The Hon Malcolm Turnbull,
Prime Minister of Australia

The Hon Barnaby Joyce
Deputy Prime Minister

Mr Dan Tehan, Federal Member for Wannon

Ms Sue Laver, Telstra General Counsel

Mr John P Mullen, Telstra Board Chair

Cape Bridgewater Holiday Camp
Service Verification Tests (Report)
Collision, Deception, Misleading and Deceptive Conduct

Exhibits 1-A to 10-B

Alan Smith
Seal Cove
1703 Bridgewater Road
Portland (Victoria) 3305

Identification of the cause would allow rectifying action to be taken and establishment of incidence would provide a basis for the calculation of any compensation which may be payable.

5.4 If the *original COT Cases'* stance (experiencing) were to be adopted, the first step would simply require Telecom personnel to experience that the claimed faults were indeed presenting problems to the business. The *original COT Cases* took the view that sufficient monitoring and testing of their services had taken place to allow Telecom to be satisfied that the problems were real. Also, given that in some cases the disputes extended for up to 7-8 years without Telecom identifying the cause of the faults, they were unwilling and financially unable to await Telecom's identification of the problem before compensation negotiations commenced. Moreover, they had a concern that if a settlement amount could not be agreed, the matter would be subjected to arbitration rather than a simple assessment of loss which they favoured. Their concern was that an arbitrator might find fault on the part of Telecom but might conclude that the fault was reasonable and therefore might award only a proportion of the losses they had incurred as a result of the service difficulties that they had experienced.

5.5 Telecom also wished to rectify as quickly as possible any faults affecting its service and to be satisfied that, at that point, all parties agreed on the fact that a normal service was being provided.

5.6 Given the extent of testing and monitoring which had taken place and Telecom's failure to identify the cause of the faults over a period of years, AUSTEL supported the *original COT Cases* in their stance.

The internal Telecom *loop*

5.7 Argument on that general theme continued. By letter dated 23 September 1992, Telecom's Group Managing Director, Commercial and Consumer, informed Mr Schorer as spokesperson for the *original COT Cases* -

> *"The key problem is that discussion on possible settlement cannot proceed until the reported faults are positively identified and the performance of your members' services is agreed to be normal. As I explained at our meeting, we cannot move to settlement discussions or arbitration while we are unable to identify faults which are affecting these services. At this point I have no evidence that any of the exchanges to which your members are attached are the cause of problems outside normal performance standards. Until we have an understanding of these continuing and possibly unique faults, we have no basis for negotiation or settlement.*

1-A

Facsimile

Telecom AUSTRALIA

To Ross Anderson

Company Telecom Portland

Facsimile 055 236 56

From Alan Barrow
P.T.T.O.1

Subject COT Case

K01489

Date 29 October 1993

Ross,

The following pages are copies of my fax machines journal and the protocol printouts of failed calls.

On the date of 28-OCT-93 we were trying to create a line failure condition that would re-produce the same error on the transmitting machine and no record on the receiving Mitsubishi machine (055 267 230). The reason for this was to show that a sending fax machine could get to the point of transmitting a page to the Mitsubishi fax machine without the Mitsubishi machine having any record of the call.

The COT case call in question was the 27-10-93 at 10:46 on the journal (it is suspected that the clock in this machine is approx 1Hour [illegible] minutes in error). The duration of the transmitting machine page of 2:21 minutes suggests that the call failed at the end of the page, possibly when requesting a reply from the receiving end. The presence of the ID in the journal of "055 267230" indicates the call was connected to the Mitsubishi fax machine in question. The receiving Machine has no matching entry in its journal for this call.

A call was placed to 055 267230 and connectivity terminated at the beginning of the page but this resulted in an error of NG in the journal along with the ID of the calling fax machine. The only way to reproduce the conditions experienced above was to interrupt the power on the receiving Mitsubishi fax machine. This would result in an entry in the transmitting machine and no entry whatsoever in the receiving Mitsubishi machine.

During testing the Mitsubishi fax machine, some alarming patterns of behaviour were noted, these affecting both transmission and reception. Even on calls that were not tampered with the fax machine displayed signs of locking up and behaving in a manner not in accordance with the relevant CCITT Group 3 fax rules. A half A4 page being transmitted from this machine resulted in a blank piece of paper 4cm long, the relevent protocol printout in sample #2 shows that the machine sent the correct protocol at the end of the page. Even if the page was sent upside down the time and date and company name should have still appeared on the top of the page, it wasn't. During a received call the machine failed to respond at the end of the page even though it had received the entire page (sample #3). The Mitsubishi fax machine remained in the locked up state for a further 2 minutes after the call had terminated, eventually advancing the page out of the machine.

Regards
Alan Barrow

1B

My Telstra account for my fax line, below, also covers the time span during which I sent these faxes.

Item STD Calls - Itemised *continued*

STD calls *continued*

	Date	Time	Place	Number	Rate	Min:Sec	$
	Telephone Service 03 6528 7285 *continued*						
247	21 Feb	06:15 pm	Melbourne	0396761853	Economy	1:17	0.39*
248	21 Feb	06:17 pm	Melbourne	0396761254	Economy	0:50	0.27*
245	21 Feb	06:39 pm	Colac	0352322449	Economy	1:08	0.30*
270	22 Feb	12:12 pm	Melbourne	0392877099	Day	8:40	2.65*
271	22 Feb	12:26 pm	Melbourne	0396266614	Day	2:34	0.86*
269	22 Feb	12:32 pm	Melbourne	0396266614	Day	0:07	0.19*
272	22 Feb	12:33 pm	Melbourne	0395266616	Day	9:30	2.78*
256	22 Feb	02:41 pm	Melbourne	0396761254	Afternoon	4:06	1.17*
271	22 Feb	03:40 pm	Warrnambool	0355616193	Afternoon	1:36	0.41*
273	22 Feb	04:31 pm	North Geelon	0352794444	Afternoon	0:55	0.37*
230	22 Feb	08:08 pm	Melbourne	0396761254	Economy	1:08	0.31*
194	22 Feb	09:12 pm	Warrnambool	0355614038	Economy	1:14	0.26*
207	24 Feb	07:42 pm	Melbourne	0396114336	Economy	17:22	2.55*
218	24 Feb	08:30 pm	Grovedale	0352414045	Economy	5:38	0.86*
284	24 Feb	08:34 pm	Melbourne	0395536030	Economy	34:06	3.00*
285	24 Feb	09:19 pm	Buderim	0754453198	Economy	14:03	2.10*
286	24 Feb	09:57 pm	Buderim	0754453198	Economy	1:09	0.31*
216	25 Feb	09:41 am	Melbourne	0392877099	Day	18:22	5.24*
217	25 Feb	10:00 am	Melbourne	0392877001	Day	2:13	0.75*
223	25 Feb	11:41 am	Grassmere	0356654227	Day	3:11	0.73*
224	25 Feb	11:58 am	Port Fairy	0355681057	Day	1:36	0.44*
199	25 Feb	12:26 pm	Melbourne	0392877099	Day	8:58	2.63*
263	25 Feb	01:07 pm	Melbourne	0392877099	Afternoon	1:05	0.42*
258	25 Feb	03:51 pm	Melbourne	0396761254	Afternoon	4:50	1.39*
259	25 Feb	03:56 pm	Melbourne	0396761853	Afternoon	1:02	0.41*
257	25 Feb	03:57 pm	Melbourne	0396761254	Afternoon	1:34	0.54*
211	25 Feb	06:46 pm	Melbourne	0392877001	Afternoon	0:52	0.37*
209	25 Feb	07:18 pm	Melbourne	0396761853	Economy	1:18	0.33*
195	26 Feb	08:39 am	Melbourne	0396761853	Day	0:57	0.41*
244	26 Feb	10:48 am	Melbourne	0396761254	Day	0:19	0.24*
243	• 26 Feb	10:55 am	Melbourne	0392877001	Day	0:47	0.37*
229	26 Feb	11:05 am	Melbourne	0392877099	Day	10:12	2.97*
228	• 26 Feb	11:20 am	Melbourne	0392877001	Day	1:57	0.69*
227	26 Feb	11:24 am	Canberra	0262711000	Day	0:10	0.20*
230	26 Feb	11:46 am	Melbourne	0392877099	Day	7:40	2.27*
197	26 Feb	01:04 pm	Melbourne	0392877099	Afternoon	7:35	2.13*
196	• 26 Feb	01:37 pm	Melbourne	0392877001	Afternoon	0:46	0.34*
277	26 Feb	03:38 pm	Melbourne	0392877099	Afternoon	0:35	0.30*
276	26 Feb	04:01 pm	Melbourne	0392877099	Afternoon	2:32	n 79*

1C

ID : GOLDEN Number L1 : 613 9287 7881 Date : 26-02-99 14:14

Number L2 :

Date/Time	Subscriber	Mode	Pages	Durat.	Status	Note
25-02 15:29	3264229	FINE	1	2'14"	Correct	L1
25-02 15:39	613996889444	NORMAL	1	0'27"	Correct	L1
25-02 15:45	+61 7 3257 1583	NORMAL	3	1'37"	Correct	L1
25-02 17:11	61 3 98287385	NORMAL	3	0'49"	Correct	L1
25-02 17:17	61 3 92138849	FINE	1	0'48"	Correct	L1
25-02 18:12	+61 7 3257 1583	NORMAL	3	1'44"	Correct	L1
25-02 18:46	855 257238	NORMAL	1	0'47"	Correct	L1
26-02 7:51	93281881	NORMAL	1	0'47"	Correct	L1
26-02 8:20	61 6 249 7829	NORMAL	1	0'21"	Correct	L1
26-02 9:01	61 3 96885838	NORMAL	2	0'48"	Correct	L1
26-02 10:21	61 3 96328875	NORMAL	11	5'24"	Correct	L1
26-02 10:38	61 3 9432 4716	NORMAL	1	0'37"	Correct	L1
26-02 10:48	61 3 96328875	NORMAL	12	5'41"	Correct	L1
26-02 10:53	855 257238	NORMAL	1	0'42"	Correct	L1
26-02 11:06	61 3 96328875	NORMAL	3	1'12"	Correct	L1
26-02 12:01		FINE	1	0'39"	Correct	L1
26-02 13:36	855 257238	NORMAL	1	0'41"	Correct	L1
26-02 14:12	+61325652554	NORMAL	3	0'54"	Correct	L1

211

1D

COT

Holmes, Jim

A00354

From: Pinel, Don
To: Hambleton, Dennis V
Cc: Holmes, Jim; Campbell, Ian
Subject: Tariff filing
Date: Monday, 20 December, 1993 1:02PM

Dennis,

I understand there is a new tariff filing to be lodged today with new performance parameters one of which commits to 95% call completion at the individual customer level.

Given my experience with customer disputes and teh recent BCI study, this is cause for concern. We will not meet this figure in many exchanges around Australia particularly in country areas.

I assume that it is too late to stop the filing (and we may not want to even if there is a downside) but this has teh potential to cause us major pain in the CoT area.

Don

2

Hunt & Hunt
LAWYERS

18 January 1994

Our Ref: GLH
Matter No:
Your Ref:

BY FAX: 287 7001

Mr Graham Schorer
PO Box 318
North Melbourne VIC 3051

Dear Sir

"COT CASES"

I confirm I have been appointed by the Telecommunications Industry Ombudsman (TIO) as assessor under the terms of the agreement entitled "Fast Track Settlement Proposal".

I will be assisted by a project team under the direction of John Rundell of Ferrier Hodgson. The project team will include Mr Jan Blaha of DMR Group Australia Pty Ltd.

I am aware the parties are anxious for early resolution. My first priority will be to establish the process and procedure for conducting the assessment. In this regard I note paragraph 2(e) of the "Fast Track Settlement Proposal" provides that:

> "The review will be primarily based on documents and written submissions. Each party will have access to the other party's submissions and have the opportunity to respond.
>
> The assessor may, however, call for oral presentations by either party. Such presentations will not include cross-examination, and would not be open to the public or third parties. Representations of the parties will be at the assessor's discretion."

I have been provided by the TIO with a document entitled "Telstra Corporation Limited - 'Fast Track' Proposed Rules of Arbitration". I have not yet formed a view as to the suitability of this proposal. I would be happy to receive an alternative submission on behalf of the COT Cases but it might be more practical to await my comments on the Telecom proposal. Naturally I am anxious to establish a procedure which is acceptable to all parties.

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.

3A

When I have formulated my views as to the appropriate procedure for conducting the assessment, I intend to meet formally with a representative of Telecom and a single representative of the four nominated COT Cases in order to finalise arrangements.

In the meantime I shall meet as soon as possible with Mr Rundell and Mr Blaha to discuss the roles of their respective organisations.

I consider it to be inappropriate for me to discuss the merits of the four actions with any involved party except in accordance with the agreed assessment procedure. I nevertheless wish to remain as accessible to the parties as possible. It may be necessary for a party to contact me personally from time to time for reasons unconnected with the merits of the actions. In such circumstances, I nevertheless reserve the right to provide any other party with a memorandum regarding the contact and the issues discussed.

At this stage I have no information at all regarding any of the claims. While the assessment procedure will of course provide for the formal presentation of material, it may be useful if the parties could informally provide me with any material which they jointly agree might be of assistance to me and the project team by way of background.

Yours sincerely

GORDON HUGHES

CC. S Black
J Rundell
J Blaha
W Smith
P Bartlett

3A

Hunt & Hunt
LAWYERS

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

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.

3B

24 October 1997

Telecommunications Industry Ombudsman

John Pinnock
Ombudsman

Ms Pauline Moore
Secretary
Senate Environment, Recreation, Communications
and the Arts Legislation Committee
Parliament House
CANBERRA 2600

CONFIDENTIAL

Dear Ms Moore

'Questions on Notice' by Senator Boswell

I refer to previous correspondence and discussions with the Committee's Research Officer, Ms Dunbar, concerning a series of questions put on notice by Senator Boswell and arising out of the Committee's proceedings of 26 September 1997.

I understand that the questions are treated as tabled questions and hence questions of the Committee.

The COT Arbitration Procedures contain provisions relating to the confidentiality of the proceedings, which bind the parties. Those provisions also bind the Arbitrators, the Resource Unit, the Special Counsel and the TIO in my role as Administrator.

I have also advised the Committee on a previous occasion that one of the COT claimants, Mrs Curran, has notified me in writing that she intends to join me as a party to Appeal proceedings she has commenced concerning the Arbitrator's Award.

Accordingly, I ask that the answers given below to the questions on notice be treated as confidential by the Committee and not be published.

1. In November 1995 I received correspondence from a COT member expressing concerns about the Technical Resource Unit. The COT member:

   - expressed concerns that the purchase by Pacific Star of Lane Telecommunications compromised the independence of the Technical Resource Unit;
   - stated that there were inconsistencies and biases evident in the Lane Telecommunications/DMR Technical Evaluation Report;
   - requested the Telecommunications Industry Ombudsman to dismiss the Resource Unit.

CONFIDENTIAL

4A

2. On 6 November 1995 I was advised by Mr Steve Black of Telstra that Lane Telecommunications and Pacific Star had already worked together on several Pacific Star contracts in Queensland and Western Australia and for the Federal Government.

3. I did investigate the commercial relationship between Telstra and Pacific Star. Based on the material provided to me by Telstra and Lane Telecommunications, it was established that:

- There were three Pacific Star separate operating entities. Pacific Star Mobile, Pacific Star Communications and Pacific Star Data Services.
- Pacific Star Mobile was a significant reseller of Telstra MobileNet products, but did not provide products or services to Telstra.
- Pacific Star Communications was in competition with Telstra.
- Pacific Star Data Services ('Pacific Star') was the entity which acquired Lane Telecommunications. Pacific Star was independent of Telstra. It facilitated services provided by carriers and vendors on behalf of clients. I was advised that the core requirement of this business was to be independent so that selection was based on the optimum provision of the required facilities, performance and cost.

Further than this, I do not have details of different commercial arrangements between Telstra and Pacific Star.

4. When providing a response to a COT member on 6 December 1995 I had requested information from Lane Telecommunications and Telstra as to whether any conflict of interest arose out of the purchase by Pacific Star of Lane Telecommunications. To the best of my knowledge and based on the information I had received at the time, I concluded there was no conflict of interest.

5. I do not have and have never had available any details concerning the Arbitrator and/or associated companies off-shore work for Telstra and/or associates and I am unaware of any such information.

6. Apart from the evidence I gave to the Committee on 26 September 1997 concerning the purchase of Lane Telecommunications by Ericsson Australia, I have recently been advised by one of the Arbitrators that he will be transferring his legal practice to Blake, Dawson, Waldron, Solicitors. I am aware that that firm is currently acting for Telstra in relation to a number of matters. Arrangements are being made to discuss with Blake, Dawson, Waldron any possible conflicts of interest.

7. I refer to my letter to the Secretary of the Committee dated 29 September 1997. I referred this question to the TIO Council for consideration at its meeting on 16 October 1997 and I advise that the Chairman of the Council will be writing to the Chairman of the Committee on this matter.

8. It is my recollection that I have never stated in person or by telephone to individual COT members and/or their representatives that the arbitration has failed. My views on the arbitration procedure are contained in my written submission made to the Committee on 26 September 1997.

4.17

9. Yes, from time to time I received complaints from foundation COT members, concerning a range of matters, including alleged non-compliance with the rules of the Fast Track Arbitration Procedures by Telstra and/or the Arbitrator and/or the Technical and Accounting Resource Unit. Identifying individual instances of complaints and detailing the response taken will require a huge amount of administrative resources in searching TIO files. Please advise me whether the Committee requires the undertaking of this work and its relevance to the Committee's inquiry.

10. Yes, I have refused to provide COT members with a copy of Telstra's Preferred Rules of Arbitration. A copy of this document was not provided because it was of historical interest only, and the COT members did not advance any arguments as to why it was relevant to their arbitration. A copy is provided for the information of the committee.

Yours sincerely

JOHN PINNOCK
CHAIRPERSON

4A

08 December 1997

RE COT CASES

After spending 2 and a quarter hours plus travelling with Pinnock and Bartlett and Schorer at the TIO's office on Friday 5th Dec., on today's date spending in two phone calls over half hour with Schorer as to next step. He is to write as quickly as he can a draft proposing mediation and opening up the possibility that after mediation the mediator could then be if acceptable to both parties given that he would have a background of knowledge that he be made the assessor. I am to settle the letter when written.

Pinnock will not make available the first draft of the fast track arbitration procedure sent in early 1994 by the then TIO to Bartlett of Minter Ellison.

Telstra has refused to make the first draft available under FOI. Schorer says Pinnock has a copy and made it available to the Senate on a confidential basis.

Schorer is convinced that it will show a complete program altering the intention of the fast track settlement proposal and commercial assessment which was the subject of the November 1993 arrangement.

I have recommended to Schorer that he settle for almost anything that would be of use to get on with his business. He says he can quantify his call losses without any doubt (I would need to be shown this to believe it. What he cannot determine is the cause of the call losses being the fault of Telstra and rate. This is always spoken about as being showing evidence of the cause or link between Telstra and the losses. It is not a question of quantifying causes or links it is a question of identifying in simple language that the calls were lost because Telstra did not provide a service that enabled the calls to be received when made. Separately he also has consequential losses arising from the loss of business. I have suggested that we might take action in the Supreme Court or otherwise to get the FOI material which has been refused of the first draft of the fast track arbitration procedure that emerged at the beginning of 1994.

It should be noted that there is something in incongruous and unfair in Telstra being the cause directly or indirectly of Schorer's losses being able to set up "its prepared rules of arbitration" to dispose of the fast track settlement procedures which had been agreed to under Ausels arrangements. In other words the victim Schorer is at a disadvantage immediately. He does not have an equal footing with Telstra in the setting up of the arbitration process whereas up to a point he did have in the fast tract settlement procedure.

4B

Australian Government

Department of Broadband, Communications and the Digital Economy

our reference: FOI

Mr Alan Smith
Seal Cove Guest House
1703 Bridgewater Road
Cape Bridgewater
PORTLAND VIC 3305

Dear Mr Smith,

Freedom of Information Request No. 01-0910

I refer to your letter of 29 June 2009 seeking access under the *Freedom of Information Act 1982* (the FOI Act), to 'copies of all the documents Mr Pinnock provided to Ms Pauline Moore, Secretary to the Senate Environment, Recreation, Communications and the Arts Legislation Committee, between October and December 1997'.

Departmental staff have conducted a thorough search of departmental records, both electronic and hard copy, for documents falling within the scope of your request and have found no relevant documents. As a result, the decision-maker has refused your request under section 24A of the FOI Act. Please see the attached Statement of Reasons detailing the decision-maker's findings.

This decision is subject to review under section 54 of the FOI Act. A statement of your rights of review is attached.

Yours sincerely

Andrea Hookway
FOI Officer
Legal Services Group
Phone: 02 6271 1741
Fax: 02 6271 1012
Email: foi@dbcde.gov.au

31 July 2009

4C

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".

SA

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.

SA

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.

5A

Sections 4 and 5 are an impact assessment and summary. We have ascertained that there were times when the service provided by Telecom to Mr Smith, quite aside from problems with CPE, fell below a reasonable level. These times ranged in duration from years in some cases, to 18 months in one case, to an estimated 70 days in one case, to shorter times in other cases. These durations of poor service were, in our judgement, sufficiently severe to render Mr Smith's service from Telecom unreliable and deficient.

Cape Bridgewater Documentation

The "Fast Track" arbitration proceedings are "on documents and written submissions". More than 4,000 pages of documentation have been presented by both parties and examined by us. We have also visited the site. Not all of the documentation has real bearing on the question of whether or not there were faults with the service provided by Telecom. We reviewed but did not use Mr Smith's diaries (Telecom's examination of Mr Smith's diaries arrived in the week of 17 April 1995). Like Telecom, we separate the problems caused by Mr Smith's CPE from those in Telecom's service and concentrate only on the latter. A comprehensive log of Mr Smith's complaints does not appear to exist.

The Technical Report focuses only on the real faults which can now be determined with a sufficient degree of definiteness. We are not saying anything about other faults which may or may not have occurred but are not adequately documented. And unless pertinent documents have been withheld, it is our view that it will not be feasible for anyone to determine with certainty what other faults there might or might not have been.

One issue in the Cape Bridgewater case remains open, and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about billing problems.

Otherwise, the Technical Report on Cape Bridgewater is complete.

A key document is Telecom's Statutory Declaration of 12 December 1994. Without taking a position in regard to other parts of the document, we question three points raised in Telecom's Service History Statutory Declaration of 12 December 1994 *[Ref B004]*.

"Bogus" Complaints

First, Telecom states that Mr Smith made "bogus" complaints [B004 p74, p78, Appendix 4, p10]. What they mean is his calls in June 1993 from Linton to test Telecom's fault recording. As others have indicated (see Coopers and Lybrand Review of Telecom Australia's Difficult Network Fault Policies and Procedures, November 1993, p6) "Telecom did not have established, national, documented complaint handling procedures [...] up to November 1992," and "documented complaint handling procedures were not fully implemented between November 1992 and October 1993." Furthermore, [p7] "fault handling procedures were deficient." Smith's June 1993 calls from Linton were, as he has stated, to test Telecom's fault reporting procedures, because people who had been unable to reach him told him that Telecom did not appear to be doing anything when they reported problems. We find Smith's tests in this instance to be unlikely to effect any useful results, but the term "bogus" does not apply.

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Hunt & Hunt
LAWYERS

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.

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.

6

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,
Telecom's comments
as discussed yesterday afternoon
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.

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Clause 9

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

Clause 10

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

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

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

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

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

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Clauses 16 and 17

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

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

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

Clause 24

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

Yours sincerely

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

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F.O.I. document AO3254 shows an internal TELSTRA letter from Don Pinel to Jim Holmes written on 28 September 1993. It indicates that a few weeks before TELSTRA agreed to a fast track settlement proposal they believed that *"our best option is still to force these cases down a legal, structured path."*

Holmes, Jim

From: Pinel, Don
To: Holmes, Jim
Cc: Parker, Harvey
Subject: Letter to Schorer
Date: Tuesday, 28 September, 1993 7:39PM

Jim,

Your proposed reply to Schorer is good although I assume it is more legalistic than Ian would like. I do not know of anyway to soften it without raising expectations.

One point not covered that you may like to consider is the question of "duress". This has been raised in a number of places and requires rebuttal.

Similarly the question of Telecom's regulatory and contractual protections from suit dont get a mention (it may not be necessary to raise these at this stage as they are certain to be provocative provided we dont allow expectations to fromthat we will relinquish such protection)

I also think that your section 2 sends conflicting messages. In one para you correctly identify the constraints on discussing a particular case with other than the specific customer . You do imply, however, that teh customers could give schorer some form of authority to act on their behalf. I am not sure that these two messages are consistent. Would a power of attorney, for example, allow disclosure to Schorer of settlemetn details covered by our form of release? I dont think so.

Perhaps I am getting too legalistic and defensive but we cant afford to let anything get away. However, our best option is still to force these cases down a legal, structured path.

Don

AO3254

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Campbell, Ian

From: Campbell, Iain
To: Campbell, Ian
Subject: FW: Gordon Hughes
Date: Thursday, 3 March 1994 8:16AM

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: Park
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

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MEETING TO DISCUSS FAST TRACK RULES OF ARBITRATION

Date: 22 March 1994
Attendees: [redacted], David Krasnostein, Simon Chalmers, Peter Barlett, Gordon Hughes, Warwick Smith, Jenny Heenright?

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

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Dr Hughes as to how he would make a determination in relation to extent 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.

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MINTER ELLISON MORRIS FLETCHER

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OUR REFERENCE
PLB

YOUR REFERENCE

22 March 1994

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

By Facsimile

Dear Graham

Fast Track Settlement Proposal

Attached are the comments on the Telecom draft, I delivered to Gordon Hughes on Friday, 18 March.

Clearly a number of the amendments suggested by Telecom are unacceptable. If Gordon can receive your comments on the Telecom draft, he can form a view as to what, in his view, is fair and reasonable.

Regards

Peter

Peter L Bartlett
enclosure

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PERTH ASSOCIATED OFFICES: MURPHY MCLEOD [illegible]

OTHERWAY ASSOCIATES OFFICES:
[illegible]

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Clause 1

This is a minor drafting style point.

Recommendation: agree.

Clause 2

Telecom seeks to make it clear that the appeal provisions of the Commercial Arbitration Act apply. The amendment should be read in conjunction with clause 12.

Recommendation: agree.

Clause 5

Telecom has deleted a sentence which in reality did not add anything to the clause.

Recommendation: agree.

Clause 6

Should the Arbitrator form the opinion that he requires an oral hearing, Telecom seeks to require him to consult with the parties. The parties would not have a right to overrule the Arbitrator's view that there was a need for an oral hearing. They would only have the right to be consulted. Clearly the Arbitrator would carefully consider any views they expressed.

Recommendation: agree.

Telecom has added a sentence providing that if the Arbitrator allows one party to have legal representation, the other party may also have legal representation.

Recommendation: agree.

Telecom has also deleted "oral submissions" and inserted "oral evidence".

Recommendation: agree.

Clause 7.1

Replace "submission" with "submissions".

Recommendation: agree.

Clause 7.2.2

Clause (2)(c) of the Fast Track Settlement Proposal ('FTSP') provides that "the review will focus on losses alleged to have been incurred by the COT Cases due to faults or problems in his or her telephone service.

The Minter Ellison arbitration procedure refers to the statement of claim stating "the service difficulties problems and faults with the telecommunications service which are alleged to have occurred". While the Archibald opinion does not comment on this clause, the Telecom procedure seeks to amend clause 7.2.2 to refer to "the service difficulties problems and faults in the provision to the claimant of telecommunications services...".

Recommendation: agree. This brings the clause into line with schedule A clause 1.

Clause 7.4

Telecom has deleted "statement of".

Recommendation: agree.

Clause 7.5

Telecom seeks to confirm the right of the parties to obtain documents pursuant to the powers set out in the Commercial Arbitration Act. That has always been the intention.

Recommendation: agree.

Telecom also seeks to prevent the Arbitrator from requiring Telecom to produce documents "which are required to be kept confidential pursuant to any statute or subordinate legislation.

The Archibald opinion says that this addition is justified as Telecom is subject to restrictions on the disclosure of information under the *Telecommunications Act 1991 (Cth)* and the *Telecommunications (Interception) Act 1979 (Cth)*.

The claimants are highly critical of Telecom in connection with the production of documents under FOI. The foreshadowed amendment is wide enough to cover the FOI Act. I query what other Acts and subordinate legislation it could cover.

The material I can find that would be covered by the foreshadowed amendment would be documents related to interception. Insofar as such documents are relevant, the claimants should be entitled to see them.

Clause 8.2

This is a typographical error in the Telecom Procedure. Delete "of" from the second line, and insert "or".

Clause 8.5

Telecom seeks to obtain a confidentiality agreement from the Resource Unit prior to it receiving any documentation.

While I do not necessarily agree with the Archibald opinion, that the provision is consistent with clause 2(1) of the FTSP (I feel that it goes far further), the addition is justifiable.

Recommendation: agree.

Clause 10.2.1

Telecom has added that the Arbitrator will also take into account "any reply and supporting documents ...".

Recommendation: agree.

Clause 10.2.2

This is potentially the most difficult clause. Clause 2(f) of the FTSP provides:

> "that in conducting the review the assessor will make a finding on reasonable grounds as to the causal link between each of the COT Cases claims and alleged faults or problems in his or her telephone service and, as appropriate, may make reasonable inferences based upon such material as is presented by each of the COT Cases and by Telecom, ie unless the assessor is able to conclude that Telecom caused the loss claimed, there will exist no basis for a claim against Telecom."

Clause 10.2.2 of the Minter Ellison arbitration procedure provides that:

> "... the Arbitrator:
>
> will make a finding on reasonable grounds as to the causal link between the claimants' claims and the alleged faults or problems with the relevant telephone service and, as appropriate, may make reasonable inferences based upon such evidence, as is presented by the parties together with any information obtained by the Resource Unit or any advice given to him by the Resource Unit."

Clause 10.2.2 of the Telecom draft provides that the Arbitrator:

"will make a finding as to the causal link between the alleged service difficulties, problems and faults in the provision to the claimant of telecommunication services and the losses claimed and for this purpose may make reasonable inferences based upon such evidence as is presented by the parties and any information or advice provided by the Resource Unit."

Telecom has deleted "on reasonable grounds" from the first line. Those words come from clause 2(f):

Recommendation: "on reasonable grounds" should appear in the first line.

I note that the Archibald opinion does not refer to Telecom's redrafted 10.2.2 except insofar as it refers to the proposed 10.2.3.

The Minter Ellison arbitration procedure (clause 10.2.2) closely follows clause 2(f) of the PTSP. While Telecom's procedure refers to "between the alleged service difficulties, problems and faults in the provision to the claimant of telecommunication services and the losses claimed and for this purpose ...", the Minter Ellison procedure refers to "between the claimants claims and the alleged faults or problems with the relevant telephone service and, as appropriate ...".

In reality, I do not see a significant difference.

Recommendation: As the Minter Ellison draft follows clause 2(f), I would not amend it. It is necessary however to consider schedule A. For discussion.

Clause 10.2.3

Telecom has recommended the following additional clause:

"the Arbitrator:

will not make a finding that Telecom is liable for a loss claimed by the claimant unless the Arbitrator is satisfied that Telecom Australia has caused the loss claimed."

The balance of clause 2(f) of the PTSP provides that "unless the assessor is able to conclude that Telecom caused the loss claimed, there will exist *no basis* for a claim against Telecom."

The Telecom additional clause is consistent with clause 2(f).

The reason why a clause to this effect was not included was the view expressed by the chairman of Austel, Mr R Davey, that there was not a need for a strict causal link.

I am not sure whether Telecom is justified in being so sensitive over the need for a causal link, in the light of clause 10.1.1.3. Telecom has not recommended any amendment to that clause.

Clause 10.2.2 already provides for the need for a "causal link".

Recommendation: for discussion.

Clause 10.3

Telecom has recommended a new clause 10.3. "The Arbitrator's award shall be compensatory and not punitive.".

I would have thought that the procedure already makes it clear that the award shall be compensatory only.

Recommendation: for discussion.

Clause 12

Telecom seeks to limit the claimants' costs of any appeal lodged by Telecom, to party/party costs.

Recommendation: agree.

The amendment proposed by Telecom does not establish how the party/party costs would be assessed, if a dispute arises.

Clauses 16, 17 and 18

Telecom has deleted clauses 16 and 17 and amended clauses 18 and 19 and added two new clauses. The Archibald opinion criticised clauses 16, 17 and 18. Those clauses were earlier drafted by Telecom and were added purely at the request of Telecom.

It is important to note that the only reference to confidentiality in the FTSP provides that "the amounts paid by Telecom under this agreement will be maintained confidential by the parties" (clause 21).

Clauses 16, 17 and 18 earlier suggested by Telecom, went much further than contemplated by the FTSP. However, the claimants agreed to the additional confidentiality clauses.

It is important to note that Archibald's opinion notes (paragraph 32) that "loss of the amount of an award for breach of a confidentiality obligation is not common in arbitration procedures. However, we have assumed for the purposes of this advice that the COT customers have accepted the principle that at least in some circumstances such a disclosure ought to have that consequence."

This may raise an obligation on us to advise the claimants to seek their own advice. Clearly they will do this anyway.

It also raises the question whether you can say the clause is reasonable.

The Archibald opinion says in the same paragraph that confidentiality was critical to Telecom's decision to participate in the arbitration. If that is so, it certainly is not made clear in the FTSP (see clause 2(1)).

Recommendation: In my view the arbitration should be conducted inhouse, rather than in the media. As such I support the

intention sought by Telecom. We need to be satisfied however, that Telecom has now come up with the correct set of words. For discussion.

Clause 22

Telecom has deleted "subject to clause 21".

Recommendation: agree.

Clause 23

Notices

Recommendation: agree.

Telecom has deleted the part of clause 23 related to deemed service.

Recommendation: for discussion.

Clause 24 of the Minter Ellison procedure and Clauses 24, 25 and 26 of the Telecom draft

Liability

Recommendation: for discussion.

Clause 25 of Minter Ellison procedure and Clause 27 of the Telecom draft

Return of documents

Recommendation: agree.

Clause 28 of the Telecom draft

Conflict of rules.

Recommendation: agree.

SCHEDULE A

Clauses 3 and 4

Recommendation: agree.

For Graeme Scherer

Clauses 1 and 2

Recommendation: agree. The amendments are consistent with clause 2(d) of the PISP.

d/pisa//01

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URGENT 2nd attempt at Sending! 270.

123

Telecommunications Industry Ombudsman ACN 057 634 787
Ground Floor, 321 Exhibition Street, Melbourne, Victoria, 3000
Telephone: 61 3 277 8777 Facsimile: 61 3 277 8797

Telecommunications Industry Ombudsman

URGENT

Facsimile Cover Sheet

PRIVATE & CONFIDENTIAL

TO: Norm O'Doherty

Company: AUSTEL

Fax: 820 3021

FROM: Pia Di Mattina

Company: TIO

Fax:

Date: 22.6.94

Pages: 12 (including cover sheet)

Comments:

Norm,

Copy of fax received from Telecom, as discussed, and for your information (and comment, ASAP!)

Regards,

Pia

8C

[illegible] 2628 272 8 19

Telecom AUSTRALIA

Commercial & Consumer
[illegible] Floor
[illegible] Street
Melbourne Vic 3000
Australia

Telephone [illegible]
Facsimile [illegible]

124

22 June 1994

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

Dear Peter

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

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

1. **Rule 9.3**

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

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

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

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

3. **Timetable**

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

4. **Pool of Arbitrators**

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

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95/0600-12

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

Yours sincerely

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

cc: Warwick Smith, TIO

8c

DRAFT - 95/0600-02

126

[Letter to Relevant Claimants re Special Rules of Arbitration]

Dear X,

Special Arbitration Procedure

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

The procedure has been designed to meet the following objectives:

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

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

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

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

1. **Timetable for arbitration**

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

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

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2. **Documents Telecom will provide you without charge**

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

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

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

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

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

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

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

Yours sincerely

10. Notices

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

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

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

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

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

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

12. Return of documents

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

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Seal Cove Guest House
1703 Bridgewater Road
Portland 3305
Phone 03 55 267 170

29th December 2008

Mr Peter Bartlett ✓
Minter Ellison
Rialto Tower, Collins St
Melbourne 3000

Dr Gordon Hughes
Blake Waldron Dawson
Level 39, 101 Collins Street
Melbourne 3000

Re Graham Schorer and Alan Smith, COT

Dear Mr Bartlett and Dr Hughes,

On 17th September 2008, Mr Chris Chapman, Chairman of ACMA, was provided with proof that our FTAP Arbitration agreement was altered after it had been distributed as the final version, to the three remaining foundation COT claimants, between 13th and 19th April 1994. We were not advised of the intended or the actual changes before we signed the agreement on 21st April 1994. The changes made included the removal of clauses 25 and 26 and alterations to clause 24, which exonerated Minter Ellison (Special Counsel), Ferrier Hodgson Corporate Advisory and DMR Inc, from legal suit.

On the day that we actually signed our agreement we were told that Steve Black would not be signing on behalf Telstra at the same time because he was unable to be at Minter Ellison for 'business reasons' and that you, Mr Bartlett, would courier the document to Telstra for later signature. It has since been shown that it took a further six days for the document to be delivered to us with Mr Black's signature added and we are both prepared to sign a sworn statement to this effect. Evidence only received earlier this year suggests that the signature on (page 12) of the agreement could well have been altered during the six days after we had signed it.

We would now like clarification of exactly when the agreement was altered and whether that was before or after we signed the agreement.

A copy of the letter dated 17th September 2008, to Mr Chapman (see paragraph 1, above), and 29th December 2008, to Mr Chris Chapman, ACMA Chairman and Ms Deirdre O'Donnell, Telecommunication Industry Ombudsman, is attached. It is considered these letters will assist you both in understanding the legal ramifications to what has transpired.

Thank you

Graham Schorer

Alan Smith

Copies to
Ms Deirdre O'Donnell, TIO, P.O Box 276 Collins Street West, Melbourne 8007
Mr Chris Chapman, Chairman of ACMA, P.O .Box Q-500 Queen Victoria Building NSW 1230

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Seal Cove Guest House
1703 Bridgewater Road
Portland 3305
Phone/Fax: 03 55 267 170

29th December 2008

Ms Deirdre O'Donnell
Telecommunications Industry Ombudsman
P O Box 276
Collins Street West
Melbourne 3000

Re Graham Schorer & Alan Smith, COT

Dear Ms O'Donnell,

Previously we both had a claim administered by the TIO in relation to the Fast Track Arbitration Procedure involving Telstra. We are again raising that matter with the TIO to ensure that you are aware of the information detailed in the following letters:

1. Letter dated 17th September 2008, to Mr Chris Chapman, Chairman of ACMA;
2. Letter dated 29th December 2008, to Mr Chris Chapman, Chairman of ACMA;
3. Letter dated 29th December 2008, to Dr Gordon Hughes and Peter Bartlett.

The documents attached to the letter dated 17th to Mr Chapman demonstrates how both Telstra's Steve Black and the then-TIO, Warwick Smith, were both totally opposed to the removal from the arbitration agreement, of the legal liability clauses 24, 25 and 26, that were later altered and/or removed without our prior knowledge consultation and/or agreement. In relation to these legal liability clauses, we are therefore now asking you to confirm:

a) Was the TIO ever informed prior to 21st April 1994, that clause 24 would be altered and the original clauses 25 and 26 were to be removed, so that the TIO's Special Counsel and the arbitrator's Resource Unit would be exonerated from legal suit?

b) Was the TIO ever warned that the FTAP agreement (page 12) could have been altered, without our knowledge or consent, during the six-day period after we had signed the agreement, but before we received it back with a Telstra representative's signature?

As the claimants in this process, we are entitled to establish the truth regarding these matters.

Thank you

Graham Schorer

Alan Smith

Copies
Mr Peter Bartlett and Dr Gordon Hughes (Melbourne)
Mr Chris Chapman, Chairman of ACMA, P.O .Box Q-500 Queen Victoria Building NSW 1230

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Seal Cove Guest House
1703 Bridgewater Road
Portland 3305
Phone/Fax: 03 55 267 170

29th December 2008

Mr Chris Chapman
Chairman
Australian Communications & Media Authority
P O Box Q-500
Queen Victoria Building
NSW 1230

Re Graham Schorer and Alan Smith, COT

Dear Mr Chapman,

The attached letter dated 29th December 2008, to Dr Gordon Hughes and Mr Peter Bartlett, is forwarded further to the letters to you on 17th and 30th September 2008. These letters all relate to the undisclosed alterations that were made to the Casualties of Telstra (COT) Fast Track Arbitration Agreement, to the detriment of Smith and Schoer claimants without notification and their knowledge or consent. When we signed that Arbitration Agreement on 21st April 1994, we were of the understanding that we were signing the document we had previously read and taken legal advice on, and was the same mirrored agreement that Maureen Gillian (the fourth original COT claimant) had already signed. We now know (and have already proved to you) that we were wrong.

We are now in possession of copies of Telstra documents which confirm that Telstra's Steve Black was interstate on the 21st April 1994, which explains his absence as to why he was not available to present himself to Minter Ellison's premises for the joint signing and witnessing of all signatories on the agreement. Steve Black's signature is recorded as having been added to the agreement on that day without being witnessed. As claimants in this matter we have the right to formally request both Mr Bartlett and Dr Hughes to explain how these undisclosed and unauthorised alterations came into existence.

Our arbitration was facilitated by AUSTEL on behalf of the Federal Government, although this is the third time we have passed this information on to you, we have not yet received any response to our questions. Please now explain what steps if any, you have taken in regards to these illegal alterations to a legal document.

Thank you,

Graham Schorer

Alan Smith

Copies to
Ms Deirdre O'Donnell, TIO, P.O Box 276 Collins Street West, Melbourne 8007
Mr Peter Bartlett and Dr Gordon Hughes (Melbourne)

8D

Hunt & Hunt
LAWYERS

31 March 1994

Our Ref: GLH
Matter No:
Your Ref:

BY FACSIMILE: 287 7001

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

Dear Graham

COT MATTERS

I am enclosing the latest draft of the Fast Track Arbitration Procedure which has been forwarded to me today by Messrs Minter Ellison Morris Fletcher.

I have not yet had an opportunity to closely peruse the document. I shall do so over the Easter break with a view to forming an opinion as to whether I consider it to be in a form that I would recommend the parties sign.

I understand all claimants will be in Melbourne on Friday, 8th April 1994. I propose that the parties meet at the offices of Messrs Minter Ellison Morris Fletcher on that day with a view to finalising negotiations.

Please let me know if you will be available to attend the meeting on 8th April at a time to be advised.

Yours sincerely

GORDON HUGHES

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 552, Melbourne.

not strictly liable or has no obligation to pay, due to a statutory immunity covering that period or periods, Telecom Australia should, having regard to all the circumstances relevant to the Claimant's claim, pay an amount in respect of such a period or periods and, if so, what amount.

10.1.2 set off against any amounts found by the Arbitrator to be otherwise owing by Telecom Australia to the Claimants any amounts paid to, rebates granted to, or services carried out for the Claimant by Telecom Australia to date.

10.2 In relation to the Claimant's loss, the Arbitrator:

10.2.1 will take into account the Claim and Defence Documents, any Reply and supporting documents, written evidence and submissions made by the parties and, if applicable, any sworn or affirmed oral evidence presented to the Arbitrator by the parties to the arbitration together with any information obtained by the Resource Unit or any advice given to him by the Resource Unit.

10.2.2 will make a finding on reasonable grounds as to the causal link between the alleged service difficulties, problems and faults in the provision to the Claimant of telecommunication services and the losses claimed and, as appropriate, may make reasonable inferences based upon such evidence as is presented by the parties together with any information obtained by

Mr Paul Rumble
National Manager-Customer Response Unit
Telecom Australia
Level 8
242 Exhibition Street
Melbourne Victoria 3000

by being delivered by hand or sent by prepaid mail.

Liability of Administrator and Arbitrator

24. Neither the Administrator nor the Arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules save that the Arbitrator (but not the Administrator) shall be liable for any conscious or deliberate wrongdoing on the Arbitrator's own part.

25. The liability of Ferrier Hodgson and the partners and employees of Ferrier Hodgson for any act or omission in connection with any arbitration conducted under these rules (other than in relation to a breach of their confidentiality obligations) shall be limited to $250,000 jointly.

26. The liability of DMR Group Australia Pty Ltd and the directors and employees of DMR Group Australia Pty Ltd for any act or omission in connection with any arbitration conducted under these rules (other than in relation to a breach of their confidentiality obligations) shall be limited to $250,000 jointly.

Return of Documents after Arbitration

27. Within 6 weeks of publication of the Arbitrator's award, all documents received under this Procedure by the parties the Administrator, the Resource Unit and/or the Arbitrator and all copies thereof, shall be returned to the party who lodged such documents.

Internal Memo

Telecom

To MR DAVID KRASNOSTEIN
GENERAL COUNSEL

From STEVE BLACK
GROUP GENERAL MANAGER

Subject

Date 7 April 1994

File

Attention

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 Peter Dawley, TIO + Hughes would be appropriate? ie Rules now agreed by Telecom, we understand they satisfy [illegible] Hughes, TIO [illegible]

R11909

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TELECOMMUNICATIONS INDUSTRY OMBUDSMAN

STANDARD ARBITRATION RULES

OVERVIEW OF ARBITRATION

Rule 1

How Does Arbitration work?

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

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

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

The Arbitration is designed to:

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

Rule 2

Who controls the Arbitration?

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

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

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

Rule 31

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

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

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

Rule 32

Return of documents

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

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

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

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