CAV
CHRONOLOGY
LGE

Exhibit 155 to 215

Facsimile Header Sheet

Difficult Network Faults

Telecom AUSTRALIA

Network Operations
Melbourne

Ground Floor
19 - 23 Prospect St
Box Hill, Vic 3128
Australia

Telephone (03) 896 6652
Facsimile (03) 899 5625

Pager 016 030 (333 439)

From:

☐ [redacted]

☑ [redacted]

K00092

To : BRUCE PENDLEBURY **FAX :** _____

SUBJECT : GOLDEN MESSENGER

As indicated on following sheet.

No known reason for double jumper.

Cable 6 is on old MDF (Hey Lowe 2).

We can speculate - Tifen
- old customer on this pair some time ago.
- pair changes whatever.

The important point is the other end was vacant.

THE JUMPER WAS BEEN REMOVED.

Pages...2..... inc this one.

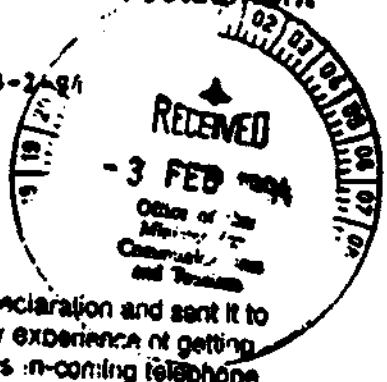
Date...3/2/94...

155

1402303

CAPE BRIDGEWATER Holiday Camp
Host - Alan Smith
RMB 4406
Cape Bridgewater
Toll Free 008 816 522
Ph. 055 267 267
Fx. 055 267 230

Country Get - Aways
Historical Portland
Victoria's first permanent settlement



Mr Michael Lees,
Minister for Communication,
Parliament House,
Canberra,
A.C.T

Dear Mr Lees,

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

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

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

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

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

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

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

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

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

, I, along with Graham Schorer are close to losing ours, all through a phone service not fit for the purpose.

I ask for your immediate response.

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

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

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

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

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

I await for your response by fax.

Sincerely.

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

OFFICE OF HON MICHAEL LEE MP

Ack/Rep by Min ☑ Information ☐
Ack/Rep by SA ☐ Approp. Action ☐
Ack/Rep by Dept ☐ Advice ☐
Copy held for min to see ☑
Final within.....

C1

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of CAPE BRIDGEWATER HOLIDAY CAMP
PORTLAND in the State of Victoria

sincerely declare 3305 do solemnly and

THAT

STATUTORY DECLARATION REGARDING MY EXPERIENCE IN ATTEMPTING TO RING GOLDEN, PLUS REPORT IT TO TELECOM FAULTS 1100

Mr. Frank Blount
Managing Director,
Telstra

FAX No: 632 3336

Dear Mr. Blount,

Re: Golden Messenger Telephone Service Difficulties, plus Fault Reporting Difficulties on Golden's Telephone No. (03) 287 7099

At 9.10a.m. on 31st January 1994, I tried to ring Golden (03) 287 7099 to no avail (engaged).

I then contacted 1100 Bendigo, Victoria. I spoke with a supervisor Mary, (Telecom employee).

I explained my difficulty in getting this number, she then tried (03) 287 7099 (engaged).

Mary, supervisor of 1100 (Telecom employee) then rang Melbourne directory on internal directory and was told (03) 287 7099 was an invalid number. The number I should ring was (03) 287 7098.

I explained I was lead to believe that (03) 287 7099 was correct.

I was then told it is not uncommon for large companies who have a large switch system to register invalid.

I have asked this lady to fax this information to Ian Campbell, Telecom Commercial & Consumer, on (03) 634 3876, likewise, to myself.

I have also reported this matter to Mr. John MacMahon's Secretary, at Austel.

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

DECLARED at PORTLAND in the
State of Victoria this 31ST
day of January One thousand
nine hundred 94

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Hunt & Hunt
LAWYERS

Partners
Edward S Boyce
James G.F. Harrowell
Christine A. Galley
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Ewin
Wayne B. Cahill
Neville G.H. Dabney
Lindsay L. Morgan
Grant D. Sutton
Charles Veevers
Andrew Logie-Smith

Consultants
Kenneth M. Martin
Richard J. Kellaway

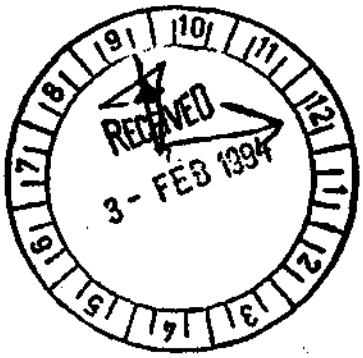
Associates
Peter A. Cornish
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Gallichio
Roy Selt

3 February 1994

Our Ref: GLH
Matter No:
Your Ref:

BY COURIER

Mr Graeme Schorer
C/- Golden Messenger
493 Queensberry Road
North Melbourne Vic 3000



Dear Mr Schorer

COT MATTERS

I am enclosing my proposal as to the "fast-track" arbitration procedure.

This procedure has been devised in consultation with Messrs Minter Ellison Morris Fletcher, solicitors for the Telecommunications Industry Ombudsman. The proposed procedure is acceptable to the Ombudsman and members of the Resource Unit.

I would be grateful if you would let me have your comments on the proposal as soon as possible. I am prepared to discuss the proposal individually with either of the parties. I am also prepared to convene a meeting involving both parties at short notice, if requested, in order to resolve any outstanding issues regarding the proposed procedure.

Yours sincerely

GORDON HUGHES

melbourne
sydney
sydney west
brisbane
canberra
newcastle
represented in
adelaide
darwin

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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GOLDEN

TELEPHONE (03) 329 7355

FAX (03) 328 4462

493-495 QUEENSBERRY STREET
NORTH MELBOURNE VICTORIA 3051
P.O. BOX 313 NORTH MELBOURNE 3051

3 February 1994

Attention: Mr. W.R. Hunt

Hunt's Solicitors
3rd Floor,
358 Lonsdale Street,
MELBURNE. 3000.

Dear Mr. Hunt,

I am forwarding to you by courier, the documentation I have received from Dr. Gordon Hughes.

As a matter of urgency, could you please read this document so that you are in a position to have further discussions or be in a position to advise me.

Subject to any strong advice you may give me, I personally am rejecting the document in total, as this is not an arbitration procedure and I do not intend to be part of an arbitration procedure and I am also informed that the other C.O.T. Case Members do not intend and never agreed to be involved in an arbitration procedure.

We were informed by Austel that this assessment process called the *Fast Track Settlement Proposal* we were agreeing to did not have to comply ~~or be~~ bound by the strict rules contained in an arbitration process.

We were all advised by Austel that we were entering into an assessment process which was vastly different to an arbitration procedure.

I await your considered response.

Regards,

GRAHAM SCHORER.

encs (18)

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A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 046
IMPORTANT. WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT which appear on the REVERSE SIDE OF THIS DOCUMENT. It is in your interests to read them to avoid any later confusion.

AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

92/596(9)

7 February 1994

Mrs A. Garms, OAM
65 King Arthur Terrace
TENNYSON QLD 4105

Fax: (07) 892 3739

Dear Mrs Garms

FAST TRACK SETTLEMENT

The terms of the procedure to be followed by Dr Gordon Hughes in resolving your claim (and the claims of the other three *COT Cases* subject to the *Fast Track Settlement Proposal*) are for you and the other three *COT Cases*, on the one hand, and Dr Hughes, on the other, to agree having regard to Telecom's position. For AUSTEL to become involved in that process would be to usurp the role of Dr Hughes. As stated in his letter of 3 February 1994, Dr Hughes is prepared to convene a meeting to resolve any outstanding issues regarding his procedure. Subject to that qualification, I can, however, provide you with my understanding of the *Fast Track Settlement Proposal* by confirming the advice conveyed to you by John MacMahon, AUSTEL's General Manager, Consumer Affairs, on Friday 4 February 1994 to the effect that:

- The thrust of the *Fast Track Settlement Proposal* was review and assessment. This may be seen by contrasting the words in the *Fast Track Settlement Proposal* with their emphasis on "*a review*" and on "*an assessor*" with the words in the *Proposed Arbitration Procedure* which was attached to the *Fast Track Settlement Proposal*.

- While clause 2(f) of the *Fast Track Settlement Proposal* dealing with the causal link was based on clause 8(j)(iii) of the *Proposed Arbitration Procedure*, it quite deliberately omitted the words "... *giving due regard to the normal rules of evidence relating to causation* ..." which appear in clause 8(j)(iii). While clause 10.2.2 of the *"Fast Track" Arbitration Procedure* which accompanied your fax of 4 February to John MacMahon appears to be consistent with clause 2(f) of the *Fast Track Settlement Proposal*, the words "... *accepted legal principles relating to causation and assessment of loss*" in clause 10.2.3 appear to be at odds with the thrust of clause 2(f).

5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 828 7300 FACSIMILE: (03) 820 3021

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- The *Fast Track Settlement Proposal* was silent on the issue of AUSTEL determining a maximum amount recoverable in tort against Telecom. It was certainly not my intention that any amount so determined by AUSTEL should apply to your claim against Telecom.

- While the Fast Track Settlement Proposal was also silent on the issue of *"set offs"*, I did have in mind that amounts previously paid by Telecom to you would be *"set off"* against the amount, if any, determined in your favour. The issue of the *"set off"* of "*. . . services carried out . . .*" in terms of clause 10.1.2 of the *"Fast Track" Arbitration Procedure* is one you should clarify with Dr Hughes.

Yours sincerely

Robin C Davey
Chairman

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Telecommunications
Industry
Ombudsman

Warwick L Smith LLB
Ombudsman

February 8, 1994

Mr. Graham Schorer
Golden Messenger
493-495 Queensberry Street
NORTH MELBOURNE VIC. 3051

By Facsimile: (03) 287 7001

Dear Graham,

Now that we have settled the appointments of assessor and resource unit and following the very intense discussions and communications about this matter with me, it is my view that the future dealings with my office should be on the following basis for all parties.

- Whilst I am happy to be accessible and amenable to facilitating in whatever way possible the "Fast Track" process, the recent involvement of the Commonwealth Ombudsman has indicated to me, that a far more regimented regime of contact with the relevant parties from my point of view is going to be necessary. The only contact point in my office is Jenny Wrethman my executive assistant.

- I will not entertain phone calls about substantive matters from any party.

- I would be happy to meet in conference at any convenient time, but would require to be present my executive assistant for note taking or my legal adviser, Mr. Bartlett.

- I will not take calls which are requiring of me to make immediate judgments about substantive matters and the expectation for me to do so should not be present in the minds of those making the calls.

The process should be given every opportunity to work and as we have worked hard to establish the environment for this to take place, I hope the opportunity to proceed forward will continue.

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I point out that my office is not, subject to public service regulation legislative arrangements such as Freedom of Information, Commonwealth Ombudsman or Auditor-General. I have indicated to all that I am happy for my office to contribute positively to the process and to contribute where necessary to the work of all other agencies in the most positive way possible.

The process has every chance of success if there is a commitment to it from all parties. A positive resolution of long outstanding claims would be a benefit to all. I urge you all to continue the commitment to the process so that there is every opportunity for it to deliver a result. The alternative of course is for this process to be abandoned with other alternatives such as court proceedings which will entail greater expense and time than what is currently available.

It is regretted that during the early weeks of January that the intense activity of phone calling, faxing etc. has led to some difficulties. I hope that these can be now put in proper context and that it be recognised through that process progress has been made and that is what is important above everything else. The more formal approach to the dealings with my office is to the mutual benefit of the continued viability of the "Fast Track" proposal.

Yours faithfully,

Warwick L. Smith
Ombudsman

C.
The exact same letter went to Telecom.

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COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

6th Floor, Aldersgate House, 405 Collins Street
Melbourne Vic. 3000
Telephone:(03) 614 3911
Facsimile: (03) 629 3138
008 133 057

9 February 1994

C/94/677

Mr Graham Schorer
C.O.T. Cases Australia
P.O. Box 318
NORTH MELBOURNE 3015

Dear Mr Schorer

I refer to your letter of 17 January 1994, concerning your complaint against the Australian Telecommunications Authority (Austel).

At the outset, I should explain that the function of this office is to determine, by investigation, whether Commonwealth agencies have acted unreasonably or improperly in carrying out their responsibilities. If we conclude that an agency has so acted, we may recommend that it take appropriate corrective measures. However, we do not have the authority to require an agency to implement our recommendation as our role is not akin to that of a court.

The essential elements of your complaint are that:

(a) Austel is refusing to respond to a written list of questions presented to it at a meeting on 13 January 1994; and

(b) Dr Robert Horton may have acted improperly in disclaiming, at the meeting on 13 January 1994, that he had any knowledge of an Agreement between Telecom and the Telecommunications Industry Ombudsman (TIO) whereby all requests from the C.O.T. Case Members would be passed to the TIO who would decide if the information should be made available.

With regard to (a), I contacted Austel after the receipt of your letter and was assured that Austel would be responding to your list of questions after Mr MacMahon returned from 3 days leave. I understand that you have now received Austel's response.

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I have conducted an investigation into the substance of your concern at (b) and I have concluded that Dr Horton was not acting improperly when he denied knowledge of an Agreement between Telecom and the TIO concerning the release of information to C.O.T. Case Members. However, I do consider that some misunderstanding has occurred in relation to the matter of the release of information. I have discussed this issue with Mr MacMahon, and he is unable to recall whether he used the words "agreement" or "proposed agreement" when he discussed the release of information with you and Mrs Garms on 13 January 1994

As a consequence of my investigation, I have established that at a meeting with Austel on 7 January 1994, Telecom put the proposition that in the light of "quasi-judicial proceedings" now in place in the context of the "Fast Track Settlement Agreement, all material which might possibly be released to the C.O.T. Members should be released through the TIO at his discretion.

I have also established that while the Telecom proposition was discussed at the meeting, Austel subsequently wrote to Telecom requesting that it put the proposed Agreement to Austel in precise terms for its formal consideration. It is my understanding that no Agreement concerning the release of information has been concluded to date.

With regard to your belief that a telephone call was placed by Mr Black to the TIO during the course of the meeting on 7 January, I can understand the basis for your belief but cannot concluded that it is correct.

Mr Steve Black acknowledges that he telephoned the TIO at his home in Launceston and raised the proposed Agreement, in the context of the implementation of the "Fast Track" settlement process, and also mentioned a meeting with Austel. He maintains that all calls made to the TIO around 7 January were made from his Telecom office and that no Austel personnel were present.

The TIO recalls that he received a call from Mr Black to seek his views. The call was received at his home around mid-morning on 7 January. While the TIO gained the impression from the conversation that the call was being made during a meeting with Austel, he did not actually hear or speak to any other person during the call.

Of more significance, however, I have established that the meeting between Telecom and Austel did not take place until the afternoon of 7 January, which was some hours after the conversation between Mr Black and the TIO was conducted.

You should be aware that the TIO has advised me that he does not have any statutory powers to be able to enter into separate agreements with other agencies to limit, permit or vary document access in this matter. The release of information is, of course, governed by the provisions of the Freedom of Information Act 1982.

In summary, for the reasons outlined above, I am unable to conclude that Dr Horton, in his capacity as acting Chairman of Austel, has acted unreasonably or improperly. Moreover, as I have established that Austel has not entered into an actual Agreement with Telecom involving the TIO I do not consider there is any basis for investigating whether or not the TIO has abrogated its duties and powers in relation to its consumer protection function.

As there is no further action, I can usefully take in relation to your complaint, I will shortly take steps to close the file. However, as you may wish to comment on the context of this letter, I will leave the file open for a period of three weeks.

Yours sincerely

E Jill Cardiff
Senior Assistant Ombudsman

FOI document A10148, a copy of a letter dated 10/2/94 from Austel's General Manager of Customer Affairs to Telstra's Group General Manager in charge of the COT arbitrations, confirms the visit by the Federal Police. In this letter Austel notes:

"Yesterday we were called upon by officers of the Australian Federal Police in relation to the taping of the telephone services of COT cases."

AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

92/0596(8)

10 February 1994

Mr S Black
Group General Manager
Customer Affairs
TELECOM

Facsimile No: (03) 632 3241

Dear Mr Black

COT Cases - Tapes

Yesterday we were called upon by officers of the Australian Federal Police in relation to the taping of the telephone services of COT Cases.

Given the investigation now being conducted by that agency and the responsibilities imposed on AUSTEL by section 47 of the Telecommunications Act 1991, the nine tapes previously supplied by Telecom to AUSTEL were made available for the attention of the Commissioner of Police.

Yours sincerely

John MacMahon
General Manager
Consumer Affairs

A10148

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Hunt & Hunt
LAWYERS

Partners
Edward S Bryce
James G.F. Hammett
Christine A. Galley
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter I. Ewin
Wayne B. Cahill
Neville G.H. Delmey
Lindsay L. Morgan
Grant D. Sefton
Charles Veevers
Andrew Legge-Smith

Consultants
Kenneth M. Mann
Richard I. Kellaway

Associates
Peter A. Cornish
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Calicho
Roy Sait

15 February 1994

Our Ref: GLH
Matter No:
Your Ref:

BY HAND

Mr John Rundell
Ferrier Hodgson Corporate Advisory
Level 11
459 Collins Street
Melbourne VIC 3000

COPY

Dear John

COT MATTERS

I refer to our conference on 11 February and confirm I am agreeable in principle to the following amendments to the draft "Fast-Track" Arbitration Procedure.

Clause 6

Insert a third dot point:

- "Such member or members of the Resource Unit (as defined in clause 8.1) as the Arbitrator deems appropriate".

Clause 7.5

Add the following sentence:

> "The Arbitrator may stipulate such time frame and such other conditions in respect of the production of documentary information pursuant to this clause as he reasonably considers to be appropriate."

Clause 7.6

Add the words "or sub-clause 7.5" in the second line after the words "sub-clause 7.1".

melbourne
sydney
sydney west
brisbane
canberra
perth
representative in
adelaide
darwin

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 8711.
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Clause 7.7

Add the words "or sub-clause 7.5" after the words "clause 7.2" in the third line.

Clause 8.1

Insert the words "(or related entity)" in the third line after the words "Chartered Accountants" and again in the fifth line after the words "South Melbourne".

Clause 8.2

Replace the second sentence with the following:

> "The Arbitrator shall notify the parties in advance of any such proposed activities, stipulating a time frame within which either party may make a submission, verbal or written, in relation to the nature of the proposed enquiries or research. The Arbitrator may at his discretion seek submissions from the parties in relation to findings of fact arising out of such enquiries or research."

I am still not completely relaxed about this clause. I would not be surprised if one of the parties objects to the ability of the Resource Unit to examine material which has not been formally placed in evidence. On the other hand, I can see no alternative way of approaching the problem in a logistically sensible fashion.

Clause 8.4

Delete the words "Subject to sub-clause 8.2,".

Clause 10.2.2

I do not think this clause requires change. In essence, it states that in the process of determining a claimant's losses, I am to establish a link between the loss claimed and the alleged defect and, to assist in this process, I can make reasonable inferences not only from the evidence as formally presented but also from additional information provided to me by the Resource Unit. The wording may be cumbersome but I believe it achieves its purpose.

Clause 20

The existing clause 20 should become clause 20.1. A clause 20.2 should be added as follows:

> "The fees and expenses of individual members of the Resource Unit shall be paid by the Administrator and are part of the administrative costs of the Procedure."

Clause 24

The heading should simply read "Liability".

The existing clause 24 should become clause 24.1 and a clause 24.2 should be inserted as follows:

> "The individual members of the Resource Unit shall not be liable to any party for any act or omission in connection with any enquiry or research or assessment of material in connection with any arbitration conducted under these Rules save that any such person shall be liable for any conscious or deliberate wrongdoing on his or her part."

Please let me know if these amendments would be acceptable to you.

As you are aware, I have not yet heard from Telecom in relation to the proposed arbitration procedure. I am expecting to confer with Schorer and Garns representing the claimants on Thursday 17 February 1994.

Yours sincerely

GORDON HUGHES

cc W Smith

AUSTEL

92/596 (9) AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

17 February 1994

Mr Steve Black
Group General Manager
Customer Affairs
Telecom

Fax 632 3241

Dear Mr Black

FAST TRACK SETTLEMENT PROPOSAL

Further to our telephone conversation of even date, I confirm that the terms of the procedure to be followed by Dr Gordon Hughes in resolving the claims of the four *COT Cases* subject to the *Fast Track Settlement Proposal* are for Telecom on the one hand, the four *COT Cases*, on the other and Dr Hughes to agree. For AUSTEL to become involved in that process would be to usurp the role of Dr Hughes.

Subject to that qualification, I can, however, provide you with my understanding of the *Fast Track Settlement Proposal* by confirming the advice conveyed to you in our telephone conversation to the effect that -

- The thrust of the *Fast Track Settlement Proposal* was review and assessment. This may be seen by contrasting the words in the *Fast Track Settlement Proposal* with their emphasis on "*... a review ...*" and on "*... an assessor ...*" with the words in the *Proposed Arbitration Procedure* which was attached to the *Fast Track Settlement Proposal*.

- While clause 2(f) of the *Fast Track Settlement Proposal* dealing with the causal link was based on clause 8(j)(iii) of the *Proposed Arbitration Procedure*, it quite deliberately omitted the words "*... giving due regard to the normal rules of evidence relating to causation ...*" which appear in clause 8(j)(iii). While clause 10.2.2. of the *"Fast Track" Arbitration Procedure* which I understand has been given to the parties appears to be consistent with clause 2(f) of the *Fast Track Settlement Proposal*, the words "*... accepted legal principles relating to causation and assessment of loss ...*" in clause 10.2.3 appear to be at odds with the thrust of clause 2(f).

- The *Fast Track Settlement Proposal* was silent on the issue of AUSTEL determining a maximum amount recoverable in tort against Telecom. It was certainly not my intention that any amount so determined by AUSTEL should apply to the four *COT Cases'* claims against Telecom.

5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD. MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 828 7300 FACSIMILE: (03) 820 3021

A10023

P.1
17 FEB '94 12:04 [illegible] 3 8823294

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- While the *Fast Track Settlement Proposal* was also silent on the issue of *"set offs"*, I did have in mind that amounts previously paid by Telecom to any of the *COT Cases* would be *"set off"* against the amount, if any, determined in their favour. The issue of the *"set off"* of *"... services carried out ..."* in terms of clause 10.1.2 of the *"Fast Track" Arbitration Procedure* is one which perhaps should be clarified with Dr Hughes.

Yours sincerely

Robin C Davey
Chairman

A10024

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17 FEB '94 17:05 [illegible] 3 [illegible] P.2

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File note

Telecom Arbitration

Date: 18 February 1994 **Matter no:** 1673136

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

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

Record of Meeting

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

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

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

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

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

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

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

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

TELSTRA FOI 133449

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

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

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

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

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

Ms Garms agreed with this conclusion.

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

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

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

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

(1) the procedure is put on hold until all the documents are exchanged in accordance with the FOI procedure; or

(2) the arbitration procedure commences and then the arbitrator gives appropriate directions for the production of documents.

FOI TELSTRA A13344 FOLIO

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

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

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

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

(1) causal link;

(2) flow on effects of treatment by Telecom - adequately compensated; and

(3) Telecom's liability amended to give assessor the right to make recommendations.

Causal Link

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

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

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

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

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

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

She stated that clause 10.2.3 was not consistent with the FTSP.

Mr Schorer agreed with this and stated that "accepted legal principles" were narrower than the "reasonable burden" that had previously been discussed between R Davey and himself. Mr Schorer believed that R Davey had said that the "assessor" would look at the whole history and would base his decision on reasonable evidence.

Mr Hughes queried whether clause 10.2.3 was deleted, this would reflect what the Cot Cases believed was the result in relation to the issue of causation.

Mr Schorer stated that he did not like all of clause 10.2.3, not just the reference to accepted legal principles.

Ms Garms stated that she had spoken to R Davey re causation and that R Davey should contact Mr Hughes to explain what was agreed in relation to the causation issue.

Mr Schorer referred to Lovey's Restaurant by way of example of the problem when one party alleges that telephone calls did not come through, how it is necessary in relation to a legal burden to prove the loss from each telephone call.

Mr Bartlett asked how would the assessor be expected to calculate the quantum of the claim?

Mr Schorer replied there were several ways, for example the arbitrator could:

(1) look at the incoming and outgoing calls and the volume of the business and look at the background to the business; or

(2) look at similar businesses and breakdown of calls coming in and look at the positioning in the market etc. of the business.

Mr Hughes said that he would consider the Cot Cases position on the causation issue at a later time.

Clause 2.C

Ms Garms states that the Rules should be amended particularly schedule A to reflect clause 2.C of the FTSP which seemed to relate to her claim that the assessment of the damage suffered by the claimants should include "flow on" losses, including pain and suffering, etc.

Ms Garms stated that if Telecom had taken different action in relation to the settlement of this matter Ms Garms would have adopted a different approach and subsequently damage would have been reduced.

Mr Schorer stated that if the past treatment or lack of processes or behaviour by Telecom had caused further losses beyond the mere business losses relating to the faulty telephone services, then they should be assessed.

Mr Schorer agreed that what he was trying to say was that if the "flow on losses" due to the past relationship between Telecom and the claims were proved to be caused by Telecom's behaviour then the arbitrator could decide that they should be compensated.

Mr Bartlett referred to Schedule A(3) of the Rules.

Mr Hughes suggested that if paragraph 2(c) of the FTSP was inserted in the Schedule then it would remedy the Rules in relation to the flow on losses.

Mr Schorer queried whether the assessor's role was only to establish the legal liability and quantum, whatever the cause of action, not just the quantum in torts but the total liability including other causes of action.

Mr Hughes stated that the clause 10.1.1 did not limit Telecom's liability to Telecommunications Act and it was queried whether it would be appropriate to insert in clause 10.1 after the expression "liability" the phrase "in the procedure".

Ms Garms stated that previously Telecom had pleaded that Telecommunications Act in defence to the actions by the Cot Cases.

Mr Hughes stated that Telecom is in a position to plead the Act.

Ms Garms queried whether because of the history of the complaint whether Telecom was entitled to rely on the exemption as its defence.

Mr Bartlett and Mr Hughes stated that the arbitrator could make an order notwithstanding the fact that statutory liability would prevent the award of damages.

Mr Hughes suggested that the word "demonstrated" in clause 10 should be deleted and that clause 10 should incorporate paragraph 2(g) of the FTSP.

Both Mr Bartlett and Mr Hughes were to review the Rules.

Mr Schorer referred to clause 11 of the Rules and stated that he did not like it.

Mr Hughes stated that "compensatory" referred to actual loss where "punitive" implies some form of punishment of the guilty party. Mr Hughes stated that in determining the amount payable by Telecom, it was the loss suffered that was relevant, not the fact that Telecom's behaviour was deserving of punishment.

Ms Garms stated that the manner in which things have been conducted in the past was relevant to the quantification of the loss. Ms Garms stated that her problems went back to 1984. Ms Garms referred to the fact that her husband could no longer work and suffered from agoraphobia, has panic attacks, is withdrawn and unhappy.

Ms Garms stated that Telecom knew of her anxiety in relation to her husband's behaviour and asked how his personal claim would be dealt with.

Mr Bartlett referred to "losses" and the FTSP.

Mr Schorer said that there should be an ability in the arbitration to add to the liability and that "loss" was not just to be based on trading documents. He had raised this question with R Davey who had replied that "loss" was the widest possible term and it would cover things like pain and suffering.

R Davey gave verbal advice. Telecom was not present during this meeting.

Mr Bartlett stated that the Rules and that the FTSP was focused on "compensation" and that the actual loss that was to be compensated would include the monetary loss plus any other loss capable of compensation.

Mr Bartlett stated that compensatory damages and not punitive damages were appropriate.

Ms Garms stated that she wanted the full loss that was proved to be compensated and not just commercial loss.

Paragraph 2(c) of the FTSP was referred to.

Mr Hughes advised that "punitive" damages should not be payable by Telecom.

Mr Hughes advised them that "compensatory" was the appropriate measure and it would be a matter for the arbitrator what amount of loss should be recovered.

Ms Garms stated that R Davey, after she had expressed her dissatisfaction with her previous treatment and that she was not happy with the settlement, etc. and that these matters should be taken into account in determining the "loss".

Mr Hughes advised that what loss was compensated by the FTSP was open to argument.

Mr Schorer referred to a letter of understanding that was sent to R Davey.

R Davey had rung up Mr Schorer about the letter of understanding.

Mr Schorer admitted that he was stuck with the FTSP.

Mr Schorer stated that J McMahon had also been present in the room when R Davey had referred to the question of loss.

R Davey had asked whether he should send the "letter of understanding" to Telecom and had objected to the use of a tape recorder.

Mr Bartlett stated that any loss claimed should be set out in the points of claim document and evidence should be given if the word "losses" was meant to be wider than monetary losses.

Ms Garms stated that she had trusted R Davey and that the assessment of the losses were up to the assessor.

Mr Hughes stated that it was his opinion that this matter should be left to the arbitration at which time he would hear submissions on the meaning on the word "losses" in the arbitration procedure and at that point he would make his determination as to what sort of losses would be compensated by Telecom.

Mr Schorer again referred to the fact that he had considered a joint presentation would be more appropriate.

Mr Bartlett confirmed that he believed a joint presentation would be unhelpful as Telecom would not have an appreciation of the Cot Claimants' claims.

Mr Bartlett stated that the proposed procedure would be faster than the method proposed by Mr Schorer.

Mr Schorer stated that the current procedure as proposed takes the onus off the plaintiff and the procedure should accept that losses have occurred.

Mr Hughes stated that as arbitrator, he must have all relevant information that after he received the claim, he would look at Telecom's defence and look at what other evidence he needed to satisfy himself that he had everything.

Ms Garms stated that to date, the procedure of the dispute had been long and drawn out and that Telecom knew the substance of the claimants' defence and that she wanted the time frames shortened.

Mr Hughes stated that he would be happy to reconsider the time frames issue after submission.

Ms Garms referred to a letter where it was stated that these matters were to be settled by the end of April.

Ms Garms requested an explanation of the Commercial Arbitration Act 1984.

Mr Bartlett and Mr Hughes agreed that Mr Bartlett would send to Ms Garms Queensland legal advisers a copy of the Victorian Commercial Arbitration Act.

Mr Schorer was still unhappy with the structure of the procedure on the basis that Telecom knew what everything was about and therefore he would be unhappy for any departure from the joint presentation method that was discussed with him prior to signing the settlement.

Mr Hughes said that he disagreed with the method proposed by Mr Schorer and that it would be appropriate to have a claim document and then a defence document filed.

Ms Garms referred to the fact that she had attempted to contact Coopers & Lybrand and they had advised her that she was no longer to approach them for documents and that it was appropriate for her to go to Telecom and not Coopers & Lybrand.

Mr Schorer put forward a proposition of the compromise in relation to the joint presentation but Mr Hughes confirmed that a claimant can always come back and reply to the loss submissions of the other party considered appropriate by the arbitrator.

Mr Hughes asked when Ms Garms and Mr Schorer would be in a position to file claim documents.

Ms Garms stated that she needed documents that were currently being sought through an FOI application but that she was currently preparing her claim.

Mr Hughes indicated that he would be happy to receive documentation and a letter explaining her claim and a letter from Telecom broadly stating its claim and documents dealing with it and then he would meet with Mr Bartlett and discuss the appropriate time frame.

Ms Garms stated that she was putting together her claim and that she had written to Telecom re the Bell Canada and Cooper & Lybrand reports. Ian Campbell had promised that Telecom would give Telecom's response to the reports and further testing results to her. Telecom had not complied with this.

Mr Schorer indicated that he would not start the arbitration until he had the full documents and that was his present position.

Mr Hughes argued that once the procedure was up and running, it would be easier for him to obtain documents.

Mr Schorer was emphatic that he would not waive any rights in relation to documents that could be obtained under the FOI request if they were obtained in the litigation by way of "discovery".

Mr Schorer reiterated that he would not waive his rights.

Mr Bartlett queried the effect of the confidentiality of the arbitration in relation to this stance.

Mr Schorer argued that Telecom had been playing ducks and drakes in relation to the FOI application and that he had no intention to sell himself "down the river".

Mr Schorer stated that Telecom was denying access to documents to cover documents by the arbitration.

Ms Garms stated that Telecom had made concessions in relation to its statutory liability and that there should be a sense of give and take between itself and the Cot Cases.

Mr Schorer maintained its position that he should not waive his rights in relation to any documents he got under the arbitration which should have been provided by Telecom under the FOI application.

Mr Bartlett indicated that it would be difficult if after the submissions were made by the claimants and Telecom, if the matter was then debated in the press.

I stated that the request for confidentiality was fundamental to the arbitration although I have no instructions expressly in relation to the particular clauses.

Ms Garms stated that there was a lot of anger in the Cot Claimants which had been enhanced by Telecom's reluctance to provide the documents under the FOI application which had not been dealt with in a businesslike manner.

Mr Schorer maintained that he would not weaken his position as he considers himself in total conflict with Telecom until the matter was resolved.

Mr Schorer stated that both parties were not fully co-operating and it was like pulling teeth and that he was not going to weaken his position and that he was not going to give away anything as to what his concerns were but he would not give away his rights under the FOI Act. There were allusions to the fact that Mr Schorer believed he would discover incriminating things against Telecom that would give him further rights to be compensated.

Mr Schorer stated that if Telecom had acted in a reasonable manner he would have all the relevant documents and the documents would be his documents and any document obtained under FOI would be available to be used later and he was not going to remain silent on certain information for example, police tapping.

Mr Schorer stated that he believed Telecom had engaged in industrial espionage and he would not remain silent in relation to documents evidencing this.

Mr Bartlett indicated that in relation to a Court proceeding, if documents were used for other purposes than the actual proceeding, it would be contempt.

Mr Bartlett stated that if the evidence indicated illegal tapping and unfair means had been used then there may be some "moral" duty on the party to go forward.

I again confirmed the essential nature of confidentiality.

Ms Garms stated that she believed that from her sources a senate inquiry was definitely going to happen in relation to the telephone bugging.

Mr Schorer would not elaborate on his concern any further.

Mr Bartlett indicated that there may be a duty to disclose to the police criminal matters.

As there seemed to be a stumbling block in relation to this clause, Mr Schorer and Mr Bartlett went out of the room to draft a particular clause for him.

Ms Garms advised in Mr Schorer's absence that Mr Schorer's strained mental state was because of his rather tragic life which included his wife leaving him and a car accident subsequently that rendered one of his sons, now approximately 22-23 years old, a quadriplegic. Ms Garms stated that Mr Schorer's related anxiety was his family.

Mr Bartlett and Mr Schorer returned into the room and put forward the following proposal which was that:

> "If Mr Schorer believes that he should go to public in relation to a particular document or information, then he would ask Mr Bartlett and provide Mr Bartlett with reasons as to why he should go public, if Mr Bartlett says no, then Mr Schorer has a right of appeal to Mr Hughes whose determination will be absolutely final."

Mr Bartlett was asked as to what criteria he would apply and indicated that going to the press would have to "sit together" with the integrity and neutral position of himself and the arbitrator and the paramount concern of the arbitration being that the integrity of the fast track procedure should be maintained.

Ms Garms indicated that she would not require such a clause in relation to her and that she would not go to the press as she considered the arbitration procedure would be a final binding resolution of her dispute with Telecom. It appeared that Ms Garms spoke on behalf of the other claimants and that Mr Schorer was in a special position.

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Subject to the above issue, Mr Schorer and Ms Garms agreed with Mr Hughes that if the amendments suggested were made they would be happy with the Rules. Mr Schorer indicated that this was subject to him receiving legal advice in relation to the final draft of the Rules.

Mr Hughes would send out a summary of today's meeting and suggested changes once he had received Telecom's suggested amendments and then he would deal with them.

Mr Schorer queried whether in the preparation of the claim they should be entitled to go to the Research Unit to see if the documents were put together properly. Mr Hughes indicated that he considered there was a risk that this would interfere with the independence of the research unit and therefore it was inappropriate. All the parties seemed to agree.

Points of Issue

Set out below are the main points of issue that were to be considered by Mr Hughes:

1. clause 10.2.3 should be deleted;

2. paragraph 2(c) of the FTSP was not reflected in the agreement and should be inserted in Schedule A;

3. the issue of "loss" covered by the arbitration should be left to submissions at the arbitration;

4. the question of confidentiality and Graham Scorer to be resolved;

5. in section 10, the word "demonstrated" should be deleted and that clause 2(g) of the FTSP should be included.

Robert McGregor

I subsequently had a meeting with S Chalmers and briefly went through the above.

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Telecom AUSTRALIA

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

Australia

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

17 February 1994

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

Dear Mr Hughes

"Fast Track" Arbitration Procedure

I refer to your facsimile dated 11 February 1994 requesting Telecom's comments on your proposal as to the "Fast Track" Arbitration Procedure.

Telecom agrees with the general spirit of your proposed procedure, but disagrees with the specific clauses set out below. In each case, I have provided amendments which would be acceptable to Telecom, and a brief explanation of Telecom's reasons for requiring the amendments.

1. Clause 5: **The first paragraph should be amended as follows:**
   - **line 1 - change "Each party" to "The Claimant and Telecom Australia";**
   - **line 6 - change "parties" to "Claimant, Telecom Australia";**
   - **line 8 - delete "and from the parties to the arbitrations between each of the three Claimants referred to in Schedule D and Telecom Australia"**

   Telecom's view is that the arbitration of a dispute should commence as soon as the relevant claimant and Telecom have completed, signed and returned a Request for Arbitration form. There is nothing in the "Fast Track" agreement which provides that arbitration should be delayed until each of the "fast-four" claimants have completed, signed and returned Request for Arbitration forms in respect of their disputes. It would be contrary to the spirit of that agreement to delay the arbitration of one claimant's case simply because another claimant had not completed, signed and returned a Request for Arbitration form in respect of a different dispute.

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2. Clause 5/ Sched. E: **The third paragraph of Clause 5, and all of Schedule E, should be deleted.**

The normal operation of the Commercial Arbitration Act would provide the parties with rights to appeal if there is a manifest error of law on the face of the award. These rights should not be excluded. To exclude these rights could bind a party to an award based upon a fundamental error of law. Normal arbitration appeal principles should apply.

3. Clause 6: **The first paragraph should be amended by inserting after line 8:**

"• At the Arbitrator's discretion, a party's professional consultants, save that if the Arbitrator allows one party to have its professional consultants present at any hearing then the other party will also be allowed to have its professional consultants present at all relevant hearings;"

The second paragraph should be amended by inserting in line 3 after the word "discretion", the words "save that if the arbitrator allows one party to have external legal representation then the other party will also be allowed to have external legal representation"

Telecom considers that these amendments are necessary to ensure that legal representation and access to professional consultants is only allowed in an equitable manner as between the parties.

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4. Clauses 7.1, 7.2, 7.5:

Delete the last three lines of clause 7.1.

Delete the last four lines of clause 7.2.

Insert at the beginning of clause 7.5:
"At any time after the commencement of the Procedure:
7.5.1 Either party may request the Arbitrator to require the other party to provide further particulars and/or documentary information which is in the possession, custody or power of the other party, or which the other party has the right to obtain from third parties. The request for further documentary information and/or particulars by a party must be made in writing to the Arbitrator and must be supported by written reasons for the request which shall state the relevance of that further documentary information and/or particulars to the arbitration. The Arbitrator will consider the request and if the Arbitrator reasonably believes that the further documentary information and/or particulars requested is or are relevant to the arbitration, the Arbitrator will require the other party or the third party, by notice in writing, to provide the further documentary information and/or particulars.
7.5.2"

Insert at the end of clause 7.5:
"7.5.3 Nothing in this Procedure shall result in a party having to disclose documents which are subject to legal professional privilege."

Clause 7.1 of your proposed procedure provides that the Claimant may request any documents that the Claimant requires which are believed to be in the possession, custody or power of Telecom. No equivalent provision is provided for Telecom to obtain documentation from a claimant. This position is particularly unfair to Telecom given the Claimants' ability to also obtain documentation from Telecom through FOI.

Telecom is of the view that it is more equitable for both parties to be given the same rights to request documents and/or particulars, and that is is more efficient for the parties to be able to request documentation prior to having to file their submissions.

It is also Telecom's view that privileged documents should be exempt from disclosure to the other party to arbitration.

6. Clause 7.6: **Replace the words "the Claimant will be treated as having abandoned the Claimant's claim under the Procedure" appearing in line 7, with "the Arbitrator shall dismiss the Claimant's claim".**

   This amendment is suggested for consistency with Clause 7.7 which deals with default by Telecom.

7. Clause 8.4: **Replace the words "and shall be under no obligation to disclose to the parties advice given in such consultations", with "but shall disclose to the parties advice given in such consultations"**

   In Telecom's view, it is usual for the parties to be aware of all information upon which a decision in respect of their dispute may be based.

8. Clause 9: **Delete this clause**

   Telecom does not consider that it is appropriate for the disputes to be heard together. The disputes concern different customers operating different telephone equipment from different parts of the telephone network, and running different businesses. I also refer to my comments at point 1 above.

9. New clause 16A: **Insert a new clause 16A before clause 16:**
   "16A Confidentiality undertakings as set out in Schedule F shall be provided by each of the following:
   - **all personnel from the Resource Unit who are used by the Arbitrator;**
   - **each parties' professional advisors who are present at any hearing and/or who have access to any documentation provided in the course of the arbitration; and**
   - **all representatives of the Administrator who attend a hearing pursuant to clause 6"**

10 New clause 16B

Insert a new clause 16B after new clause 16A:

"16B Confidentiality undertakings as set out in Schedule Gshall be provided by each of the following:

- **the Special Counsel;**
- **all personnel from the Special Counsel's office who are in any way used by the Special Counsel in relation to the arbitration; and**
- **all representatives of the Special Counsel who attend a hearing pursuant to clause 6."**

Telecom has submitted to arbitration in consideration of the arbitration process being kept confidential. The above undertakings are required by Telecom to ensure the confidentiality of this process in respect of non-parties to the dispute.

Schedule F would contain a form of confidentiality undertaking in relation to the the conduct of the Procedure, any documentation provided in the course of the arbitration, the Confidential Information, and the Arbitrator's award.

Schedule G would contain a form of confidentiality undertaking with the same provisions as in Schedule F, but also with further provisions specifically providing that the person shall not at any time discuss any aspect of the arbitration or the Disputes, with other personnel from the Special Counsel's office who have not signed such a confidentiality undertaking or who are retained by or undertaking work for Optus. Telecom considers that it is especially important to ensure that the Special Counsel's office provides adequate "Chinese walls", given that this office is also engaged by Telecom's major competitor.

9. Clause 19:

Replace the words appearing after "Claimant" in line 14 with the words "then any obligation of Telecom Australia arising out of the Procedure to pay any sum to the Claimant shall be rendered null and void. Any payment already made by Telecom Australia to the Claimant arising out of the Procedure shall be wholly and immediately refundable by the Claimant to Telecom Australia as liquidated damages."

Telecom should not bear the burden of proving specific damages in the circumstances of these arbitrations, if a breach of confidence is established. Telecom has submitted to arbitration in consideration of the procedure and the award being kept confidential. The time, effort and cost involved for Telecom to again submit to arbitration to prove specific damages once a breach of confidence is already established, would be substantial. It would be reasonable and normal in such circumstances to fix the amount which Telecom can recover if a breach of confidence is established, as above.

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10 Clause 23/ Sched. B

Replace the first three lines of clause 23 with the words "All documents letters or notices sent pursuant to the Procedure shall be served upon the addressee by being delivered by hand or sent by pre-paid post to the addressee's address specified in Schedule B and, if"

Insert at the end of Schedule B, the following:
"('Telecom Australia')
Attention Mr Paul Rumble
Telecom Australia
8th Floor
242 Exhibition Street
Melbourne Victoria 3000"

Insert before the word "day" on line 5 of clause 23, the word "business".

The first two amendments are required to ensure that no disputes arise as to the delivery or receipt of relevant documents letters or notices. Telecom is particularly concerned to ensure that the claimants recognise that Telecom is managing these arbitrations through Telecom's head office.

The third amendment is required to take account of weekends and public holidays.

11 New Clause 25

If either party has sent original or copy documents in support of its case to the Administrator then that party may within six weeks of publication of the award request the return of those documents.

This addition is required because Telecom may need the return of the documents provided, for use in other matters.

If you require further explanation of Telecom's reasons for requiring the above amendments, please contact me.

Telecom has not yet had the opportunity to consider any changes which you may consider appropriate as a result of your meeting today with several of the claimants. Telecom may consider that further amendments are necessary in response to any changes to the procedure which are proposed by the claimants. Accordingly, please keep me informed of any such possible changes to the procedure.

Yours sincerely

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

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1. GENERAL

Crossbar equipment was originally designed to have an operational life in excess of 40 years, before major upgrading of equipment would be required.

It was expected that a small number of components (generally relays) would fail at an earlier time, but maintenance philosophies, using indicators, would identify these faults and have them rectified before degradation to service was noticed by the customer.

Experience with Crossbar common control equipment has shown that the operational life, before major upgrades are required, is closer to 20 years than 40 years due to :-

- Increasing and higher traffic rates than expected.
- Low maintenance effort.
- Under dimensioning of some ranks of equipment.
- Working environment.

Also a number of relays have been found to have a short operational life due to factors such as :

- Number of Operations per year.
- Sequencing of springsets and contacts.
- Design problems causing contact erosion.

These problems have caused early crisis periods in equipment performance.

The following conditions have been observed when an exchange reaches a relay wear crisis point:

- Service to the customer is degraded.
- Current indicators do not highlight the problem area.
- Existing resources, using normal maintenance practices cannot rectify all faults and problems.

When relay wear becomes significant, a different approach to maintenance practices is required if the same performance targets are to be achieved with existing resources.

The intention of this manual is to provide information relating to:-

- Alternative maintenance practices.
- Mechanisms and effects of relay wear.

Hunt & Hunt
LAWYERS

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James G.F. Harrowell
Christine A. Galley
Gordon L. Hughes
Mark T. Knapman
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Roy Selt

21 February 1994

Our Ref: GLH
Matter No:
Your Ref:

BY FAX: 287 7001

Mr Graham Schorer
Golden Messenger
493 Queensberry Road
North Melbourne VIC 3000

Dear Graham

COT MATTERS

I enclose the following:

(a) letter from Telecom dated 17 February 1994 commenting on the proposed "Fast Track" arbitration procedure;

(b) copy memorandum by Peter Bartlett of Messrs Minter Ellison Morris Fletcher concerning the COT Case response to the proposed procedure; and

(c) copy letter from me to Ferrier Hodgson Corporate Advisory summarising the outcome of my meeting with representatives of the Resource Unit in relation to the proposed procedure.

I have set out below a summary of the issues raised by the various parties and my recommendation (made after consultation with Mr Bartlett) in relation to those issues.

It is my opinion that the recommendations set out below are reasonable and should not present either party with any serious basis for concern. If these proposals are acceptable in principle, I shall instruct Messrs Minter Ellison Morris Fletcher to redraft the Arbitration Procedure, with a view to execution later this week.

I think it would be inappropriate for me to personally engage in further dialogue with the parties in relation to the contents of this letter. Please direct any comments direct to Mr Bartlett. I would be grateful if you would endeavour to communicate with him within 48 hours.

melbourne
sydney
sydney west
brisbane
canberra
newcastle
represented in
adelaide
darwin

168

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Clause 5

In relation to the first paragraph, Telecom seeks amendments to provide that the arbitration will commence in relation to each claimant when that claimant has completed the formalities. It is not necessary to wait until all four claimants have completed the formalities.

Recommendation: agreed.

In relation to the third paragraph, Telecom seeks to reserve normal rights of appeal arising under the Commercial Arbitration Act.

Recommendation: agreed.

Clause 6

In respect of the first paragraph, Telecom proposes that the arbitrator have the discretion to permit a party's professional consultants to be present, with a reciprocal right for the other party to have its consultants present in such circumstances.

Recommendation: agreed.

Also in relation to the first paragraph, Ferrier Hodgson proposes that specific mention be made of the right of a member of the Resource Unit to be present, at the arbitrator's discretion.

Recommendation: agreed.

Clause 7

Concern has been expressed by the COT Case representatives about the time frame for submissions.

Recommendation: I am happy to introduce greater flexibility into the proposed time frame. This can be achieved by inserting an initial sub-clause to the effect that "the time frames for compliance referred to in this clause are subject to the overriding discretion of the Arbitrator and may be the subject of submission by the parties".

Telecom has suggested that clauses 7.1, 7.2 and 7.5 be amended to provide each party with the same rights to request documents from the other, such requests to be made through the arbitrator and to be subject to the arbitrator's discretion.

Recommendation: agreed.

Also in relation to clause 7.5, Ferrier Hodgson suggests that the arbitrator be required to stipulate a time frame in relation to the production of documents.

Recommendation: agreed.

In relation to the production of documents, Telecom recommends a specific exemption for documents protected by legal professional privilege.

Recommendation: agreed, subject to the right of the Arbitrator to hear submissions on whether particular documents are protected by legal professional privelege.

Clause 8

In relation to clause 8.2, Ferrier Hodgson suggests a re-wording to make it clear that the arbitrator will notify the parties in advance of any proposed inspection or examination by the Resource Unit and that the arbitrator should have the discretion to seek submissions from the parties in relation to finding of fact arising out of such inspection. Commenting on clause 8.4, Telecom believes the arbitrator should disclose to the parties all advice received in consultation with the Resource Unit (ie interpretative conclusions as well as findings of fact).

Recommendation: agreed.

Clause 9

Telecom objects to the claims being heard together as each case may involve different considerations of fact.

Recommendation: given that the claims will be heard simultaneously, the arbitrator should by leave of the parties concerned have the right to transpose common findings of fact from one case to another in appropriate circumstances.

Clause 10

The Claimants seek a specific reference to clause 2(g) of the Fast Track Settlement Proposal in the opening lines of clause 10 so as to clarify the parameters of the arbitrator's powers of assessment under this procedure.

Recommendation: agreed.

The Claimants seek the deletion of clause 10.2.3 on the grounds that the wording of clause 10.2.2 directly reflects clause 2(f) of the Fast Track Settlement Proposal and is therefore adequate.

Recommendation: agreed.

Clause 16

The COT Case representatives have, subsequent to the meeting on 17 February, withdrawn their objection to this clause.

Telecom has proposed additional provisions requiring formal confidentiality undertaking to be signed by all persons who are privy to the proceedings.

Recommendation: agreed.

Clause 19

Telecom is not satisfied with the proposal that in the event of a breach of confidentiality, its damages arising from the breach will be determined by an independent arbitrator. Telecom proposes that in the event of unauthorised disclosure, any obligations imposed upon Telecom pursuant to the procedure should be rendered null and void and any moneys paid to the claimants should be refundable.

Recommendation: agreed.

Clause 23

Telecom recommends that persons authorised to receive notices be specifically identified.

Recommendation: agreed.

Clause 24

The Special Counsel and members of the Resource Unit seek an exclusion from liability for any act or omission, to the same extent as the arbitrator.

Recommendation: agreed.

New Clause 25

Telecom seeks a return of documents within 6 weeks of publication of the award.

Recommendation: agreed.

Schedule A

The Claimants seek specific reference to clause 2(c) of the Fast Track Settlement Proposal (or a replication of the wording of that clause) in Schedule A.

Recommendation: agreed.

Schedule E

If Telecom's proposals regarding clause 5 are accepted, this Schedule would be deleted.

Recommendation: agreed.

Yours faithfully
HUNT & HUNT

Encl

David,
Relevant correspondence as discussed yesterday/today.
Simon.

Telecom AUSTRALIA

23 February 1994

COMMERCIAL AND CONSUMER CUSTOMER AFFAIRS
37/242 EXHIBITION STREET
MELBOURNE
VICTORIA 3000
Australia
Telephone (03) 632 7700
Facsimile (03) 632 3241

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

Dear Mr Hughes

"Fast Track" Arbitration Procedure

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

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

Clause 6

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

Clause 8

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

Telstra Corporation Limited
ACN 051 775 556

Clause 9

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

Clause 10

(a) Telecom agrees to the insertion of a reference to Clause 2(g) of the Fast Track Settlement proposal in the opening lines of Clause 10, conditional on a reference to Clause 2(f) also being included in that clause.

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

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

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

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

Clauses 16 and 17

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

(a) The words ", existence or subject matter" added after the word "conduct" in line 2 of Clause 16; and

(b) The words "and any other documents provided in, or oral evidence given in, the arbitrations by either party" added after the word "Documents" in line 3 of Clause 17.

Clause 24

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

Yours sincerely

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

5

Dwyer, Kevin

From: Dwyer, Kevin
To: Gamble, Peter
Cc: Humrich, Alan
Subject: RE: Software query
Date: Thursday, 24 February 1994 11:07AM

Peter,

You are quite correct in your thought that the anecdotal reference applies more to AXE than ARE-11. 'Lockups' are generally well-known as a problem in AXE exchanges, not only in Australia but in overseas countries as well. A number of upgrades have included software which would reduce the incidence of lockups.

There is nothing to add to my previous notes on ARE-11 exchanges concerning claims of 'incompatibility' problems.

Regarding the problems in AXE :

In the NASM database (which has a record of faults reported from AXE exchanges, dating from 1988 when it was introduced, although it was not in widespread use till 1992/3) there are 105 reports of Lockups affecting customers. Two of these reports refer to PBX services, but there are no reports referring specifically to 'Commander' services.

The TR database (Trouble Report system controlled by TNE to monitor problems reported, passed to Ericsson, and fixed by Ericsson) which was used prior to NASM for all records of faults does show lockups on AXE equipment which would have affected customers and PBX functions, but does not provide any realistic count of problem occurrences. It does not record any lockups specifically related to 'Commander' systems.

As a general comment, if the first line was locked up and calls allowed to flow on to the other lines, then no calls would be lost until all lines were busy, so I fail to see how an estimate that "call loss could be up to15% " could be made or repeated with any degree of integrity.

There is also another NSIS database which would contain records of AXE faults which I have not checked yet but which I believe has records of large numbers of lockup instances affecting individual customers lines. I am reluctant to initiate a search of the NSIS database at present as the faults recorded therein would have no bearing on the CoT services in question, unless the fault occurred on their individual line.

Kevin.

From: Gamble, Peter
To: Humrich, Alan; Dwyer, Kevin
Cc: Wagland, Fran
Subject: Software query
Date: Thursday, 17 February 1994 7:04PM

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A13980

Fran, I am not sure where Alan is - please pass to him if he is on the 24th floor.

Kevin, Alan

Kevin, I did not use your comments on software (COMPATBL) at this time as they didn't seem relevant to the additional information that Austel have provided. John MacMahon writes as follows:

"I have references to Ericssons having considered a lock up fault which was occurring where the first line would be locked out and this would allow calls to flow to the other lines. It was said to arise through the

incompatibility of exchange software and Telecom's equipment. Ericssons apparently provided a solution and advised that particular Commander systems were most vulnerable. Ericssons are said to have suggested that call loss could be up to 15%."

Any thoughts on this new line ? It sounds a bit like AXE rather than ARE to me !

Peter.

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A13981

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YOUR REFERENCE

PLB 928549 FJS

25 February 1994

Mr G Hughes
Hunt & Hunt
Solicitors
21st floor
459 Collins Street
MELBOURNE 3000

BY FACSIMILE - 614 8730

Dear Gordon

COT Matters

I am enclosing two copies of the "Fast Track" Arbitration Procedure, one providing for a right of appeal and one providing for no appeal.

With respect to a confidentiality undertaking to be executed by all persons privy to the proceedings, I think it best to arrange this separately outside the agreement with the parties concerned. The Procedure only binds the parties to the agreement so there is little point in referring in the agreement to confidentiality requirements to be imposed upon those not a party to the agreement.

I would like to discuss with you some of the amendments I have made and suggest we meet on Monday some time for this purpose.

With kind regards,

F. J. SHELTON

enclosure

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1/1js40561

Campbell, Ian

From: Campbell, Iain
To: Campbell, Ian
Subject: FW: Gordon Hughes
Date: Thursday, 3 March 1994 9:16AM

DELIVERED TO IAIN CAMPBELL INSTEAD OF IAN CAMPBELL

From: Blount, Frank
To: Black, Stephen
Cc: 'Mason, Deirdre'; Zoi, Charlie; Vonwiller, Chris; Burdon, Steve; Campbell, Ian new; Pari
Carmel; Campbell, Doug; Krasnostein, David; Parker, Harvey; Rizzo, Paul; Scott, Sue
Subject: RE: Gordon Hughes
Date: Thursday, 3 March 1994 7:21AM

Stephen:

I am more and more of the view that some form of summit meeting be held between Warwick Smith, AUSTEL (Robin Davey), Gordon Hughes, David Krasnostein, me, and perhaps others to put this "foolishness" behind us.

Please advise.

Frank

From: Black, Stephen
To: Blount, Frank
Subject: FW: Gordon Hughes
Date: Wednesday, March 02, 1994 10:50PM
Priority: High

Frank

Copy for your information

Steve Black

From: Black, Stephen
To: Krasnostein, David
Cc: Parker, Harvey; Rizzo, Paul
Subject: Gordon Hughes
Date: Wednesday, 2 March 1994 10:48PM
Priority: High

David

As discussed it appears that Gordon Hughes and Peter Bartlett are ignoring our joint and consistent message to them to rule that our preferred rules of arbitration are fair and to stop trying to devise a s of rules which meet all the COTS requirements and with which we might agree if we were prepared t waive further rights.

Whilst at a personal level I am of the view that we should walk away I do not believe that this option suits Telecoms wider strategy in that it would appear to lead directly to a senate enquiry.

My course therefore is to force Gordon Hughes to rule on our preferred rules of arbitration.

I am having our preferred rules prepared now based on Bartlett's latest rules plus our amendments. I have also initiated an independent and authoritative view on these rules, which I expect will advise th these rules are fair. I will then send these directly to Gordon Hughes with a direct and blunt request rule on whether they are fair.

I expect this action to be finalised by tomorrow midday.

Steve Black

D01166

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AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

95/0596-02

38

92/0596(9)

3 March 1994

Mr S Black
Group General Manager
Customer Affairs
TELECOM.

Facsimile No: (03) 632 3241

Dear Mr Black

COT Cases - Freedom of Information

I refer to our conversation yesterday about the provision of information. I would confirm the view expressed that while AUSTEL has no formal role in enforcing the Freedom of Information Act it is concerned that if the Fast Track Settlement Proposal is to be effective then the COT members must be given access to the documentation in Telecom's possession necessary for them to prepare their cases.

Yours sincerely

John MacMahon
General Manager
Consumer Affairs

5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 828 7300 FACSIMILE: (03) 820 3021

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Commercial-in-Confidence

181

Tom
Dona
11/3
for info & file pls

Size of the complaints problem

I raised the (telephone) business survey Rob Davey referred to in Hansard (Senate Estimates Committee A 25/2/94) with John MacMahon (AUSTEL)

- it was apparently run by (T) at AUSTEL's request in an attempt to see how wide (spread) the problems are
- (T) provided the results to AUSTEL as 'commercial-in Confidence'
- They will be covered in AUSTEL's report.
- 10% of those surveyed said they had experienced the same sorts of problems (as the CBT people)
- 4% (I'm not sure if this is of the total or of the 10%) said they had been affected seriously or very seriously

([redacted])

This is the basis for AUSTEL's view that the size of the problem is significantly greater than (T)'s claim of 50.

J R Martinsen
10/3/94

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MEETING TO DISCUSS FAST TRACK RULES OF ARBITRATION

Date: 22 March 1994
Attendees: Steve Black, David Krasnostein, Simon Chalmers, Peter Bartlett, Gordon Hughes, Warwick Smith, Jenny Henright??

Mr Bartlett stated that he agreed with the majority of the changes in Telecom's amended rules, however he did not agree with the provisions set out below.

1. Confidentiality

Mr Bartlett stated that he thought the confidentiality clauses in Telecom's amended rules were not consistent with the Fast Track Settlement Proposal. He stated that Mr Archibald QC's advice was that the clause proposed by Telecom was "not inconsistent with the Fast Track Settlement Proposal", which is different to the clause being consistent with the Fast Track Settlement Proposal.

Dr Hughes only commented to the effect that the differences between the confidentiality clauses in Telecom's amended rules and Mr Bartlett's earlier proposed rules were material.

Mr Krasnostein stated that in the circumstances of conversations which Telecom had had with some of the claimants, and given their conduct leading up to entering into the arbitration process, the confidentiality provisions set out in Telecom's amended rules were justified.

Mr Smith stated that he thought it was fair to include wider confidentiality clauses in the rules than those expressly set out in the Fast Track Settlement Proposal. He stated that the confidentiality clauses in Mr Bartlett's earlier proposed rules appeared fair.

2. Establishing a Causal Link

Mr Bartlett stated that he thought the removal of the words "on reasonable grounds" from the phrase "will make a finding as to the causal link" appearing in clause 10.2.2 of Telecom's amended rules was not fair because it did not reflect the wording of the Fast Track Settlement Proposal. He said that Mr Archibald's advice did not cover this key clause of Telecom's amended rules. He acknowledged that neither he nor Mr Smith had been given access to correspondence leading up to the formation of the Fast Track Settlement Proposal.

Dr Hughes stated his view that the inclusion of these words would not make 'a jot of difference' to the outcome of the arbitration. He said that in giving effect to the words "on reasonable grounds" in this context, he would apply normal rules of law as that was the proper basis for his decision being on reasonable grounds.

Mr Smith stated that he would not endorse the rules as fair unless clause 10.2.2 repeated clause 2(f) of the Fast Track Settlement Proposal, and in particular that the words "on reasonable grounds" were inserted in the phrase "will make a finding as to the causal link". He asked Telecom to have regard to the assurances given by

Dr Hughes as to how he would make a determination in relation to causal link based on "reasonable grounds".

3. **Punitive Damages**

Mr Bartlett stated that in his view punitive damages would not be recoverable under his earlier proposed rules.

Dr Hughes did not expressly state a position on this matter when it was raised, however he did subsequently say that none of the changes set out in Telecom's amended rules other than the amended confidentiality provisions, would make 'a jot of difference' to the outcome of the arbitration.

Mr Smith stated that in his view Telecom would not be disadvantaged by agreeing to arbitration without Telecom's new clause 10.3. He also subsequently commented generally that Telecom should have regard to the assurances given by Dr Hughes as to how he viewed the effect of the amendments.

6. **Exclusion of Liability for Arbitrator's Advisers**

Mr Bartlett stated that he was unhappy that Telecom did not appear prepared to allow his firm an exclusion from liability.

Dr Hughes stated that the resource unit was also not satisfied with a capped liability, but that he did not have a position in relation to this matter as it did not affect him or the performance of his functions.

Mr Smith stated that he thought it was reasonable for the advisers to incur some liability, and that the only matter left to be negotiated on this issue was the quantum of the liability caps.

Mr Black said that he thought the liability caps proposed by Telecom in the amended rules were already reasonable.

It was agreed that Mr Bartlett would produce a re-drafted set of rules which Mr Smith and Mr Bartlett would agree was fair. It was further agreed that the likelihood of negotiating an agreement as to the form of the rules which was acceptable to all parties, was small. Mr Smith indicated that he proposed to have the re-drafted rules simply put to both Telecom and the four COT Claimants for signature.

Paul Rumble - 48441
cc: ~~Tim Campbell - 43876~~
Tim Holmes - 23215
Steve Black - 23241
Dave Krasnostein - 42858
CEO Sydney Office

COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

Prudential Building, cnr London Circuit & University Avenue, Canberra City
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25 March 1994

C/94/195.C/94/225

CEO
Melb. Office
28/3/94 cp

Mr F Blount
Chief Executive Officer
Telstra Corporation Ltd.
38th Floor, 242 Exhibition Street
MELBOURNE VIC 3000

Dear Mr Blount

On 20 January 1994 I notified Mr Holmes that I had received complaints from three of the 'COT Cases', Mr Graham Schorer, Mr Alan Smith and Ms Ann Garms, concerning TELECOM's handling of their applications under the Freedom of Information Act (FOI Act) of 24 November 1993 and 21 December 1993 respectively.

I informed Mr Holmes that it is my opinion that Telecom should release to the participants of the Fast Track Settlement Proposal (FTSP), free of charge, the information required by them in connection with presentation of their cases to the assessor and that such release should be outside the provisions of the FOI Act. I also suggested that Telecom should waive the application fees payable by those participants who had applied for information under the FOI Act and also waive that part of the charges which relates to the information requested which is required to enable the applicants to present their cases under the FTSP. Mr Black replied on 9 February 1994 agreeing to provide certain information to the participants, without conditions. I have enclosed copies of the correspondence for your convenience.

On 15 February 1994, I received a complaint from Ms Maureen Gillan alleging that Telecom had not responded to an FOI application she had lodged with Telecom on 7 December 1994. Your officers informed us that Telecom has no record of Ms Gillan's FOI request, but that Telecom extends to Ms Gillan the same offer made to Mrs Garms, Mr Schorer and Mr Smith as detailed in Telecom's letter to me on 9 February 1994. I understand that a copy of Ms Gillan's FOI request was sent to Telecom on 16 March 1994.

My officers received a number of assurances that documents were being sent to the four applicants from mid February 1994, but I understand that there still are many documents which are being withheld by Telecom. Mr Alan Smith has advised that he still awaits many documents, Mrs Garms advised that she has received only about 7000 of the 15500 documents identified by Telecom as falling within her FOI request and Ms Gillan and Mr Schorer advised that they have not received any documents since the offer of 9 February 1994.

In view of the lack of progress by Telecom in providing the documents and complaints by Mr Smith that Telecom was improperly claiming exemptions for information without giving adequate explanation, one of my officers, Mr Wynack, visited your officers in Melbourne to obtain an update of the progress in providing information and to examine some of the FOI decisions.

Your officers informed Mr Wynack that the status of the exercise of providing information to the four applicants was :

- Mr Schorer - There was no valid FOI application until he either paid the application fee or agrees to participate in the arbitration process
- Mr Smith - He has a valid application and he has been granted access to most of the documents offered free. He has not paid the deposit for the other documents included in his FOI request. Your officers informed Mr Wynack, on 10 March 1994, that Telecom will not release the remaining free documents until Mr Smith signs an agreement related to the FTSP (the Agreement), which was then being developed.
- Ms Gillan - Telecom did not then have an FOI application from Ms Gillan. Your officers informed Mr Wynack that Telecom is ready to release certain documents to Ms Gillan, free of charge, on the same basis as the offer to the other three participants.
- Mrs Garms - She has a valid FOI application. Your officers informed Mr Wynack that a substantial number of documents have been released and there are a number of other documents being considered for release.

During discussions on 10 March 1994, your officers informed Mr Wynack that there is a delay in sending the remaining documents because of their concern that information might be released by the applicants which might result in comment in the media which is adverse to Telecom. Your officers also advised that the Agreement, which was almost finalised, contained clauses which required that all FTSP participants keep all information confidential. Your officers informed Mr Wynack that they expected that the Agreement would be presented to the participants on 15 or 16 March 1994.

Your officers assured Mr Wynack, however, that Telecom was not delaying the release to Mrs Garms of the documents she requested under the FOI Act. They said that they were concerned at the publicity and significant diversion of Telecom resources caused by the recent release of certain information by Mr Smith and that the delay in release of documents was due to the need for Telecom to check all documents prior to release so that Telecom is alert to the possible use/misuse of sensitive information. Your officers also informed Mr Wynack that they expected the vetting of the documents would take only a couple of days.

On 31 January 1994 Mr Black released a number of documents to Mr Smith and stated in a letter of that date that some other documents were being collated, copied and reviewed and would be provided to him shortly. Mr Smith informed my officers recently that Mr Black told him recently that no further documents will be released. This decision by Mr Black was made soon after a media report based on information released by Mr Smith and Mr Black's decision appears to have been a reaction to inconvenience caused to Telecom by that media report. Please advise whether

Telecom has formally decided not to release the remaining documents it had promised to provide to Mr Smith free of charge.

In the expectation that the documents would be released within a couple of days after Mr Wynack's visit to your office on 10 March 1994, I took no further action on the complaints. It now appears that Telecom does not intend releasing the documents until the participants agree not to release any information in the documents.

I made some inquiries as to whether it is Telecom, or the other participants, who have been delaying the finalisation of the Agreement. Mr Warwick Smith and Mr Bartlett informed me that the delay is with Telecom. I understand that Mr Bartlett sent a draft Agreement to Telecom on 2 March 1994 and that Telecom sent final information to Mr Bartlett late on 17 March 1994.

As little progress has been made by Telecom in processing the FOI applications, I have decided to give a higher priority to investigating the complaints. As a first step, I should like to apprise you of my preliminary views on that part of the complaints which relate to delays in providing documents.

Decisions under the FOI Act

Insofar as Telecom's actions relate to decisions on the valid FOI applications - Mr Smith's and Mrs Garms' - it is my view that delaying release of the documents to Mr Smith and Mrs Garms is unreasonable in terms of section 15 of the Ombudsman Act 1976.

The statutory time limits within which FOI applications must be processed have not been met and no explanations for the delays have been provided to Mrs Garms or Mr Smith. I should mention that there is no provision in the FOI Act which enables Telecom to delay granting access to information while Telecom vets the information in anticipation of the use to which the applicants might put the information. Indeed, section 11 (2) of the FOI Act states:

> "Subject to this Act, a person's right of access is not affected by:
> (a) any reasons the person gives for seeking access; or
> (b) the agency's or Minister's belief as to what are his or her reasons for seeking access."

Nor is the delay in granting access to the information within the spirit of Telecom's undertaking, given in response to my letter of 20 January 1994, to release certain information outside the provisions of the FOI Act.

I should be grateful if you would inform me, within seven days, of the reasons why the authorised Telecom officer has not made decisions on the FOI applications made by Mrs Garms and Mr Smith.

I should be grateful also if you would inform me whether there is any impediment to Telecom immediately releasing those documents for which exemptions have not been claimed. In this context, I understand that all documents have been gathered and decisions on access have been made.

Mr Alan Smith also informed my officers that Mr Black informed him that Telecom has lost, or destroyed, a number of files relating to his contacts prior to June 1991 and also some personal files given to Telecom in 1992. Please inform me of the steps Telecom has taken to locate the files or to confirm that they were destroyed.

Imposition of conditions on release of documents.

Telecom's undertaking in response to my letter of 20 January 1994 is unconditional and it was given in the knowledge that the Cot Case people had signed agreements to participate in the FTSP. It was unreasonable for Telecom to require the participants to make further assurances while Telecom was considering the Agreement and thereby denying the participants the opportunity to consider the rules that Telecom wished to have included in the Agreement.

There is no provision in the FOI Act which would permit Telecom to impose such conditions on applicants prior to granting access to documents - access under the FOI Act is public access. Notwithstanding that Telecom's undertaking to me may have been to provide access outside the FOI Act, it was made in the context of complaints to me about Telecom's processing of applications under the FOI Act. Accordingly, it is my view that it was unreasonable for Telecom to impose the condition.

I do not accept that the action by Mr Alan Smith in disclosing to the media, and to the AFP, some information released by Telecom pursuant to its undertaking to grant free access, provides justification for the imposition of a condition that the participants must sign the Agreement before access to documents will be effected.

Please inform me whether Telecom intends releasing information to Mr Smith, Mrs Garms, Mr Schorer and Ms Gillan in accordance with the undertaking in Mr Black's letter to Mr Schorer dated 27 January 1994 (copy attached) and subsequently confirmed in communications to my officers by Mr Black and Mr Rumble.

I will write to you separately to inform you of my findings on other aspects of the complaints, when I have concluded my investigation. The other matters include the basis for some exemptions claimed, the adequacy and method of providing reasons given for exempting documents, the estimates of charges for access under the FOI Act.

Yours sincerely

Philippa Smith
Commonwealth Ombudsman.

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D03721

INTERNAL REVIEW DECISION: SCHORER

Applicant	File number	Document number	Document date	Description	Primary Decision Table	Primary Decision Exemption Claimed	Internal Review Decision New Table	Internal Review Decision Exemption Claimed
Schorer	Correspondence - File Held In CRU Golden Messenger - Schorer D03765 - D04046	D03765	14.4.94	Letter to Mr Graham Schorer from Telecom Australia	C	Released in Full	C	R
Schorer	Correspondence - File Held In CRU Golden Messenger - Schorer D03765 - D04046	D03766	14.4.94	Fax Transmission Report of letter of 14.4.94 to Mr Graham Schorer	C	Released in Full	C	R
Schorer	Correspondence - File Held In CRU Golden Messenger - Schorer D03765 - D04046	D03767	7.4.94	Internal Fax to St Albans Exchange Management Group from Telecom Australia Solicitor	A	LPP	C	R
Schorer	Correspondence - File Held In CRU Golden Messenger - Schorer D03765 - D04046	D03768	7.4.94	Fax Transmission duplicating text of Internal Fax of 7.4.94 to St Albans Exchange Management Group from Telecom Australia Solicitor records substance of D03767	A	LPP	C	R
Schorer	Correspondence - File Held In CRU Golden Messenger - Schorer D03765 - D04046	D03769 - D03770	15.3.94	Fax to Mr G Schorer of Golden Messenger from Telecom Australia	C	Released in Full	C	R
Schorer	Correspondence - File Held In CRU Golden Messenger - Schorer D03765 - D04046	D03771	1.3.94	Fax to Mr G. Schorer from Telecom Australia	C	Released in Full	C	R

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LEGEND: TABLE A - WHOLLY EXEMPT TABLE B - RELEASED WITH DELETIONS TABLE C - RELEASED IN FULL TABLE D - IRRELEVANT MATERIAL

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Internal Memo

Telecom AUSTRALIA

To MR DAVID KRASNOSTEIN
GENERAL COUNSEL

From STEVE BLACK
GROUP GENERAL MANAGER

Subject

Date 7 April 1994

File

Attention

COMMERCIAL AND CONSUMER
CUSTOMER AFFAIRS
8/242 EXHIBITION STREET
MELBOURNE
VICTORIA 3000
Australia
Telephone (03) 634 5736
Facsimile (03) 634 8441

Steve/Paul
Agreed.
David

David

Peter Bartlett tells me that Graeme Schorer is putting pressure on Gordon Hughes to read the Austel Report and see if it contains anything which would necessitate a change in the Arbitration Rules. I told Mr Bartlett to tell Dr Hughes that Telecom would seriously object to such a course of action.

Dr Hughes is now convinced that his proposal to have a joint meeting to finalise the rules tomorrow is useless. I have told Mr Bartlett that the only basis on which Telecom would attend a meeting is to formally sign the rules - no further discussion or negotiation to be entered into.

Dr Hughes seems to have dug a bit of a hole for himself.

Mr Bartlett is urging Dr Hughes to notify COTS that he has decided that the rules are now finalised and fair and reasonable and must be signed by COTS and Telecom tomorrow. Warwick Smith supports him in this. Dr Hughes has agreed to talk to Mr Schorer in an attempt to convince him to sign the rules tomorrow. I understand that Amanda Davis is ready to sign.

Paul Rumble
NATIONAL MANAGER
CUSTOMER RESPONSE UNIT

Maybe a letter to Robin Dewey, TIO & Hughes would be appropriate? ie. Rules now agreed to by Telecom, we understand they satisfy final points of Hughes, TIO & Bartlett, we await sign.

A11908

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Facsimile

Telecom AUSTRALIA

To	Russell Berry/ Denise McBurnie	**From**	Simon Chalmers
Facsimile	288 1567		
Company	Freehill Hollingdale & Page	**File**	
Location		**Date**	8 April 1994
		Total Pages	
Distrib.			

Commercial & Consumer

8th Floor
242 Exhibition Street
MELBOURNE VIC 3000
Australia

Telephone 634 8434
Message Bank
Facsimile 634 8441

Dear Russell and Denise

Austel Report

A copy a letter which we have sent to Austel is enclosed for your information.

Simon Chalmers.

Simon Chalmers

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R11840

Telstra Corporation Limited
ACN 051 775 556

Telecom AUSTRALIA

Commercial & Consumer

37th Floor
242 Exhibition Street
Melbourne Vic 3000

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

8 April 1994

Mr Robin Davey
Austel
By Facsimile: 820 3021

Dear Mr Davey

Preliminary Draft Austel Report ("the Report")

The purpose of this letter is to confirm Telecom's comments made to your officers in respect of the preliminary draft of the Austel Report which was made available to Telecom for comment.

Those comments are covered in the following three sections: General Comments, Key Issues of Major Concern to Telecom, and Comments on Secondary Issues.

Telecom's General Comments

As a broad comment, if the Recommendations in the Report reflect the amendments and additions I discussed with Mr MacMahon yesterday, then Telecom would consider the Recommendations substantially acceptable and would so state.

However, Telecom understood the purpose of Austel's Report was to assess defects in Telecom's process of dealing with customer complaints of persistent faults, and the Report fails to accomplish this objective. Telecom is willing to accept a report that illustrates the history of the problem by describing the COTs' complaints, fairly presenting Telecom's responses to those complaints, analysing how Telecom's processes and systems may have failed to address and resolve those complaints in a satisfactory and timely manner, and then presenting Austel's Recommendations for improvements. Telecom cannot accept a report that merely repeats unsubstantiated, and in some cases defamatory, claims without giving equal space to Telecom's reply, thereby giving express and implied support to those claims. Austel is not in a position to arbitrate on the merits of those allegations.

Austel and Telecom have agreed that Dr Gordon Hughes, as arbitrator, will adjudicate on the merits of those claims and will determine the amount of compensation, if any, required. This is not Austel's function, nor has it conducted the kind of investigation that would enable it to responsibly make such determinations of law or fact.

Telecom acknowledges that its handling of aspects of the COT cases has not always been ideal and recognises that improvements need to be made, as has been evidenced by Telecom's prompt and diligent response to the recommendations of the Coopers and Lybrand Report.

However, in respect of the narrative in the Report, Telecom considers that the Report is unbalanced in that allegations against Telecom by many parties, many of which are defamatory and still unsubstantiated, are simply repeated without providing adequately for Telecom's response to these allegations. By repeating these allegations, Austel cloaks them with credibility.

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Telstra Corporation Limited
ACN 051 775 556

In addition, I spent some four hours with Mr MacMahon yesterday going through in detail Telecom's comments and concerns on the narrative of the Report. In general, Telecom considers that Austel's selective use of technical information in the Report has the potential to mislead readers and, in a number of cases, the conclusions drawn from the material presented are unsound and unsubstantiated by the evidence. Telecom is also concerned that in the more general areas the information presented demonstrates an unacceptable bias against Telecom.

In our discussion yesterday, Mr MacMahon offered me the opportunity to provide responses to a number of these allegations and I have agreed to do so. I will provide these responses by Monday 11 April 1994.

Telecom also considers that two additional issues for which Austel has a primary responsibility, should be specifically included in the Recommendations. The two matters are firstly, the need for Austel and the carriers to agree a definition of a satisfactory standard of service against which future performance can be measured, and secondly, the requirement for Austel to move promptly to set limitations on carriers' liability under section 121 of the Telecommunications Act 1991. The latter matter has now become urgent. Recent media coverage has heightened the public awareness of the availability of compensatory payments for business losses without reference to the normal limitations of liability which are provided to telecommunications carriers worldwide. In addition, customer response to the recent damage to Telecom plant in Melbourne and Hobart has demonstrated the need for stability in this area.

Key Issues of Major Concern to Telecom

There are five key issues of major concern to Telecom. Each is dealt with in turn below.

1. The allegation that the Chairman of Telecom misled the then Minister for Communications, Mr David Beddall. This allegation is supposedly supported by Austel by quotations from letters from Telecom and Austel. Telecom has not previously been given the opportunity to comment on this allegation. Telecom is also concerned that AUSTEL does not appear to have consulted the previous Minister on his views on this matter. Telecom's view is that this allegation must be removed from the Report.

2. The allegation that Mr Ian Campbell misled the Senate and that Telecom misled other Parliamentarians. From our review of the Report, there is no evidence offered to support the allegation that Mr Campbell misled the Senate, and from my personal knowledge of the comments of at least one of the Senators briefed at these sessions, Telecom considers that this allegation is completely unfounded. I understand from Mr Campbell that you have indicated that this allegation is to be withdrawn. Would you please confirm this in writing. The allegation that Mr Wright was misled by the information that was given to him by Telecom has also been included in the Report apparently without investigation. Telecom is concerned that you do not appear to have consulted Mr Wright on his views on this matter. Telecom's view is that this allegation must be removed from the Report.

3. The allegation originally made by Mrs Garms that Telecom misled the Australian Federal Police in an earlier investigation of allegations in respect of her telephone service, which is repeated in the Report by Austel in an authoritative way. Telecom considers that the presentation of this matter in the Report is misleading and defamatory. It is my understanding that Austel has made no inquiries of the Australian Federal Police in respect of this matter.

   Mrs Garms' original allegations were investigated by the Australian Federal Police and they found no evidence to support her claims. Mrs Garms was unsatisfied with their findings and made allegations of corruption directly against the Australian Federal Police.

When Mrs Garms repeated her allegation to Telecom on 27 February 1994, Telecom referred the allegation to the Australian Federal Police for their information and review. Whilst Telecom has not received a formal response from the Australian Federal Police, it is my understanding from oral comments that they have considered the allegation and the impact of Mrs Garms' statements on the original findings, and do not consider that the matter needs to be reviewed further. Under these circumstances, Telecom considers that the allegations repeated in the Report are unwarranted and must be withdrawn. Opportunity should be give to the Australian Federal Police.to comment on this material before it is published.

4. The Report, when commenting on the number of customers with COT-type problems, refers to a research study undertaken by Telecom at Austel's request. The Report extrapolates from those results and infers that the number of customers so affected could be as high as 120 000. Telecom is of the view that this statement is patently flawed and is not supported by the outcomes of the study and the subsequent follow up interviews and evaluated material which has been provided to Austel.

   In view of the high media profile that this Report is likely to generate, and Austel's failure to limit carrier liability under Section 121 of the Telecommunications Act, it is considered by Telecom that the inclusion of this reference is unnecessary, inflammatory and must be deleted.

5. Paragraph 6.106 of the Report uses the word 'cover-up' to describe the attitude of Telecom staff in relation to COT matters. Telecom considers that the use of this term is defamatory, inflammatory and inappropriate and requests that it be replaced by the word 'defensive'.

Comments on Other Issues

As Telecom has spent some four hours briefing Mr MacMahon on the detailed comment, it is not proposed to deal with those detailed matters in this letter.

However, it is appropriate to raise the issue of Austel's interpretation of the Bell Canada International consultant's report. It is Telecom's view that the comments purporting to be derived from the information in this report and the statements made that the Bell Canada International report supports the COT allegations are not soundly based. Opportunity should be given for Bell Canada International to comment on this material before it is published.

Yours sincerely,

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

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Commercial & Consumer

37th Floor
242 Exhibition Street
Melbourne Vic 3000

Telephone (03) 632 7778
Facsimile (03) 632 3241

9 April 1994

Mr Robin Davey
Austel
By Facsimile: 828 7394

Dear Mr Davey

Preliminary Draft Austel Report ("the Report")

I refer to my previous letter dated 8 April 1994 and our subsequent conversation, and .

In relation to the key issues of major concern to Telecom which I raised in that letter, I confirm the following:

1. In relation to point 5, you have accepted Telecom's requested amendment;

2. In relation to point 4, you have agreed to withdraw the reference in the Report to the potential existence of 120,000 COT-type customers and replace it with a reference to the potential existence of "some hundreds" of COT-type customers; and

3. In relation to point 2, you have agreed to withdraw the allegation that Mr Ian Campbell misled the Senate, and you will also alter the wording in respect of the reference in the Report to the statements made by Telecom to Mr Wright, to read that the statements had the "potential to mislead".

I also confirm your advice that you will include a recommendation in the Report that Austel will settle with the carriers a standard of service which they will offer, and that you will include a statement in the Report that Austel will move to determine limitations on carriers' liabilities under section 121 of the Telecommunications Act as a matter of urgency.

Key Issues Which Remain of Major Concern to Telecom

Telecom still holds the following concerns about the key issues which were raised in my previous letter.

1. In respect of the first key issue raised in my previous letter, you have refused to withdraw the disputed reference on the grounds that the words of paragraphs 8.38 and 8.39 of the Report only indicate that the Chairman of Telecom did not disclose the true nature and extent of COT case problems, and do not specifically state that the Chairman of Telecom misled the then Minister for Communications, Mr David Beddall.

   Telecom's concern is that this statement comes directly under a heading **"COT case allegations"** and a clear statement in the first line that Telecom misled the Parliament. Telecom is of the view that the juxtaposition of these paragraphs carries the clear inference that the Chairman of Telecom misled the then Minister for Communications, Mr David Beddall.

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Telecom is also concerned that the Report purports to be an independent review of the COT allegations by Austel, which holds itself out as being disassociated from the matters under review. However, the evidence led to support Mrs Garms' allegations that Telecom has misled the Parliament refers to documents evidencing a personal disagreement between the Chairman of Austel and Telecom as to the efficacy of a ministerial briefing note. Telecom disputes the Chairman of Austel's views on this matter and is of the view that unless the allegation is removed from the Report, the Report will still imply that the Chairman of Telecom misled the then Minister. This is unacceptable to Telecom.

Telecom is also concerned that AUSTEL does not appear to have consulted the previous Minister on his views on this matter. Telecom's view is that this allegation must be removed from the Report.

2. In respect of the second key issue raised in my previous letter, I note your advice that you propose to retain the altered reference to Mrs Garms' allegations in respect of Mr Keith Wright. Telecom still has the following concerns with your proposal. Telecom is concerned that it has not been given sufficient time to contact the officer who gave the briefing and obtain a statement of his understanding of Telecom's systems and to prepare a proper response in relation to this matter for inclusion in the Report. Telecom is of the view that if this allegation is to remain, then Telecom should be given adequate time to prepare a formal response for publication in the Report.

3. In respect of the third key issue raised in my previous letter, I note your advice that you propose to include the findings of the initial Australian Federal Police (AFP) investigation into Mrs Garm's allegations of corruption to make it clear that there was no evidence to support her allegations, and also to withdraw any specific reference to Telecom having misled the AFP. However, Telecom's concern is that this statement comes directly under the heading **"COT case allegations"** and is presented in the context of a section where allegations by Mrs Garms that Telecom misled the Australian Federal Police are presented. This clearly infers that Telecom misled the Australian Federal Police in the conduct of their investigation.

Telecom is concerned that this makes the Report misleading for two reasons. First, the statements relied upon by Mrs Garms to support her allegation, were not relevant to the subject matter of the investigation carried out by the Australian Federal Police. It would therefore not have affected the outcome of the Australian Federal Police investigation which related to the physical disconnection of her service.

Secondly, Mrs Garms' allegation that Telecom is corrupt and has misled the AFP, is untrue. The basis of her allegation is that Mr Bennett's purported statement to the AFP, that Telecom did not have access to check her old Commander telephone system, is not consistent with the file note dated 31 May 1990. Her allegation is that Mr Bennett's statement is untrue because Telecom had physical access to view her equipment, as evidenced by the file note.

Access to check equipment from a technical point of view refers to the ability to physically access equipment and the capacity to disassemble the equipment for testing and repair. The file note indicates that Mrs Garms had not taken out a maintenance contract for that equipment with Telecom and the equipment was privately installed and maintained. From a technical perspective Telecom did not have access to check the equipment, in that it did not have Mrs Garms' authority or the responsibility to disassemble the equipment for testing and repair. Therefore the two statements are consistent.

Mrs Garms has accused Telecom of corruption twice, and has also made allegations of corruption against the AFP. The first allegation of corruption against Telecom has been investigated by the AFP and found to be without foundation. The allegation of corruption against the AFP has also been investigated and found to be without foundation. The allegations which Austel now seeks to re-state in the Report in an authoritative way have also been referred to the AFP and it is Telecom's understanding that, after further consideration, the AFP does not consider that the matter needs to be reviewed further. Telecom considers that the proposed changes to the Report are insufficient and considers that the allegations repeated in the Report are unwarranted and must be withdrawn.

Telecom is also concerned that Mr MacMahon has been incorrectly informed that the AFP officer who conducted the original inquiry into Telecom, has been found guilty of corruption charges and is in prison. I have taken this matter up with the AFP who have advised me that this is totally unfounded. As Austel appear to have been seriously misinformed about the status of the AFP inquiries and AFP personnel, Telecom considers that any matters dealing with AFP investigations must be formally cleared with the AFP.

Telecom also considers that it should be given the opportunity to provide specific responses to any allegations of COT members re-stated in the Report, and that adequate time should be allowed for this purpose.

4. In respect of the fourth key issue raised in my previous letter, Telecom is still concerned that, in the absence of agreed service standards, the proposed reference to "some hundreds" of customers has the potential to be misleading.

At our meeting on 6 April 1994, Mr Ian Campbell indicated that Telecom accepted that the number of customers reporting DNF-type problems might be more than 50. However, in the absence of agreed service standards, it is not possible to define objectively how many customers are not receiving a satisfactory level of overall service.

The number of customers currently in serious dispute with Telecom on all service-related matters of which Telecom is aware, is substantially less than 100. Accordingly Telecom's view is that the only reference made in the Report to the number of potential COT customers, should be the original reference to "more than 50" customers.

Telecom considers that the Report's findings which purport to be derived from the information in the Bell Canada International (BCI) report, are misleading in that they focus on minor issues and ignore the primary findings of the BCI report in relation to those same issues, and are also in some cases factually incorrect. The Report is also unbalanced because the findings do not deal with the primary findings of the BCI report but only deal with peripheral issues favourable to the views of the COT customers.

In the concluding section of the section of the Report dealing with BCI, Austel makes no reference to the primary findings of BCI, but instead focuses on the following statement.

"The BCI report suggests the following weaknesses:

- potential problems attributable to older technology
- inadequacies in monitoring and testing equipment
- inadequacies of maintenance spares
- inadequacies of maintenance procedures
- potential problems attributable to number assignment procedures."

1809

The executive summary of the BCI report directly contradicts a number of these points. It states that "the testing and fault locating equipment and systems, as well as procedures to detect and correct network troubles were found to be comparable with world standards...". It also states that "the TEKELEC/CCS7 test system with enhancements by Telecom is the most powerful tool available in a digital network." In view of this, Telecom considers that the Report is factually incorrect. Telecom is also of the view that the statement that BCI found inadequacies of maintenance spares, is factually incorrect

If the following amendments are made, this section of the Report will be more be more balanced. The amendments include:

- relating Telecom's responses to COT issues and dealing with them together,
- correcting the errors of fact in Austel's findings in relation to technical matters,
- referring to the fact that supplementary testing addresses Austel's concerns regarding the original testing, and
- provide prominence to the primary findings of BCI in the relevant sub-section of the Report dealing with Austel's findings.

In addition, opportunity should be given for Bell Canada International to comment on this material before it is published.

It is also critical to point out that repetition of the unsubstantiated allegations of the four COT customer (unsubstantiated because AUSTEL recognises that an arbitrator will make these final determinations) without at the same time offering Telecom's response to those claims, is misleading and biased.

AUSTEL must either (1) not publish four COT customer's allegations at all, or (2) publish them alongside Telecom's responses, state that AUSTEL does not take one side or the other since the allegations will be determined by an arbitrator, point out how these disputes illustrate defects IN THE PROCESS of Telecom's process for resolving customers' complaints, and proceed to make recommendations on IMPROVING THE PROCESS. This will involve much new material being inserted in the Report to present our position on each quoted COT claim.

Finally, Telecom understands that you may amend the Report to reflect concerns raised with you by the COT customers. As these changes may raise further issues of concern to Telecom, Telecom is of the view that it should have an adequate opportunity to comment on any such changes.

Yours sincerely,

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

180A

R11831

Commercial - in - Confidence

Tom. 11/3
Dona for info & file pls

Size of the complaints problem

I raised the (telephone) business survey Rob Davey referred to in Hansard (Senate Estimates Committee A 25/2/94) with John MacMahon (AUSTEL)

- it was apparently run by (T) at AUSTEL's request in an attempt to see how wide (spread) the problems are
- (T) provided the results to AUSTEL as 'commercial - in Confidence'
- they will be covered in AUSTEL's report.
- 10% of those surveyed said they had experienced the same sorts of problems (as the CBT people)
- 4% (I'm not sure if this is of the total or of the 10% said they had been affected seriously or very seri

(~~John Mc~~)

This is the basis for AUSTEL's view that the size of the problem is significantly greater than (T)'s claim of 50.

J J Martinsen
10/3/94

1803

TELECOM - IN - CONFIDENCE

EXECUTIVE SUMMARY

The survey, through a series of detailed questions focussing on **incoming** calls to the business, found a **total** of **4%** who felt that recent difficulties associated with incoming calls had affected their business adversely to a **significant** or **very significant** extent.

The results showed **no significant difference** between the **selected** exchanges and the **control** areas included in the survey.

This figure was derived from **two** questions asked of **all** respondents. The first related to difficulties experienced with incoming calls over the last month by the **business**. The second (asked of all respondents regardless of their response to the first question) related to comments received from **callers** regarding difficulties in getting through to the business in the last month.

A **total** of **8%** of **all** businesses stated they had experienced problems **themselves**; **5%** had, by inference from comments made by **callers**, assumed they had problems; and **8%** claimed they had both experienced problems **themselves** and **also** received comments from **callers** regarding difficulties in getting through to the business.

However, the majority perceived these not to have had any or only a minimal effect on their business.

Problems experienced by **callers** to the business appeared to influence the **extent** to which incoming calls were considered to **seriously** effect the business.

Businesses who felt that problems with incoming calls had **significantly** or **very significantly** effected their business tended -

- to claim they had experienced **multiple** incoming call problems within the last month
- to have experienced incoming call problems at least **every few days**
- to have **heightened awareness** of potential problems that may exist with the telephone service in their area.

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TELECOM - IN - CONFIDENCE

* Table 1 shows the response to the two questions asked of **all** respondents to elicit the incidence of **incoming** call problems over the **last month.**

Firstly survey respondents were asked if the business had experienced difficulties with incoming calls over the last month - 16% indicated they had. All respondents (even those who had **not** experienced any difficulties) were then asked whether they had received any comments from **callers** regarding difficulties in getting through to the business and a total of 13% stated they had.

This in fact represented a total of **21% of all businesses** in the survey who assumed - either from their own experience, or comments made by callers - that there had been problems with incoming calls to their business during the last month.

* **47%** of these respondents claimed incoming call problems had had an **adverse** affect on their business.

* **19% of all businesses with incoming call problems** felt these had adversely affected the business **significantly or very significantly (4% of all business)**; **26%** perceived the affect as **slight.**

* The table opposite (Table 2) suggests it was comments from **callers** regarding ...

  - the number being constantly engaged (Q5a)
  - the number ringing but not being answered (Q6a)
  - a recorded message saying the number had been disconnected (Q7a)

... that had the **greatest influence** on perceptions relating to the effect on the business.

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TELECOM - IN - CONFIDENCE

Compared to the **overall** business population the businesses claiming incoming call problems had **very/significantly** affected their business were found to have -

- more **lines** to their premises
- more **handsets** attached directly to lines (where there was no small business system)
- a higher incidence of **other equipment** attached to the lines

No differences were apparent between the **nature** of business of these customers and the general business population.

73% of customers who felt the problems associated with incoming calls had seriously affected their business had **reported** the problems to Telecom with varying degrees of success regarding resolution.

When invited at the end of the survey, **84%** agreed they would like Telecom to follow up their problems.

These customers will form the basis of the **second, diagnostic** stage which will be carried out by Telecom in order to determine the underlying cause of the problems believed to exist with incoming calls. During this stage Telecom will investigate both the **Telecom** network and the **customers** equipment; and their usage of the telephone service.

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FACSIMILE TRANSMISSION

TO:	Mr Warwick L Smith LLB Ombudsman - TIO	FAX NO:	(03) 277 8797
FROM:	Ann Garms OAM 65 King Arthur Terrace TENNYSON QLD 4105	FAX NO: PHONE NO:	(07) 892 3739 (07) 892 5040
C.C.:	Mr R Davey, Chairman AUSTEL Senator Richard Alston Senator Ron Boswell	DATE:	14 April 1994
RE:	FAST TRACK SETTLEMENT PROPOSAL		
NO OF PAGES:	2 (including this one)		

Dear Mr Smith

On reviewing Mr Blount's comments in the media in the last 20 hours, it is apparent that Telecom is still adopting the hard line that the problems experienced by COT were not as severe, or to the extent that we claimed. In a whole page advertisement in every major newspaper in Australia today, Mr Blount states –

"Publicity surrounding the allegation of a group of small business people, who call themselves Casualties of Telecom, or COT cases, about the effect of deficiencies in Telecom's service on the viability of their businesses would appear to undermine the values which Telecom claims to cherish. Let me assure all our customers, this is not the case."

The statement in the advertisement of Mr Blount is of course contrary to the findings in Coopers & Lybrand's Review of COT Cases. **"Telecom did not meet the minimum standards of adequacy, reasonableness and fairness".**

AUSTEL has also found that Telecom is **"less than that which might be expected of a model corporate citizen".**

It is this attitude of denial that has taken Telecom to the position it finds itself in today. For the first nine years of my dispute, Telecom consistently denied that any such problem existed. It was only with the intervention of AUSTEL, the Senate and the Minister, that the story changed from "no problem" to "the problem's not as bad as you say".

As you are well aware, COT Cases signed a **'Fast Track Settlement Proposal'** on 23 November 1993 with Mr Jim Holmes, Corporate Secretary, Telecom. We were advised by AUSTEL that the 'Fast Track Settlement Proposal' was an **Assessment Process** and not an Arbitration Procedure. Mr John MacMahon of AUSTEL has confirmed that very fact with me in the last week. The Arbitration Procedure was to be developed for further cases out of the experience of dealing with COT through the 'Fast Track Settlement Proposal'.

At our first meeting with you, you advised COT that Mr Steve Black of Telecom had given you a document pertaining to rules of arbitration. We requested that you not forward this document to Dr Gordon Hughes as this was not the agreement reached between COT and Telecom. We were subsequently advised by Mr Peter Bartlett, your legal adviser, and Dr Gordon Hughes, that because of Telecom's non-compliance with Freedom of Information requests, the Arbitration Procedure would serve our purposes better.

We have the utmost faith in Dr Gordon Hughes in his role as the assessor.

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On the surface, that could very well sound rational, and in normal circumstances, could very well be workable and achievable. We are not involved in a dispute situation of normal circumstances. From documents I have in my possession, it is quite obvious that Telecom bears a deep resentment to COT and, as is evidenced throughout their own documents which I obtained under FOI, their express purpose has been to try to get COT into Court, and I quote from correspondence from Mr D Hoare, Chairman of the Telstra Board to the Hon David Beddall MP, Minister for Communications, on 18 August 1993 –

"Telecom would welcome the opportunity to present its case in court but there is no 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."

There are numerous other references in Telecom Corporate files that indicate Telecom's desire to litigate this matter.

I initially litigated against Telecom in 1990, however they successfully pleaded immunity under the provisions of the Telecommunications Act. The dispute with Telecom has literally crippled us financially leaving us, at this point in time, with massive amounts of outstanding debts to our consultants who had be appointed by us to assist in substantiating our claims.

Telecom are well aware of our financial position as this is recorded time and time again throughout their files. That is of course, notwithstanding the fact that Telecom tape-recorded and listened to thousands of hours of my personal and business conversations, which included very critical discussions with my lawyer, professional advisers and financial consultants.

The 'Fast Track Settlement Proposal', Clause 2(h) states: **"that before the assessor commences the review, to inform AUSTEL in writing that the assessor's finding will be final and binding upon each of the COT Cases, and that no claims will be pursued or considered for those services for the period reviewed for any reason in any forum."**

Correspondence of 25 October 1993 from John MacMahon, Manager Consumer Affairs, AUSTEL, to Ann Garms, re 'Fast Track Settlement Proposal' reads in part, as follows:

"Outcome binding on all parties – Telecom also want AUSTEL to accept the outcome as binding on all parties."

Under the 'Fast Track Settlement Proposal' we can present our claims and they can be assessed in exactly the same manner with some guidelines as to time frame, confidentiality, and so forth.

As the Tivoli's complaint has been so protracted and complicated by Telecom's actions and inactions, there is now no doubt in my mind after Mr Blount's statements of last night and today, that under the Arbitration Procedure, with all of its legal barbs, Telecom will find a way to not accept the Arbitrator's findings and appeal on a point of law, thus holding up the final settlement of COT. We are not prepared to deviate from the 'Fast Track Settlement Proposal'.

Maureen Gillan phoned me last Friday, 3 April, to advise me that she could no longer continue; she had not obtained her FOI; she was finished; her health was suffering and she just wanted out; and that she had no choice but to sign the Arbitration Procedure, as she could not continue any longer.

Yours sincerely

Ann Garms OAM

FACSIMILE TRANSMISSION

TO: MR WARWICK L. SMITH	FAX NO: 03 9776797
FROM: Ann Garms OAM 65 King Arthur Terrace TENNYSON QLD 4105	FAX NO: (07) 892 3739 PHONE NO: (07) 892 6040
C.C.:	DATE: 14-4-94
RE: FAST TRACK SETTLEMENT PROPOSAL	
NO OF PAGES: 2 (including this one)	

DEAR MR SMITH,

THANK YOU FOR YOUR RETURN FAX. MY APOLOGIES IF I WAS NOT CLEAR - YES WE ARE PROCEEDING - BUT UNDER THE FAST TRACK SETTLEMENT PROPOSAL.

MR BLANEY REMINDED TODAY RE THE AUSTEN ENQUIRY TO CO-MAKER IN IMPERATIVE THAT WE STICK TO OUR ORIGINAL AGREEMENT WITH TELECOM. THIS PROCESS WAS DEVELOPED BETWEEN TELECOM - AUSTEL & CO. AS A SETTLEMENT PROCESS. MY CLAIM IS ALMOST READY FOR ASSESSMENT BY DR GORDON HIGHES. I ENCLOSE CORRESPONDENCE FROM MR JOHN MCMAHON, MANAGER CONSUMER AFFAIRS - AUSTEL IN REGARD TO THOSE NEGOTIATIONS.

THANKING YOU

Yours Sincerely

Ann Garms.

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AUSTEL
AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

14 April 1994

Mrs Ann Garms
85 King Arthur Terrace
TENNYSON QLD 4105

FAX: 07 892 3730

Dear Mrs. Garms

This letter is to confirm that the Fast Track Settlement Proposal drafted by AUSTEL and signed by Telecom on 18 November 1993 and by you on 23 March 1993, refers to an "assessment" process and an "assessor" and makes no reference to "arbitration" or to an "arbitrator."

Yours sincerely

John MacMahon
General Manager
Consumer Affairs

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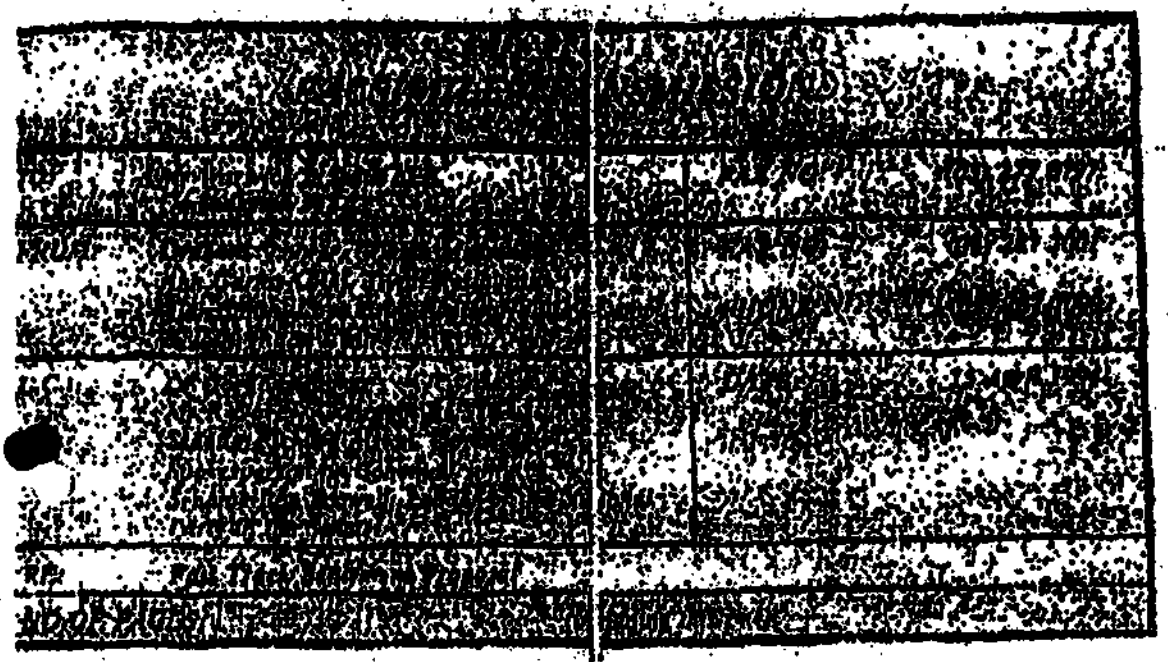
QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 828 7300 FACSIMILE: (03) 820 3021



Dear Mr Smith

Re: Fast Track Settlement Proposal and the Assessment of COT in Relation to that Proposal

We are all in agreement that we wish to be assessed by Dr Gordon Hughes under the Fast Track Settlement Proposal authored by AUSTEL and signed by Mr Jim Holmes, Corporate Secretary of Telecom on 18 November 1993, and by COT members on 23 November 1993.

We acknowledge the confirmation by AUSTEL on 14 April 1994, that the Fast Track Settlement Proposal confirms the assessment process for COT members. (Copy enclosed.)

Thanking you,

Yours sincerely

Graham Scherer

Alan Gamm OAM

Alan Smith

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Telecommunications
Industry
Ombudsman

Warwick L Smith LLB
Ombudsman

April 14, 1994

STRICTLY CONFIDENTIAL

Mrs. Ann Garms
65 King Arthur Terrace
TENNYSON QLD. 4105

By Facsimile: (07) 892 3739

Dear Mrs. Garms,

Thank you for your fax of today. Apart from my briefing yesterday from Rob Davey, I have not spoken to him about the matter you raised on the Procedure. Gordon Hughes is in Port Moresby. I hope to see Peter Bartlett tonight if he is available.

I am not sure where Alan Smith or Graham Schorer are with regard to proceeding. They have been in regular contact with Peter Bartlett, but I still hope the matter can proceed and am of the view the Procedure endorses the "Fast Track" Agreement and is important for the arbitrator in his role. Let me come back to you as I take it from your letter that you are not now proceeding at present.

Yours sincerely,

Warwick L. Smith
Ombudsman

c.c. Peter Bartlett

... Box 18098
... Collins Street East
... Melbourne 3000

Telephone (03) 277 8777
Facsimile (03) 277 8797
... 018 591 205

FROM : TYLOL CABARET AND BAR PHONE NO. : 07 32571583 Mar. 10 1998 12:48PM P5

Telecommunications
Industry
Ombudsman

Warwick L Smith LLB
Ombudsman

April 15, 1994

STRICTLY CONFIDENTIAL

Mr. Graham Schorer
Golden Messenger
493-495 Queensberry Street
NORTH MELBOURNE VIC. 3051

By Facsimile: (03) 287 7001

Dear Graham,

I met with Mr. Bartlett last evening. He will arrange a meeting with Dr. Hughes on his return to seek his position on what I understand to be the desire of 'COTS' on the Procedure and "Fast Track Settlement". There are apparently several.

Mr. Bartlett will arrange a time on Tuesday for me to meet with him and Mr. Schorer spokesman for 'COT' to review the current position.

Yours sincerely,

Warwick L. Smith
Ombudsman

cc. Mr. Peter Bartlett
Dr. Gordon Hughes

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Mr Hunt, 19/4/94
2.43 p.m.
Mr Goldberg's Secretary rang back to say that he does have a full copy.

V.

19th April, 1994.

IN RE: Telecommunications Act 1991

IN RE: COT Cases

IN RE: Golden Messengers

BRIEF TO ADVISE AND TO APPEAR IN PRELIMINARY DISCUSSIONS BEFORE ARBITRATOR/ASSESSOR.

Mr. A.H. Goldberg, Q.C.

We act for G.M. (Melbourne) Holdings Pty. Ltd. of 493-495 Queensberry Street North Melbourne. It carries on a business of acting as the agent for independent couriers under the business name Golden Messengers, usually contracted to Golden. A substantial part of its activities is the receipt and despatch of messages by telephone.

Counsel is asked to confer with Graham Schorer the Managing Directof of the Company and to appear on Wednesday morning the 20th inst. in a preliminary discussion before an arbitrator/assessor (Dr. Gordon Hughes).

Golden Messengers had issued proceedings in the Federal Court against Telecom. Liability was denied. Money was paid into Court and accepted.

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Cause of complaint was simply that Telecom did not provide an effective service. Other persons had similar complaints. Golden Messengers' problems continued. COT had been formed as a loose group of complainants similar to Golden. Austel, the Telecom industry watchdog, investigated the COT cases complaints, and recommends settlement procedures.

There is apparently a fast track settlement procedure now in hand under which Golden's damages were to be assessed.

Schorer's present complaint, and the reason for the preliminary hearing, is that Dr. Hughes, Telecom, and other parties connected with the Telecom industry are supposedly endeavouring to make the proceedings not an assessing process but a more legalistically involved and technical arbitration procedure requiring, it is feared, Golden Messengers to prove its case, as it were, from the beginning.

Austel's review of the COT Cases problems is forwarded herewith.

The over-weening problem is that Schorer/Golden Messengers can set out its complaints against Telecom. A Statement of

Claim can be produced from that, but the problem then arises that the proof is, as it were, all in the hands of Telecom.

Telecom has been given one or more requests to provide material under FOI Legislation. It neglects or refuses to do so. Excuses are unconvincing but understandable.

Given general knowledge and what has emerged from the settled case it is more than a fair inference that Telecom has been evasive in dealing with Golden Messengers' complaints and has given conflicting and non-factual explanations for the substantial problems that the services including the assertion that the same do not exist when they clearly do. It is feared the proceedings before Dr. Hughes will be abortive if it becomes too legalistic.

It is essential that matters be deferred until Telecom produces the FOI information required and/or gives precise reasons why not. Golden will probably prefer to take Telecom to the Court as to its reasons.

Accordingly we require urgently a substantial conference with Counsel whether inside or outside normal hours before tomorrow.

Hunt & Hunt
LAWYERS

Partners
Edward S Boyce
James G.F. Harrowell
Christine A. Galley
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Ewin
Wayne B. Cahill
Neville G.H. Debney
Grant D. Sefton
Charles Veevers
Andrew Logie-Smith

Consultants
Kenneth M. Martin
Richard J. Kellaway

Associates
Peter A. Cornish
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Gallichio
Roy Salt
Randal P. Williams

FACSIMILE TRANSMISSION

Our Ref: GLH

Matter No:

Date: 19 April 1994

To: MR GOLDBERG

Fax No: 670 8389

From: CAROLINE FRIEND

Subject: TIO ARBITRATION

Further to my telephone discussion with Mr. Graham Schorer of todays date, please find attached "Fast Track" Arbitration Procedure as of 31st March 1994 for your attention.

Yours faithfully
HUNT & HUNT

Att.

We are transmitting 20 (twenty) pages (including this cover sheet). If you have problems with this transmission call

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Christine A. Cailey
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Ewin
Wayne B. Cahill
Neville C.H. Debney
Grant D. Sefton
Charles Veevers
Andrew Logie-Smith

Consultants
Kenneth M. Martin
Richard J. Kellaway

Associates
Peter A. Cornish
Shane C. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Gallichio
Roy Selt
Randal P. Williams

FACSIMILE TRANSMISSION

Our Ref: GLH
Matter No: 5122795

Date: 19 April 1994

To: MR. WILLIAM HUNT

Fax No: 670 6598

From: CAROLINE FRIEND

Subject: TIO ARBITRATION PROCEEDURE

Further to my telephone discussion with Mr. Graham Schorer of todays date, at his request, I attachfor your attention a copy of the "Fast Track" Arbitration Procedure of 31st March 1994.

File
Golden re
COT Cases

Yours faithfully,
Hunt & Hunt
HUNT & HUNT

Att.

We are transmitting 20 (twenty) pages (including this cover sheet). If you have problems with this transmission call

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1863

COPY

Hunt & Hunt
LAWYERS

Partners
Edward S Boyce
James G L Hammond
Christine A Gailey
Gordon J Hughes
Mark L Kingsmill
Ian S Craig
Peter J Irwin
Wayne R Cahill
Neville G.H. Delaney
Grant D. Sellar
Charles Vermeer
Andrew Lodge-Smith

Consultants
Kenneth M. Martin
Richard J. Halloway

Associates
Peter A. Cannon
Shane G. Bird
John S. Medina
Melissa A. Henderson
Frank V. Gallichio
Kay Seal
Randall P. Williams

2 May 1994

Our Ref: GLH
Matter No:
Your Ref:

BY HAND

Mr John Rundell
Ferrier Hodgson
Chartered Accountants
Level 11, 459 Collins Street
Melbourne VIC 3000

Dear Sir

TELECOM AUSTRALIA - COT CLAIMS

As you are aware, Maureen Anne Gillan signed (through her power of attorney) the Request for Arbitration on 8 April 1994.

Ann Garms (on behalf of herself and other related claimants), Alan Smith and Graham Schorer (on behalf of himself and other related claimants) signed the Request on 21 April 1994.

Mr Steve Black signed each agreement on behalf of Telstra Corporation Ltd.

Pursuant to clause 5 of the "Fast-Track" Arbitration Procedure, the Administrator, Warwick Smith, has formally notified the parties and me in writing that he has received completed and signed Request for Arbitration forms from both parties in each instance. Pursuant to clause 7.2 of the Fast-Track Arbitration Procedure, each claimant must, within four weeks of receipt of Mr Smith's notice, send to Telecom and to me its Statement of Claim together with supporting claim documents.

I have been advised by the Administrator that formal notice pursuant to clause 5 was delivered to Garms, Smith and Schorer on 27 April and to Gillan on 3 May 1994.

I am anxious for these matters to proceed as expeditiously as possible. In the circumstances I believe it would be appropriate for the Resource Unit to familiarise itself with documentation which will unquestionably be placed in evidence, namely:

melbourne
sydney
sydney west
brisbane
canberra
newcastle
registered in
adelaide
darwin

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Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 8711.
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1. Bell Canada International Inc, "Report to Telecom Australia", 1 November 1993;

2. Coopers & Lybrand, "Review of Telecom Australia's Difficult Network Fault Policies and Procedures", November 1993;

3. Telecom Australia, "Response to Coopers & Lybrand Report and Bell Canada International Report", December 1993;

4. AUSTEL, "The COT Cases: AUSTEL's Findings and Recommendations", April 1994.

I believe a thorough understanding of this documentation will assist you in anticipating the scope and extent of investigations which the Resource Unit may be called upon to carry out.

I suggest also that you familiarise yourself with the *Commercial Arbitration Act* 1984 (Vic).

Yours sincerely

GORDON HUGHES

cc P Bartlett, W Smith, M Gillan, A Garms, A Smith, G Schorer, P Rumble

CEO
Melb. Office
10/5 RD

COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

Prudential Building, cnr London Circuit & University Avenue, Canberra City
GPO Box 442, Canberra, A.C.T. 2601, Australia
Tel: (06) 276 0111; Fax: (06) 249 7829; Int. Fax: + 61 6 249 7829

6 May 1994

C/94/195:JW

Mr F Blount
Chief Executive Officer
Telstra Corporation Ltd.
38th Floor, 242 Exhibition Street
MELBOURNE VIC 3000

cc: Steve Black.
Dave Kinnaird
Ian Campbell
S40. Cab'l Offic
(2 pages)

Dear Mr Blount

I refer to previous correspondence concerning complaints I received from Messrs Schorer and Smith and Ms Garms and Ms Gillan about Telecom's handling of their requests under the Freedom of Information Act (FOI Act).

In my most recent letter, dated 25 March 1994, I apprised you of my preliminary views on that part of the complaints that related to delays in providing documents, and invited your comments on several matters.

Mr Black replied on your behalf on 31 March 1994, but his letter addressed only some of the matters I raised. Mr Black stated that Mr Rumble '..would give Mr Wynack a full update on the current status of all applications next Tuesday. A further written response will be provided at this time based on a total status review.' I have not yet received the promised written response.

✳ I should be grateful if you would now respond to the outstanding matters raised in my letter of 25 March 1994 ie

1. Comment on my views that:
   - it was unreasonable for Telecom to impose a condition for release of certain documents that the participants make further assurances that they will participate in the FTSP; and
   - it was unreasonable for Telecom to require the participants to make the assurances while Telecom was considering the agreement related to the FTSP (the Agreement) and thereby denying the participants the

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opportunity to consider the rules that Telecom wished to have included in the Agreement.

2. Provide information about the steps Telecom has taken to locate files containing information relating to Mr Smith's contacts prior to June 1991 and the personal files which allegedly were destroyed.

I have decided to prepare separate formal reports pursuant to section 15 of the Ombudsman Act 1976 on each of the complaints I received from Ms Garms, Ms Gillan and Messrs Schorer and Smith. As I have commenced preparing the reports, I should be grateful if you would provide a substantive response to my letter of 25 March 1994 by 13 May 1994.

My reports will contain opinions critical of certain Telecom actions and, in accordance with section 8(5) of the Ombudsman Act 1976, I will give you an opportunity to make submissions in relation to those actions.

I should also inform you that, in compliance with section 8(7A)(b) of the Ombudsman Act 1976, I have informed the Minister that I am investigating the complaints.

Yours sincerely

Philippa Smith
Commonwealth Ombudsman

(1) Outline of [illegible]

(2) Typical

(3) Email of [illegible] report. (Not

(4) Allegation of [illegible]

(5) Not highlighted

(6) Reference to new unit in reference Acknowledged

000722

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I, ALAN SMITH

of CAPE BRIDGEWATER in the State of Victoria

HOLIDAY CAMP PORTLAND do solemnly and

sincerely declare 3306

THAT

At approximately 4.20 pm yesterday, I spoke to Detective Superintendent Jeff Penrose (Federal Police) regarding my concerns about what had just taken place.

Telecom had just returned to me, two (2) identical copies of an Austel letter addressed to Telecom attached to two (2) different types of header sheets of different dates.

My purpose for being at Telecom House was that when Telecom had originally supplied the F.O.I. documentation, they had somehow failed to supply the adjoining documentation that should have accompanied some of these Fax Header Sheets, (fifty six (56) header sheets in all).

It was now apparent my concerns were justified.

Telecom had no intention of supplying the full documentation either maliciously or by the fact of their own admission made yesterday by Mr Pollock the Telecom F.O.I. Officer, because that much of this documentation is out of the correct chronological order order due to so many viewings that had taken place, either by Austel, Coopers & Lybrand, Commonwealth Ombudsmans Office and others. Mr Pollock also stated in the company of two (2) other Telecom employees, one male, one female, in the office provided for me, that because much of the F.O.I. documentation was so blanked out that it was hard to match the correct correspondence to the Telecom Header Sheets in question.

I asked Rod Pollock, how can I put my claim together if the material, that I have requested under the F.O.I. agreement is in such a mess, that even Telecom themselves, their own office, is unable to be sure that the information they are supplying to me is in fact the correct documents I originally applied for under the F.O.I. agreement.

Even though an office had been allocated for me, with a note on the door to that effect, "reserved from 8am to 6pm", the moment I brought to their attention the irregularities regarding the two Fax's in question, there was an immediate urgency to terminate my presence and I was asked to leave at 4.40 pm. These two Telecom employees made it known there was no bad feelings, however the male Officer also made it very clear, that like Rod Pollock had previously said, because of the way the F.O.I. documentation was laid out and had been viewed by so many different People and Departments etc., they were finding it hard to match the correct F.O.I. Fax Header Sheets to correspond with the original documentation.

With reference to this signed declaration and the admissions of these Telecom employees mentioned, one can can only perhaps wonder for good reason, has the C.O.T. Case Members actually received their appropriate documentation under F.O.I. conditions (Act), which will allow them to have every opportunity to have their known communication faults shown by the correct data presented by Telecom?

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

DECLARED at Camberwell in the State of Victoria this 14th day of May One thousand nine hundred 94

Before me N Creasey

N. D. CREASEY
Senior Constable 21524

Camberwell Police Station
317 Camberwell Road

189A

Warwick

URGENT

Attached is a fax received from Alan Smith regarding access to FOI documents at Telecom.

Smith is alleging that the documents are not in chronological order and blanking done for earlier FOI inspections has made the collection of appropriate documentation uncertain and diminished the opportunity for him to satisfactorily present his case.

Mr Smith has demanded a TIO member be present at today's examination of papers by him at Telecom.

I have attempted to contact Peter Bartlett as the most appropriate person to comment in your absence but he is unavailable.

I have also attempted to contact Gordon Hughes to seek his views but at this point he too is unavailable.

Finally I have contacted John McMahon at Austel to see if he was aware of any undertakings regarding the access to FOI documents and commitments about the presentation of these that might have been given by Austel or any other parties. He said he was not aware of any such commitments.

Sue
16 May 1994

PS Mr Smith subsequently arrived in the office. He asked that someone from the office go to Telecom with him. I said that this was not possible but that he should call this office and advise us of his telephone number when he was allocated an office in the Telecom building. In the interim I undertook to:

- advise you of his concerns as soon as you arrived and said that you would call as appropriate;
- advise Hughes and/or Bartlett of his concerns when they were available;
- seek your advice as to whether the Commonwealth Ombudsman's office should be involved.

I also noted that the absence of proof in the form of documents may be seen as weakening his case but could also be seen as weakening Telecom's defence and he should bear this in mind when examining documents. Mr Smith was also concerned about documents which stated that there were attachments where no attachment was available. He left an example of this with us (also attached).

10/5 Spoke to Smith + Hughes relating to proposed etc.

1893

COPY

GOLDEN
Transport Agency

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 046

IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT. It is in your interests to read them to avoid any later confusion.

To:	Dr. Gordon Hughes	Date:	25 May 1994
Company:	The Arbitrator for Telecom / COT Cases "FAST-TRACK" arbitration procedure incorporating the FAST-TRACK SETTLEMENT PROPOSAL.	Fax No:	03 614.8730
From:	Graham Schorer	Total Pages (incl. Header)	2

MAILED: YES (X) NO ( )

Dear Dr. Hughes,

Due to circumstances and events experienced beyond the direct and/or indirect control of Graham Schorer plus other related claimants, companies etc., I am formally applying for an extension of time on behalf of Graham Schorer plus other related claimants, companies etc., pursuant to Clause 7.1 in the "Fast-Track" arbitration procedure to enable Graham Schorer plus other related claimants, companies etc. to finalise their interim claim for losses due to telephone service difficulties, problems and faults experienced.

In this letter henceforth, please accept that all that is stated relates to and includes both Graham Schorer and the other related claimants and companies connected with him.

It is respectfully requested that an extension of time to submit the interim Statement of Claim be granted to at least 15 June next.

The reason for the request are as follows:-

1. A substantial burglary in Golden's premises on the 4 March, 1994 and the theft of vital equipment and records.

2. The inability of suppliers to replace the equipment until 17 April, 1994.

3. The consequent difficulties in conducting any business accentuated by external auditors commencing part of their annual audit from 9 May last.

4. The requirement commencing from 2 May, 1994 to devote the entire staff as fully as possible to maintain a substantial part of its business with Westpac Bank and add A.N.Z.'s business. Competitive quotations had been called for by the A.N.Z. Bank.

   Should Golden's quote be considered to be of great merit, placing Golden on the A.N.Z short list of selection.

   Golden will be required to become immediately immersed in an extensive exercise requiring long hours to finalise a massive transport logistic exercise, which will involve Golden's current customer Westpac and the A.N.Z. to determine what additional savings can be enjoyed by A.N.Z. *(and Westpac)* as a result of Golden being able to provide to both A.N.Z. and Westpac shared services where appropriate without loss of service standards.

   Since the initial indicators of savings to be identified in engaging in such a potential time and resource consuming logistic exercise to confirm the belief of a minimum of 15% up 20 - 25% savings to both parties, where a future need may arise to substantiate savings to be gained of this magnitude on a

Voice: (03) 287 7099 Fax: (03) 287 7001

493-495 Queensberry Street, NORTH MELBOURNE VIC. 3051

potential contract exceeding $1,000,000.00 just may be the deciding factor on who will be finally selected.

Should such a major opportunity present itself to Golden in the near future where the time and resources of Golden have to be dedicated to meet this commitment, interferes or prevents Graham Schorer and other related claimants, companies etc., from being able to complete their interim claims for losses due to telephone service difficulties, problems and faults,

Graham Schorer will immediately notify the Arbitrator in writing to seek a further extension.

Being engaged in this extensive exercise to date, required long hours to finalise such a massive transport quotation to the A.N.Z. Bank have seriously compromised my ability to produce the interim Statement of Claim up to this point.

5. The inability to commence using outside resources to assist in preparation of the interim Statement of Claim etc. until such time as they are in receipt of new confidentiality clauses.

The equipment stolen on 4 March comprised:-

(a) One of two word processors with its laser printer and back up disks containing Golden's sales quotas, customer agreements, facsimiles and all of the correspondence facsimiles and most of the documentation relating to telephone service difficulties, problems and faults in relating to our present claim.

(Another processor with its back up disks which contained no information relating to the telephone service difficulties was not interfered with.)

(b) The facsimile machine, micro film and reading equipment, computer modems.

To retain insurance cover, and make good the damage caused by the burglary, the entrance door had to be replaced, and steel surrounds provided to repair structural damage to the buildings. As well as other repairs a new automatic alarm system also had to be procured and installed on 20 May, 1994.

The burglary, the loss of equipment, the time taken to replace it and the time taken to re-create files, reports, correspondence etc. *(with significant amounts of information nevertheless being permanently lost)* have had incalculable adverse effect on efficiency and the proper conduct of business generally.

The requirements to, maintain contact with customers, to maintain and gain new additional professional principle carriers.

If any further information or explanation is required to support this application, would you please kindly contact me as soon as possible.

Yours sincerely,

Graham Schorer

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AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

10 June 1994

Mr S Black
Group General Manager
Customer Affairs
TELECOM.

Facsimile No: (03) 632 3241

Dear Mr Black

COT CASES

AUSTEL is continuing to receive complaints as to the quality of service from a number of the COT Cases

- Mr [redacted] at Cape Bridgewater continues to express concern about his ability to receive and send facsimiles
- Mr Schorer at North Melbourne continues to claim that customers are reporting an inability to make a successful phone call to his business
- Mr [redacted] is likewise claiming that he is not receiving calls on his business number and that he is at times still being subjected to drop out; he also claims problems in receiving calls via the mobile service as well as false busy. Additionally, he is still receiving calls meant for other customers.

In these circumstances, and given your apparent advice to Mr Schorer that his service is operating satisfactorily, AUSTEL considers there is a need for objective data as soon as possible and accordingly, if it has not commenced, you are asked to apply the service verification tests to these services immediately. AUSTEL's Chief Operating Officer has confirmed that the detail negotiated with Mr [redacted] is accepted.

Please comment on the service claims made above.

Your comment on the further points raised by Mr [redacted] is also requested

- is a pre-fab replacement or substitute exchange being installed at Devlin's Bridge?
- if so please provide detail and rationale and date of

A32874

191

5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 828 7100 FACSIMILE [redacted]

commissioning

- have complaints been received from customers at Glenburn that their last account is 2 or 3 times the normal level and if so what is the cause?

Finally, in the course of the COT inquiry Telecom undertook to standardise a form of words to be used in advising customers about liability. The attached letter dated 31 May 1994 from Sheridan Bailey does not use the wording advised to AUSTEL and remains a misleading and incomplete statement. Your comment is sought as well as an assurance as to how staff are being made aware of Telecom's obligation to cease this practice.

Yours sincerely

John MacMahon
General Manager
Consumer Affairs

Encl:

191

A32875

Cape Bridgewater Camp

PORTLAND - Phone (055) 267 267

A

Victoria's Birthplace 1834.

Part of

THE SHIPWRECK COAST

Mr Paul Rumble
General Manager
Customer Response Unit
Commercial & Consumer
Telecom.

4/7/94

Dear Mr Rumble,

Further to your telephone conversation with me on the evening of Friday 31/06/94. The discussion was associated with my concern about certain confidential matters, which I firmly believe Telecom has breached, by allowing its personnel access to my private phone conversations. Monitoring without my concent. Checking up on who I might decide to ring. Example, re: hand written, names of the people I have spoken to at the side of the data, telephone numbers. I thought this type of invasion of privacy, only happened in a un-democratic country.

Mr Rumble, I gave you my word on Friday night, that I would not go running off to the Federal Police etc, I shall honour this statement, and wait for your response to the following questions I ask of Telecom below. As we are in an Arbitration Process, I shall only send a copy of this letter, to the associated incorporated within this process.
These questions are in point form, with copies of the information FOI extracts accompanied with this letter.

(1) re: letter addressed to Mark Ross from myself. This letter, as you can see, was confidential. I was asking Telecom for only a Guarantee that my phone service was at an exceptable level, not for them to look into my private business matters. (Question) I had tendered for a quote with a bus company to accommodate persons a the Cape Bridgewater Holiday Camp. How come Mr Rumble, that the name of this company appears hand written at the top right hand corner of a copy of the letter sent to Mr Ross. This copy was obtained from the FOI request.
I make this very clear, at no time did I discuss the name of this company, other than with Mr Pat MacNamara's Office, the then Opposition Minister for Tourism. It was unlikely his office would have had access to Telecom correspondence from me.

(2) My telephone calls to various locations. Why has Telecom found it necessary to hand write the names of the people I have spoken to at the side of each column.
(Example) What would Telecom have to gain from knowing who I am speaking to on a daily basis. I find the name of my ex-wife hand written at the side of her phone number that I have rung. My son also happens to live there, I guess however that you already know that. (Question) Why has Telecom not only wrote my ex-wife's name in these columns, but also, Austel, Telecommunication Ombudsmens Office, Graham Schorer, and other private persons who I have rung? How was this going to fix my phone faults?

(3) We have a letter addressed to a David, Telecom document. I asume this David is Mr Stockdale. Seeing this letter is dated the 7/4/94, 2.05pm. I am bewildered to read this letter to David. I ask the writer, Mr Bruce Pendelbury, how come? I quote from this letter: Mr Smith is absent from his premises from the 5/8/94 to 8/8/94.

My first question is: Can Mr Pendelbury read into the future, I don't even know if I will even be at these premises in August 1994. Much of Mr Pendelebury's future remarks about my phone service being up to network standard, has not born fruit to date. Perhaps he may have got the dates wrong, or is it another typist's error, similar to perhaps the Bell Canada Report. The only conclusion associated with these dates, is maybe he meant the 05/05/94. When talking on the phone to M[illegible]. I made mention I could be coming to Melbourne then. However, I had a school group coming in on this day, a[illegible]

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(4) Again my friend Mr Pendelbury, how come he has written a letter to Simon Chalmers. Telecom's outside Solicitor, informing him I had spoked to him some twelve months prior, regarding a telephone conversation I had, with the former Prime Minister Malcolm Fraser.

I look at the date of this letter, dated the 14th April 1994, and view the article re: Herald Sun dated 15th April 1994, I think back to a recorded statement by a Mr. Steve Black, Telecom Group Manager, he informed me, documented. That there were Telecom internal documents, three in fact. That stated three Telecom employees were known to have heard me say I had rung Mr Fraser. I know what really happened. What say Telecom give a statement on this issue raised.

(5) I have a Telecom internal letter, please read. You will see that it refers to my staff leaving the Camp unattended when they were paid to stay the night.

Who is the author of this document, he has not only attacked my staff, but showed his contempt, and disregard for others at this fabrication.

Because I did not have a lot of money during these past two years, I used to give two days off in lue of staying at the Camp overnight. I have questioned the two staff members who this has affected. Telecom can speak to these persons at will.

(6) (Question) Could Telecom please explain the following Telecom minute. I quote from this document.

To check that incoming calls to the Portland Exchange were successfully connected through Mr. Smith, the investigating Technical officer at Portland Exchange set up equipment which trapped data on those calls, then sounded an alarm. At this point the Technical Officer would check to see if the call had been connected by the monitoring line. This process was established from approx. June 1993 to August 1993, however the equipment was only set up to trap data while this particular officer was available.

(a) If this was only set up for one Officer to listen to my calls, then it was not much of a testing procedure. A waste of time. What about the early morning calls, the late night calls. Or was it just open slather to Micro my calls in the Telephone Exchange for entertainment.

Telecom is well aware, that this technical monitoring should have customer approval. You have gone outside the rules of common decency.

I make this known now Mr Rumble. I have friends now saying is it okay to talk to you now Alan, this may be in jest, but not that way with a female friend of mine in Portland. To think that our private conversations have been listened to by local people, people my friend and I see at various times in Portland. You, telecom have left us with very little dignity. I cannot even feel safe now to make just the every day acceptance of a common phone call, without wondering, perhaps Telecom is listening?

If Telecom had approached me, and requested to use this device to monitor, listen to the calls, this would have been different. My private conversations, intimate female and male simple talk, with my lady partner has been violated.
I now ask one more question from Telecom. I quote from this Telecom internal document.

> Caller usually from this number, but supposedly somewhere near Adelaide, on this occassion.
> How did Telecom know that the person from that particular number usually rang from that particular location? How did they know who this person was?

Perhaps I can tie this in with this other Telecom internal document I received under the F.I.O. agreement. I also quote from this document.

> The information regarding the phone numbers called by this customer following this incident, are available from Network Investigation, and my information was verbal from? The name of that person has been blanked out.

How in the bloody hell was Telecom going to fix my phones, by the things I have mentioned in this letter, was or is this Telecom standard practice to go about their communication programmes in this manner?

I await your answer.

Sincerely,

Alan Smith.

C.C. Mr Warwick Smith. Telecommunications Industry Ombudsman.
Dr. Gordon Hughes. Fast Track Arbitrator.

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[redacted]

FYI Geny, FILE

Telecom AUSTRALIA

COMMERCIAL AND CONSUMI
CUSTOMER AFFAIRS

37/242 EXHIBITION STREET
MELBOURNE
VICTORIA 3000
Australia

Telephone (03) 632 77(
Facsimile (03) 632 32

11 July 1994

FAXED
11/7/94

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

M34276

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

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PART II—APPOINTMENT OF ARBITRATORS AND UMPIRES

6. *Presumption of single arbitrator*

S. 6 substituted by No. 15/1993 s. 7.

An arbitration agreement shall be taken to provide for the appointment of a single arbitrator unless—

(*a*) the agreement otherwise provides; or

(*b*) the parties otherwise agree in writing.

7. *Presumption as to joint appointment of arbitrator*

Unless otherwise agreed in writing by the parties to the arbitration agreement, an arbitrator who is to be appointed for the purposes of an arbitration to be conducted under an arbitration agreement shall be jointly appointed by the parties to the agreement.

8. *Default in the exercise of power to appoint an arbitrator*

(1) Where a person who has a power to appoint an arbitrator defaults in the exercise of that power, a party to the relevant arbitration agreement may, by notice in writing—

(*a*) require the person in default to exercise the power within such period (not being a period of less than seven days after service of the notice) as may be specified in the notice; and

(*b*) propose that in default of that person so doing—

(i) a person named in the notice ("a default nominee") should be appointed to the office in respect of which the power is exercisable; or

(ii) specified arbitrators (being the arbitrators who have prior to the date of the notice been appointed in relation to the arbitration) should be the sole arbitrators in relation to the arbitration.

(2) A notice under sub-section (1) (or, where appropriate, a copy of the notice) must be served upon—

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Telecom AUSTRALIA

Customer Response Unit
Commercial and Consumer
8/242 Exhibition Street
Melbourne 3000, Victoria

Tel: 03 634 5736
Fax: 03 634 8441

12 July, 1994

Mr Graham Schorer
Golden

By Facsimile: 287 7001

Dear Mr Schorer

I refer to our telephone discussion of last night wherein I indicated that I regarded the onus being on you at this point to advise Telecom which of the documents you required from the schedules that we provided to you at the meeting that you attended last Thursday, 7 July 1994.

I confirm my understanding that you wished to make an informed decision as to which documents were required and that you might take a few days in order to make an informed decision. I would appreciate your response at your earliest convenience so that the recent progress that we have achieved towards resolving your outstanding concerns can be maintained.

With respect to my advice to you that no analysis has been undertaken by Telecom on your System 10 data, a sample of which was provided for your assessment at the meeting on Thursday, 7 July, I wish to advise that I have taken steps today to have developed an Interpretative Manual which will hopefully assist you to undertake your own analysis of this data. At this stage, I cannot commit to a definite timetable within which the Manual will be available, but I will advise you in due course.

I await your further advice as to which documentation you require and I have organised for the material to be processed so that it can be made available to you at the earliest opportunity once I receive your advice.

Yours faithfully,

Paul Rumble
General Manager, Customer Response Unit

sch12794

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DRAFT
as at 16/

GOLDEN

Transport Agency

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 046

IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT. It is in your interests to read them to avoid any later confusion.

To:	Mr Paul Rumble	Date:	15 July, 1994
		Our Ref:	1068
Company:	Telecom	Fax No:	634 8441
From:	Mr Graham Schorer	Total Pages (incl. Header)	

MAILED: YES ( ) NO (X)

Dear Mr Rumble

I refer to your fax of 12 July 1994 received at 9.19 pm which contains many statements that require that require a written response:

Regarding the meeting of Thursday 7 July, 1994, which commenced at 10.00 am. Present were Mr Paul Rumble, Mr Simon Chalmers, Mr Peter Gamble, Ms Leslie Ann Sleep (who arrived late) representing Telecom, and Mr Harry Thorpe and Mr Graham Schorer representing Golden. Mr Thorpe's records of the meeting are as follows:

1) The meeting opened with Schorer tabling a tape recorder to record the meeting.

Schorer stated that he did this on the understanding that Telecom, in their own internal documents (obtained under F.O.I.), have recommended Telecom employees recording Telecom customer's conversations without the other parties' knowledge. Therefore Telecom should not be adverse to the meeting being recorded with Telecom's knowledge.

Telecom rejected the use of the tape recorder on the basis of it being inappropriate under the circumstances.

Schorer's response. As Telecom have not fulfilled their previous undertakings given to Schorer to provide, in writing, their understanding of what has been agreed to between both parties at previous meetings, required Schorer to record stated events so he did not have to rely upon Telecom's version of the events which occurred during the meeting, or Telecom fulfilling their undertaking to provide in writing to him a copy of Telecom's understanding of events before the next meeting took place.

Mr Rumble's response, "I have provided you with a copy of events of the last meeting of 21 June."

Schorer's response, "Agreed. However, I am referring to the meeting on 17 June. I am still waiting for Mr Black to fulfil his undertaking to provide in writing what was agreed to at that meeting."

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493-495 Queensberry Street, NORTH MELBOURNE VIC. 3051

16 JUL.'94 10:08 No.004 P.06 ID:61-3-2872001 GOLDEN

Mr Chalmers made a suggestion that the tape recorder only be used to record what was agreed to between both parties. Further discussion resulted in the agreement that Mr Chalmers would take notes of events, including what was agreed to between both sides, and for a typed copy of agreements made would be forwarded to Golden.

To date this undertaking has not been met.

2) Telecom's response to the question put by Schorer, "Now that Telecom has received the Commonwealth Ombudsman's S15 report, did Telecom still insist that the Golden F.O.I. application lodged with Telecom on 24 November 1993 as being an invalid application." To which Telecom answered, "It would be inappropriate for Telecom to attempt to answer that question until such time as Telecom responded to the Commonwealth Ombudsman."

3) Schorer then asked the question, "What progress has been made on C.o.T. Cases Australia's F.O.I. application lodged with Telecom on 24 February, 1994. Telecom deferred answering the question until such time as Ms Sleep was present at the meeting to advise the state of progress.

The meeting ran out of time, and this matter was never re-addressed.

4) Schorer then stated that he was aware that Telecom had advised Mr Alan Smith that the raw data used by Bell Canada International including working papers and analysis made by Bell Canada International to produce the Bell Canada Report, was not in the possession of Telecom as Bell Canada took all of the data and documents with them on completion of the report.

Schorer stated that his F.O.I. Application of 21 April, 1994 included all of this data and documentation as Telecom had publicly relied upon the Bell Canada Report to give the Telecom consumer assurances that the Telecom network had been given a clean bill of health at a snapshot point in time by an independant international organisation who disputed the extent of the variety and magnitude of the faults alleged by the C.O.T. Members.

Schorer went on to say that there was a serious flaw in the Bell Canada testing results of Alan Smith's services. Telecom's internal documents stated that all tests required a minimum of 30 seconds between test calls to allow the network to reset itself.

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Some of the tests done on Alan Smith's services had a time separation of approximately 7 seconds between test calls, would have produced test results showing many test calls receiving a busy signal when the actual line was free, which the test results did not record.

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Mr Gamble from Telecom responded by stating there was a 'typographical error' in Alan Smith's report producing the assumption that the test calls have a time separation of approximately 7 seconds. Mr Gamble stated that Telecom are fully aware of the need for the actual required time between test calls.

Schorer's response, "I am aware that Telecom claim that it is a typographical error in Alan Smith's Bell Canada test results. What I want to know is, how can Telecom state that it is a typographical error when Telecom claim all the testing raw data used by Bell Canada International and their working papers and results are not in Telecom's possession."

Furthermore, in the testing of Golden's service, Bell Canada conducted most of the testing at times and days when the North Melbourne exchange was in idle capacity, and outside Golden's normal operating hours, i.e. tests starting at 4.30 pm on Friday and some tests starting on Saturday, with all testing finalising by 1.07 pm Monday from locations only one or two exchanges separation from North Melbourne.

Schorer then went on to say that the Telecom monitoring results of Golden's services, as a result of the Austel directive, forwarded to Austel showed Week 4 where the exchange received 80 less calls than that arrived at Golden's premises. A highly unsatisfactory situation and impossible result to achieve.

Telecom presented this report to Austel showing four (4) weeks 'results' versus the actual time period of monitoring being five weeks.

There was no record of start and finish times or dates of the supplied testing results placing Golden in the position of being unable to further analyse the 'results' for other inherent flaws without being in possesion of the raw data and working papers.

Schorer then asked the question of Mr Gamble, "Are Telecom now going to claim that this anomaly is another 'typographical error' ?"

Mr Gamble's response was that he was unable to respond because he was not involved.

Schorer then went on to state that on page 137 of the Austel Report, listing the North Melbourne exchange activity, showing 329 7000 series of numbers was the worst performing part of the exchange which Bell Canada were required to test to. Yet Bell Canada tested to the 329 8000 series of numbers which was the best performing series of numbers within the North Melbourne exchange. Yet all of Golden's VIP customers were given the VIP numbers to call which were in the 329 7000 series. And Telecom expects us C.o.T. members to accept carte blanche the results of all these testings.

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Mr Gamble from Telecom responded by stating there was a 'typographical error' in Alan Smith's report producing the assumption that the test calls have a time separation of approximately 7 seconds. Mr Gamble stated that Telecom are fully aware of the need for the actual required time between test calls.

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Mr Gamble's angry outburst and response was, "Austel were provided more comprehensive information than what appeared on Page 137 of the Austel Report. Austel chose to ignore the other information supplied which explained the relevance of the figures contained in the performance report." Mr Gamble further added by indicating that as Austel chose to ignore Telecom's explanation Austel were not on side with Telecom and were acting in a biased manner to justify the report.

Mr Gamble made the point that the 329 7000 series, when 3AW was connected to that part of the North Melbourne exchange, created problems, and the problem went when 3AW shifted premises to South Melbourne.

Austel did not use this information when they produced the Austel report, even though this information had been provided by Telecom to them.

Schorer stated, "It is for these reasons that it is essential that Telecom provide these documents, including those documents, data and working papers used to produce the Bell Canada report, under F.O.I. application" Schorer stated his 21 April 1994 application included the requests for the production of these documents.

However, Schorer stated that he predicted what Telecom's final response would be, "We do not have the documents in our possession, therefore we are unable to provide them to you." Schorer then went on to state that the Telecom response would be the same to the Arbitrator under the Arbitration discovery process.

Schorer stated that for this reason he was going to continue to pursue the matter with Austel as Telecom had publicly relied upon the Bell Canada report to independently verify Telecom's publicly stated position that they provide world's best practice network performance.

Schorer stated in his opinion that Austel were the only people who had the power to direct Telecom to produce all of the raw data, working papers and results used in the Bell Canada report, placing the responsibility on Telecom to seek the return of all documents and raw data held by Bell Canada International to do with the Bell Canada Report on Telecom's network perfromance.

5) Schorer then went on to state that, in his opinion, Austel and Telecom have now joined forces. Austel are abandoning their consumer protection role and reinforced his position by stating that it was not hard to support that position when Austel supports Telecom in providing an 85.5% incoming call success rate being an acceptable standard of service.

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Schorer then made the statement that he was going to continue to pursue this matter, including pursuing political intervention, as this incoming call performance acceptability falls far short of Telecom's guarantee given to him and other Telecom customers, and fell far short of Telecom's publicly stated transmission performance of 98% success rate of calls on first attempt.

6) After 10.30 am Ms Leslie Ann Sleep joined the meeting.

7) An amended list of Schedules was tabled by Ms Sleep for discussion, in the following order, being:

Files from viewing room - not customer specific

General Files

Schedule 2 - Schorer/Golden Messenger files from viewing room

Schedule 3 - New Schorer Golden Messenger files charged for

Schedule 5 - New Schorer/Golden Messenger files charged for

Discussion took place on the amended list regarding costs of supplying the documents contained in each Schedule, and determining the need for Schorer to access certain information contained in some of the Schedules.

Files from viewing room - not customer specific: No estimate of cost at this stage, believed to be $20 per hour plus 10c per page supplied, less withheld.

General Files: Under $500.

Schedule 2: $40 plus 10c per page, less withheld.

Schedule 3: $600 search fee, approximate total cost $1000, stated initially. This was changed to a search fee of $15 per hour plus 10c per page, which Mr Rumble changed again to a search fee of a flat $40 plus 10c per page, less withheld.

Schedule 5: Free, including 10,000 pages of System 10 data. (Telecom decision)

8) Discussion is still continuing of what Schorer requires from some of the amended schedules tabled at the meeting of 7 July, 1994.

Files from the viewing room - not customer specific: Schorer is still to determine his requirements.

General Files: All documents required. (Telecom were advised of this on 7 July, 1994 at the meeting.)

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Schedule 2: Schorer is still determining whether he requires some or all of the customer account billing documents. All of the rest of Schedule 2 is required. (Telecom were advised of this on 7 July, 1994 at the meeting.)

Schedule 3: Schorer requires all of these documents. (Telecom were advised of this on 7 July, 1994 at the meeting.)

Schedule 5: Schorer is still determining his need for the 10,000 pages of System 10 data. All of the rest of Schedule 5 is required. (Telecom were advised of this on 7 July, 1994 at the meeting.)

It was indicated by Mr Rumble that the overall cost would be less than $2,000 for the supply of documents that had been agreed to from the amended list, being Schedule 2, Schedule 3, Schedule 5 and General Files.

At first it was indicated that Telecom would arrange for delivery of the agreed to documents on Friday 8 July, 1994. On reflection, Telecom changed the agreement to the agreement that Telecom are to provide Schorer with an accurate costing before the documents were shipped in order to seek Schorer's acceptance of costs, before the documents were shipped.

Telecom undertook to provide the account later that day or Friday (the next day) with the agreed to documents to be delivered no later than Monday 11 July, 1994. However, Schorer's right of refusal was reserved subject to him getting back to Telecom to advise additional documents required under these Schedules provided.

To date Schorer has not received this advice of costs.

9) As stated at previous meetings, the documents provided to Schorer on 14 April, 1994 require re-supply with legible copies of the original documents being processed in accordance with the F.O.I. procedures and guidelines.

Schorer has repeatedly informed Telecom that these documents are covered under the FOI applications of 24 November 1993 and 21 April 1994.

This matter has been repeatedly tabled with Telecom since the 17 June 1994 meeting and following meetings and, as yet, has not been addressed satisfactorily.

Schorer also raised the question that certain computer printouts had been supplied that he could not identify as to what sort of computer reports they were, nor could any of the telecommunications experts he spoke with.

Schorer arranged for a courier to pick up the documents from his business to enable Mr Gamble to inform him what the computer report represented.

When the computer report arrived Mr Gamble was not sure what the raw data was being produced for. He gave some explanation and said that he would investigate the matter further.

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10) In response to Schorer's question regarding Telecom's progress in locating Golden's fault reports from 1 January 1985 and subsequent Telecom network investigations commenced in June or July 1986, Ms. Leslie Ann Sleep revealed that Telecom have located documents regarding Golden's fault complaints etc. dating back to December 1984.

Schorer again asked the question of Mr. Rumble about the issue of the network investigations performed on the North Melbourne exchange in the Telecom network in June/July 1986 and January/February 1987, and the progress in locating the Telecom Engineer, Mr John Searle's, reports regarding the Golden complaints.

As to what progress Telecom had made in identifying where these investigations and reports were, Mr Rumble indicated that time had not permitted an investigation of this matter.

However, Ms. Leslie Ann Sleep did volunteer the information that she had uncovered files relating to the Golden fault reports made, etc. back to December 1984, plus some Golden files held at Mr. Charlie Zoi's office.

11) Ms Sleep gave explanations of files that would be withheld on the basis of "adverse to the workings of Telecom".

As Ms Sleep's explanation was not accepted by Schorer, Mr Gamble gave what he believed to be a clearer explanation, which again was not accepted by Mr Schorer.

What Mr Gamble was asking Mr Schorer to accept was that a technician in the field or an exchange engineer's documented views, opinions or observations not acceptable to senior management, would be deleted from the supplied FOI documents on the basis that senior management disagreed with the technician or the exchange engineer's point of view and therefore would be classsed as information being disclosed which would have a substantial adverse effect on Telecom.

Ms Sleep then stated that names of Telecom personnel would be deleted when those Telecom employees had no interface with the Telecom customer.

Technical terms also would be deleted.

12) Schorer again raised that the proposed verification testing being not acceptable and that Schorer would not accept any testing results performed by Telecom.

Schorer went on to state that Schorer would not accept the findings of Telecom's verification testings because of the manner and types of procedures to be used, **plus**, Telecom's credibility.

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13) Schorer stated to Mr Gamble that Telecom had different databases and that these databases were not being correctly and accurately updated. Therefore the different databases contained different information, being the electronic white pages databases was different to the fault finding databases, and even the seperatly geographically located fault finding databases were not all the same. Telecom were maintaining that Golden had not provided them with the correct information, and yet Telecom were, on many occasions, provided in writing with the correct information.

14) During the meeting Schorer raised the point that he had not been able to finalise the list of Telecom personnel he had interacted with, receive written permission from other specific network fault customers or finalised compiling a list of some of the different types of Telecom terminologies of retrofits, modifications, changes carried out by Telecom to eliminate part or some of the telephone service, difficulties, problems and faults experienced by the C.O.T. Case Members and other Difficult Network Fault customers. Mr Chalmers responded that other Difficult Network Fault customers were not relevant under Schorer's application. Schorer disagreed and explained to Mr Chalmers that in a previous meeting discussing further clarification of his F.O.I. application lodged with Telecom on 21 April 1994, Telecom had accepted the need to provide such documents to Schorer when Schorer had obtained permission from a select number of Difficult Network Fault customers.

In reference to the third paragraph of Mr. Rumble's facsimile dated 12 July, 1994:

- Telecom's written advice given to Schorer on 12 July 1994, that, " no analysis has been undertaken by Telecom on your System 10 data, a sample of which was provided [to Graham Schorer] for your assessment at the meeting on Thursday, 7 July." - is an incorrect statement.

  I have enclosed a copy of the facsimile received from Austel (11 pages) on 9 December, 1993, which contains an analysis of some of the System 10 data in compliance with the Austel directive dated 12 August, 1993.

  This monitoring equipment had been in place on Golden's telephone services at the North Melbourne exchange long before, during and after Austel's directive of 12 August, 1993.

  I appreciate Mr Rumble's undertaking to develop an Interpretive Manual which will hopefully assist Schorer to analyse this data that is currently available from Telecom.

  However, as Telecom has constantly informed Schorer verbally in response to Schorer's complaints lodged with Telecom during this period of monitoring that Telecom's monitoring and test results do not substantiate, or identify, some, same or similar types of telephone service difficulties, problems or faults complained of contradicts the statement made in the Telecom 12 July, 1994 facsimile that the raw data has not been analysed by Telecom.

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493-495 Queensberry Street NORTH MELBOURNE VIC. 3051

ID:61-3-2877001 16 JUL.'94 10:14 No.004 P.13
GOLDEN

Telecom have previously demonstrated, by the report presented to Austel as mentioned above, that Telecom had analysed this raw data.

I formally request Telecom to provide the other analysis made before September 2, 1993 and after 5 October, 1993 of the System 10 data.

In reference to the first, second and fourth paragraph's in Mr. Rumble's facsimile dated 12 July, 1994:

The contents of Mr. Rumble's facsimile dated 12 July, 1994, paragraph 1,2 & 4, strongly suggests to the reader (Schorer) that Schorer, in not getting back to Telecom, has delayed Telecom in providing Schorer with the supply of the documents already agreed upon.

If the writer of the Telecom facsimile dated 12 July, 1994, received at 9.19p.m. is in fact strongly suggesting Schorer has delayed Telecom in providing the agreed to documents, then this allegation being made contradicts the Telecom undertaking given to Schorer at the 7 July, 1994 meeting.

This point has already been covered in Point 8 of this facsimile.

As there are many unresolved issues to do with the FOI applications of Golden lodged with Telecom on 24 November 1993, the C.O.T. Cases Australia application lodged with Telecom on 22 February 1994 and the Graham Schorer FOI application lodged with Telecom on 21 April 1994, would Telecom, as a matter of urgency, please advise the time and date of the next meeting.

Yours respectfully,

Graham Schorer.

195

493-495 Queensberry Street NORTH MELBOURNE VIC 3051

16 JUL.'94 10:14 No.004 P.14
ID:61-3-2872001
GOLDEN

Telecom AUSTRALIA

19 July 1994

COMMERCIAL AND CONSUMER
CUSTOMER AFFAIRS

37/242 EXHIBITION STREET
MELBOURNE
VICTORIA 3000
Australia

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

Mr G. Schorer
Golden

By Facsimile: 287 7001

Dear Graham

The purpose of this letter is to acknowledge that I have received a cheque for $2,000 made payable to Telstra Corporation Limited and delivered by your Courier this afternoon.

I have not yet had time to read your letter and respond. However I note one comment that refers to the information provided to the arbitrator. This information has been supplied to the arbitrator for onforwarding to you under the rules of the procedure. Telecoms action in supplying this information should not be taken to imply anything other than a valid interest in providing you with the information you believe you need to enable you to complete your claim. This information is available to you without charge.

This action has been taken in the interest of meeting your requirements to receive the information without charge and to facilitate the commencement of the arbitration process.

Yours faithfully

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

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Telecom AUSTRALIA

21 July 1994

COMMERCIAL AND CONSUMER
CUSTOMER AFFAIRS
37/242 EXHIBITION STREET
MELBOURNE
VICTORIA 3000
Australia

Telephone (03) 632 7700
Facsimile (03) 632 3236

Mr G. Schorer
Golden

Facsimile No. 287 7001

Dear Mr Schorer

I refer to your letter dated 19 July 1994 which refers to the information provided to the TIO under the "Fast Track" arbitration procedure for onforwarding to yourself.

The 12 900 pages of information provided to the TIO were intended to be provided directly to you without charge under the arbitration procedure. At no stage was it stated or inferred that these documents had been previously provided to you.

I have noted your statement that, "if ... [Telecom is] supplying the information as part of the arbitration process on [Telecom's] own account, then [Telecom] should be supplying Schorer with copies as a matter of right and it should not be dependent on whether I ask the arbitrator to supply it or not and whether or not it is without charge."

The supply of these documents is not dependent on whether you asked the arbitrator or not, or whether it is without charge. They are provided under the arbitration procedure to meet your requirement for documents which you believe may assist you in your claim. The confidentiality requirements of the arbitration procedure will, of course, apply. I have asked the TIO to onforward the documents to you directly in accordance with the requirements outlined in your letter.

Yours faithfully

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

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Telecommunications
Industry
Ombudsman

Warwick L Smith LLB
Ombudsman

22 July 1994

Mr Steve Black
Group General Manager
Customer Affairs
Locked Bag 4960
MELBOURNE VIC 3000

By facsimile: 632 3241

Dear Mr Black

I refer to your related letters of 15 and 19 July 1994 and your two letters of 20 July 1994, the six boxes of documents which have been delivered to the TIO office, and your request that these be forwarded to Mr Schorer, ostensibly under the Fast-Track Arbitration Procedure.

In contacting Mr Schorer by phone on 19 July and again on 21 July 1994 to arrange delivery of these boxes, he categorically declined to receive them, stating that he wished to receive his documents under FOI, and not through any other avenue.

Consequently, the TIO is not in a position to pass these documents on to Mr Schorer as you have requested.

The documents will be held at the TIO office until you indicate what should be done with them.

Yours sincerely

Warwick L. Smith
Ombudsman

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criteria which guide such scheduling. This issue is also of particular relevance to the determination of the required maintenance standard for analogue exchanges (recommendation 2), and AUSTEL cannot accept any Telecom analogue exchange maintenance proposal until this information has been received and assessed.

Development of New Fault Management and Complaint Management Procedures

Telecom is instituting new fault handling and complaint management procedures, these having been developed in conjunction with Coopers & Lybrand. A major training program has been developed to implement and reinforce these procedures. Telecom provided AUSTEL with a copy of its fault management manuals on July 18 1994 and will be providing copies of the complaint management manuals in the near future. Procedures in the manuals embrace a number of the report's recommendations and will significantly impact on Telecom's handling of faults over the next several years. AUSTEL's Consumer Advisory Committee will be consulted on issues of specific consumer interest or concern. Further reporting on this matter will be provided in our next quarterly report.

Service Verification Tests

An important component of Telecom's 4-stage fault handling process is the Service Verification Tests (SVT). These tests are applied during stage 3 of this process. AUSTEL has indicated an initial acceptance of the SVT in the form in which Telecom has now released the document. These tests are important for Telecom to be able to provide objective data about the end-to-end performance of its network in regard to the service of an individual customer on the date the tests are conducted. It is the nature of such tests that they are more able to demonstrate that the network is not performing to an acceptable standard as opposed to a demonstration of compliance. In its briefing, Telecom indicated (and we will seek confirmation and further detail in writing) that if the SVT indicates an unacceptable level of service then the required replacement of network equipment will be undertaken.

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We are aware that there is some criticism of the SVT, particularly from some of the COTs. However, the SVT in their current form are subject to review after 6 months. Results during this initial period are to be reported to AUSTEL monthly; and the results of any tests conducted on the services of the 4 original COTs and the later 12 COTs are not relevant to their claims under arbitration (although relevant to any ongoing Difficult Network Faults they may be experiencing).

In view of the significance, complexity and importance of the SVT for Telecom's ongoing fault/complaint handling, AUSTEL has decided to engage a consultant to provide additional advice on the engineering/statistical issues inherent in the SVT to assist our own monitoring and review during this 6-month period.

Telecom's Treatment of FOI Applications

AUSTEL has concerns that Telecom is not being sufficiently "flexible" in its approach to FOI applications. It is understood that the Commonwealth Ombudsman is currently dealing with 5 formal complaints received from members of the COT group in regard to Telecom's treatment of their FOI requests. The Ombudsman has produced a draft report on one of these complaints from Mr Schorer, with Telecom providing a lengthy response to the draft report. It is also understood that the Ombudsman intends to make all 5 reports publicly available. These reports, when finalised, will provide an independent assessment of a number of FOI issues. AUSTEL does not propose to comment on Telecom's treatment of individual FOI applications, given that the complaints have been made to the Commonwealth body with direct jurisdiction in this area.

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FAXED 9/8/94

GOLDEN
Transport Agency

13.56

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 046

IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT. It is in your interests to read them to avoid any later confusion.

To:	Dr Gordon Hughes Arbitrator for the Fast Track Arbitration Procedure	Date: Our Ref:	9 August 1994 1123
Company:	Hunt & Hunt	Fax No:	
From:	Mr Graham Schorer	Total Pages (incl. Header)	2

MAILED: YES ( ) NO ( )

Dear Dr Hughes

RE: FAST TRACK ARBITRATION PROCEDURE

I am writing to you to confirm what progress has been made to date regarding documents being received under the three different F.O.I. applications.

On 14 April 1994 two boxes of documents, not processed in accordance with the procedures of the F.O.I. act, were delivered to my premises, outside the F.O.I. Act. Many of the documents were illegible and have not been resupplied in accordance with our official request and is part of the many complaints lodged with the Commonwealth Ombudsman's Office. These two boxes contained approximately 2200 documents, over 55% of which were raw data (ie over one box).

On 15 July 1994 five boxes of documents were delivered to my premises, outside the F.O.I. Act. These five boxes consisted of one box of documents and four of raw data.

On 29 July 1994 eight boxes of documents were delivered to my premises, under the F.O.I. Act. These eight boxes consisted of two boxes of Schorer's documents, two boxes of raw data, four boxes contained documents in relation to other C.o.T. Case Australia members F.O.I. applications.

A meeting between Telecom and myself on Wednesday 3 August 1994 was convened and agreed to on the basis that Telecom were prepared to discuss all of the unresolved issues regarding the three F.O.I. Applications.

Telecom agreed to such a meeting under false pretences, as they refused to discuss the agreed to unsupplied documents and other unresolved issues in relation to the three F.O.I. Applications at the meeting. These three F.O.I. Applications being:

- Graham Schorer, other related entities, companies, etc F.O.I. Application lodged with Telecom on 23 November 1993.
- C.o.T. Cases Australia F.O.I. Application lodged with Telecom on 22 February 1994.
- Graham Schorer (the person) F.O.I. Application lodged with Telecom on 21 April 1994.

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493-495 Queensberry Street, NORTH MELBOURNE VIC. 3051

Of the thirty two thousand (32,000) documents received (excluding the raw data and other C.o.T. Case Australia Members applications - which is the majority) documents relating to the Graham Schorer and Golden Application consist of many duplicate copies and does not represent all of the documents applied for under the two F.O.I. Applications, being 24 November 1993 and 21 April 1994.

I will advise the Arbitrator in writing what action I intend to take to ensure that I am correctly supplied with the required documents that I have requested under the F.O.I. Applications, as the documents supplied do not contain all of the fault reports, investigations, and early monitoring data referred to in some of the existing documents, therefore preventing me and my advisors from commencing compiling my submission and claim substantiated with supporting documentation.

Yours respectfully

Graham Schorer

200

493-495 Queensberry Street, NORTH MELBOURNE VIC. 3051

FAXED 9/8/94 13:56

GOLDEN
Transport Agency

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 046

IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT. It is in your interests to read them to avoid any later confusion.

To:	Dr Gordon Hughes Arbitrator for the Fast Track Arbitration Procedure	Date: Our Ref:	9 August 1994 1124
Company:	Hunt & Hunt	Fax No:	
From:	Mr Graham Schorer	Total Pages (incl. Header)	10

MAILED: YES ( ) NO ( )

Dear Dr Hughes

RE: FAST TRACK ARBITRATION PROCEDURE

I have enclosed a facsimile from Telecom received at my premises on 26 July 1994 at 11.41 pm.

This facsimile states that Telecom has forwarded all of the documents that fall within my F.O.I. Applications to the T.I.O. for onforwarding to the Arbitrator.

Would the Arbitrator please advise in writing as to what date the documents were delivered to the Arbitrator's premises. Also please advise myself as to what arrangements that I need to comply with for the viewing of the same documents.

It should be noted that in Point 5, Paragraph 3, Page 2 of the above facsimile from Telecom, where Telecom unconditionally informed myself that, "The FOI exemptions which have been applied to the documents will not apply to any of the documents provided under the rules of the arbitration." which was accepted by myself in correspondence dated 29 July 1994 (Our Ref: 1104 - page 4, referring to point 5, Paragraph 3). (A copy of this correspondence referred to is enclosed with this facsimile.)

Yours respectfully

Graham Schorer

201

493-495 Queensberry Street, NORTH MELBOURNE VIC. 3051

Hunt & Hunt
LAWYERS

COPY

Partners
Edward S Boyce
James G.F. Harrowell
Christine A. Gailey
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Ewin
Wayne B. Cahill
Neville G.H. Debney
Grant D. Sefton
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. Gallichio
Roy Seil

16 August 1994

Our Ref: GLH
Matter No:
Your Ref:

Mr Paul Rumble
Group Manager - Customer Response Unit
Telecom Australia
Level 8
242 Exhibition Street
Melbourne VIC 3000

Dear Mr Rumble

ARBITRATIONS - GARMS, SCHORER, GILLAN, SMITH

I enclose copy facsimile from George Close & Associates Pty Ltd, undated but received 12 August 1994.

You will note Mr Close is seeking information to which he has apparently not yet had access. Presumably this may lead to a formal application by one or more of the Claimants pursuant to clause 7.5 of the "Fast-Track" Arbitration Procedure.

Before I give consideration as to what course to follow, do you wish to provide an initial response to the matters raised in Mr Close's letter?

Yours sincerely

GORDON HUGHES

Encl

CC A Garms, G, Schorer, A Smith, A Davis, G Close, P Bartlett, W Smith, J Rundell

melbourne
sydney
sydney west
brisbane
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202A

Level 21, 459 Collins Street, Melbourne 3000, Australia. **Telephone:** (61-3) 614 8711.
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GEORGE CLOSE & ASSOCIATES PTY LTD

Data - Telecommunications Consultants

Suite 202,
83 Mount Street,
NORTH SYDNEY N.S.W. 2060
Phone: (02) 922 4888
Facsimile: (02) 957 3627

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

Dear Dr Hughes

Together with my colleagues, I have studied and assessed the Bell Canada International Report to Telecom Australia.

There is a significant lack of reference material, essential to give credibility to their conclusions, which in the light of emergent hard evidence produced in the last few months is not simply dubious, but by Telecom's admission, incorporeal.

Accordingly, we are requesting the raw data, documentation, calculations, minutes, inter-Telecom correspondence and Telecom. internal reports associated with the Tivoli Restaurant and Theatre, Golden Messenger Service, Cape Bridgewater Holiday Camp, and Japanese Spare Parts. It should naturally include all test procedures, time scales, dates, length of test, phone numbers and point to point of tests.

Without this information, essential to substantiate the percentage claims so readily displayed but not supported by basic data, their claims and Telecom's employment of them, be it ever decreasing, are unacceptable.

If it is preferable for this information to be included in the individual COT Case documentation under Clause 7.5 of the Fast Track Arbitration Procedure, please advise and we will comply.

Yours sincerely

GEORGE CLOSE

202B M34000

THIS CORRESPONDENCE TO BE ATTACHED AND FORM PART OF MY REPORT ON THE TIVOLI RESTAURANT AND THEATRE

Sa réponse 25.8.94.

(File) Rumble Black Geary Chalmers Freehills

Hunt & Hunt
LAWYERS

Partners
Edward S Boyce
James G.F. Harrowell
Christine A. Gailey
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Ewin
Wayne B. Cahill
Neville G.H. Debney
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William P. O'Shea

Consultants
Kenneth M. Martin
Richard J. Kellaway

Associates
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Gallichio
Roy Seit

16 August 1994

Our Ref: GLH
Matter No:
Your Ref:

Mr Paul Rumble
Group Manager - Customer Response Unit
Telecom Australia
Level 8
242 Exhibition Street
Melbourne VIC 3000

Dear Mr Rumble

ARBITRATION - SMITH

I enclose copy facsimiles received from Mr Smith dated 12 August and 15 August 1994.

In his facsimile of 12 August, Mr Smith foreshadows the submission of his completed claim by 17 August 1994. In his later fax, he indicates that the submission will be delayed until 18 August 1994.

Although Mr Smith states no further submissions will be made after 18 August, I note he is simultaneously asking for a direction from me in relation to the production of certain raw data. This is consistent with the matters foreshadowed in the letter from George Close & Associates of 12 August which I have forwarded to you today by a separate facsimile. I will be asking Mr Smith to clarify whether he seeks to include the raw data or any analysis of the raw data as part of his submission.

If Mr Smith does seek to rely upon the raw data or the results of any analysis of the raw data, and if such information is to be made available to him, then I could not accept his submission as being "complete" as at 18 August 1994.

As requested in my covering facsimile enclosing a copy of Mr Close's letter, I would be grateful if you would provide me with your initial reaction to the request so that I can consider appropriate directions on the matter.

Mr Smith also makes a second request, that is, for me, the Resource Unit and certain claimants to view privileged information in the possession of Telecom. I am seeking further clarification of this request from Mr Smith but my inclination is to disallow it.

melbourne
sydney
sydney west
brisbane
canberra
newcastle
represented in
adelaide
darwin

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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M34001
202c

LCC response 25.8.94
see Telecom's further letter 13.9.94

Telecom AUSTRALIA

COMMERCIAL AND CONSUMER
CUSTOMER RESPONSE UNIT
8/242 EXHIBITION STREET
MELBOURNE VICTORIA 3000

Telephone (03) 634 5736
Facsimile (03) 634 8441

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25 August 1994

Dr Gordon Hughes
Hunt & Hunt

Facsimile No. (03) 614 8730

Dear Sir

Fast Track Arbitration - Smith

I refer to your letter of 16 August 1994, concerning Mr Smith's request for further documentation.

1. Mr Smith has requested "*all raw data associated with the Bell Canada testing*".

   Bell Canada International conducted three separate sets of tests into Telecom's network, and consequently produced the following three separate reports in relation to those tests:

   - Bell Canada International Report to Telecom Australia, dated October 1993;
   - Inter-Exchange Network Test Results Western Suburban Exchanges Melbourne, dated November 1993; and
   - Bell Canada International Telecom Australia Rotary Group Hunting Study, dated November 1993.

   I understand that Mr Smith's request covers raw data in relation to each of the above reports ("the Reports"), and is therefore wider than Mr Close's request

   I have obtained files containing some test results and working documents belonging to Bell Canada International which they created while preparing their Reports, and subsequently left with Telecom. I have been informed by Bell Canada International that they have not retained any other files containing such documents. These files consist of approximately 700 pages plus six disks of data.

   These files contain some information specifically relating to various Telecom customers other than the claimants, which Telecom submits should not be disclosed to Mr Smith for reasons of privacy, and because information specifically relating to them is not directly relevant to the claimants' claims.

   Other than that, Telecom has no objection to providing copies of these files to Mr Smith in accordance with a direction from you under the arbitration procedure.

203A M33989

2. Mr Smith also appears to be requesting documents which Telecom has exempted from release to him on the ground that they are subject to legal professional privilege.

I note that Mr Smith's reason in support of his request is that Telecom has provided him with a network investigation working document which is marked "*Legal Professional Privilege*". Telecom assessed the documents which were exempted from release to Mr Smith on grounds of privilege on a case by case basis, and did not simply rely upon headings in documents which note privilege. This is evidenced by the fact that Telecom did not claim legal professional privilege in relation to the document Mr Smith has referred to.

Clause 7.5 of the rules of arbitration provides that "*the arbitrator may not require the production of documents protected by legal professional privilege*".

Telecom objects to providing copies of documents to which legal professional privilege applies.

Yours sincerely

Paul Rumble
GROUP MANAGER
CUSTOMER RESPONSE UNIT

M33990

203A

Document number	File Number	Date	Description of Document	Decision	Exemption	Reason for Decision
A59671 - A59672	Extract - Litigation Cots Fast Track pt 4	19/09/1994	Service Verification Tests - Status Report	Exempt in Part	s41	This document contains personal information about third parties - I consider release would be an unreasonable disclosure of personal information
A59673 - A59676	Extract - Litigation Cots Fast Track pt 4	07/09/1994	Facsimile from Peter Gamble to Norm O'Doherty	Exempt in Part	s41	This document contains personal information about third parties - I consider release would be an unreasonable disclosure of personal information
A59690 - A59691	Extract - Litigation Cots Fast Track pt 4	21/09/1994	Emails from Joy Geary to Simon Chalmers	Exempt in Full	s42	This document contains a confidential communication created for the dominant purpose of aiding the conduct of existing legal proceedings
A59692	Extract - Litigation Cots Fast Track pt 4	20/09/1994	E-mail from Simon Chalmers to Paul Rumble	Exempt in Full	s42	This document contains a confidential communication created for the dominant purpose of aiding the conduct of existing legal proceedings
A59693	Extract - Litigation Cots Fast Track pt 4	20/09/1994	E-mail from Joy Geary to Janet Buzza	Exempt in Full	s42	This document contains a confidential communication between a lawyer and client created for the dominant purpose of giving or receiving legal advice
A59694 - A59695	Extract - Litigation Cots Fast Track pt 4	20/09/1994	Letter from Stephen Mead to Joy Geary	Exempt in Full	s42	This document contains a confidential communication between a lawyer and client created for the dominant purpose of giving or receiving legal advice
A59696	Extract - Litigation Cots Fast Track pt 4	20/09/1994	E-mail from Simon Chalmers to Joy Geary	Exempt in Full	s42	This document contains a confidential communication between a lawyer and client created for the dominant purpose of giving or receiving legal advice
A59703	Extract - Litigation Cots Fast Track pt 4	20/09/1994	E-mail from Joy Geary to Janet Buzza	Exempt in Full	s42	This document contains a confidential communication between a lawyer and client created for the dominant purpose of giving or receiving legal advice
A59712 - A59714	Extract - Litigation Cots Fast Track pt 4	19/09/1994	Emails between Joy Geary and Paul Rumble and Jessie Lewis	Exempt in Full	s42	This document contains a confidential communication between a lawyer and client created for the dominant purpose of giving or receiving legal advice

2038

Telecommunications
Industry
Ombudsman

Warwick L Smith LLB
Ombudsman

September 30, 1994

Mr. Graham Schorer
Golden Messenger
493-495 Queensberry Street
NORTH MELBOURNE VIC. 3051

By Facsimile: (03) 287 7001

Dear Graham,

Telecom have changed some of the management team for the COT process. Today I asked Mr. Ted Benjamin to accompany me to briefly meet Dr. Hughes formally. Yesterday Mr. Benjamin, in my presence, received an overview of the current position from Mr. Peter Bartlett and Ms. Pia Di Mattina. Also yesterday I formally introduced Mr. Benjamin to Mr. John Rundell, Manager of the Resource Unit. At this critical stage the impact of such a change needs to be minimal and advantage the process. I hope this will be the case.

Under Clause 23 of the 'Fast Track' Arbitration Procedure notices to Telecom are sent to Mr. Paul Rumble. Telecom will formally seek to vary this and such notices will pass to Mr. Benjamin.

Mr. Benjamin will I am sure provide you with his contact points and those of his team immediately.

Over the next week I will be in North Queensland on TIO matters.

Yours sincerely,

Warwick L. Smith
Ombudsman

c.c. Mr. Peter Bartlett
Mr. John Rundell
Mr. Ted Benjamin
Dr. Gordon Hughes
Ms. Pia Di Mattina

204

FACSIMILE TRANSMISSION

FROM: HUNTS'

OUR FAX: (03) 670-6598

SENDER: Wm. R. HUNT

DATE: 3rd October, 1994

TO: GOLDEN MESSENGERS

YOUR FAX: 287 7001

ATTENTION: MR. GRAHAM SCHORER

RE: TELECOM

MESSAGE:

Reference your draft of 1st October 1994 to Warwick Smith. I suggest the following:-

The second and third paragraphs should be deleted.

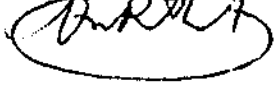
Instead I suggest the following:-

"My understanding is that one reason for the change was to provide a management team which would be, as it were, impartial in its appraisal of current matters in that its members would not have had any previous involvement with or working knowledge of the C.o.T. matters.

This would not appear to be the case in respect of Mr. Ted Benjamin."

I am presuming that there is no doubt whatever that Benjamin was present on 26th August 1992 as stated.

Generally speaking, however, I am troubled by the attack on the individuals generally - Benjamin, Rumble, and Geary. There may be repercussions if it turns out you are not in a position to prove your statements, and the inferences which can be drawn from your letter. Any one of the parties involved might consider that somewhere along the line he or she has an action for slander.



PAGES: (Including this page)

IF ANY PART OF THIS TRANSMISSION HAS NOT BEEN RECEIVED OR IS ILLEGIBLE PLEASE CONTACT THE SENDER ON 670-5694

204A

C.o.T. Cases Australia

Facsimile Transmission

To:	Mr. Warwick Smith	Date:	3 October 1994 1239
Company:	TIO	Fax No:+	277 8797
From:	Mr G J Schorer	Total Pages (incl. Header)	

MAILED: YES ( ) NO (X)

FAXED s110

Dear Warwick,

I refer you to your correspondence dated and received 30 September 1994 at 3.05pm containing the advice that Telecom have changed some of the management team responsible for the C.o.T. process.

Our understanding is that Mr Lee has given a commitment to others to bring around necessary changes within Telecom and to produce a change in Telecom conduct towards C.o.T. Members. This is understood to ensure that immediate progress and publically acceptable arbitration resolution of current problems will eventuate.

The Telecom management decision to replace Mr. Rumble with Mr. Benjamin is believed by the C.o.T. Members to have taken place as part of the increased scrutiny by the Minister for Telecommunications and other concerned politicians of Telecom's conduct towards those involved in arbitration.

Mr. Rumble's conduct and treatment towards the CoT Members involved or attempting to become involved in the arbitration process, in the opinion of the individual C.o.T. Case Members, failed to meet the minimum standards of conduct regarding adequacy, reasonableness and fairness.

It should be noted that Mr Rumble performed his duties under the directions of the senior Telecom Group General Manager of Customer Affairs controlling the whole unit that directly interfaces with CoT Members, Mr Black.

The CoT Members opinion of Mr. Black's conduct and treatment of individual CoT Members can only be described as being inferior when compared even with Mr Rumble's performance.

The question that all of the C.o.T Members would like the answer to is ,"Under who's direction is Mr. Black performing his duties?"

We further understand that one reason for the current change was to provide a management team which would be, as it were, impartial in its appraisal of current matters in that its members would not have had any previous involvement with or working knowledge of the C.o.T. matters.

This would not appear to be the case in respect of Mr. Ted Benjamin.

Mr Benjamin was present and participated in the first meeting between C. o. T. and Telecom on 26August 1992.

2043

Voice: (03) 287 7095 Fax: (03) 287 7001

493-495 Queensberry Street, NORTH MELBOURNE VIC. 3051

Enclosed is one (1) document, dated 6 October 1993, identifying Mr. Ted Benjamin's continued involvement in the C.o.T. project team.

All of the C.o.T. Members have received numerous documents under FOI identifying Mr. Benjamin's continuous involvement in C.o.T. matters. Further sample copies substantiating this statement can be supplied on request.

Telecom published in the Telecom newsletter titled "Our Future "for the reading of Telstra people and their families, issue No. 46 dated 20 September 1994, a Preselection Code of Conduct between Telstra and their competitor.

This Code of Conduct was finalised prior to publication "Our Future"Newsletter No. 46 which reported wide distribution throughout Telstra.

This newsletter states that the Preselection Code of Conduct has four (4) basic principles, the first being 'Staff are not to give inaccurate or misleading information."

C.o.T. Members are of the opinion the Telecom management team involved in the C.o.T process have not always applied the first basic principle of Telecom's stated Preselection Code of Conduct when dealing with individual C.o.T. Members and others.

The question which now has to be raised is, "Which Telstra Code of Conduct Governs the actions of the Telstra management team now dealing with the C.o.T. problems?"

Warwick, it is the opinion of C.o.T. Members that this totally farcical situation created by Telecom management's conduct has to be formally raised by the Telecommunications Industry Ombudsman and/or Austel with Mr. Blount, and/or the Telstra board.

Because of Telecom's current and past conduct including lack of action, the failure of Mr. Blount and/or the Telstra Board to appoint an impartial team leader totally responsible and accountable for its future conduct , there is a major risk to Telecom and all concerned, past events will be repeated.

Warwick, now you have been provided with this information, is there anything you can do to help overcome the problems encountered by the C.o.T. Members.

Yours sincerely,

Graham Schorer
Spokesperson
C.o.T. Cases Australia

c c Mr Frank Blount
Mr Peter Bartlett
Mr John Rundell
Dr. Gordon Hughes
Ms Pia Di Mattina

204 B

Voice: (03) 287 7095 Fax: (03) 287 7001

493-495 Queensberry Street, NORTH MELBOURNE VIC. 3051

PARLIAMENT OF AUSTRALIA · THE SENATE

SENATOR RON BOSWELL

LEADER OF THE NATIONAL PARTY IN THE SENATE
SENATOR FOR QUEENSLAND
SHADOW MINISTER FOR CONSUMER AFFAIRS

DATE: Mon 5/12

Please deliver the following message to:

Name: G. Schoner

Fax No: 03) 287 7001

From: Ron Boswell

Fax No: 06) 277 3246

Number of Pages (incl cover) 7

Message:

PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600
TEL: (06) 277 3244
FAX: (06) 277 3246

12TH FLOOR
295 ANN STREET
BRISBANE, QLD 4000
TEL: (07) 864 6660
FAX: (07) 229 9735

204C

Ms Geary—I can assure you that Telecom is doing everything it can to do that as quickly as possible.

Senator BOSWELL—I turn to the Australian Federal Police report. Senator Bolkus said, 'I am assured by the Australian Federal Police that, as indicated in the Senate on Monday 17 October, the DPP advice had little or no effect on the final outcome of the AFP investigation.' This advice is contrary to that provided to Ann Garms by the investigating office of the Australian Federal Police. The Australian Federal Police is getting advice that Telecom has a shield of the Crown, so it could not be prosecuted. It is quite obvious to me that, if that is your legal advice, then it is wrong.

Mr Krasnostein—I will address that because I have some personal knowledge of it. I am not sure where this allegation emanated from. There was never a period of time when Telecom either received advice or asserted a position that it had a shield of the Crown. I do not know who is asserting that, but it is nonsense to do so.

Senator BOSWELL—I would hope so.

Mr Krasnostein—What the Australian Federal Police have concluded and what the DPP have concluded is something that we are not privy to. We have given full cooperation in the Australian Federal Police investigation, to the extent that we were lawfully able to do so—which was almost total. They interviewed whoever they wanted to interview, they gained access to documents that they requested. There was only one issue of some tapes that they had a problem getting hold of. We are not privy to the result of that investigation. We are not privy to what their recommendation was—or their report, if they did not make a recommendation to the DPP, and we are not privy to what the DPP deliberations are.

Senator BOSWELL—Why did Telecom advise the Commonwealth Ombudsman that Telecom withheld FOI documents from Alan Smith because Alan Smith provided Telecom FOI documents to the Australian Federal Police during their investigation?

Ms Geary—Could you please repeat that?

Senator BOSWELL—Why did Telecom advise the Commonwealth Ombudsman that Telecom withheld FOI documents from Alan Smith because Alan Smith provided Telecom FOI documents to the Australian Federal Police during their investigation?

Ms Geary—I am not aware that that has been said. I can take that on notice.

Senator BOSWELL—Mr Krasnostein would probably be able to—

Mr Krasnostein—No, I am not aware of who at Telecom made that statement. I would be happy to take it on notice unless you have some information that sheds some light on it.

Senator BOSWELL—All right, I will do that. I will ask you another question. Telecom is cooperating fully with the Australian Federal Police inquiry. Why would Telecom withhold vital documents from the AFP? Also, why would Telecom penalise COT members for providing documents to the AFP which substantiate that Telecom had conducted unauthorised interceptions of COT members' communications and subsequently dealt in the intercepted information by providing that information to Telecom's external legal advisers and others?

Mr Krasnostein—Could you ask that question again?

Senator BOSWELL—You may take it on notice. It will be on the record.

Mr Krasnostein—I might add that—and I am sure the Australian Federal Police will confirm this to you—we had total cooperation with the Australian Federal Police. They were able to interview whatever staff they wanted to and they were given free and unrestricted access to a document room containing all the documents they wanted. They photocopied whatever they wanted. Inspector Penrose, who conducted the investigation, said to me that we cooperated fully and freely, and I do not know where an allegation would come from that there has been anything but total cooperation with the Australian Federal Police.

Senator BOSWELL—Thank you very much.

Senator TIERNEY—I refer to a question I put on notice in the Senate on 10 October

204C

Telecom AUSTRALIA

3 October 1994

COMMERCIAL AND CONSUMER
CUSTOMER AFFAIRS
8/242 EXHIBITION STREET
MELBOURNE
VICTORIA 3000
Australia 6327700
Telephone (03) 634 5736
Facsimile (03) 634 9930

Mr G. Schorer
Golden Messenger
405 Queensberry Street
NORTH MELBOURNE VIC 3051

RE: MEETING WITH THE ARBITRATOR

Dear Mr Schorer

I refer to discussions with Mr Alan Smith on 3 October 1994. Mr Smith advised me that he understood the Arbitrator had indicated his availability to convene a meeting between Telecom and Mr Smith, Mrs Garms and yourself.

Subject to the confirmation of the consent and availability of the Arbitrator I confirm my agreement to meet with him, Mr Smith, Mrs Garms and yourself on Wednesday 5 October 1994, or such other date as the Arbitrator is available. I will confirm with the Telecommunications Industry Ombudsman arrangements for the reimbursement of travel expenses for Mrs Garms and Mr Smith.

The Arbitrator will determine the format of the meeting, which topics will be dealt with in joint session and which topics are more appropriately dealt with on an individual basis. The purpose of the meeting is to address the means by which these Arbitrations may be progressed promptly. In particular the meeting will focus on issues relating to the production of documents both by Telecom and between the parties.

Yours faithfully

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

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RECEIVED
13 OCT 1994
Office of the Minister for Communications and Tourism

OFFICE OF HON
MICHAEL LEE MP
Rep by Min ☐ Information ☐
Rep by Parl Sec ☐ Appropriate Action ☐
Rep by SA ☐ Advice ☐
Rep by Dept ☐
Copy note for min to sign ☐
Final within .....

94/0269-05
22

Parliament House
Canberra ACT 2600

Circumstances and past actions of senior staff within Telecom have made it necessary to bring to your attention some very concerning activity that my colleagues and I feel can no longer be ignored or dismissed.

We hesitate to bring the following instances to your attention but decided it was necessary as this situation is far too serious to be allowed to continue, and attempts we have made within the organisation to bring our concerns to light have fallen unheard.
In bringing this matter to your attention we do not wish to paint the picture that all staff are involved in certain activities, we strenuously would like to make the point here, there are staff within the whole framework of the staff of Mr Steven Black who have and are continuing to work towards the recommendations of the Cooper and Librand and Austel report toward addressing customer issues fairly and ethically.

Concerns and Issues.

Mr Steven Black Group General Manager of Customer Affairs who has the charter to work to address and compensate Telecom's "COT" customers as well as the management of other customer issues related to Telecom is involved in and initiates conduct and work practices that are totally unethical and he has managed to achieve certain results in relation to major cases due to the assistance of key senior executives past colleague and friends with whom key strategic activities have been assigned. These individuals have not the skills or expertise required for the job and has jeopardised Telecom's position in attaining positive beneficial results for customers as the following instances will highlight.

1. Implementation of a complaint handling procedure throughout Telecom though outwardly giving the appearance of acceptance and uniformity of work practices, is nothing more than outward deception to external regulating parties. Mr David Fickling in association with Mr Steven Monro have deceived AUSTEL as to the implementation of core initiatives.
Existing within Telecom nationally is different Regional offices operating in various ways to address customer complaints. This situation is attributable to a lack of:

- comprehensive documentation to staff at time of training
- comprehensive training by competent individuals to all manner of staff
- a incomplete database unable to capture and store required criteria for most purposes specifically reporting
- continued failed deadlines to major initiatives resulting in blatant short cuts being needed.

To meet certain commitments to AUSTEL made by Mr Black and Mr Fickling a incomplete complaints handling process has been forced down staffs throats, resulting in much resentment and confusion whereby key initiatives are not in place.

2. The management of COT customers by Mr Rod Pollock is nothing more than a unprofessional, adversorial approach towards customers. Mr Pollocks approach to these customers has been one of manipulation and deception as in his dealings with the top four COT customers and subsequent eleven customers Mr Pollock has lied and deceived these customers.
Damaging evidence against Telecom has been conveniently removed or altered to suit the case.
Junior staff or temporary agency staff have been requested not to place pertinent information on customer files so as no to weaken Telecom's case further.
COT customers that may prove to be a threat to Telecom have been expertidly manipulated and paid settlements.

Warwick Smith has been critical of Pollock a some issues.

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3. Unfortunately the Legal advise and expertise that Telecom has sought from its internal legal group has also been sadly lacking in ethical direction. In the management of major customer disputes the legal area has sought to hide and skirt around the truth. Telecom's legal advisors have responded to external statutory authorities with only half of the information required fully aware of not providing all information. Their general position has been to sit behind the legal word and its many interpretations in so doing avoiding full disclosure of information. There have been instances where the legal group have directly overruled staff wishing the disclosure of information to external authorities, in so doing slowing down or redirecting the wheels of natural justice.

Not sure what context of this could be but it talks about MD's COT in excess of 12 months

Senior allegation

4. There are three main areas which Steve Black and his senior executives have sought to influence and manipulate:

1. Remove or change clear information on the position of liability.
2. Diminish the level of compensation payable to COT customers.
3. Dismissive of breaches in relation to matters regarding customer Privacy.

In relation to the Robert Bray case Steve Black has sought to cover up the true facts of disclosure of customer information. Particularly he has sought to cover up "broadcasting" of the customers private information.

(Gilmuich Sr has been also associated with this issue

As you can see from what I have mentioned to you something needs to done. As you can appreciate we are not in a position to go any deeper that what has already been outlined . As to where next that lies in your hands. We have done what is unfortunately our only form of address to the situation.

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Hunt & Hunt
LAWYERS

Partners
Edward S Boyce
James G.F. Hammond
Christine A. Cailey
Gordon L. Hughes
Mark T. Knapman
Ian S. Craig
Peter J. Bahr
Wayne S. Cahill
Neville Gill, Sydney
Grant D. Sefton
Charles Vlavianos
Andrew Leigh-Smith
William P. O'Shea

Consultants
Kenneth M. Martin
Richard J. Kellaway

Associates
Shane G. Hird
John S. Molnar
Melissa A. Henderson
Francis V. Calichio
Roy Sett

10 November 1994

Our Ref: GLH
Matter No:
Your Ref:

BY FAX: 287 7001

Mr Graham Schorer
Golden Messenger
493-495 Queensberry Street
North Melbourne VIC 3051

Dear Sir

ARBITRATION - TELECOM

I am enclosing a submission from Telecom dated 26 October 1994 in response to your letter of 17 October 1994.

In response to the three questions raised in your letter of 17 October 1994, I advise as follows:

(a) I have power under Clause 7.5 of the Fast-Track Arbitration Procedure to direct the production of relevant documents, excluding those protected by legal professional privilege. I am unable to make such a direction at this stage as I have still not been formally advised as to the nature and parameters of the claim. Once your claim has been submitted and once I have received Telecom's defence, I will be sufficiently informed as to the issues to make any appropriate orders regarding the production of further documents;

(b) I can effectively compel an explanation by Telecom of its raw data and other statistical documentation by requiring a suitably informed representative to attend a hearing. I can enlist the assistance of DMR, a member of the Resource Unit, in this regard. Again, I consider it premature to embark upon such a course of action. I must be convinced that the exercise is relevant to your claim. I cannot determine what is relevant to your claim until you have submitted formal claim documentation;

(c) You have inquired whether the current Fast-Track arbitration Procedure incorporates or excludes loss and damage arising out of alleged unauthorised telephone tapping.

melbourne
sydney
sydney west
brisbane
canberra
newcastle
represented in
adelaide
darwin

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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The scope of the arbitration is determined by reference to the arbitration agreement (that is, the Fast-Track Arbitration Procedure) unless the parties have subsequently agreed to vary the scope. Clause 1 of the Fast-Track Arbitration Procedure states that the purpose of the procedure is to resolve the disputes listed in Schedule A. Schedule A states that the scope of this arbitration is to determine:

> "the liability of Telecom to the Claimant in respect of alleged service difficulties, problems and faults in the provision to the Claimant of telecommunication services".

Telecom has indicated in its letter of 26 October 1994 that it is "keen to have all issues in dispute" dealt with in the arbitration process. It is, therefore, prepared to classify the allegations of unauthorised telephone tapping as falling within the description of "alleged service difficulties, problems and faults".

You have inquired "how and when these matters were introduced into the Fast-Track Arbitration Procedure". I am not clear whether this means you are objecting to their introduction. In any event, I am not aware that they have been "introduced" to the procedure. As indicated above, I cannot form a view as to what specific matters are in dispute until you have formally submitted your claim.

If you submit a claim which makes no reference to the allegations of unauthorised telephone tapping, and if Telecom makes no comment about the exclusion of such allegations, then they will fall outside the scope of this arbitration.

If your claim documentation includes a claim for compensation in relation to unauthorised telephone tapping, and if Telecom makes no objection to its inclusion, then it will fall within the scope of the arbitration.

If Telecom contends, at the time of submission of your claim, that certain matters have been incorrectly included or excluded, I will invite formal submissions from both parties as to their understanding of Schedule A of the Fast-Track Arbitration Procedure and I shall then issue such directions as I consider appropriate.

It should be clear from my comments above that I am unable to play a constructive role in these proceedings until your claim documentation has been lodged. I am unable to compel you to lodge a claim. I can, however, set deadlines and if you are unable or unwilling to comply with them, Telecom may chose to make a submission as to the future of this arbitration. Alternatively, regardless of any submission by either party, I may conclude at some point that any attempt to arbitrate the dispute is futile, in which event I might elect to withdraw. I do not consider this scenario would be in the interests of either party and I am therefore

hopeful (and I have to date been prepared to give every possible indulgence to ensure) that this claim can be processed in accordance with the agreed Fast-Track Arbitration Procedure.

I now direct that your claim documentation be submitted on or before Monday 12 December 1994.

In submitting your claim, you should bear in mind that it is not necessary for all relevant or potentially relevant documentation to be appended or even referenced. The function of the claim documentation is to present me, and Telecom, with an adequate explanation of the basis upon which you consider you are entitled to compensation or, more specifically, the "alleged service difficulties, problems and faults" in the provision by Telecom to you and related entities of telecommunication services.

Yours sincerely

GORDON HUGHES

Encl

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

109. In my opinion, it was unreasonable of Telecom to fail to give reasons for its initial decision to decline to remit the application fee.

2.1.5 The decision on remission.

112. In my opinion, Telecom's decision to decline to remit the application fee was wrong.

2.1.6 Imposition of conditions on remission of fees.

116. In my opinion Telecom acted unreasonably in imposing the condition.

2.1.7 Notification of decision to remit fees.

121. In my opinion, Telecom acted unreasonably in failing to notify Mr. Schorer that the fee was waived when Mr. Schorer met Telecom's condition by signing the FTAP on 21 April 1994.

138. In my opinion, it was unreasonable for Telecom to impose the condition in the letter of 15 March 1994 to Mr. Schorer that it would provide certain documents after receiving confirmation that the FTSP was to proceed.

140. In my opinion, Telecom acted unreasonably in refusing access to those documents for a further five weeks.

2.3.1(3) Delay in granting access to the files mentioned in B above.

151. In my opinion, it was unreasonable for Telecom to delay sending the documents while the solicitors examined them for contentious issues.

2.3.1(3b) Verification of exemptions.

155. In my opinion it was unreasonable for Telecom to delay sending the documents while the solicitors examined the documents to verify that exemptions had been applied wherever possible.

2.3.2 Decisions under the FOI Act.

161. In my opinion, Telecom acted wrongly in deciding

unilaterally that the 24 November 1993 application lapsed when Mr. Schorer submitted a new application on 21 April 1994, which Telecom referred to as a 'Revised FOI Request'.

2.3.2(b) Provision of estimate of charges for the 24 November 1993 application.

165. In my opinion, Telecom acted unreasonably in not providing an estimate of charges, or informing Mr. Schorer of the number of documents involved in the request, when it became a valid application on 21 April 1994.

2.4 The decisions and the reasons for the decisions

2.4.1 Merits of the decisions on deletions and exemptions.

172. In my opinion, Telecom acted unreasonably in failing to explain deletions made from documents and that all of the deletions from the documents released to Mr. Schorer on 14 April 1994 were not considered on the merits.

182. In my opinion, Telecom acted unreasonably in failing to explain deletions and exemptions when it released documents to Mr. Schorer on 14 April 1994.

2.4.3 Quality of access provided by Telecom.

187. In my opinion, Telecom acted unreasonably in providing the documents without explanation of the condition of the text of the documents, and without attempting to provide legible copies or transcripts.

2.5 Adequacy of training of FOI decision makers

2.5.1 Adequacy of training given to Telecom officers.

194. In my opinion, the training given to the 'document reviewers' was inadequate and it is pleasing to note that Telecom has decided to take action to '...direct a greater level of expertise on this important activity'.

2.5.2 Adequacy and appropriateness of instructions given to private

solicitors.

204. In my opinion, the instructions given to Freehill Hollingdale & Page were inadequate for the purpose stated in the instructions.

205. In my opinion, it was wrong for Telecom to direct that the solicitors identify whether exemptions had been applied wherever possible under the FOI Act.

FAX FROM:	ALAN SMITH C. O. T.	DATE:	11.11.94
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

FAST TRACK ARBITRATOR

Dear Dr Hughes,

I believe the following fax from the Commonwealth Ombudsman's Office, is relevant to my claim, and not contrary to the instructions outlined in your letter dated 10th November, 1994.

In defence of these letters and faxes I would like to state that I believed at the time of writing that I was showing both the reluctance of Telecom to assist me with the Arbitration Procedure and their efforts to inconvenience me in this Procedure. However, I understand the legal reasons you have put forward as to the inappropriateness of forwarding literature back and forth where it may be seen by parties as compromising the confidential undertakings I agreed to abide by.

At no stage did I, or will I in the future, intend to embarrass Hunt & Hunt; neither will I undermine the Arbitration Procedure. I respect your views and judgement and will leave any grievances that I may or may not have with Telstra to be viewed only in the Arbitration Procedure and within the guidelines of the process.

Respectfully,

Alan Smith.

209A

COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

Prudential Building, cnr London Circuit & University Avenue, Canberra City
GPO Box 442, Canberra, A.C.T. 2601, Australia
Tel: (06) 276 0111; Fax: (06) 249 7829; Int. Fax: + 61 6 249 7829

10 November 1994 C/94/225

Mr Frank Blount
Chief Executive Officer
Telstra Corporation Ltd
38th floor, 242 Exhibition Street
MELBOURNE VIC 3000

Attention Ms Joy Geary

Dear Mr Blount

At the request of Ms Geary, I am notifying you of the details of the complaints made to the Ombudsman by Mr Alan Smith.

20.1.94 Telecom unreasonably has decided to apply charges to his FOI request and has stated that the charges will be considerable.
2.3.94 Telecom has delayed providing access to documents.
2.3.94 Deletions from documents provided and exemptions were not explained.
24.3.94 Telecom claimed that documents given to Telecom by Mr Smith in 1992 had been destroyed or lost.

Telecom unreasonably refused to give any further documents to Mr Smith.

Telecom has lost or destroyed a number of files relating to his contacts with Telecom prior to 1991.
14.4.94 Telecom unreasonably refused to provide documents allegedly referring to discussions Mr Smith had with three Telecom officers concerning a discussion Mr Smith had with Mr Malcolm Fraser.

Telecom unreasonably deleted information from documents released.

Telecom unreasonably denied Mr Smith access to 460 documents.(letters of 14.4.94 and 15.4.94 from Mr Smith to Mr Black refer)
5.5.94 Telecom unreasonably delaying providing access to many documents.

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Telecom denied access to ELMI tapes for 21, 22, and 23 October 1992.

Telecom imposed unreasonable charges for access to documents sought under the FOI Act.

25.5.94 Telecom failed to provide fault reports for the period after 22/6/93, particularly from 9/8/93 to November 1993.

14.9.94 Telecom refused access to documents relating to voice monitoring for fault finding during 1993.

18.9.94 Telecom acting unreasonably in refusing to provide access to 'Bell Canada Raw Data'.

2.10.94 Telecom delayed providing access to documents under the FOI Act while Telecom's solicitors examined the documents.

23.10.94 Telecom unreasonably refused access to 'ELMI Smart 10 tapes' for the period May to July 1993. (Mr smith's letter to Mr Benjamin on 23.10.94 refers).

27.10.94 Telecom unreasonably refused access to CCS7 Call Statistics documents dated 4/11/93, 5/11/93, 6/11/93 and 9/11/93. (Mr Smith's letter to Mr Benjamin dated 27.10.94 refers).

26.10.94 Telecom incorrectly informed Mr Smith that Telecom did not have in their possession '..any of the raw data and working papers to do with the Bell Canada testing and report.'

7.11.94 Telecom unreasonably refused to provide the 'Portland/Cape Bridgewater Log Book associated with the RCM at Cape Bridgewater' for the period 2 June 1993 to 6 March 1994.

I think the above is comprehensive; but I have sent a copy of this letter to Mr Smith and invited him to apprise me of any complaints he has made which I may have omitted inadvertently.

Yours sincerely

John Wynack
Director of Investigations

209B

GOLDEN

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 046

IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT. It is in your interests to read them to avoid any later confusion.

To:	Dr. Gordon Hughes The Arbitrator	Date: Our Ref:	5 December 1994 1397
Company:	Hunt & Hunt	Fax No:	(03) 614 8730
From:	Graham Schorer	Total Pages (incl. Header)	

MAILED: YES ( ) NO ( )

Dear Dr. Hughes,

Re: Arbitration - Telecom

I refer to your correspondence dated 10th November 1994 and the enclosed Telecom's correspondence dated 26th October 1994.

The contents contained in Telecom's correspondence to yourself is not accurate in its detail nor a totally open record of discussions or events between Telecom and myself.

My response to the Telecom statement contain in the paragraph commencing with, "On 15th July 1994" is:-

Telecom have knowingly violated the FOI Act and their obligations to supply myself with Telecom documents in accordance with my valid FOI applications.

It was always understood and accepted by Telecom that the supply of Telecom documents to enable myself to finalise my claim, submission supported by documentary evidence, was always meant to have been achieved by Telecom correctly responding to my FOI applications.

Telecom even gave an undertaking to the Chairman of Austel, Mr. Robin Davey to pass on to myself and the other COT members on the 22nd November 1993 that Telecom undertook to fast track mine and the other COT members FOI applications prior to Mr. Davey emphasising that Telecom were serious in withdrawing from all negotiations if I and the other COT members did not sign the fast track seminar proposal by 5.00 p.m. Tuesday, 23rd November 1993.

Telecom have constantly misled myself and others regarding the ease of obtaining more documents containing greater information relevant to the self interest of the claimants under the confidential clause contain in the arbitration processes. I have had these discussions with Mr. Black and it is obvious that Mr. Black is advising everybody on Telecom's interpretation on the ease of obtaining documents in accordance to Rule 7.5 of the Arbitration procedures which contradicts the arbitrators and other legal advisers interpretation of Rule 7.5.

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Documents supplied by Telecom under the FOI Act entitled me to cross examine Telecom on the accuracy contain in those documents and provides me with the maximum protection of the inordinate powers that are bestowed upon the Commonwealth Ombudsman.

Telecom's referral to the Telecom letter dated 15th July 1994 regarding the subject matter associated with my FOI applications as a justification to be used as supporting evidence of Telecom's willingness and reasonableness to assist me in the correct supply of all documents requested is a further example of Telecom's misleading, deceptive, unconscionable and oppressive conduct towards myself in my endeavours to be immediately and correctly supplied with documents sort.

Peta of Warwick Smith's office can substantiate that Telecom is knowingly misleading other COT members regarding Telecom supply of documents.

The Telecom paragraph commencing with "Telecom submits with the arbitrator" contains many inaccurate statements.

While it is true that Telecom decided to conduct a voluntary internal review of my FOI applications in accordance with the procedures and guidelines containing in Section 54 of the FOI Act, Telecom has not done such a review. This matter is in the hands of the Ombudsman.

Telecom have also made a statement that I can immediately apply for a directive from the arbitrator while knowing I cannot apply for a directive until such time that I am in a position to finalise my claim and lodge it with the Arbitrator.

Telecom are consistently advising other COT members the same advice. This matter is now being taken up by the T.I.O. Office and the Commonwealth Ombudsman as a very serious complaint.

On page 2 of Telecom's letter, the paragraph commencing with "Telecom has not given any undertakings" contains statements that can be best described as blatant lies and gross distortion of facts and events.

Telecom are required under the FOI Act to provide answers or explanations to raw data and other statistical information supplied, identifying what telephone services they are monitoring, whether Telecom are monitoring incoming calls, outgoing calls or a combination of both, supply definitions and explanations of codes used, to supply explanation of equipment and systems used including full details of the purpose of the equipment and all systems are being used for.

Telecom are required under the FOI Act to provide summaries, working papers, diary notes, work orders associated with any raw data and statistical information created, captured or devised by Telecom.

It is true Mr. Gamble first stated Telecom were not required to supply this information and offered an explanation that Telecom's summaries or opinions being prepared for Telecom's defence were not available. This was accepted without question nor was it requested.

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It was pointed out to Mr. Gamble that all codes must be supported by explanations.

For Telecom to insist and state to the Arbitrator that Telecom have no explanations of current codes used by Telecom is nonsensical and demonstrates Telecom's oppressive conduct.

Peter Gamble gave a Telecom undertaking to supply answers and or explanations after he was acquainted with the reality of Telecom's obligations under the FOI Act. This undertaking was at a meeting attended by Peter Gamble and Paul Rumble and was also attended by Mr. Harry Thorpe, Golden's Corporate Secretary whose presence was for the sole purpose of verifying any Telecom undertakings given that would be denied at a later date.

At a meeting held at Telecom's premises on the 26th October 1994, supposedly a one on one meeting between Mr. Black and myself which turned out not to be the case as Telecom had Mr. Ted Benjamin and Mr. Paul Rumble accompanying Mr. Black. Most of the meeting was taped and I am including a copy for the Arbitrator.

During the meeting, I raised the issue of Telecom's non-supply of explanations, summaries, reports , etc., and asked the question had Telecom responded to the Arbitrator's request.

Mr. Benjamin read out Telecom's written reply.

I immediately refuted the validity of Mr. Benjamin's written statement sent to the Arbitrator, I then reminded Mr. Benjamin of Mr. Gamble's undertaking given in the presence of Mr. Paul Rumble, Mr. Harry Thorpe, Golden's Corporate Secretary and myself. (Mr. Rumble had since left this meeting to attend his son's school play called Alladin with his son playing the part of Alladin.

I insisted, demanded that Mr. Benjamin immediately inform the Arbitrator in writing that his statement was incorrect.

Telecom's response to the Arbitrator to my question put to the Arbitrator under Question (C) is a nonsensical Telecom answer to the question I put to the Arbitrator.

The arbitration process only deals with losses as a result of telephone call losses and the arbitration process has no capacity, procedure or authority to deal with this matter of unauthorised taping and listening to telephone conversations.

The inadequacies contained in the current arbitration' procedures to correctly address this matter requires the existing Fast Track Arbitration Procedure to be changed, or the acceptance of my preferred position, that a new, different and genuine ***FAST TRACK arbitration procedure*** especially designed and drafted to eliminate all of the current inadequacies contained in the current Fast Track Arbitration Procedure that allows Telecom to drip feed documents in response to valid FOI applications, prevents or

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penalises Telecom for the Telecom conduct of purposely and incorrectly withholding of Telecom documents.

This subject matter of developing a new different and genuine ***FAST TRACK arbitration procedure*** just to deal with Telecom's unauthorised taping and listening to Telecom's customers telephone conversations has been raised many times by myself and other COT members with Telecom.

I have raised this matter on numerous occasions with Mr. Black and have informed him, he and other Telecom officers were knowingly misleading the COT members by constantly stating it was a subject matter that the Fast Track Arbitration Procedure could and would correctly deal with as the Arbitration procedure was the correct forum to correctly and appropriately addressed Telecom's violation of Telecom's customers' privacy and Telecom's conduct of dealing in interceptive information obtained from unauthorised listening and taping of telephone conversations.

I have pointed out to Mr. Black on many occasions that Telecom's statement is not the case and have discussed with him the need to introduce changes in the existing Arbitration' Processes which he objected to and I agree with his objection on the basis that the most proper way to deal with Telecom's conduct was to create a new different and genuine ***FAST TRACK arbitration procedure*** especially designed to deal with Telecom's unauthorised and abhorrent conduct.

I require both Telecom and the Arbitrator to arrange a meeting with myself and other C.o.T. members in the presence of Peter Bartlett, the TIO's Office Legal Resource Unit, for the sole purpose of creating a new, different and genuine FAST TRACK arbitration procedure especially designed to deal with Telecom's unauthorised listening and taping of the C.o.T. member's telephone conversations plus Telecom's dealing in the intercepted information obtained from listening and taping of telephone conversations.

I will now deal with the events and matters including Telecom's undertakings, knowledge, understanding, Telecom's stated appreciation and Telecom's statements made to myself or occurred between Telecom and myself, reached between Telecom and myself that Telecom has not made known to the Arbitrator which in my opinion has served to place the Arbitrator of making a very unreasonable and uninformed decision that will be detrimentally cause loss and damage to my self interest.

The points I am now going to make substantiating my objection to Telecom's response to the Arbitrator's written enquiry to Telecom dated the 20th October 1994, are not necessarily made in chronological date order.

1. There had been numerous discussions between myself and Mr. Black where Mr. Black was offering to address Telecom's incorrect and non-supply of Telecom documents.

These discussions between Mr. Black and myself started to develop a very proactive and change of heart attitude by Mr. Black late September and early October 1994 as a result of constant intervention, monitoring of the Commonwealth Ombudsman including Telecom's desire to insure the Commonwealth Ombudsman report soon to be released published report would be modified and changed as the result of the modified and changed Telecom conduct.

Voice: (03) 287 7099 Page No. 4 Fax: (03) 287 7001

493-495 Queensberry Street, NORTH MELBOURNE VIC. 3051

of urgency to immediately convene a meeting between Telecom and myself to resolve all matters in dispute regarding Telecom's incorrect and non-supply of Telecom documentation.

This meeting finally took place on the 26th October 1994 and the meeting commenced a few minutes after 5.00 p.m. and concluded on or about 9.00 p.m.

I complained to Mr. Black that the less than one hour notice for the convening of the meeting, time and meeting place was unreasonable. Mr. Black's defence was the time had been set at 5.00 p.m. , the day had been set and he had diarised it in his diary. All it needed to be immediately confirmed was the meeting place. Mr. Black's statement was not correct as the date set was the 19th October 1994.

Telecom did not inform the Arbitrator of the planned existence of that meeting regardless of date confusion nor has Telecom when I last question Mr. Black deemed it appropriate to inform the Arbitrator of the Telecom's undertakings made at that meeting, which include Telecom's agreement to release substantial classes and types of documents, substantial classes and types of previously exempted documents all of which will go a long way towards the advancement of my position to prepare and finalise my claim.

2. Golden's major client wrote to Golden on 10 August 1994 inviting Golden to participate in a new and different two year contract for the supply of services in the metropolitan area, Mornington Peninsula and Geelong.

This extensive proposal and Golden's quotation resulted in a Letter of Intent to be received by Golden on 21 September 1994.

From 21 September 1994 there were extensive negotiations and changes in the contract, including gaining legal advice on potential litigation for a breach of contract, copyright and intellectual property.

On Friday, 25 November, 1994, signed contracts were exchanged.

On Monday, 28 November, 1994, Golden finalised all insurances in accordance with the contract conditions.

On Tuesday, 29 November, 1994, Golden commenced this two year contract which has an option for a further two year extension.

This exhaustive, extensive negotiation has absorbed Golden's management time and that of Golden's legal advisers at the exclusion of all other matters other than normal daily duties and Golden's obligation to itself pursuing Telecom for the correct supply of documentation under FOI.

Graham Schorer has kept Mr Black informed of Golden's involvement in achieving this task.

Graham Schorer has also, on a periodical basis, kept the Arbitrator informed.

3. Graham Schorer has also kept Mr Black from Telecom informed in recent times of Golden's involvement and development of a courier, transport package software program to meet Golden's requirements finally coming to fruition with the planned commencement of installation commencing late December 1994/early January 1995.

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Mr Ian Campbell and Jim Holmes and other Telecom personnel were made aware in January/February 1994 of Golden's involvement in the further development and enhancement of an existing courier, transport software package that would cater for computer generated visual aid for despatch, computer despatch using mobile data terminals, accompanied by automatic job costing, client detailed invoice statement billing that Golden were wanting to install when Golden's telephone service difficulties, problems and faults had been resolved.

Graham Schorer at the meeting of 26 October, 1994, before the meeting commenced to discuss the matters the meeting was called for, explained to Mr Black that he left a meeting at his premises that had take three months to organise and arrange for the presence of his software people to do with the computer installation proposed for late December/early January 1995.

Schorer explained he was not impressed with having to cancel that meeting and stated to Black he did so because he deemed it more important to resolve the matter of Telecom not correctly supplying documents as a greater priority in this instance.

I am enclosing correspondence addressed to Mr Black regarding this meeting plus copies of the tape recordings made of that meeting to substantiate the continued efforts of myself to obtain documents from Telecom.

4. I also draw the Arbitrator's attention to the Commonwealth Ombudsman's report, findings and recommendations.

The Arbitrator should also be made aware that Mr Black rang Schorer Friday, 2 December, 1994, at 9.53 am to advise Schorer, as part of the following up, that arrangements were being made for the supply of documents.

Mr Black also stated that he would ring Schorer early Monday morning to give him the latest update.

In response to the Arbitrator's direction that Graham Schorer Other Associated Entities Companies etc claim documentation be submitted on or before Monday, 12 December 1994, I wish to draw the Arbitrator's attention to the matters that I consider makes the Arbitrator's direction an unreasonable direction.

The Fast Track Settlement Proposal entered into by all parties on 24 November 1993 is a specially designed, unconventional, new and different instrument to ensure that natural justice prevails.

The Fast Track Arbitration Procedure which incorporates the Fast Track Settlement Proposal is also an instrument to ensure that natural justice prevails.

Telecom, (including Austel and the TIO's Office), substantiated by the Commonwealth Ombudsman's report, have always known that I and other claimants were always intended by Telecom and Austel to correctly receive all of our requested documentation under FOI applications before I and the others were in the best position to prepare our claim for losses, a full written submission to the Assessor/ Arbitrator, accompanied by all documentation including Telecom's documentation substantiating call losses and all other losses plus quantification of all financial losses.

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The Commonwealth Ombudsman's report clearly substantiates beyond doubt that all delays in supplying of documentation has been created by Telecom.

The Commonwealth Ombudsman's published report regarding Telecom has made it clear that this report is the first of a series of published reports. There are many other matters the Commonwealth Ombudsman intends to publicly report upon in regards to my complaints.

5. I formally request that the Arbitrator should take into consideration that I, as Managing Director of Golden, have other duties that require my attention and time to perform the duties as Managing Director of Graham Schorer Other Associated Entities Companies etc.

It goes without saying I have a self interest to protect all of the family assets that are involved.

The list could go on.

I hereby formally request that the Arbitrator revisit the decision requiring claim documentation be submitted on or before Monday, 12 December, 1994, taking into consideration in accordance with the written, including publicly stated objectives, that this process is designed to ensure natural justice to the claimants, as I am not in a position to respond by this date due to the oppressive Telecom conduct which includes Telecom's violation of the FOI Act.

I can guarantee the Arbitrator that I will be in a position to finalise my claim documentation only on or before Friday, 30 December 1994.

To ensure there is no confusion or misunderstanding, by claim documentation I mean just the claim documentation. It does not include written submission, documentary evidence or financial extrapolation of figures representing dollar losses.

The Arbitrator's immediate written response would be appreciated.

Yours sincerely,

Graham Schorer
on behalf of Graham Schorer Other Associated Entities Companies etc.

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GOLDEN
Transport Agency

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 046

IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT. It is in your interests to read them to avoid any later confusion.

To:	Dr Gordon Hughes	Date:	16 February 1995
		Our Ref:	1548
Company:	Hunt & Hunt	Fax No:	614 8730
From:	Mr Graham Schorer	Total Pages (incl. Header)	

MAILED: YES ( ) NO ( )

Dear Dr Hughes,

RE: ARBITRATION - TELECOM

In response to the Arbitrator's correspondence dated and received 3 February 1995, enclosing a copy of Telecom's correspondence dated 27 January 1995 but received 2 February 1995, and subsequent correspondence from the Arbitrator dated 6 February 1995, received same day, enclosing a copy of Telecom's correspondence dated 31 January 1995, received by the Arbitrator xx/xx/95, I wish to make the following points known to the Arbitrator.

Point 1

Telecom in their dealings with myself and others associated with the Fast Track Arbitration Procedure, have on many occasions effected transmission by facsimile, correspondence dated days prior to actual date of receipt.

Telecom in their dealings with myself and others, have on many occasions effected transmission of correspondence by facsimile, where the correspondence has been dated days or weeks prior to actual date of receipt. Telecom on many occasions have also alleged transmission of a facsimile which did not take place.

My observations of the importance and significance of the Telecom alleged dated correspondence versus receipt date and the sensitivity of the issue in hand the alleged dated correspondence is addressing, has created a doubt as to whether Telecom are engaging in irregular corporate conduct.

I am formally suggesting that the Arbitrator give serious consideration to creating and maintaining a register of all correspondence received from Telecom and C.o.T. members noting date of correspondence and date of receipt. I believe the register should include all past correspondence from both parties to enable the Arbitrator to be able to evaluate as to whether there appears to be irregularities of conduct occurring by any party associated with the Arbitration Process.

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Point 2

Telecom's statement contained in their correspondence dated 27 January 1995, and I quote, *"As to Mr Schorer's facsimile of 25 January 1995 addressed directly to Telecom, Telecom agrees that Mr Schorer has written to Telecom on many occasions regarding what Mr Schorer regards as omissions in the range of documents provided to him pursuant to his requests under the Freedom of Information Act. On each occasion, Telecom has responded to Mr Schorer"*, can only be taken as an accurate statement in the context of, Telecom do, after an extensive delay, **"respond"** to **all** correspondence.

What Telecom has failed to bring to the Arbitrator's attention, as demonstrated in the contents of Telecom's correspondence to the Arbitrator, is Telecom's definition of responded or response.

Based on Mr Schorer's experience, it would appear that Telecom's definition of *"On each occasion, Telecom have responded to Mr Schorer"*, Telecom's definition of *"responded"* also refers to Telecom's correspondence acknowledging receipt of correspondence, selectively addressing some of the issues contained in the correspondence, mentioning other issues without correctly addressing them or complying with a reasonable request regarding issues brought to Telecom's attention in that particular correspondence dealing with Telecom's non compliance under the FOI Act, requesting that Telecom does comply with the FOI Act.

This type of Telecom conduct is another complaint being investigated by the Commonwealth Ombudsman. I am not suggesting the Arbitrator devote his valuable resources duplicating the Ombudsman's investigation of this type of Telecom conduct.

I am drawing the Arbitrator's attention to, I refute the assertions Telecom have made and/or implied. Hopefully, the Ombudsman will finalise all of her investigations into Telecom's alleged conduct, including this complaint, in time to produce a report outlining her findings before the Arbitration process is completed, to enable the Arbitrator to determine whom is misleading who.

Point 3

The Telecom statement referring to Telecom's voluntary review completed on 23 December 1994 stating and I quote, *"A voluntary review was carried out by Telecom during the period September to December 1994 of all documents previously released to or withheld from Mr Schorer pursuant to the Freedom of Information Act 1982 ("the FOI Act"). As a result of the voluntary review further documents were provided by Telecom to Mr Schorer. Since the completion of the voluntary review on 23 December 1994 Mr Schorer has not provided Telecom with any lists of documents that Mr Schorer claims he is entitled to have access to under the FOI Act but which he has not received"*, is only true if Telecom are relying on the fact that Mr Schorer has not provided Telecom with a written list of documents since 23 December 1994.

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It is not a fact that Mr Schorer has not provided specific information to Telecom identifying some specific types and classes of documents and information that Telecom have not provided in accordance with the relevant FOI applications discoverable under the FOI Act since 23 December 1994.

Mr Schorer has, during telephone conversations with Mr Black after 23 December 1994, identified specific examples of documents and information to Mr Black that Telecom has not provided under FOI.

Mr Schorer has even given Mr Black explanation as to the reasons this information is discoverable under FOI.

It is not a requirement under FOI for the applicant to explain to Telecom the relevance or importance of the document sought under the FOI Act.

Mr Schorer has explained in detail to Mr Black, including giving examples of certain types and classes and specific information being sought as to how it is essential to Mr Schorer to receive the sought documents and information to establish Telecom's legal liability, causal link between phone losses, and losses of courier jobs before quantum of all losses can be completed by the expert witnesses.

Mr Schorer has explained to Mr Black, the non supply of these documents by Telecom are preventing Mr Schorer from progressing his submission and is preventing his expert witnesses from starting the major portion of their allotted assignments.

Mr Schorer refutes the implications contained in Telecom's correspondence regarding this aspect of not attempting to identify what documents have not been supplied under FOI.

Point 4

In the Telecom paragraph referring to Mr Schorer's facsimile of the 25 January 1995, Telecom make statements including that Telecom find it difficult to reconcile with Schorer's advice, "*it will not be until end February/early March when he will be in a position to identify most, if not all, outstanding documents, reports, types and classes of documents and information consistently sought from Telecom under (his) respective FOI applications*", to which Telecom then add, and I quote, "*Telecom considers it has provided all the documents requested by Mr Schorer pursuant to his Freedom of Information requests, save for electronic data which was only requested on 6 January 1995. Mr Schorer has been informed of this repeatedly*", requiring the following response to ensure the Arbitrator is fully informed as to what has been implied by Telecom and the inaccuracies contained in part of this Telecom statement.

The Telecom statement, and I quote, "*save for electronic data which was only requested on 6 January 1995*", is incorrect. This request was recorded on 24 November 1993 with Telecom in the first FOI application. On Thursday, 9 February 1995, Telecom by courier, at approximately 5.00 pm, delivered a letter, dated 6 February 1995, plus six computer diskettes, accompanied by a document titled "Internal Review Decision: Schorer C1", dated 21 December 1994, demonstrating Telecom understood precisely the FOI application of 24 November 1993, and a result of the Telecom review, finally correctly supplied them.

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Mr Schorer's draws the Arbitrator's attention to what appears to be a further Telecom irregularity of delivering correspondence dated 6 February 1995 by hand (courier), approximately 5.00 pm, the evening of the 9 February 1995.

Mr Schorer draws the Arbitrator's attention to the fact that Telecom have still failed to deliver the raw data and summaries associated with the Austel directive, which was supplied to Austel, which was documentation and information sought, incorporated in the 24 November 1993 FOI application.

Mr Black and other Telecom officers have been verbally and in writing informed for some time that Telecom has not complied with the FOI Act, with precise examples given. It was brought to Mr Black's attention, after Mr Schorer spoke to Ms Joy Geary to identify what process Telecom were using in the review, (Ms Geary is the Telecom person in charge of Telecom's *"voluntary internal review"*), that Telecom were not conducting the review according to the guidelines and procedures outlined in Section 54 of the FOI Act, and again precise examples were given.

Since Telecom have completed the review, further precise examples of where Telecom have not correctly complied with the FOI Act have been given to Mr Black, including the raw data and summary reports provided to Austel on disk.

It was easy for Mr Schorer to quickly establish that Telecom had not provided Mr Schorer with the same information, in the same format, on disk as Telecom provided Austel because simply, there was no computer disks in the nine large boxes of documents Telecom provided to Mr Schorer on 22 December 1994 as part of Telecom's *"voluntary internal review"* and the same was conveyed to Mr Black.

Telecom were informed on a number of occasions by telephone, prior to 6 January 1995, that this information was missing.

It is true that on 6 January 1995 Mr Schorer forwarded this same information in writing to Telecom to formalise what has been said many times to overcome the consistent Telecom conduct of denying knowledge of received information not put in writing to Telecom, when it suits Telecom's strategy, tactics and hidden agenda.

Copies of Telecom correspondence, dated 6 February 1995, received approximately 5.00 pm on 9 February 1995, are enclosed.

Point 5

The Telecom statement contained in Telecom's correspondence, and I quote, *"Mr Schorer was asked to provide a list of all documents that he considers he requires as part of the arbitration at least a week prior to the forthcoming directions hearing. This list would of course relate to documents relevant to the arbitration. The list is not necessarily the same as any list of documents which Mr Schorer claims he is entitled to (but has not received) under FOI. Mr Schorer appears to be declining to provide the list of documents Telecom has requested. It is noted that you have separately indicated to Mr Schorer that such a list would be helpful and Telecom still considers that in all the circumstances this would be the best way to proceed"*, is misleading to the reader by Telecom's omissions of facts.

Mr Schorer on many occasions has requested Telecom, both verbally and in writing, for Telecom to place in writing Telecom's understanding of types and classes of documents and information and reports being sought by Graham Schorer.

This request was made after numerous meetings, exchange of correspondence between Graham Schorer and Telecom, all of which have produced a nil result.

Telecom are consistent in continually stating Telecom do not understand the FOI request, the request was outside FOI or Telecom had complied with the FOI application under the FOI Act.

It is also true that Telecom have asked for a list prior to the oral direction hearing being on the agenda. A comprehensive list has been provided identifying **some** types of classes of information sought prior to the oral direction hearing being on the agenda. Telecom have still to comply with the reasonable request put to them by Graham Schorer to provide their understanding of the types and classes of documents sought by Graham Schorer.

Mr Black of Telecom has suggested a further comprehensive list be developed of all types and classes of documents, information etc. to be forwarded by Graham Schorer to Telecom now that Telecom has supplied further documents as a result of Telecom's internal review.

Mr Schorer has not refused that request, in fact, has stated that it was always his intention to compile such a list once he had the opportunity to fully examine all the documents supplied under Telecom's internal review. When this subject was first raised by Mr Black, Mr Schorer stated he was not in a position to estimate when this list could be compiled as there were substantial documents to be studied, and Mr Black was informed there were nine very large boxes to be read before such a list could be attempted to be compiled.

Mr Black was also informed by Mr Schorer that Telecom had not complied or attempted to comply with his reasonable request. Mr Schorer informed Mr Black that Telecom's conduct had been reported to the Ombudsman as a further complaint and stated to the effect, when the Ombudsman finally does produce a report on such conduct and/or allegations, it will be interesting to discover the Ombudsman's opinion of who is misleading or unreasonable to whom.

Point 6

The Telecom statement, and I quote, *"The forthcoming directions hearing will involve Telecom in the following costs over and above the time of its officers who attend:*

- *your time as Arbitrator;*
- *the time of DMR as part of the Resource Unit;*
- *the time of Mr Bartlett;*
- *the cost of transcript.*

Mr Schorer is not exposed to any of those costs", is an accurate statement.

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The need for this directions hearing is a direct result of Telecom knowingly not complying with the FOI Act. Mr Schorer does not deny Telecom will be liable for the abovementioned category of costs.

Telecom have not acknowledged to the Arbitrator that there have been costs incurred, and still are being incurred, by Graham Schorer, Associated Entities, Companies etc. because of Telecom's defective administration in processing of Mr Schorer's valid FOI applications.

Telecom's defective administration has been acknowledged by the Ombudsman, resulting in the Ombudsman recommending to Telecom to pay Mr Schorer for any costs unnecessarily incurred.

After a considerable time, and I believe, numerous correspondence between the Ombudsman and Telecom, Telecom finally accepted the Ombudsman's recommendation to compensate Mr Schorer.

I draw to the Arbitrators attention that the other remaining foundation C.o.T. members, respondents to the Fast Track Settlement Proposal & claimants under the Fast Track Arbitration Procedure Messrs Garms, Gillam and Smith have all registered similar or same complaints to the commonwealth Ombudsman in respect to Telecom's Conduct regarding continual violations of the FOI Act. These violations have occurred in respect to Telecom processing their respective FOI applications.

Enclosed is a copy of the latest Commonwealth Ombudsman's correspondence to Telecom in this matter.

Point 7

The Telecom statement, and I quote, *"Since Mr Schorer seems hesitant to provide the list sought Telecom suggests that the following course be adopted at the directions hearing:*

- *Mr Schorer be required to list each and every document or class of documents that he requires and the basis on which the document or class of documents is relevant to his claim in the arbitration proceeding;*

- *The directions hearing be adjourned for 7 days whilst Telecom considers the list provided by Mr Schorer and the basis of relevance.*

If Mr Schorer decides not to provide the list prior to the directions hearing Telecom will be exposed to the costs of this first directions hearing running much longer than necessary and to the costs of a second directions hearing which would, if a list had been provided, not have been needed", requires the following comments to be made.

1. Mr Schorer is not hesitant to provide a list of documents sought under FOI which mirrors the documents sought under the Fast Track Arbitration Procedure. Telecom have knowingly suggested what they know not to be true, Mr Black of Telecom, has been told verbally during numerous telephone conversations of the efforts made, including all weekend, the time Mr Schorer was spending to read the documents before such a list could be made.

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Mr Schorer stated to Mr Black, he agrees with his suggestion in principle, given time, he will comply, as it was his own intention to do so anyway. Mr Schorer stated to Mr Black it was unreasonable not to have a directions hearing dealing with those types and classes of documents and information that had already been identified to Telecom that was preventing Mr Schorer's resource team from progressing with his submission and expert witness reports.
Mr Black has had it explained to him on numerous occasions that Mr Schorer's telecommunications expert witness cannot commence part of his assignment, or complete any of the assignment, until Telecom comply by supplying documents and information sought.

Mr Black has had it explained to him on numerous occasions by Mr Schorer that the telecommunications expert witness requires most of the documentation and information sought to establish a substantiated reasonable causal link between telephone service difficulties, problems and faults to call losses before findings can be made in relation to the amount of call losses incurred because of telephone service difficulties, problems and faults.

Mr Black has also had it explained to him that the results of the findings for the telecommunications expert witness is required by the forensic accountant expert witness before he can commence the majority of his assignment, and without this information, cannot complete any of his assignment.

It was explained to Mr Black, dealing with these issues first at the directions hearing, would by gaining the Arbitrator's direction compelling Telecom to comply, would break the deadlock, allowing Mr Schorer's resource unit to substantially advance the preparation of the submission and quantification of the claim.

Mr Schorer has taken great time and trouble to explain to Mr Black the role of the third member of his resource team who are professional Loss Adjusters and Investigators. Mr Schorer has pointed out that these people have hands on experience in assessing the information that must be passed to expert witnesses. In this regard Mr Black has been made aware that considerable time and cost must be incurred in order to examine, categorise and isolate the documents in the necessity to substantiate the requirements to be examined by each of the specialist expert witnesses responsible for a specific category of the claim. This has proven to be a time consuming and financial debilitating exercise frustrated by the reality that the documents supplied to date by Telecom in effect represent the material to build the roof and the roof trusses of a house which cannot be supported because no material being provided to build the walls or substantiated foundation. This is totally dependant upon the information that Mr Schorer contends Telecom is wilfully and unlawfully withholding.

Mr Schorer's statements covered in this correspondence are provided to the Arbitrator to give him greater understanding as to the reasons little or nil progress can be made at this stage in advancing the submission and expert witnesses reports in the Fast Track Arbitration Process.

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2. Telecom's suggestion to the Arbitrator that Schorer be required to list each and every document or class of documents will and always was intended to be addressed by Mr Schorer, time permitting.

3. Telecom's suggestion that the directions hearing be adjourned for seven days while Telecom considers the list provided by Mr Schorer and the basis of relevance, is rejected by Mr Schorer as being an unreasonable Telecom request due to:-

   (a) All documents and information sought under the relevant FOI applications have been sought in relationship to establishing Telecom's liability, reasonable causal link between Mr Schorer's telephone service difficulties, problems and faults and call losses, establishing quantum of call losses to be able to establish courier job losses to enable quantum of all losses to be calculated to finalise claim;

   (b) There have been many meetings with senior Telecom personnel, including technical officers, much correspondence from Mr Schorer to Telecom regarding the same matter identifying in detail, including discussions of relevance, including Mr Schorer giving Telecom examples of just how vital the relevant information is to establish the base foundation from which the submission and claim can be logically put together;

   (c) The Arbitrator should be made aware that these discussions and efforts to obtain documentation and information sought under FOI commenced in early January 1994 and have included telephone conversations, correspondence directed at some of the most senior Telecom management people, including Mr David Hoare - Chairman of the Board of Telstra Corporation Ltd, Mr Frank Blount - Chief Executive Officer, Mr Paul Rizzo - Group General Manager - Administration and Finance, Mr Harvey Parker - Group General Manager of some department, Mr Jim Holmes - the then Corporate Secretary, Mr Ian Campbell - then Director, Mr David Oertle - then Director, Mr David Krasnostein, Mr Steven Black, Mr Paul Rumble, Mr Peter Gamble, Mr Simon Chalmers, Mr Rod Pollick, Mr Michael Pickering, Ms Joy Geary, Mr Paul Haar.

   Mr Schorer has sent correspondence to the Minister for Telecommunications, Mr Michael Lee, seeking his intervention into Telecom's conduct regarding the Telecom violations of the FOI Act.

   Correspondence to the Attorney General, the proprietor of the FOI Act and naturally, of course, the Commonwealth Ombudsman.

   For Telecom to suggest that they would be reasonable in determining relevance is refuted and Mr Schorer relies upon the Commonwealth Ombudsman's report to substantiate Telecom have been anything else but reasonable.

   The Arbitrator should note the Commonwealth Ombudsman's report has only dealt with some of the complaints and allegations made by Mr Schorer to the Ombudsman.

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Mr Schorer has authorised the Commonwealth Ombudsman to discuss all of his complaints and allegations with the Arbitrator, including any findings that are conclusive prior to the release of the next report if the answers to the Arbitrator's questions will assist the Arbitrator to formulate an accurate assessment of events or statements before attempting to deliberate as to whether to make a decision and/or impose a direction on one or other party associated with the arbitration process.

Point 8

The Telecom statement, and I quote, *"Please note that Telecom will be requesting you to set a final date for submission by Mr Schorer of his claim documents at the forthcoming directions hearing. Telecom will ask also that you make a direction that if Mr Schorer does not file his claim by that date, then the arbitration procedure be discontinued automatically"*, requires the following response:-

Telecom are attempting to have the Arbitrator set a date that will disadvantage Mr Schorer as Telecom are fully aware of the vital relevant information they are withholding.

Telecom in making this statement have finally disclosed in writing their motive (which has been known to the C.o.T. members for a period of twelve months) for purposely adopting a corporate policy of deliberately withholding discoverable documents and information under FOI, containing adverse information to Telecom as part of the corporate strategy and tactics of conduct being used to limit Telecom's liability or negate it by having Mr Schorer's claim disqualified by the Arbitrator for non compliance, where the non compliance in reality has been a direct result of Telecom's violation of legislation, including the FOI Act.

Telecom's undertaking given to Mr Schorer and the others present via Mr Davey, the then Chairman of Austel, to Fast Track all of the foundation C.o.T. members (respondent to the Fast Track Settlement Proposal) respective FOI applications has now been demonstrated by Telecom's actions as conduct which was and still is misleading, deceptive, unconscionable and oppressive.

The conduct of Telecom at the time via the goodwill messenger, Mr Robin Davey, has proven to be an agreement that Telecom intended to Breach.

To gain the acceptance of Mr Schorer and the others present at the specially convened meeting at Austel's premises, Mr Davey, on behalf of Telecom issued a statement outlining Telecom's intentions and conduct if total acceptance was not obtained.

This statement has proven to be (by Telecom's blatant breaches and disregard to the undertakings) an act to harass and coerce to wrongfully obtain acceptance by Mr Schorer and the others *"voluntary admission"* into the process (Fast Track Settlement Proposal).

This proposal and the subsequent Fast Track Arbitration procedure have constantly been described by all those involved but not effected by, as a process of natural justice, but Telecom has used the original and subsequent proposal to escape further Government scrutiny, public opinion and outrage in order to obtain extra time to plan, connive and put

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into place strategies to implement tactics that will serve to deny Mr Schorer and the others the right to receive natural justice.

Dr Hughes, in the beginning all Mr Schorer wanted was a telephone service fit for purpose.

Due to Telecom's conduct, Mr Schorer wanted some compensation not necessarily 100 cents in the dollar because he wanted to go back to his best love, being the best courier operator in Melbourne, and he was prepared to make compromises to avoid the time and expense to achieve 100 cents in the dollar compensation.

Now, Mr Schorer intends to obtain a telephone service fit for purpose, every cent Telecom owes him and a contract that ensure Telecom will not engage in future retribution.
Due to the delays and orchestrating of time of when events will take place, the successful strategies of Telecom has resulted in, if the Arbitrator is to accept most or all of Telecom's suggestions, a clash of priorities that Mr Schorer must deal with.

As in the Commonwealth Ombudsman's letter (copy supplied) outlining when Mr Schorer must submit his claim for compensation due to Telecom's defective administration must be finalised and submitted by 17 February 1995, which will be the beginning of a process that will last one month, Mr Schorer is now not in a position to estimate when he can fulfil any of the points raised by Telecom or deemed necessary by the Arbitrator until such time as he has a meeting with Mr Marks to determine what requirements will be made of him to substantiate his claim against Telecom for defective administration.

Due to the content, statements, recommendations made in Telecom correspondence to the Arbitrator, Mr Schorer intends to draw the Arbitrator attention to the following:-

Mr Schorer's current commitments and priorities upon his time and his support resources includes:-

Involvement in a completely new and different computer installation which is the initial stage of totally computerising all of the functions associated in supplying a courier service;

By Telecom caused delay committed to a process for Telecom to compensate Mr Schorer for losses created by Telecom's defective administration, with a Telecom orchestrated commencement date. This process requires Mr Schorer's personal involvement. What Mr Schorer does not know as to the extent of what the demand will be on his resources when the process actually starts.

It is estimated that Mr Schorer will have to devote all of his available resources from Saturday, 11 February 1995 to close of business Friday, 17 February 1995, just to finalise part one of the claim for assessment.

The task of identifying most of the documents, as referred to by Telecom, Mr Schorer's estimate still remains the same, conditional on demands on his personal resources as a result of the unknown demand factor associated with participating in the compensation claim against Telecom exercise.

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Telecom, on the other hand, are using a small army of people, including Mr Black, Mr Benjamin, Mr Paul Haar, Ms Joy Geary, Mr Michael Pickering and their faceless army of internal solicitors, plus the extensive resources of Telecom's external solicitors, Freehill Hollingdale and Page, just to deal with all the matters in dispute regarding all the types and classes of documents and information being sought by Graham Schorer under various FOI applications. The documents Mr Schorer is seeking under FOI mirror those documents he will be seeking under the Fast Track Arbitration Procedure.

The Arbitrator should note, according to Telecom's own written statements, Telecom started Telecom's *"voluntary internal review"* on 16 September 1994 and as of the 5 December 1994, applied 27 people, working 10 hours a day, 7 days a week, to the 23 December 1994 to finalise Telecom's internal review, which is 27 people x 14 hours per day = 378 hours per day, 378 hours per day x 19 days = 7182 hours, which divided by the average office worker's average annual hours worked, being 1725 hours = 4.1634782 man years as of the 5 December 1994 for Telecom to complete the *"voluntary internal review"* of Mr Schorer's FOI documents.

It is unreasonable for Telecom, to insist on such time constraint conditions, as put the Arbitrator. Telecom know Mr Schorer has limited resources. It is unreasonable for Telecom to expect Mr Schorer to produce a list, as Telecom have suggested, in the time that Telecom suggested, given the gross imbalance between all of Telecom's resources, both internal and external, plus a huge positive bank balance, with Mr Schorer's resources, who is just one person, the only person within Mr Schorer's businesses with the continuity of knowledge and experience within his organisation to deal with such a matter.

Mr Schorer's business telephone service difficulties, problems and faults has been acknowledged by Austel, the industry regulator, and the knowledge that he has suffered losses also has been acknowledged by Austel, hence the reason of Austel developing the Fast Track Settlement Proposal to enable independent assessment of what those losses was formulated in recognition of the limited resources of Mr Schorer and the other C.o.T. members justified by Austel's assessment of Telecom's conduct to that date.

Should the Arbitrator require further information, please do not hesitate to make contact for immediate response.

Yours faithfully,

Graham Schorer

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493-495 Queensberry Street, NORTH MELBOURNE VIC. 3051

PS Mr Schorer's comments regarding the contents contained in 31 January 1995 Telecom correspondence, in particular, the 16 pages titled "Documents to be included with the Claimants' Claim Documents" are:

1. Telecom when they want to does understand Mr Schorer's correspondence.

2. Telecom in the 16 pages identifying what they require understand the relevance contained in Mr Schorer's document titled "A History of Events and Complaints about Telephone Service Difficulties, Problems and Faults dated 15 June 1994.

3. Telecom by their requests contained in the 16 page document have acknowledged and identified the relevance for all the types and classes of documents and information sought under the relevant FOI applications.

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493 495 Queensberry Street, NORTH MELBOURNE VIC. 3051

FAXED 2/3/95

GOLDEN
Transport Agency

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 045

IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading TERMS AND CONDITIONS OF CONTRACT. It is in your interests to read them to avoid any later confusion.

To:	Att: Joy Geary Steve Black Paul Haar	Date: Our Ref:	2 March 1995 1584
Company:	Telecom Australia	Fax No:	634 4553, 632 3235, 204 5505
From:	Mr Graham Schorer	Total Pages (incl. Header)	

MAILED: YES ( ) NO ( )

RE: TELECOM AUSTRALIA NOT SUPPLYING ALL DOCUMENTS AND INFORMATION CORRECTLY SOUGHT BY GRAHAM SCHORER, ASSOCIATED ENTITIES, COMPANIES, ETC. IN THE FOI APPLICATION MADE AND RECEIVED BY TELECOM ON 24 NOVEMBER 1993.

In a number of recent conversations with Mr John Wynack, the Commonwealth Ombudsman's Director of Investigations, Mr Wynack has informed me to the effect of, that in his telephone conversations with Ms Geary, she has informed him that as far as she is aware, Telecom have correctly supplied all documents and information requested in the 24 November 1993 FOI application and she has not received any correspondence or advice to the contrary.

I have had numerous conversations with Mr Black and Mr Haar and have constantly quoted two classic examples where Telecom have omitted to discover and supply the raw data and summary reports Telecom compiled on diskette and the working papers of the Telecom technicians associated with the monitoring and testing programs, being:-

The monitoring and testing performed by Telecom in accordance with the Austel directive.

The monitoring and testing program performed by Telecom technicians under the directives of Bell Canada International that became the first of the Bell Canada reports produced in November 1993.

Yesterday, I informed Mr Haar that the Telecom supplied monitoring and testing raw data and summary reports computer discs, conducted under Bell Canada's directive, are related to additional Telecom monitoring and testing performed well after the 24 November 1993, therefore, those computer discs have been supplied under a different FOI application.

I have addressed this correspondence to all three of you people collectively and am separately sending you your own individual copy, as based upon the information I have received from Mr Wynack, I am of the strong opinion that Telecom have a communication problem.

I formally request that Telecom immediately supply me with this information as Telecom have been aware of their omission to supply since early January 1995.

Yours respectively,

Graham Schorer

cc Commonwealth Ombudsman

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[redacted] MELBOURNE VIC 3051

01 MAY '95 15:20 No.004 P.01
ID:61-3-2877001
GOLDEN
01 MAY 95 03:21PM

FAXED 16/3/95 3.07 pm FAXED 16/3/95 3.12 pm FAXED 16/3/95 3.19 pm

GOLDEN Transport Agency

A Division of G.M. (MELBOURNE) HOLDINGS PTY. LTD. A.C.N. 005 905 046

IMPORTANT: WE ARE NOT COMMON CARRIERS. The Carrier directs your attention to its trading **TERMS AND CONDITIONS OF CONTRACT.** It is in your interests to read them to avoid any later confusion.

To: Ms Joy Geary
Mr Steven Black
Mr Ted Benjamin
Mr Paul Haar

Date: 16 March, 1995

Our Ref: 1619.DOC

Company: Telecom

Fax No: 634 4553
632 3235
634 8441
204 5505

From: Mr Graham Schorer

Total Pages (Including Header):

Mailed: Yes ( ) No (X)

Dear Ms Geary, Mr Steven Black, Mr Ted Benjamin, Mr Paul Haar,

RE YOUR CORRESPONDENCE DATED 7 MARCH 1995, PARTIALLY FAXED 10 MARCH 1995, RECEIVED BY POST 15 MARCH 1995, IN RESPONSE TO MY CORRESPONDENCE DATED 2 MARCH 1995, REFERENCE NO 1584

Point 1
Telecom in their correspondence dated 7 March 1995, have been unreasonable in not substantiating which specific FOI application the computer disks were forwarded to me under Telecom's covering letter dated 6 February 1995.

Telecom are formally requested to identify which specific FOI application the computer disks were forwarded to me under.

Point 2
Telecom has wrongly stated and unreasonably denied in Telecom's correspondence that Telecom has supplied *"all records, correspondence and other documents or material (however stored) relating to Golden Messenger and its telephone service that Telecom made available to Austel or any other party"* as correctly sought by Graham Schorer, Associated Entities, Companies etc. FOI application lodged with Telecom on 24 November 1993.

Telecom has not supplied the documentation information of the raw data and summaries of Telecom monitoring and testing performed by Telecom under the directive of Bell Canada and the associated technicians and engineers working papers, which includes Telecom National Network Investigations personnel associated with the monitoring and testing, in particular Adelaide, Brisbane and Melbourne offices of National Network Investigations, which became the material Telecom supplied to Bell Canada International and which Bell Canada used to produce the Bell Canada November 1993 Report.

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493-495 Queensberry Street, North Melbourne Vic 3051

MAY 01 '95 03:21PM ID:61-3-2877001 01 MAY'95 15:20 No.004 P.02 GOLDEN

Telecom are also reminded that Mr Blount, the Chief Executive Officer of Telecom Australia, gave an undertaking to the Commonwealth Ombudsman that was to the effect that Telecom Australia would at all times comply with the FOI Act.

Telecom are again formally and reasonably requested to immediately supply this information correctly sought under a correct FOI application to be processed by Telecom in accordance with the FOI Act, which the Chairman of the Board of Telstra gave an undertaking to the Minister of Communications that Telecom Australia would at all times fully comply with the FOI Act.

Point 3
Telecom in their correspondence dated 7 March 1995, have finally identified that it was on 22 February 1995 that Telecom received from Austel information supplied to Austel by Telecom which Telecom are now asking all to believe by Telecom alleging they did not keep one single copy of same information.

Telecom have also identified in the same correspondence that they provided this information in the standard Telecom format that Telecom always compile their raw data into, to enable Telecom to do detailed analysis and produce summary reports, ie in Microsoft Dos format.

The reasonable request now being asked of Telecom is for Telecom to place in writing Telecom's written explanation as to why it is reasonable for Telecom to provide Austel with all computer data information, which naturally include Telecom summary report evaluations in accordance with the Austel directive, on diskettes in a Microsoft Dos format when Telecom have deemed that it is an unreasonable request of Graham Schorer and/or Graham Schorer, Associated Entities, Companies etc. to request Telecom to supply computer information in Microsoft Dos format, as contained in Telecom's official decision supposedly in accordance to the FOI Act, as stated in their correspondence to me dated 10 March 1995, that it is an unreasonable request made of Telecom for Telecom to supply like information containing other monitoring and testing performed by Telecom at other times in the same format.

Point 4
Telecom are officially requested to place in writing Telecom's detailed explanation of why it requires more than six weeks to reformat the information Telecom originally supplied to Austel in Microsoft Dos format, which Austel converted to Mackintosh format for their own use, which Austel returned to Telecom in Mackintosh format, which Telecom has taken more than six weeks without Telecom being able to reformat the same information from Mackintosh format back to Microsoft Dos format.

Point 5
On page two of Telecom's correspondence dated 7 March 1995, in the first paragraph Telecom make mention, without identifying, of other material I am seeking that Telecom are making an application to Austel to transfer my FOI request to Austel pursuant to Section 16 of the FOI Act.

Telecom are now formally requested to identify in detail what other material Telecom are referring to, that they are currently making application to Austel pursuant to Section 16 of the FOI Act to transfer that unidentified part of my FOI request, which Telecom have not identified which specific FOI request Telecom are making reference to.

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Voice: (03) 287 7099
Fax: (03) 287 7001
493-495 Queensberry Street, North Melbourne, Vic. 3051

01 MAY '95 15:21 No.004 P.03
ID:61-3-2872001
GOLDEN
MAY 01 '95 03:22PM

A prompt response to the above five points from Telecom would be beneficial to all parties and would be considered by myself that Telecom have now chosen to start acting reasonably to reasonable requests.

Yours respectively,

Graham Schorer

cc Commonwealth Ombudsman

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MAY 01 '95 03:22PM
01 MAY'95 15:22 No.004 P.04
ID:61-3-2872001
GOLDEN

FAXED 15/3/95

Telecom AUSTRALIA

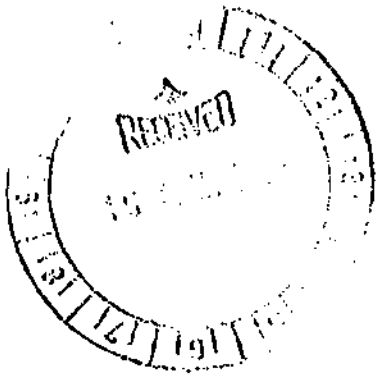
Customer Response Unit
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic. 3000

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

7 March 1995

Mr Graham Schorer
Golden Transport Agency
493-495 Queensbury Street
NORTH MELBOURNE VIC 3051



Dear Mr Schorer

Your letter of 2 March 1995 - Ref 1584

I refer to your letter 2 March 1995 in which you state that Telecom has omitted *"to discover and supply raw data and summary reports that Telecom compiled on diskette and the working papers of the Telecom technicians associated with the monitoring testing programs being:-*

- *The monitoring testing preformed by Telecom in accordance with the Austel directive;*
- *The monitoring and testing program performed by Telecom technicians under the directives of Bell Canada International that became the first of the Bell Canada Reports produced in November 1993".*

I note further that you claim to have informed Mr Haar that *"the Telecom supply of monitoring and testing raw data and summary reports computer disks conducted under Bell Canada's directive, are related to additional Telecom monitoring and testing performed well after 24 November 1993 and, therefore, those computer disks have been supplied"* under your second FOI application.

Telecom has provided to you all *"records, correspondence and other documents or material (however stored) relating to Golden Messenger and its telephone service that Telecom made available to Austel or any other party"* that it has been able to identify which are referrable to that request.

On 22 February 1995 a set of data disks that Telecom had sought from Austel in January 1995 were received. There are 15 disks each containing from 2 to 6 files. They were received from Austel in McIntosh format, not DOS. We are currently arranging for them to be converted to DOS and once the data has been checked for privacy implications, (some of the files do not relate specifically to you or to the other 6 signatories of COT's Shared Access Agreement), they will be forwarded to you.

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In relation to the other material you seek we are currently making an application to Austel to transfer your request to it pursuant to Section 16 of the Freedom Of Information Act (a copy of section 16 is enclosed for your perusal).

We would also refer you to the following documents that were provided to you in file numbers 60, 66, 67 and 68 of the "General Files" in December 1994:

R00911 to R00918,
R00939 to R00941
R03298 to R03299
R03287, R03867 to R03868
R03842 to R03847
R04253 to R04255
R04110 to R04111 and R03941

These documents comprise the correspondence that went with the disks to Austel.

Yours faithfully

Ted Benjamin
National Manager
Customer Response Unit

ENC.: COPY s.16 of the Act

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MAY 01 '95 03:23PM
01 MAY '95 15:23 No.004 P.06
ID:61-3-2877001
GOLDEN

AUSTRALIAN SENATE

LEGAL AND CONSTITUTIONAL

REFERENCES COMMITTEE
LEGISLATION COMMITTEE

17 March 1995

PARLIAMENT HOUSE
CANBERRA ACT 2600
Tel: (06) 277 3560
Fax: (06) 277 3794

Mr Graham Schorir
The Casualties of Telecom
PO Box 313
North Melbourne 3051

FAX: (03) 287 7001

Dear Mr Schorir

Telecommunications (Interception) Amendment Bill 1994

Thank you for agreeing to participate in the Committee's hearing on 21 March in Canberra.

I attach a draft copy of the program for the evening which sets out the time and venue for the hearing and a rough schedule for when you are to appear and with whom.

The Committee members who will be attending on the day will be Senators Cooney (Chair), Spindler (Deputy Chair), Ellison, Evans, Vanstone, McKiernan and O'Chee.

The hearings are conducted with minimum formality. Witnesses are usually grouped in blocs although we suggest that you be available at the commencement of the hearing. You may wish to give some consideration to making a brief statement, 10 - 15 minutes, otherwise we hope to conduct the hearing as a 'round table' and you will be given an opportunity to comment on the other witnesses and answer questions from the Committee.

We further enclose some information on giving evidence before Senate Committees

If any of these arrangements pose any difficulties please contact the writer on (06) 277 3563.

Yours faithfully

Stephen Stuart Bull
Senior Research Officer

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FERRIER HODGSON CORPORATE ADVISORY

STRICTLY PRIVATE & CONFIDENTIAL

Pia
14/4/95
we to discuss

BY COURIER

18 April 1995

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

Dear Sir,

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

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

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

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

Smith

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

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

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.

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.

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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.

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