hardship.

This meeting resulted in the COTS seeking a transfer to AXE exchanges in their respective charging zones and action to commence financial settlement for claimed business losses due to unsatisfactory service from Telecom. Telecom insisted on further testing to identify perceived faults and for agreement that the level of service was normal prior to further discussions on settlement or relocation to an AXE exchange. This matter has been addressed in further detail within Allegation (i).

On 23 September 1992 Telecom advised Golden Messenger that -

at this point I have not evidence that any of the exchanges to which your members are attached are the cause of problems outside of normal performance standards.

This advice reflected the views put forward by Regional Technical staff in Victoria. No record was found on how the past testing specifically addressed the continuing and recurring problems claimed by Golden Messenger or how the testing established that there were no significant faults. Telecom appear to have maintained the position that as it could not identify the cause of the problems with its testing, it did not accept that the level of service provided was unsatisfactory.

It is noted that Telecom fault records show that for the period 27 September 1992 to 8 September 1993 Golden Messenger continued to frequently report faults, many of a recurring nature.

Customer complaints records provided by Telecom for the period 15 April 1993 to 28 June 1993 reveal considerable interaction between Regional Technical staff and Golden Messenger in trying to identify the cause of some faults reported. Of note is the claim by G Schorer of 4 June 1993 that the intermittent problem regarding the marker switches, controlling the 0 thousands number group, solved on 27 April 1993 was identified by Honeywell whilst testing the PABX. He further stated that Telecom testing

failed to reveal the cause of the problem. Telecom fault reports show a high level of testing and repeated faults being reported without locating a fault. The Telecom fault reports also confirm G Schorers claim that the PABX maintainer identified where the fault was to be located.

From the customer complaint records it is evident that Telecom technical staff have advised Golden Messenger of what testing had taken place, and of the results of that testing. What is not evident in any of the documentation is whether the customer was advised how the testing addressed the faults being reported on a continuing basis or how the testing would isolate and thereby identify the causes of the faults being reported.

In view of the continuing nature of the faults being reported, the level of testing undertaken by Telecom, past history where Telecom did not appear to identify major causes of faults using the 1100 fault reporting mechanism, and the above situation where the PABX Maintainer provided the critical insight to locate a serious fault doubts are raised on the capability of the testing regime to locate and isolate the causes of faults being reported.

Golden Messenger**Allegation (iii)****BRIEF**

For the COTs in particular it is alleged that Telecom said they had no fault or the fault was of minor nature.

- material on file
- identify and record
- relevant to complaints
- Telecom files - any difference?

GOLDEN MESSENGER**FINDINGS - ALLEGATION (iii)**

Findings at Allegation (ii) are also relevant to this Allegation. Telecom have maintained the position that network service was within acceptable standards despite having considerable information, obtained from internal investigations, that major problems did exist with the network and that these problems did impact on the level of service provided to the customer.

The following extracts from views put forward by Telecom Regional Technical staff and Senior Management -

- Telecom Minute from General Manager, Telecom Commercial Vic/Tas to Group General Manager, Consumer and Commercial of 28 October 1993 which advised of serious concerns that the technical experts had in conducting further testing, and their view that extensive testing has already been performed and that all indicators other than the customers own comments are that the telephone services are performing satisfactorily.
- Telecom letter from D Campbell to G Schorer of 23 September 1992 which advised that "At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside of normal performance standards."

indicate that Telecom has formed the view that as its testing had not identified the source/s of the recurring faults being frequently reported, that there was no evidence to suggest that the network was performing unsatisfactorily.

However, whilst maintaining this view Telecom had -

- been receiving fault reports frequently, with many of the faults being reported on a recurring basis
- been informed of other network users that had experienced difficulties in contacting Golden Messenger or experienced similar problems
- located and rectified significant faults within the network.

The key issue is again the extent to which the testing regime is capable of identifying the problems that occurred, and in particular, testing the network as a whole.

Allegation (iv)**BRIEF**

For the COTs and some clients claims were made that Telecom suggested that the faults would be overcome if they purchased improved consumer equipment when Telecom knew that this would not rectify the faults or was not sure that it would. also maintains that he was told to relocate

- check files for details
- identify documents
- consider wording carefully
- check the Telecom files
- record any evidence of improvement.

GOLDEN MESSENGER**FINDINGS - ALLEGATION (iv)**

Golden Messenger has claimed that Telecom advised that there were no problems with the network and that Golden Messengers problems would be overcome with the purchase and installation of improved customer equipment. The customer equipment recommended by Telecom as most appropriate for meeting Golden Messengers then current and foreseeable needs was the Flexitel System.

Documentation reviewed does not provide direct evidence to support Golden Messengers claim, however, the following extracts from the Telecom quotation for the design and installation of the Flexitel System -

"The equipment Telecom has offered is the Flexitel and meets the service requirements of your company. It is Telecom's opinion that the system is the best and most advanced presently available to Australian users.

Telecom selected the Flexitel only after intensive evaluation, and proving to our own satisfaction the superior facilities, reliability and flexibility of the system."

along with the frequency of problems with the system and statements made by technical and legal staff within Telecom internal correspondence, suggests that Telecom recommended and subsequently installed a system that clearly did not meet Golden Messengers operational requirements.

Allegation (v)**BRIEF**

COTs and many in _____ allege that Telecom told them that their fault was unique in the area (or no one else was complaining to the same extent)

- check files for details and identify documents
- check the Telecom files (especially Network Investigation)
- evidence of wider problem
- extent of this advice in _____

GOLDEN MESSENGER**FINDINGS - ALLEGATION (v)**

The documentation reviewed indicates that the principal response from Telecom to Golden Messenger was that all reasonable efforts to inquire into complaints of unsatisfactory service have been unable to substantiate the claims of recurring faults resulting in business loss.

Telecom appear to have maintained this approach despite having internal information, on a number of occasions, that problems did exist in the network.

The only direct reference within Telecom documentation to other customers experiencing similar problem to Golden Messenger appears in the Final Report dated 17 November 1989 into Golden Messenger. The report concluded that two of the three customers cited by Golden Messenger as having similar problems, were affected by network problems specific to themselves.

This is difficult to understand as the major problems referred to in the report -

- congestion problems in the network
- problems with equipment in various exchanges and problems in integrating AXE and ARE technology

would have impacted on all other customers connected to the North Melbourne exchange.

No documentation was found where Telecom acknowledged that the customers cited as having problems similar to Golden Messenger did actually experience customer specific as well as network wide faults.

Allegation (vi)**BRIEF**

has alleged that information relevant to making a claim was withheld from despite FOI. and both complain of difficulty in gaining access under FOI, including 30 day rule applying only when FOI officer returns from leave, personnel other than FI officer determining questions of access. There are allegations that they were not told of the nature of the fault when this information was known to Telecom.

- check files and identify documents
- check Telecom files, including FOI files
- check Telecom manuals.

FINDINGS

Review of documentation within Telecom files, provided by G Schorer and contained within AUSTEL files did not reveal difficulty in gaining access under FOI.

Allegation (vii)**BRIEF**

The COTs have complained that the period of settlement was unreasonably extended during a time of financial pressure on themselves (), that they were required to settle under duress (), that they were misled into taking legal action which was then unreasonably extended (Schorer) and that secrecy conditions on settlement are unwarranted, that reliance was unreasonably placed on Telecom's immunity from suit, etc.

- check files for detail
- check Telecom files
- check Telecom manuals
- check settlement conditions.

GOLDEN MESSENGER**FINDINGS - ALLEGATION (vii)**

Golden Messenger has claimed that it has incurred business losses due to unsatisfactory service and being sold customer equipment that did not meet its operational requirements.

Golden Messenger has obtained a settlement in regard to the customer equipment (Flexitel System) sold and installed by Telecom, however, it has not been successful in negotiating a settlement for business losses claimed due to unsatisfactory service.

Unsatisfactory Service

Documentation reviewed indicates that Golden Messenger has continued to report problems with the level of service provided to it. Findings at Allegations (i) and (ii) reveal that Telecom has had internal information confirming that significant problems had existed in the network and that these would have impacted on the quality of service provided to Golden Messenger.

Findings at Allegations (i), (ii) and (iii) also reveal that Golden Messenger has -

- continued reporting faults over the past seven years
- provided Telecom with advice of other network users who have experienced difficulty in contacting Golden Messenger or have experienced problems similar to those reported by Golden Messenger.

Telecom has maintained the position that as its testing had not identified network faults that would produce the range and extent of customer service faults claimed, there is no evidence to indicate that the network has not performed satisfactorily.

On 23 September 1992, Telecom advised Golden Messenger that discussion on possible settlement cannot proceed until the faults are positively identified and the performance of your members services is agreed to be normal.

This approach has essentially placed Golden Messenger (and the other COTs) in a catch 22 situation, where Telecom maintain that the results of their testing indicate a network working to an acceptable standard, but offering further such testing as means of assessing the customers claims that the network is not working to an acceptable standard as a pre-condition to commencing settlement discussions.

In the absence of detailed information from Telecom on how the further testing would specifically address the claimed problems such as -

- not receiving ring
- clients receiving engaged signal

- call drop out on answer

and how this testing would differ from previous testing, the insistence of further testing is not seen as a positive contribution to a settlement process.

Customer Equipment

Documentation reviewed reveals that -

- The Flexitel System was proposed by Telecom after a list was submitted by Golden Messenger of all facilities required. Telecom determined that the Flexitel System best suited Golden Messengers business requirements. The Flexitel System was installed in July 1987.
- Almost immediately after installation, Golden Messenger was making complaints to Telecom about the performance of the system and non-compliance with the terms of the contract.

Telecom letter of 14 January 1988 acknowledges some of the reported deficiencies of the system and suggested action to overcome the non-compliance with the terms of the contract.

At a meeting between Telecom and Golden Messenger on 15 January 1988 it was decided that Golden Messenger would not keep their Flexitel System as they could not hold more than two calls on each station.

On 3 February 1988 Telecom proposed two options to overcome the operational deficiencies of the Flexitel System -

- Option 1 - by providing additional equipment and modification to the system
- Option 2 - replace with a Phillips D1200 PABX with UCD.

On 10/3/88 Telecom advised Golden Messenger that Option 1 caused the system to be slowed to such an extent that it could not then cater for an expansion to cover the administration section. Telecom suggested that another Flexitel system be installed and linked to the first system with tie lines. This was accepted by Golden Messenger and the additional system was installed on 9 and 10 April 1988.

Golden Messenger continued to report difficulties with the system and also with the network on regular basis.

On 17/5/88 the Network Investigation Section provided a progress report on its investigation into Golden Messenger and stated that the major problem still appears to be the slow response time of the Flexitel. This combined with high call through put results in operators misusing the system resulting in adverse service to their customers.

Telecom Minute of 23/3/8 advised of the following -

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

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

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

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

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

on 6/7/90 Telecom advised -

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

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

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

Telecom Minute of 30/3/88 states that advice from Legal and Policy Headquarters indicate that Golden Messenger appeared to have a case against us and that we should negotiate a settlement to prevent legal action proceeding. This advice was also contained in Telecom Minutes of 27/4/88 and 5/1/92.

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

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

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

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

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

Allegation (viii)**BRIEF**

It is alleged () that Telecom misled the Ombudsman, AFP and politicians and AUSTEL as regards complaint. and Schorer allege that politicians being briefed re possible Senate Inquiry were provided with an unbalanced and incomplete brief.

- check latter brief in terms of above allegations
- check and identify allegations on file
- check Telecom files.

There are also allegations that personnel in Queensland gave inaccurate briefings to senior national Telecom personnel (eg re briefing to re compensation/goodwill issue).

GOLDEN MESSENGER**FINDINGS - ALLEGATION (viii)**

Review of the Telecom brief of 17 August 1993 to The Hon David Beddall MP, Minister for Communications revealed that the brief did not present a balanced representation of the situation.

A number of statements have been extracted from this brief and comments, in terms of the findings against the other allegations, are provided on these extracts.

Extract

Financial settlements have been reached with each of the original five customers although with two exceptions () the customers continue to express dissatisfaction with their service and one customer in particular (Cape Bridgewater) is seeking to re-open the issue of compensation. It would be fair to say that even those customers that are no longer active in the COT arena will remain dissatisfied customers of Telecom.

Comments

- Telecom did not convey to the Minister the impact of Telecom's statutory immunity from losses/problems prior to July 1991 and that Telecom had advised the COTs of this in their dealings regarding settlement matters.
- The COTs were not in a position to commence legal proceedings to seek recompense for business losses prior to July 1991.
- By July 1991 the COTs were claiming that due to continued inadequate service they had suffered business losses and that their customer bases had been eroded to such an extent that they were in financial difficulties.
- A balanced brief would need to advise of the capability of the COTs to fund proceedings in the Federal Court.
- This statement is also misleading as it does not advise that the reason that the two COTs are no longer complaining of unsatisfactory service is that they have ceased operating.
- This statement does not advise that settlement with Golden Messenger related to legal action under the Trade Practices Act 1984 and the Fair Trading Act 1985.

Extract

The settlements reached to date have been, in Telecom's opinion, very generous and have contained a not insignificant component beyond

that which could be supported by objective analysis of the factual evidence. This business judgement was made in the interests of settling the claims in a manner that clearly addressed the customer's perceived problems in the expectation that such settlement would avoid ongoing debate (with associated costs) and alleviate the acrimony that had developed over an extended period. This approach has obviously not been successful.

Comments

- In the case of the settlement with Golden Messenger, a balanced brief would have advised that the claimed amount exceeded the settlement by a factor of ten and that the claimed amount was supported by independent assessment of business losses by two accounting firms.
- There is sufficient evidence to suggest that Golden Messenger has experienced problems with the network and that these problems impacted on its business operations. A balanced brief would have acknowledged that network problems were found, and whilst every effort was made to repair such faults, they would have impacted on the customer.
- Telecom's reliance on its statutory immunity prior to July 1991 and insistence that as its testing regime could not locate the cause of the claimed ongoing problems it found no evidence that the network was operating unsatisfactorily, were two key items in the negotiation processes. These do not support Telecom's claims that the claims were settled in a manner that addressed the customers perceived problems.
- In view of internal information confirming network problems and advice of other network users that had difficulty in reaching Golden Messenger or experienced similar problems, Telecom's reference to customers problems as perceived problems is not considered a balanced approach.

Extract

The businesses involved in these disputes have all received very fair treatment of their cases - some would argue that the settlements reached have, in fact, been excessively generous given the factual evidence. Telecom's testing (whilst identifying some faults from time to time) has repeatedly demonstrated the integrity of the network and ample evidence exists to support this contention. Only one of the customers (Golden Messenger) involved has been prepared to take court action against Telecom and this action did not relate to network issues. Telecom would welcome the opportunity to present its case in court but there is not accepted mechanism for it to initiate court proceedings on these matters. Hence Telecom must continue to bear the brunt of negative media activity despite its attempts to resolve these cases.

Comments

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- The decision made by Golden Messenger to accept a settlement and not proceed with legal action was made on the basis that it was not in a position to fund the legal action in the Federal Court. It should be noted that for five years prior to the settlement, that is for the entire duration of the dispute period, Telecom maintained that the Flexitel System was satisfactory whilst internal correspondence from technical and legal staff acknowledged that -
 - the system did not meet Golden Messenger operational requirements
 - Golden Messenger was likely to be successful in establishing that Telecom engaged in misleading and deceptive behaviour.

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

- Comments offered against the previous extract regarding Telecom's statutory immunity and non-finding of faults as evidence that the network is performing satisfactorily are also applicable to Telecom's claim that COT received fair treatment.
- The statement regarding only one customer being prepared to take court action and this did not relate to network issues does not reflect the problems faced by the COTs in dealing with Telecom's statutory immunity prior to July 1991 or their respective financial difficulties.

It should also be noted that Golden Messenger commenced legal action in June 1990 regarding customer equipment sold and installed by Telecom, and that at that time it was the only course of legal action available to Golden Messenger.

- Telecom testing has revealed problems with the network, and whilst this led to action to overcome the problems found, there is sufficient evidence to suggest that these problems have impacted on the level of service to and business operations of Golden Messenger.
- The comment regarding testing demonstrating the integrity of the network is not seen as balanced. Telecom have found major and minor faults in many components of the overall network and whilst Telecom may choose to deal with these as individual situations, the cumulative and ongoing effect on the customer is one of claimed ongoing unsatisfactory service. This is best summed up by a statement contained within a Network Investigation Report of August 1991 of another COT case () -

Over a period of several weeks, a number of faults were identified in different parts of the network. These faults would not cause major difficulties individually, but compounded to form a complicated sequence of events that

appeared as continuous service difficulty for the customers
in the area.

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Allegation (1)

BRIEF

Isn't this more Arrogant + Bullying behavior?

The original C problems had provided. Th others (

settle until the telephone cards whether ent.

For each of

①. Telecom staff to be identified by name - Glossary of names + positions in appendix.

Is this all

②. Conclusion at front of allegation - easier to focus on substantiation of case.

Observe AUSTE follow

ation within re above response

Docurr

③. Produce documents referred to in argument.

Did A

made settlement?

- AG may iron can this be produced as 'hard evidence' - it is clearly only hearsay. She has not produced any evidence to support this - and how could she? - only evidence would be testimonials by people who claimed difficulties were being experienced by monitoring recording faults. Testimonials may be challengeable - no TBA records available.

OBSERVATIONS

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On 26 August 1992 the COTs put forward the following two questions to Telecom

- Question 1 Is Telecom prepared to restore its telephone services of our foundation members within 28 days from today at no cost to the foundation members?
- Question 2 Is Telecom prepared to resolve the issue of financial compensation for the foundation members within 28 days from today by way of an independent arbitrator?

Telecom responded by suggesting that it appoint an internal project manager to review each case.

The negotiating point for Telecom was Mr D Campbell, Group Managing Director Commercial and Consumer and Mr G Schorer, in his capacity as COT spokesperson, was the negotiating point for COT.

On 11 September 1992 D Campbell was forwarded a technical report from Victoria Region Network Investigation and Fault Management and Diagnostics areas within Telecom. This report was supported by the General Manager, Telecom Commercial Vic/Tas.

This brief two page report drew the following conclusions -

- Various network faults were found which would have influenced the customer's service. All these problems were corrected by 25 October 1988.
- It is evident by the fault reports from the customers since 24 October 1988 that the system and the network are now operating at an acceptable standard.

The Telecom Victoria regional technical staff expressed strong views as to the validity of the continuing faults claimed by the Victoria COTs and maintained that network services were performing satisfactorily. Two key indicators of these views held by regional technical staff were -

- Telecom Minute from General Manager, Telecom Commercial Vic/Tas to Group General Manager, Consumer and Commercial of 28 October 1993 which advised of serious concerns that the technical experts had in conducting further testing, and their view that extensive testing has already been performed and that all indicators other than the customers own comments are that the telephone services are performing satisfactorily.

- Telecom Minute from National Manager, Planning and Development to Managing Director Commercial of 26 November 1992 which advised that (for Golden Messenger) there are no outstanding technical issues with this customer excluding those associated with the installation of his new AT&T PABX.

The record of conversation, prepared by D Campbell, of the meeting of 15 September 1992 between himself and G. Schorer reveals that -

- Regional Telecom people appear convinced that there were no problems beyond normal
- COT customers left no doubt that they viewed the situation quite differently and in some cases found the service totally unsatisfactory
- D Campbell recommended further testing, including the placement of Telecom staff in COT customer premises, to get a more accurate perception of the customer's problems and undertake monitoring to positively identify the extent and type of problems
- G. Schorer was of the view that it was important to fix the problem even if it meant "bypassing the problem" and suggested that Telecom should try unique solutions and indicated that all COT customers should be moved to other exchanges
- G. Schorer stated that if Telecom would put his new number in the next Yellow Pages he would waive any claims to loss of business due to number change and he would not want Telecom to pay for any special advertising other than an RVA on his old number
- D. Campbell reminded G. Schorer that until the cause of the problems was known there was no certainty that service would improve by relocating to another exchange

Telecom appear to have considered the request for relocating to new exchanges and D. Campbell's letter to G Schorer of 16 September 1992 sets out the following three key items as outcomes of their meeting of 15 September 1992 -

- Telecom to move quickly to finalize their understanding of the problems
- COTs to advise of possibility of Telecom providing people to work with COT members in their businesses to obtain first hand exposure to the problems on a continuous basis
- G. Schorer to discuss with (COT) members willingness to consider being reassigned to another exchange - which might

involve a number change in an attempt to quickly improve the quality of service and whilst this in itself does not necessarily mean an improved performance it would be an action different from that undertaken to date. Telecom to assist financially with advertising as well as with recorded voice announcement to old number

COT expressed the view that their service problems were due to two factors -

- network congestion
- the age of the exchanges to which they were connected

Letter of 22 September 1993 from G. Schorer to D. Campbell advises that COT have no objections to further testing, but request immediate connection to AXE exchanges in the same charging zone. Letter also states that COT cannot accept that Telecom need to do further testing to be satisfied that problems have been experienced.

Letter of 23 September 1993 from D. Campbell to G. Schorer incorporated the following statements -

- The key problem is that discussion on possible settlement cannot proceed until the reported faults are positively identified and the performance of your member's services is agreed to be normal
- we cannot move to settlement discussions or arbitration while we are unable to identify faults which are affecting these services. At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards
- the proposed testing regime is also a necessary prelude to the suggestion that your members be moved to different exchanges

The approach stated by D. Campbell in the aforementioned letter was subsequently reaffirmed on the following occasions -

- Telecom letter of 14 October 1992 from D. Campbell to G. Schorer
- Telecom letter of 21 October 1992 from D. Campbell to G. Schorer
- Telecom letter of 6 January 1993 from D. Campbell to G. Schorer which advised that as a suitable process of comprehensive testing was not agreed the offer of arbitration was withdrawn and stated that he did not feel

that further talking would be beneficial, suggested that COT's recourse is further negotiations or the courts.

Reaction of COTs to the above approach was that COT members did not accept precondition of testing prior to moving to more modern and different exchange equipment. COTs were prepared to allow Telecom to do as much testing as it needs to in order to try and locate exchange faults, but their business operations should not be jeopardised. These views were contained in the letter of 23 December 1992 from G. Schorer to D. Campbell.

Record of conversation of 13 January 1993 between R. Davey (AUSTEL) and Blount (AOTC) reveals -

- Blount indicated that AOTC wanted to make tests and that the complainants did not want them to do that. As a result of this there was no substantial material upon which AOTC might resolve the difficulties

It was accepted with Garms not any after this damn!

Davey advised of comments received from Garms and Gillan that their call rates had increased between 300% to 500% since moving to a new exchange

No information was available on Telecom files or correspondence received from G. Schorer on the specific makeup of the further testing proposed by D. Campbell.

D. Campbell did not appear to indicate how his proposed testing would differ from previous testing. This is a particularly important issue as Golden Messenger has continued to report a wide range of problems since 1987 and it would appear that existing testing has not resolved the problems. Whilst D Campbell's purpose for the further testing was clearly outlined in his minute of 26 October 1993 to Holmes - "to try and break the deadlock between our Commercial staffs views that there were no problems outside normal network failures and the COT members views that performance was much worse", his proposed methodology was not contained in any documentation or record of discussions. The effectiveness of the proposed testing was questioned by Telecom's own technical experts.

No evidence was found of a structured and co-ordinated approach to demonstrate how this proposed further testing would specifically address the problems claimed by Golden Messenger (and the other COTs). In view of

- the strong views of Telecom regional technical experts that the network was operating satisfactorily
- the absence of any specific methodology to be followed for the proposed further testing thereby creating a situation where these same experts would conduct the same testing procedures that led

them to forming the view that the system was operating satisfactorily

it is doubtful that the proposed further testing would identify the causes of claimed faults that have not been able to be identified since 1987.

In his letter of 23 September 1992 Mr Campbell states that

"at this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards"

yet there is no documentation to show that the re-opened investigation into G. Schorer's claim of losing 50 calls per day, had been finalised. It should be noted that on 11 September 1992, one day after receiving a technical report (referred to earlier) the General Manager, Telecom Commercial Vic/Tas advised the authors of the technical report that -

"Mr Graeme Schorer of Golden Messenger is reported to have told a Telecom Representative that he is still losing 50 calls per day and that there was some improvement in May 1992, coincident with a change in dial tone. This is the sort of claim we normally treat seriously. It is the first I heard of it. Could you please re-open your investigation and even instigate some additional testing if necessary".

The General Manager, Telecom Commercial Vic/Tas advised D. Campbell on 14 September 1992 that the investigation was re-opened and that the claimed loss of 50 calls per day had staggered them.

Whilst the Telecom Regional technical experts had reported that there were no outstanding technical problems with Golden Messenger and that the network was performing satisfactorily, Golden Messenger was regularly reporting faults as confirmed by monitoring information provided by Telecom. A summary of reported faults for the period 29 July 1992 to 8 September 1993 is located on the Golden Messenger monitoring file. Internal Telecom documentation reveals that considerable testing has been conducted since November 1989 and that these tests indicated the network was performing satisfactorily. Missing in any of the documentation within the Telecom files is how the testing was structured to address the problems reported, and in particular, the claims that these problems were being caused by network congestion and having a network comprising differing technologies and computer systems. This appears to be the core of the differing views put forward by the Telecom technical experts and the COT customers.

D. Campbell appeared to be willing to consider the request put forward by G. Schorer on 15 September 1992 to move COT customers to different exchanges. In his letter of 16 September 1992 D. Campbell requested G. Schorer to discuss with COT members their willingness to be reassigned to another exchange in an attempt to quickly improve service, and stated that whilst this in itself does not

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

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

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

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

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

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

Allegation (i)**Appendix 1**

Documents relating to this allegation - contained within AUSTEL's files in chronological sequence

FOLIO	DATE	FOLIO	DATE
69	26.8.92	28	14.10.92
4	1.9.92	30	14.10.92
5	1.9.92	45	21.10.92
7	1.9.92	50	21.10.92
11	8.9.92	553	21.10.92
507	10.9.92	596	21.10.92
508	10.9.92	58	22.10.92
12	11.9.92	64	22.10.92
509	11.9.92	517	22.10.92
510	11.9.92	54	23.10.92
511	14.9.92	55	23.10.92
512	15.9.92	519	26.10.92
13	16.9.92	63	27.10.92
15	16.9.92	590	28.10.92
513	16.9.92	520	29.10.92
514	16.9.92	521	9.11.92
16	17.9.92	522	26.11.92
19	18.9.92	523	24.12.92
20	22.9.92	524	6.1.93
22	23.9.92	526	6.1.93
505	26.9.92	114	11.1.93
516	14.10.92	145	15.1.93