CAV
CHRONOLOGY
LGE

Exhibit 48-A to 91

COT Cases.

Holmes, Jim

From:	Vonwiller, Chris
To:	Campbell, Ian; Parker, Harvey; Holmes, Jim
Cc:	Stanton, John; Blount, Frank; Rizzo, Paul
Subject:	Warwick Smith - COT Cases
Date:	Wednesday, 10 November, 1993 6:58PM

CONFIDENTIAL

Gentlemen:

Warwick Smith contacted me in confidence to brief me on discussions he has had in the last two days with a senior member of the parliamentary National Party in relation to Senator Boswell's call for a Senate Inquiry into COT Cases.

Advice from Warwick is:

> Boswell has not yet taken the trouble to raise the COT Cases issue in the Party Room.

> Any proposal to call for a Senate Inquiry would require, firstly, endorsement in the Party Room and, secondly, approval by the Shadow Cabinet.

> This would appear highly unlikely at this stage, given Boswell's apparent lack of interest of raising it within the Party Room.

> The intermediary will raise the matter with Boswell, and suggest that Boswell discuss the issue with Warwick Smith. Warwick sees no merit in a Senate Inquiry.

He has undertaken to keep me informed, and confirmed his view that Senator Alston will not be pressing a Senate Inquiry, at least until after the AUSTEL report is tabled.

Could you please protect this information as confidential.

Chris Vonwiller

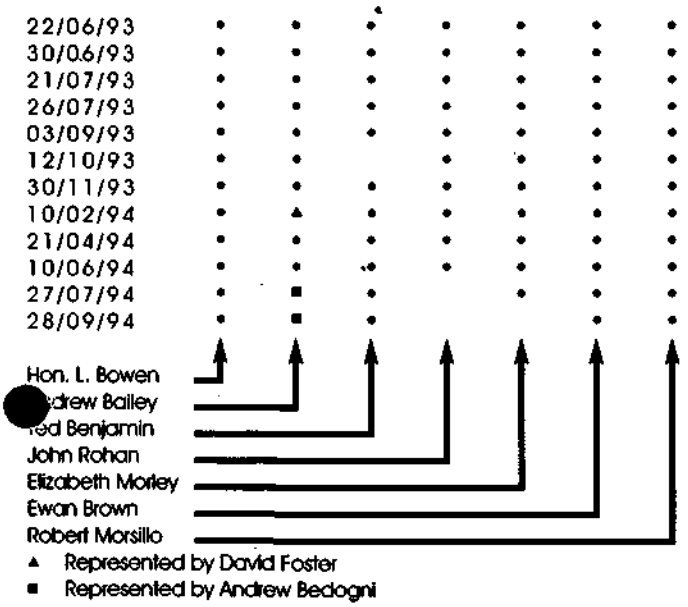
48.A

i) matters which may involve anti-competitive behaviour or restrictive practices potentially in breach of the Trade Practices Act 1974; and

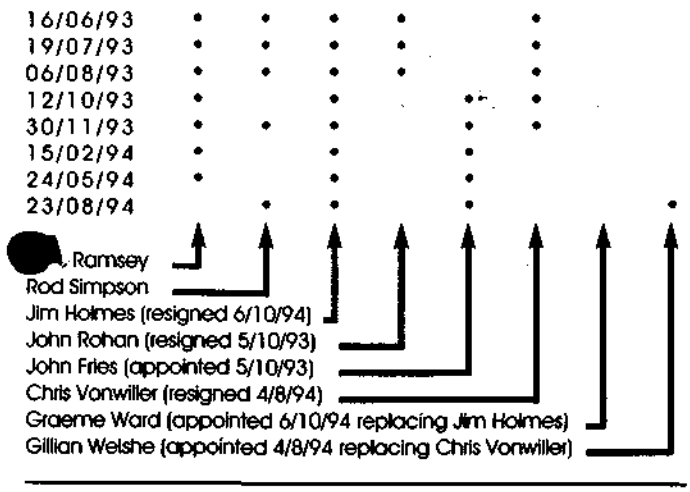
j) complaints which are specifically under consideration by AUSTEL, the Trade Practices Commission or any court or tribunal, or which have been considered by any of those bodies previously.

Appendix B

Council Attendance



Board Attendance



30/11/93

Internal Memo

Telecom AUSTRALIA

To Mr I Campbell
Customer Projects
Executive Office - C&C

From E. J. BENJAMIN

Subject TIO AND COT

File

Date 30 November, 1993

Commercial & Consumer
Customer Affairs

Locked Bag 4960
Melbourne Vic 8100

Telephone (03) 634 2977
Facsimile (03) 632 3241

At todays Council Meeting the TIO reported on his involvement with the COT settlement processes - it was agreed that any financial contributions made by Telecom to the COT arbitration process was not a matter for Council but was a private matter between Telecom, AUSTEL and the TIO.

I hope you agree with this.

Ted Benjamin
GROUP MANAGER - CUSTOMER AFFAIRS

DON PINEL

FAXED 2/12/93

Don

seems ok to me.
when I spoke to Daniels I
suggested that at least for the
first group he develops a
separate budget, seems with
us, approves bills for payment.
must we pay ahead.
when we have had experience with
this can decide to continue for
group 2 and future

48C

D01218

Telstra Corporation Limited
ACN 051 775 556

pp TED BENJAMIN

2.12.93

Cape Bridgewater Holiday Camp
22 November 1993

Mr J.R. Holmes
Corporate Secretary
Telecom
242 Exhibition Street
Melbourne 3000.

Dear Mr Holmes

I enclose the Fast Track Settlement Proposal (latest version) which I have signed. I acknowledge the significant shifts which Telecom has made to bring this matter to settlement.

In signing and returning this proposal to you I am relying on the assurances of Mr Robin Davey, Chairman of Austel, and Mr John MacMahon, General Manager, Consumer Affairs, Austel, that this is a fair document. I was disappointed that Mr Davey was unwilling to put his assurances in writing, but am nevertheless prepared to accept what he said.

I am concerned that there is no deadline stated in the Fast Track Proposal, only that "speed is of the essence". I hope that there will be no unnecessary delays in handling the matter.

I would not sign this agreement if I thought it prevented me from continuing my efforts to have a satisfactory service for my business. It is my clear understanding that nothing in this agreement prevents me from continuing to seek a satisfactory telephone service.

Thank you very much

Alan Smith

copies to: The Hon David Beddall, Minister for Communications
Mr R.C. Davey, Chairman, Austel

A05141

489

21 December 1993

Commercial & Consumer

Level 5
242 Exhibition Street,
MELBOURNE VIC 3000
Australia

Telephone (03) 634 6671
Facsimile (03) 634 3876

A00356

Mr W. Smith
Telecommunications Industry Ombudsman
Ground Floor, 321 Exhibition Street
MELBOURNE, Vic. 3000

Dear Mr Smith,

RE: FAST TRACK SETTLEMENT PROCEDURE

Thank you for your letter of 16 December 1993 advising of your preliminary view about arrangements for the above process.

Telecom's response to these arrangements, using the same headings as your letter, is as follows:

1. **ASSESSOR**

Generally agreed with the following additional comment.

Because the procedure is a "flexible, quasi-judicial process" and could lead to significant precedents for the new, similar future dispute resolution process based on arbitration, Telecom's view is that the priority requirement is for legal and financial experience in common law assessment of commercial claims for losses.

Telecom is aware of a small number of people who do not have a legal background, but would be suitable - for example, Mr Fergus Ryan of Arthur Andersen. However, there are few such people, and care should be taken if a non legal person is being considered.

2. **RESOURCE UNIT**

Agreed with two additional comments:

(a) "Independence. No conflicts are permissible."

48E

Agreed.

You may receive arguments from others that because Telecom uses (Price Waterhouse, Arthur Andersen, KPMG, Coopers & Lybrand, etc) from time to time, and indeed may be using them now, they are not independent because of possible conflict.

A0003577

Telecom does not accept this argument and nor, in our view, would most reasonable businesses. What would be reasonable is that if the firm providing the Resources Unit is also doing work for Telecom, that firm provides the TIO with arrangements it proposes to ensure independence with no conflict.

(b) Capacity in small business and communications issues is vital.

Agreed.

It is suggested a high level of financial and accounting expertise is needed as well as project management.

3. **STRUCTURE**

Agreed, with two additional comments:

(a) It is understood that the TIO, in addition to appointing the assessor and administering the process, will:

- make any necessary directions on the conduct of the process
- approve and issue the final report and recommendations.

(b) It is assumed that, while the Legal Advisor reports to the TIO, the Legal Advisor would also be available to advise and assist the Assessor.

4. **FUNDING ARRANGEMENTS**

Agreed.

Early advice, when available, would be appreciated of the budgetary cost estimates for the process - Assessor, Legal Advisor and the Resource Unit.

5. **TIMING**

The indicative timetable is agreed.

Your intention to push for an earlier resolution where possible is supported.

In view of the nature of the complaints and the previous history, compliance to the final timetable should be required of the parties. A particular issue that Telecom would like to discuss with you is the time allowed for Telecom to respond to the four "Statements of Claim". Apart from volume, it would be expected that a significant part of these statements may be new to Telecom.

48E

It is noted that outstanding issues on the assessor's procedure are scheduled to be finalised by 30 January 1994. Telecom will be making some suggestions before

25 December 1993 for your consideration about items not covered by the "Fast Track" Agreement.

Please phone me if you wish to discuss any of the above matters further.

Yours sincerely,

Ian Campbell
MANAGING DIRECTOR
CUSTOMER PROJECTS

c.c.: S. Black
P. Rumble
D. Pinel

48E

A00353

5/ Copies please to: Don Reid
Roxanne Kilsby

CAPE BRIDGEWATER Holiday Camp
Host - Alan Smith
RMB 4408
Cape Bridgewater
Toll Free 065 816 808
Ph. 065 267 267
Fx. 065 267 230

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

Mr J Holmes,
Corporate Secretary,
Telecom,

21st December 1993.

Dear Mr Holmes,

As you are aware of the Fast Track Settlement, you will understand this request. I am applying directly to yourself for All documentation, files and records relating to my business, The Cape Bridgewater Holiday Camp.

This request is made under FOI.

The application is accompanied by a cheque for $30.00. If there is any other fee associated with this request, please inform me of such at your earliest convenience.

This request relates to the periods from February 1988 to November 30th 1993.

This information I am led to believe is held within certain offices of Telecom Australia mentioned below -

- Telecom Corporate;
- " Corporate Solicitor;
- " Corporate Secretary;
- " Chief Executive Officer;
- " Regulatory;
- " National Network;
- " Business Services Melbourne;
- " Commercial and Consumer - Melbourne;
- " - 231 Elizabeth Street Sydney;
- " Brisbane Commercial Services;
- " Network Support Melbourne;
- " Commercial Manager Melbourne.

These documents are required within 14 days, to enable the Cape Bridgewater Holiday Camp to present our settlement submission.

Sincerely,

Alan Smith.

cc Mr Robin Davey, Chairman Austel
Senator R Alston,
Senator R Boswell

P.S. As the Christmas mail may be a little late, I am facsimiling this request; A copy of this letter will be sent today accompanied by a Cheque to the amount mentioned above.

48E

To: Bill Henderson@EXEC@TPOL, Janelle OGrady@RPB@TPOL, Garth Hartley@RPB@TPOL, Laurie Andrews@RPB@TPOL
C
Bcc:
From: Tom Dale@RPB@TPOL
Subject: cot cases
Date: Friday, January 7, 1994 at 10:34:51 am EDT
Attach:
Certify: N

I spoke with Warwick Smith in light of today's press reports that he is investigating the telephone monitoring allegations.

He said that, while he wanted to be seen as taking an interest in the latest allegations (and COT matters generally), his involvement in practice for the time being is to ask AUSTEL and Telecom to keep him informed of developments. He doesn't see himself being in a position to ake matters further until the AUSTEL COT report is available. I metioned that we were keeping A-G's informed to cover the TI Act aspects.

It now seems that the AUSTEL report will not be available until mid-February at the earliest. Smith thinks it is dragging on very slowly, and I said we would consider putting some pressure on AUSTEL to hurry up.

He also mentioned that the fast-track claim settlement process was not getting anywhere due to the COT cases knocking back the TIO's proposals for people to determine their claims. We should not give the Minister the impression that the fast-track would fix things: it is far from certain.

I passed on all of the above (together with a potted history of the COT cases) to Bob Bowden in the Minister's Office, who said he was fairly relaxed about it all and didn,t want anything further for the time being.

48F

9309018 2

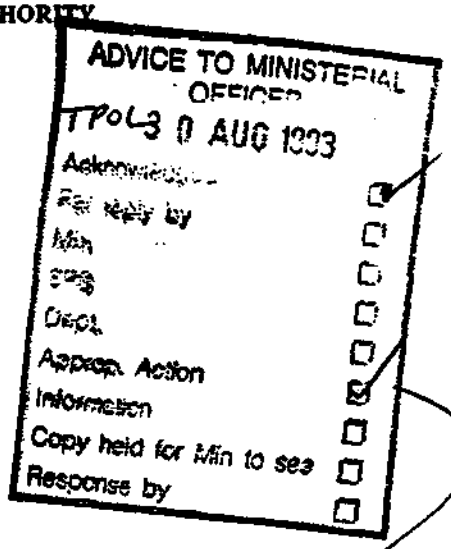
28

AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

92/0596/PO6

26 August 1993



The Hon David P Beddall MP
Minister for Communications
Parliament House
Canberra ACT 2600

Facsimile No: (06) 273 4134

Dear Mr Beddall

Please note re done reply 31/8/93 D.C

COT CASES

AUSTEL is of the opinion Telecom's briefing of 17 August 1993 does not convey the true nature and extent of the COT case problems.

Extent of Problem

First there is the extent of the problem. The Telecom brief gives the impression that the problem is essentially confined to seven customers with major claims. On the information available to AUSTEL this seriously underestimates the extent of the situation. AUSTEL has directed Telecom to institute detailed monitoring procedures to all five of the cases named by Telecom, plus three others, and is devising comparable requirements for a mobile telephone complainant. It is investigating the basis of a further half dozen comparable cases (including two shops claiming to have been forced into liquidation) and is aware of other cases claiming to have suffered similar problems but which were resolved by relocation or other special arrangements. Mrs Garms in Brisbane has indicated that she has identified another 50 businesses in the Fortitude Valley area which experience major telephone problems. AUSTEL's checking suggests that a significant proportion of those cases are currently experiencing problems.

Mr Dawson of Dawson's Pest and Weed Control has informed me to the effect that he contacted some 120 companies or businesses with telephone numbers in "318", "317" and "319" ranges and that -

> *"over 60% of the companies or businesses that we contacted today* (24 August 1993) *have explained that they have, and had same or similar faults problems, conditions, as we have been reporting, for years, and that some of the companies and businesses have been told that they are the only ones in the area, reporting or saying that they are experiencing the faults, problems, conditions, and Telecom*

48 G

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

cannot find or identify any cause in their complaints.
"Quite a few of the persons contacted .... were rather angry, and emotionally bitter when it was explained to them that we had been experiencing the same and/or similar faults, problems, conditions, and that we had also, been told by Telecom, we were the only ones in the area reporting and experiencing the alleged problems."

Telecom states that with the exception of and the the other original COT Cases continue to express dissatisfaction on the level of their telephone service. It is not made clear that and that the has been attached to an AXE exchange and has changed the nature of its business.

Settlements

Telecom claims to have provided very generous settlements.

The claimants would not agree that the settlements are generous or that the process leading to them has been satisfactory. Allegations they have made include -

(a) that they continue to experience the problems giving rise to their claims

(b) that the existence and incidence of their problems has been denied or down played

(c) that they have been told that their problems were unique when Telecom knew that they were not (this is part of a perception of misleading and deceptive conduct)

(d) that the negotiation/settlement process was extended over such a long period during which the consumer was financially at risk that they were forced to accept inadequate amounts of compensation in order to retain ownership of their business

(e) that Telecom has stated that it has no liability under the law to compensate for network faults when it is aware that it has such a liability.

Allegations of misleading and deceptive conduct go beyond the items mentioned at (c) and (e) above and extend to underestimating the extent of problems experienced by failing to take into account reported faults which it had recorded "off-line", failure to make available all relevant information sought under the *Freedom of Information Act 1982* and misleading briefings. Of course allegations are not necessarily accurate and even if they are, the actions may be the result of incompetence rather than an attempt to deceive. They are, nevertheless, matters which AUSTEL must pursue.

Incidence of Problem

All consumers are faced with difficulty in attempting to quantify the extent of any alleged problem. AUSTEL's concern - and it is one reflected in the Telecom briefing - is the way in which Telecom describes the extent of the fault. On a number of occasions it is said by Telecom that its data does not substantiate the level of problems claimed by the consumer. This may very easily be read as saying that Telecom believes that there is little or no problem in the consumer's service when it may well mask the conclusion that the incidence is well above average but not at the level claimed.

Telecom has a tendency to brief in terms of the adequacy of service on an averaged national basis. That service at a national level meets high standards is not at issue - it is the service provided to the complainants which is relevant.

Individual Briefs

A few points can be made to give credence to claims of selective briefing which have been alleged by COT Case members after having sighted briefing provided to politicians.

Garms

- The summary relates to 1990 onwards - Mrs Garms has been in dispute with Telecom since 1984 - the brief speaks in terms of *"over three years"*

- some reservation might be held as to Telecom's view that the settlement was very generous given the duration of Mrs Garms' concerns, the fact that Telecom did not provide all relevant information to Mrs Garms in its initial response to her FOI request and only made information which she says is relevant to her claim available to her at *"the eleventh hour"*.

Schorer

- Schorer has claimed that refusal of testing was in the context of an agreement whereby Telecom would commence the settlement process when it has **experienced** the faults rather than **identified** them.

- he maintains that there is a regular calling pattern throughout the day for his business and when he is not receiving calls at a time which is normally busy there may be an intermittent fault in the network affecting him.

Cape Bridgewater

- Telecom has admitted existence of unidentified faults to AUSTEL.

Dawson

- twice it is suggested that no faults have been identified but Telecom has admitted to AUSTEL that Dawson does experience problems due to power line interference.

- reference to financial settlement misleading - no real claim yet made and a minimal waiver of charges has been made.

There is also a most serious aspect of Dawson's case in that as recently as 23 July 1993, Telecom informed him -

> *"Under the Telecommunications Act 1991 we are not legally liable to compensate customers for network problems....."*

That statement is quite misleading and deceptive - the 1991 Act had the effect of removing Telecom's statutory immunity against claims for damages for network loss.

Summary

There is a wide difference between Telecom's perspective and those of its customers. AUSTEL's current inquiry is directed to getting "hard information" to enable to scope the problems, what is causing them and how they might best be resolved.

In the course of doing that, we will also be looking at whether the problems were known to Telecom and, in that context, whether -

- Telecom's conduct towards the complainants was misleading or deceptive
- Telecom's response to reported problems was responsible and whether its approach to the settlements may be so characterised.

Dealing with these COT Cases as a series of single incidences is a mistake on Telecom's part. Until Telecom approaches the COT Cases on the basis that they may be indicative of a wider underlying problem that should be addressed it will be open to criticism.

No doubt, if we were to provide copies of the summaries to the complainants, the complainants would come up with even greater criticisms - see for example the attached comments by Mrs Garms and Mr Schorer on copies of briefings on their cases that were provided by Telecom to Senators who have been considering whether to conduct an inquiry into Telecom's handling of the COT Cases.

Yours sincerely

Robin C Davey
Chairman

Ogden, Joan

From: Pittard, Rosanne
To: Ogden, Joan
Subject: FW: Voice monitoring of Priority Investigation Services
Date: Friday, 14 January 1994 3:23PM

K00604

Joan, This should probably filed with the appropriate COT cases. Thanks....Bill.

From: Hindson, Trevor
To: Black, Stephen
Cc: Prins, Cheryl; Pittard, Rosanne
Subject: FW: Voice monitoring of Priority Investigation Services
Date: Friday, 14 January 1994 3:15PM

Stephen,

Further to your Email of the 7/1/94 please find below additional information for Customers in the country.

Regards Trevor Hindson

From: Doody, Chris
To: Hindson, Trevor
Subject: Voice monitoring of Priority Investigation Services
Date: Friday, 14 January 1994 11:21AM

Trevor,

Described below are the details of any voice monitoring which has been carried out on the 3 Priority Case Investigation services in Country Vic/Tas.

Cape Bridgewater Holiday Camp

To check that incoming calls to the Portland Exchange were successfully connected through to Mr Smith, the investigating Technical Officer at Portland Telephone Exchange set up equipment which trapped data on these calls, then sounded an alarm. At this point the Technical Officer would check to see if the call had been connected by monitoring the 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.

Glen Waters Fish Farm

After analysing data tapes of test equipment connected to Mr Mains service, irregularities were identified in some of the customers attempts to make out going calls. To ascertain if these problems were caused by the customer's calling habits or an equipment fault, a Technical Officer monitored Mr Main's outgoing calls while at the Devilin's Bridge Exchange. This monitoring occurred during May 1993 on two occasions until it was established that the irregularities were in fact caused by the customer's calling habits.

The Bentinck House

No voice monitoring has taken place.

If you require any further information please don't hesitate to give me a ring.

48 H

AUSTEL
AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

98/0507

26 January 1994

Mr A Humrich
General Manager, Central Region
Network Operations
Telecom Australia

Facsimile 657 3529

Dear Mr Humrich,

VERIFICATION TESTS FOR DIFFICULT NETWORK FAULT CASES

As discussed late last year with Mr J Gitsham, the following comments are offered on your draft set of verification tests for public switched telephone services with recurring service difficulties.

General Comment

The tests would be applicable to a very small percentage of customers, and the emphasis should be on going to great lengths to ensure the absence of any type of fault condition rather than on minimising the amount of effort involved for the carrier.

The purpose of such tests would be to ensure that a particular service has every possible liklihood of working correctly. Prior to a service complaint being escalated to this level, Telecom's normal testing and maintenance activities would have failed to remedy the situation from the customer viewpoint. With this in mind, the verification testing should eliminate all potential sources of service difficulties. Therefore, the draft set of tests proposed are not seen to be sufficiently rigorous or extensive enough for application to these types of services.

In keeping with this approach, the use of the term "Desirable Outcome" for test results is inappropriate and should be changed to "Essential Outcome"

Specific Matters for Consideration

- The customer specific line tests nominate outcomes for insulation resistance and foreign battery which are considered to be at the margins of acceptable performance for any customer, much less a customer with a demonstated history of service difficulties. The essential outcome of these tests must be to eliminate poor insulation resistance or foreign battery as potential sources of service difficulties. Performance less than that expected of new plant should be thoroughly investigated and the causes removed.

49A

7 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE (03) 828 2900 FACSIMILE (03) 820 3021

- Tests of outgoing call functions should also be performed, as well as checks of transmission quality. Tests involving the customer's equipment should be conducted to ensure that there is no fault in that equipment.

- The customer specific exchange tests should also examine aspects of the local exchange which have the potential to affect the customer. For example,

  - processor performance and loading in computer controlled exchanges should be checked, and marker, register and other common equipment operation in crossbar exchanges should be checked

  - alarm and exchange performance records should be examined for any possible service affecting conditions

  - customer originating and terminating classifications should be checked

  - customer specific transmission systems, such as those involved in RCMs, should be checked thoroughly.

- The public network call delivery tests are seen to be adequate in scope, but the number of call attempts from each location would need to be considerably greater to produce results with any statistical significance (hundreds rather than tens). Calling periods must include significant periods of time when the customer would expect high traffic volumes. The essential outcomes must be much tighter than the 90% levels suggested in the draft. Sample results would need to be equal to or better than Telecom's target performance for the traffic type involved.

- Where test results do not meet the essential outcome, remedial action should be taken and the relevant tests repeated to confirm correct network operation.

I trust the above comments provide you with AUSTEL's view of what would represent a firm basis for further development of the verification test program.

Yours sincerely

Cliff Mathieson
Specialist Advisor
Networks

Michael Elsegood
Manager
International Standards Section

49A

A10232

(4) 31/1

Telecommunications
Industry
Ombudsman

Warwick L Smith LLB
Ombudsman

January 24, 1994

Ms. Fay Holthuyzen
Assistant Secretary
Regulatory Policy Branch
Telecommunications Policy Division
Department of Communications
P.O. Box 2154
CANBERRA ACT 2600

By Facsimile: (06) 274 6893

Tom
Dullicall
contact.

Dear Faye,

I understand you spoke with Sue Harlow about the COT case matters and just to confirm, please feel free to call again if you want a bit more indepth detail and background.

My role is as administrator under the "Fast Track Settlement Proposal", a copy of which is enclosed. This was brokered by AUSTEL with the COT group and Telecom. My appointments were announced in a press release dated the 17th January, 1994, also enclosed.

As you know, Michael Lee visits today and I will informally advise him about this and other matters.

Yours sincerely,

Warwick L. Smith
Ombudsman

Enc. 2

49 B

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

TIO LTD ACN 057 634 787
National Headquarters
321 Exhibition Street
Melbourne Victoria

Box 18098
Collins Street East
Melbourne 3000

Telephone (03) 277 8777
Facsimile (03) 277 8797
Mobile 018 591 208

process that he believes need to be settled. He will address these matters directly to the parties involved and to myself.

I have stressed to him that this proposal is a "Fast Track" arrangement and he is prepared to commit time and resources to address the matters in a very timely fashion.

In addition I have indicated to him that subject to exceptional matters arising it is my view that as Assessor he will have an ongoing role in further arbitration matters given however that they may take a different form to this initial "Fast Track" proposal.

On settlement of any matters of process and procedure that Dr. Hughes believes to be necessary, it is expected that the matters will proceed within the next two weeks. I hope that all parties can now attend to the preliminary preparation of matters that will need to be placed before the Assessor.

I thank all parties for their consideration in being able to finalise this appointment process to the mutual satisfaction of all.

Yours sincerely,

Warwick L. Smith
Ombudsman

Enc.

49B

MEDIA Release

Telecommunications Industry Ombudsman

RELEASE: IMMEDIATE

DATE: 17TH JANUARY, 1994

"Settlement Resolution Procedure For Claims Against Telecom"

Under a proposal for Fast Track Settlement of the claims of four customers against Telecom (COT cases) developed in consultation with AUSTEL it was determined that the Telecommunications Industry Ombudsman would appoint an Assessor to resolve the claims.

I have appointed Dr. Gordon Hughes as Assessor. He is an immediate past President of The Law Institute of Victoria and currently Managing Partner of the Melbourne office of national law firm Hunt & Hunt. Dr. Hughes is a leading expert in information technology law and is on the Executive of the Law Council of Australia.

In addition I have appointed Ferrier Hodgson, a major Australian Chartered Accounting practice and DMR Group Australia, an international consulting group with specialist expertise in information technology and telecommunications to act as an expert resource unit to the Assessor.

In addition Mr. Peter Bartlett a senior Partner with Minter Ellison Morris Fletcher a national legal firm, and currently Chair of the Law Council's Business Law Committee on Telecommunications and Media has accepted the position as special counsel to the Telecommunications Industry Ombudsman for the purposes of the "Fast Track" Settlement process.

The process will commence immediately.

For further information: Mr. Warwick Smith
Telecommunications Industry Ombudsman
Phone: (03) 277 8777

49B

PROTECTED

019

CALL DETAILS 055 267230 Page 15

* COMMERCIAL *
* IN CONFIDENCE *

DAY	DATE AND TIME	CALL TYPE	NUMBER DIALLED	WAIT TIME (SEC)	CONV. TIME (SEC)	METER	METER PULSES REC'D	DIFF	RATE	R P	O C
MON	31/01/94 06:46:12	OAS	1	3599	3910	?	0		N		
MON	31/01/94 09:08:02	OUS	032877009103	18	0	= WRONG NO.	0		Q		
MON	31/01/94 09:08:20	ONU	1100	22	772		0		Q		
MON	31/01/94 09:21:37	OAS	032860055	26	10	C.M.	0		Q		
MON	31/01/94 09:29:15	ONU	1100	22	97		0		Q		
MON	31/01/94 09:38:01	OAS	038287342	31	202	[illegible]	0		Q		
MON	31/01/94 09:43:28	OAU	234780	22	16	[illegible]	0		Q		
MON	31/01/94 09:57:12	OAS	032877001	39	86	FAX TO C.M.	0		Q		
MON	31/01/94 10:06:12	OAS	032778777	32	33	T [illegible]	0		Q		
MON	31/01/94 10:10:54	OAS	087258158	31	137	[illegible]	0		F		
MON	31/01/94 10:13:45	OUS	057252364	12	0		0		Q		
MON	31/01/94 10:13:58	OUS	057252364	24	0	LOCAL CALL	0		Q		
MON	31/01/94 10:14:22	OUS	057286234	27	0	NO RTN	0		Q		
MON	31/01/94 10:14:54	OUS	057252364	17	0	[illegible]	0		Q		
MON	31/01/94 10:17:32	OAU	286234	27	70		0		Q		
MON	31/01/94 10:27:42	OAS	036327700	26	28		0		Q		
MON	31/01/94 10:45:00	OAS	036174617	37	51		0		Q		
MON	31/01/94 10:46:44	ONU	0175	24	61		0		Q		
MON	31/01/94 10:54:52	ONS	008033849	29	216		0		N		
MON	31/01/94 11:15:43	OAS	032877099	27	[illegible]		0		Q		
MON	31/01/94 11:16:19	OUS	078925040	13	0	C.M.	0		Y		
MON	31/01/94 11:18:17	OUS	078925040	13	0		0		Y		
MON	31/01/94 11:20:40	ONU	013	9	0		0		Y		
MON	31/01/94 11:21:03	OUS	078925040	12	0		0		Y		
MON	31/01/94 11:23:46	OUS	078925040	11	0		0		Y		
MON	31/01/94 11:25:29	OUS	078925040	12	0		0		Y		
MON	31/01/94 11:26:18	OAS	0789250401	33	119		0		Y		
MON	31/01/94 11:31:28	OUS	078925040	12	0		0		Y		
MON	31/01/94 11:37:43	OUS	078925040	12	0		0		Y		
MON	31/01/94 11:41:35	OAS	032877099	27	129		0		Q		
MON	31/01/94 11:44:37	OAS	038893543	27	85		0		Q		
MON	31/01/94 11:46:44	OUS	078925040	13	0		0		Y		
MON	31/01/94 11:52:03	IA		4	93		0				
MON	31/01/94 11:56:33	OUS	078925040	11	0		0		Y		
MON	31/01/94 11:56:47	ONU	1100	22	157		0		Y		
MON	31/01/94 11:59:50	OAS	078925040	27	432		0		Y		
MON	31/01/94 12:07:48	IA		4	54		0				
MON	31/01/94 12:09:02	OAS	038893543	27	260		0		Q		
MON	31/01/94 12:20:15	OAS	038893543	33	103		0		Q		
MON	31/01/94 12:22:39	OAS	0367073103670721	35	82		0		Q		
MON	31/01/94 12:35:16	OAU	231000	24	597		0		Q		
MON	31/01/94 14:15:11	OAS	036346671	37	25		0		Q		
MON	31/01/94 14:16:53	OAS	036343876	38	46		0		Q		
MON	31/01/94 14:18:54	OAS	022642044	37	45		0		Q		
MON	31/01/94 14:26:04	OAS	038203021	37	34	[illegible]	0		Q		
MON	31/01/94 14:49:30	OAS	038203021	38	93	[illegible]	0		Q		
MON	31/01/94 14:51:46	OAS	038893543	27	104		0		Q		
MON	31/01/94 14:55:14	OAS	035681824	25	16	[illegible]	0		Q		
MON	31/01/94 14:56:04	OAU	234780	23	96		0		Q		
MON	31/01/94 15:12:24	OAS	036707211	30	1010		0		Q		
MON	31/01/94 15:29:52	OUS	031	7	0		0		Q		
MON	31/01/94 15:30:18	OUS	032877099	19	0	[illegible]	0		Q		
MON	31/01/94 15:32:19	OAS	032877099	40	128	C.M.	0		Q		
MON	31/01/94 15:42:46	OAS	032877099	28	15	C.M.	0		Q		
MON	31/01/94 15:43:45	OAU	217777	25	165		0		Q		
MON	31/01/94 15:47:13	OUS	053428357	16	0		0		Q		
MON	31/01/94 16:05:11	IA		4	112		0				
MON	31/01/94 16:24:18	OAS	035622080	39	110		0		Q		
MON	31/01/94 16:26:54	OAS	032877099	28	313	C.M.	0		Q		
MON	31/01/94 16:32:51	IA		3	61		0				
MON	31/01/94 17:21:51	OAS	038287342	32	1178		0		Q		
MON	31/01/94 17:57:53	OAS	0534283575	48	2464		0		Q		

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PROTECTED K01411

020

MON 31/01/94	18:43:51	OAS	032877099	[redacted]	1607	Gm	0	Q
MON 31/01/94	19:11:16	IA		4	70		0	
MON 31/01/94	19:19:46	ONU	0175	22	41		0	L
MON 31/01/94	19:21:22	ONU	0175	25	160		0	L
MON 31/01/94	21:06:30	OAS	035681824	30	6407	Pete Smith	0	Q
MON 31/01/94	22:58:43	OAS	1	3599	3059	?	0	N

****
* COMMERCIAL *
* IN CONFIDENCE *
****

CALL DETAILS
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055 267260

Page 16

DAY	DATE AND TIME	CALL TYPE	NUMBER DIALLED	WAIT TIME (SEC)	CONV. TIME (SEC)	METER	METER PULSE REC'D	DIFF	RATE	R P	R O C
MON	31/01/94 15:01:00	OAS	032877099	[redacted]	582		14		Q		
MON	31/01/94 15:11:14	OUQ		191	0		0		?		

PROTECTED

50 A

aware that there was Elmi in 92. But only because of the briefcase being left here at my premises in 93, in June, the 3rd or 4th of 93, that I found that there was Elmi being monitoring the call, like the, as the tapes in at the RCM. But I didn't, I wasn't aware of them being done.

Q13. That, that, but that pre, previous Elmi testing wasn't done with your knowledge at the time. Is that correct?

A. That wasn't done, yes. The 92 was done at my time I knew about that, but certainly not the one in the Elmi, in, in May of 93, I wasn't aware of that at all.

DAHLSTROM Okay.

A. And they've refused to give me any tapes from, from, from that. I've only got the five day tape that I managed to get a copy of out of the briefcase. Now they, they have stated in their FOI that they've had, it ran from May to July and I've received no documentation and I've applied for it twice under FOI and I've received none.

Q14. And the live monitoring as Telecom term it, that ran from approximately June 93 till August 93. Were you consulted in relation to that?

A. No.

Q15. And no approach was made from Telecom to gain your consent to live monitor your telephone calls?

A. No. Definitely not.

Q16. Another document that you've sent me, is the detail of telephone calls made, call details dated the 31st of, the calls were made on the 31st of January 1994 and along with a number of printed information on the document, it's a two page document, ah numbered K01410 and K01411, for the purpose of the tape. That's the document you sent me is that correct?

A. That's right yes.

Q17. Now along with the printed data on that, these two pages there is also a number of handwritten entries on that?

A. Mmhuh.

Q18. And those entries actually identify the callers or the numbers called from this, from your premises?

A. It does yes.

Q19. Now those handwritten entries were not made by yourself?

A. No.

Q20. Can you tell me who might've made those entries?

A. No I, I don't recognise the handwriting. But I certainly didn't, it certainly wasn't, wasn't mine and you'll see that who actually rung these, Fay SMITH, my ex-wife, which you know I find rather, rather poor.

Q21. The other numbers called can you just run through those for me as to the sort of general people they were writing down of who you called?

A. GM, which, which if you go across the page you'll see that it was Graham SCHORER from, from Golden Messenger. If you go across the page you'll see the phone number of Austel which was then the, the General Manager, you go across the page you'll see GM again which was the Graham SCHORER, go across the page to Telecommunications Ombudsman's office, a domestic number. You go across the line again you see Austel, you see Golden Messenger, you see Austel, you see Austel, you see Fay SMITH was my ex-wife, you see the Ombudsman again, you see Golden Messenger, Golden Messenger that's twice. You turn the page you come up to the top of the page you see GM which, check the number it's the Golden Messenger and then the bottom page you see where I rang my son, Golden Messenger and if you go to the bottom of the page you will find, which is very relevant although it's not relevant to perhaps the, the monitoring is that it registered the next call which was the, in the evening registered 3,599 seconds. We've never been able to prove that the phone was completely, they, they were locked up. [illegible] communication ex, has shown the calls [illegible] being locked up into this business and that's, that's just a clear example of calls locking up.

Q22. There are also a number of other numbers that are listed in the printed details?

A. That's right.

Q54. Just one last thing Alan that I've got, there's a letter here that you've written to Mr Paul RUMBLE of Telecom?

A. Right.

Q55. And it relates to a conversation that you had on the 31st of June with him?

A. Mmhuh.

Q56. And I believe it also relates to the bus?

A. Right, it does yes.

Q57. Company matters etcetera. The thing that I'm intrigued by is the statement here that you've given Mr RUMBLE your word that you would not go running off to the Federal Police etcetera?

A. Mmhuh.

Q58. Can you tell me what he background of that is?

A. Well I rang Paul RUMBLE up and I said look, I want some sort of clarification with all these, I said we, we get people saying that my staff no longer, as soon as I leave, that they, turn me back they're away. I said we get people that are saying that this person no longer here, and I went through all this, what you've got there. And I said, now I come up with the documentation, I said with Malcolm FRASER that I spoke to Malcolm FRASER and I know damn well I didn't tell anybody. I said I come up with this document and I said and there's no, nobody, nobody's given me any information to, to, to where you got all this information from. And he said well look I'll, I said my.. the one thing I want to know I said, how the bloody hell did you, or what made you fella's write this notifications at the side of these columns of people I've rang, I said I want to know. And he said look, well I'll do anything, he said, just don't go running off to the Federal Police. I said I won't go, I said tell you what, you do the right thing by me, you return, you give me some a letter back on this, and I said I won't go off to the Federal Police. Now I've got the letters regarding that, and I gave that copy to Warwick SMITH too.

Q59. And that, I mean that relates directly to the monitoring of your service where, where it would

indicate that monitoring was taking place without your consent?

A. That was before I found the other document under malicious call trace, on my 267230, as I said they haven't got back to me since.

Q60. And you know what Mr RUMBLE's position is in Telecom?

A. Yes. He's Customer Response Unit, which would be sort of number, number one underneath Mr BLACK.

Q61. And he is fully aware of our investigation in relation to monitoring of telephone services?

A. Oh yeah sure.

DAHLSTROM Okay. Superintendent PENROSE have you got any questions.

PENROSE
Q62. Thanks Tim. The information that John McMAHON passed on you from Austel about live monitoring. Do you know where he got that information from?

A. No, but it, it is in an Austel document, I can't find it but it wouldn't be that hard to find. At a, it's amazing because I wanted to put it into my, my own submission but it's a document saying Mr SMITH was one of two people that were, the lines were in, and it's really to that, very similar to that one that it's in the Telecom stuff. So it did mention Glen Waters being John MAIN and it mentioned me but it did say that the certain times of 1993 that Mr SMITH's lines was, you know was monitored. And that's when I first knew right. And then I come across me FOI and of course that, that clarified it.

PENROSE Do we have that document.

DAHLSTROM Yeah I think I've seen it somewhere before, which is virtually a mirror of the document we spoke about earlier.

A. Yeah it's very close to that.

DAHLSTROM Where, it's an internal report stating that monitoring did take place.

PENROSE
Q63. And live monitoring as far as he was aware was aural

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in which you don't mention the name of the bus service, and you're asking for a guarantee of your phone service?

A. That's right.

Q29. And again you've shown on this document that handwritten onto the document is the actual name of the bus service?

A. I think this is the worst out of the lot of them, because at no stage, I mean it was only a small charter but I, I kept this one very, very clear and there's no way in the world that I disclosed who it was. Because let's face it, I'm not saying anyone else would've got this contract, it was only a small charter but the point is I mentioned it in the letter form that I wanted a, a guarantee so that I could tell this gentleman, because the same person experienced problems with my phone, and I thought well at least I can do the right thing if I can give him a guarantee then, you know, then he could guarantee to his people that yeah okay, we can, we can do the service. A handwritten note is the name of the bus company on the right hand side which, it's just.

Q30. And had you been making calls to the bus company around that time, or to the owner?

A. Oh yes, yes, yeah, yeah.

Q31. And that handwritten note just for the purpose of the tape is O'Meara is the name?

A. O'Meara and actually that same fellow did send a letter prior, prior to that, that he'd experienced problems with my phones, prior. So there is a letter in Telecom archives and I have a copy, where he actually sent a letter complaining about getting through to Cape Bridgewater.

Q32. Right. All right so we'll just, you've also said that there are other documents there, although they're not directly relating to the live monitoring issue they show that the malicious call trace has been set up on your line without your knowledge?

A. That's right.

Q33. And those documents you say clearly show that the malicious call trace has affected the phone service

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COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

[illegible]

20 January 1994

C/94/195.C/94/225:JW

Mr J R Holmes
Corporate Secretary
Telstra Corporation Ltd.
38th Floor, 242 Exhibition Street
MELBOURNE VIC 3000

Dear Mr Holmes

I 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 have summarised Mr Smith's complaint as alleging that TELECOM unreasonably has decided to apply charges to his FOI request and that the charges will be considerable.

Mr Schorer's complaint is that TELECOM unreasonably refused to remit the application fee and is proposing to impose processing charges.

Ms Garms also has complained that TELECOM unreasonably is imposing charges.

All three assert that they require the information to support their submissions to the imminent review in accordance with the Fast Track Settlement Proposal (FTSP) agreed between TELECOM and AUSTEL, and endorsed by the then relevant Minister.

I understand that the FTSP provides a basis for a Proposed Arbitration Procedure that may be applied as a dispute resolution process additional to the Telecommunications Industry Ombudsman scheme. I also understand that TELECOM acknowledges that the COT Cases proposal has assisted TELECOM to clarify its views about dispute resolution processes suitable for small business in the future.

Clearly it is important that the FTSP be given every opportunity to achieve its objectives. As clause 2(e) stipulates that the review will be primarily based on documents and written submissions and that each party will have access to the other party's submissions and have the opportunity to respond, TELECOM should facilitate access by the parties to relevant information. Furthermore, it is important that TELECOM be seen to be co-operating as far as is reasonable.

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In the circumstances, the giving of access to information required by the applicants to present their cases to the assessor appointed under the FTSP is in the general public interest, in the context of s 29(5) and s30A(1)(b)(iii) of the FOI Act. Accordingly, it is my view that TELECOM should waive payment of the application fees in respect of the FOI applications. Also, TELECOM should 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.

I should also draw your attention to section 14 of the FOI Act which states:

> Nothing in this Act is intended to prevent or discourage Ministers and agencies from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so or are required by law to do so.

In view of the importance of the FTSP, I think that TELECOM should release to the applicants all of the information required by them in connection with presentation of their cases to the assessor, outside the provisions of the FOI Act. TELECOM could invite the applicants to make an application under the FOI Act if they require further information which TELECOM is not prepared to release without considering an application under the FOI Act. Should you decide to withhold some documents, it would be helpful to the applicants if you would describe them so that they may make an informed judgement as to whether to pursue access through the FOI Act.

I should be grateful for your early comments on my views.

Should your officers wish to discuss any of the foregoing they could contact John Wynack on 06 2760153.

Yours sincerely

PS

Philippa Smith
Commonwealth Ombudsman.

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THE HON MICHAEL LEE MP
MINISTER FOR COMMUNICATIONS AND THE ARTS
MINISTER FOR TOURISM

- 8 FEB 1994

Hon Duncan Kerr, MP
Minister for Justice
Parliament House
CANBERRA ACT 2600

Dear ~~Minister~~ Duncan

I am writing to inform you that members of the group known as the Casualties of Telecom (COT) have contacted my Office regarding the Australian Federal Police inquiries into voice monitoring by Telstra of their telephones.

Both Mr Graham Schorer and Mr Alan Smith of COT have informed my Office that they have information on Telstra's activities in relation to these matters. They were informed by my Office that they should contact the Australian Federal Police directly and provide what information they could to assist police inquiries.

For your information.

Michael Lee

MICHAEL LEE

52A

AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

92/0596(9)

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

52B

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 M3346

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.

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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.

Department of Communications and the Arts

Our Reference:

Your Reference:

Contact:

25 February 1994

Mr Jim Holmes
Corporate Secretary
Telstra Corporation
41st Floor
242 Exhibition St
MELBOURNE VIC 3000

Dear Mr Holmes

Attached are copies of correspondence received by the Hon Michael Lee MP from Mr Alan Smith of Cape Bridgewater Holiday Camp; Victoria, outlining further difficulties he is having with his telephone and facsimile service.

I ask that you investigate Mr Smith's allegations and take all appropriate steps to resolve his problems. I have also written to AUSTEL asking that the matter be included in the scope of its investigation into Telecom's handling of the COT cases.

Yours sincerely

Fay Holthuyzen
Assistant Secretary
regulatory Policy Branch
Telecommunications Policy Division

54A

GPO Box 2154 Canberra ACT 2601 Telephone: (06) 279 1000 Facsimile: (06) 279 1515

Minute

DEPARTMENT OF Communications AND THE ARTS

P93/515

25 February 1994

SENT TO MINISTER 1 MAR 1994 Schedule No ML 436

MINISTER FOR COMMUNICATIONS AND THE ARTS

cc Secretary
Deputy Secretary
A/g FAS T-POL

SUBJECT: **Casualties of Telecom (COT) - Complaint by Mr Alan Smith, Cape Bridgewater Holiday Camp, concerning his telephone and facsimile service.**

ACTION SOUGHT: That you sign the attached letter to Mr Smith informing him that AUSTEL is carrying out a detailed investigation of the complaints made by members of the Casualties of Telecom.

PRIORITY: AUSTEL should receive the letter well before it finalises its report.

ISSUES

- Mr Smith is a member of a group of business people (COT) that allege they have suffered financial loss due to unsatisfactory service from Telecom.
- Mr Smith also alleges possible breaches of the *Telecommunications (Interception) Act 1979*.

CURRENT SITUATION

- In August 1992 AUSTEL commenced a detailed investigation of the way Telecom was handling complaints by COT members. AUSTEL advises that the investigation is continuing and that they will be issuing a preliminary report shortly.
- The Australian Federal Police has been asked to investigate possible breaches of the *Telecommunications (Interception) Act 1979* and it would be inappropriate for you to make any further comments on details of the allegations while the matter is before the Federal Police.
- A draft letter to Mr Smith has been cleared by Legal and General Branch of the Department (Attachment A).
- We have provided both Telecom and AUSTEL with copies of Mr Smith's letters requesting that they investigate his allegations (Attachment B).

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RECOMMENDATION

That you sign the attached letter to Mr Smith.

Fay Holthuyzen
Assistant Secretary
Regulatory Policy Branch
Telecommunications Policy Division

Action Officer: Tom Dale
Telephone: 274 7063

AGREED/NOT AGREED

MICHAEL LEE

/ /94

548

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

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world standards and are in fact superior to those used in other similar networks of equivalent digital penetration.

- *Telecom Australia has all the tools, skills and procedures needed to detect and locate troubles reported by the CoT customers.*

- *The troubles found revealed some switching faults and potential for network congestion. The contribution made by these in degrading network performance was rated as insignificant.*

(d) *Telecom generally accepts the findings and recommendation of the report."*

AUSTEL'S COMMENTS ON TELECOM'S RESPONSE

11.8 Prior to receiving Telecom's response to the Bell Canada International report as outlined in paragraph 11.6 above, AUSTEL had written to Telecom informing it that the claim in the Bell Canada International report to the effect that Telecom's customers received a grade of service that meets global standards goes too far because the study was an inter-exchange study only and did not extend to the customer access network - AUSTEL had agreed to the study being so limited on the basis that other monitoring it had requested Telecom to undertake on AUSTEL's behalf should provide AUSTEL with the data on the efficacy of the customer access network.

11.9 AUSTEL also noted that from the *COT Cases'* perspective there were limitations in Bell Canada International's first report, namely -

- *"test call patterns used by Bell Canada International may not be typical of the COT Cases - but that of itself does not necessarily invalidate the outcome*

- *it did not extend to testing of PBX (rotary) search facilities that are of significance to some COT Cases but, again, this does not invalidate the results of the tests as far as they went*

- *it did not include test calling via 008 numbers which is of relevance to some COT Cases but, yet again, this does not invalidate the results of the tests as far as they went."*

(Letter dated 16 December 1993, AUSTEL to Telecom's Managing Director, Commercial Business)

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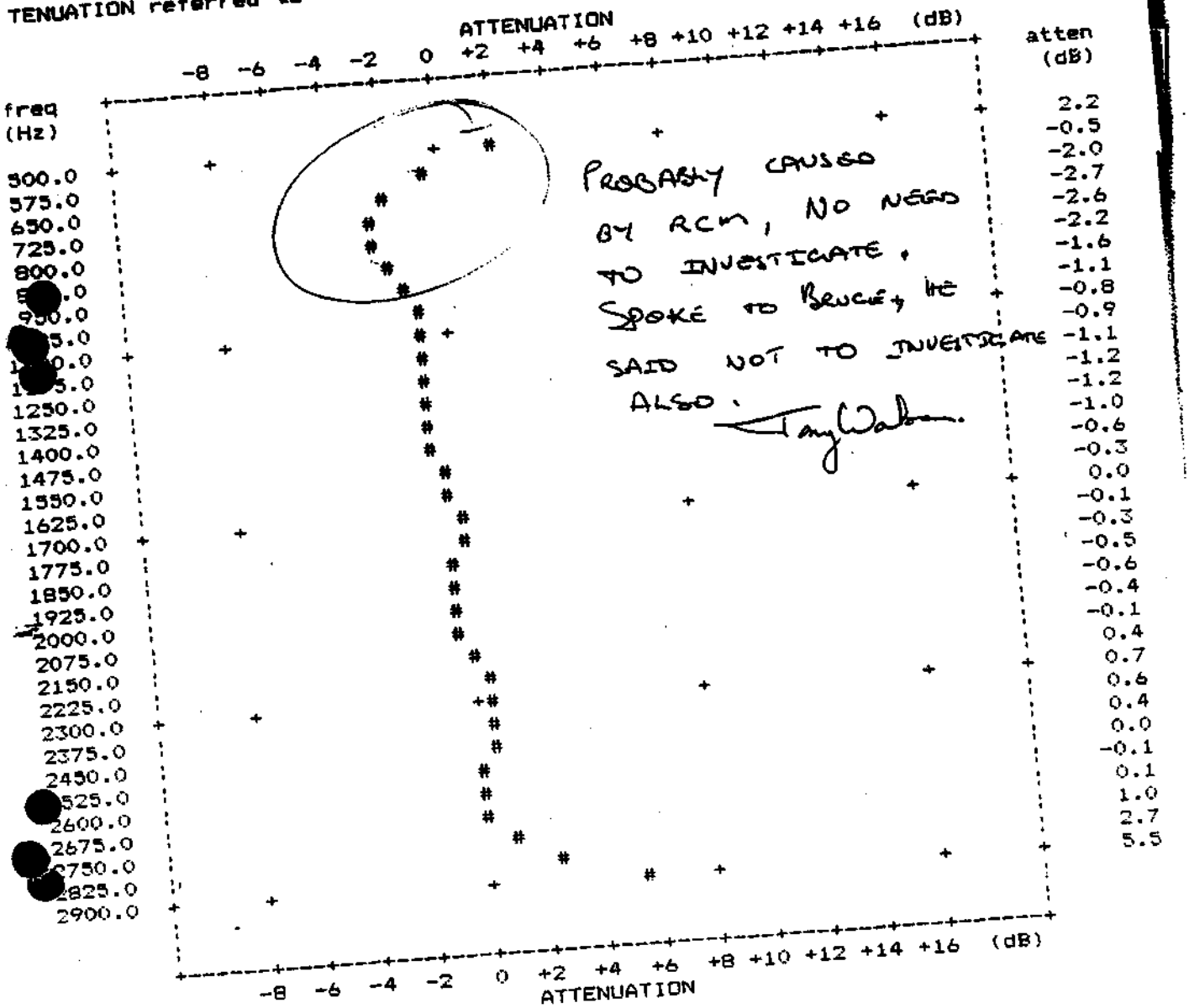
K01398

inted: 30 Jan 1994 15:01:29

TENUATION referred to 1700.0 Hz



PROBABLY CAUSED BY RCM, NO NEED TO INVESTIGATE. SPOKE TO BRUCE, HE SAID NOT TO INVESTIGATE ALSO.

Tony Watson

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FREEHILL
HOLLINGDALE
& PAGE

COPY

28 January, 1994

K01160

Mr Alan Smith
Cape Bridgewater Holiday Camp

By facsimile
No. 055 267 230

Dear Mr Smith

Cape Bridgewater Holiday Camp
DLM:001660539

We refer to your letter dated 4 January 1994 to Denise McBurnie.

We also refer to your telephone conversation with Denise McBurnie on 25 January 1994 and confirm that Telecom wishes to establish Mr Steve Black and Mr Paul Rumble of Telecom, as your point of contact for requests for information from our client. Any further requests for information which you have for our client should therefore be directed to Mr Black or Mr Rumble.

In response to your request for information we provide below our client's responses to the questions raised in paragraphs 1-6 of your letter. In your letter you requested answers to the questions raised in paragraph 1-7. Your letter did not contain a paragraph 7 and we were unable to ascertain any further questions from your letter. Our client has instructed us to respond to the questions raised in paragraphs 1-6 of your letter as follows:

(1) **Paragraph 1**

Telecom has previously advised both yourself and AUSTEL that it did locate the names of two employees who made the calls referred to in this paragraph. These employees are involved in investigating reported faults and testing customer services by making a number of calls each day. Given the elapse of time between the making of the two test calls in question and the time you requested release of the caller's name, it would be difficult to determine any detailed information regarding the discussions which took place during those test calls. It is Telecom's position that it will not release the names of employees unless Telecom considers the release of such information to be reasonable and proper in all the circumstances.

BARRISTERS & SOLICITORS
101 COLLINS STREET
MELBOURNE 3000 AUSTRALIA
GPO BOX 128A MELBOURNE 3001
TELEPHONE (03) 288 1234 FACSIMILE (03) 288 1567
TELEX AA33004 DX 240 MELBOURNE

SYDNEY MELBOURNE PERTH CANBERRA BRISBANE LONDON SINGAPORE
REPRESENTED IN BANGKOK AND JAKARTA

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(2) **Paragraph 2**

An examination of the fault history for telephone number 055 267 267 indicates that you made a total of nine reports to Telecom's Fault Report Services during the period 1 January 1993 until 9 August 1993. As a result of testing conducted into these reports the following results were obtained:

- In January 1993 two reports resulted in:
  - (i) on 6 January 1993, a handset was replaced at your premises.
  - (ii) on 13 January 1993, a printed circuit board at the Portland Telephone Exchange associated with your telephone equipment was replaced.
- On 18 February 1993 your report was referred to the Customer Operations Group in Ballarat. This report involved the repair of a fault that was found on another customer's PABX located in Ballarat.
- Testing associated with the remaining six reports occurred between 20 May 1993 until 9 August 1993 and resulted in the fault reports being cleared as "No Fault Found" or "No Fault Found, but additional network testing to be undertaken". This additional testing found no evidence of any network faults.

(3) **Paragraph 3**

Telecom has recently had in place equipment to monitor your service at the Portland Exchange. This equipment is involved in passive line potential monitoring and does not "register" fault conditions as such, but provides a report on the line status experienced, for example, incoming call, outgoing call, time of call. Interpretation of the output of this monitoring is required in conjunction with other information and testing to allow Telecom to determine the overall performance of a customer's service.

Other forms of service monitoring which can be used by Telecom are AXE Test System and Common Channel Signalling Monitoring. Again, these systems both produce data that requires analysis and cross referencing with other materials. It is therefore not possible to provide the information as requested in paragraph 3 of your letter. A detailed analysis of your service occurs as an ongoing process and any anomalies detected during that time are acted upon directly.

(4) **Paragraph 4**

As the information provided originally in your letter dated 12 November 1993 was of a limited nature, no specific response was possible to your allegations concerning over charging and short duration of calls. However, Telecom does have clearly defined policies and principles for call charging and billing. These principles are:

- customers will be charged only for calls which are answered.
- unanswered calls are not charged.

- unanswered calls include calls encountering engaged numbers (busy), various Telecom tones and Recorded Voice Announcements as well as calls that "ring out" or are terminated before or during ringing.

(5) **Paragraph 5**

As Telecom has previously advised to you, the incident referred to in this paragraph relates to the use of Malicious Call Trace (MCT) that was placed on your line as part of the testing of your service. MCT resulted in the line being "held busy" for 90 seconds after the actual call was terminated. Consequently, the first call was made, answered and terminated, and the following five calls, all made within the 90 second period received a busy tone. Subsequent to this incident, MCT was removed.

(6) **Paragraph 6**

(i) As you have noted in your letter the Elmi Tape which was retained by you from a brief case inadvertently left at your premises by a Telecom employee was apparently returned by you to AUSTEL. Telecom has been unable to locate that tape and has instructed us that it received a different tape from AUSTEL than the one to which you refer in paragraph 6(i) of your letter.

Consequently, Telecom is unable to comment or provide any opinion of the tape to which you refer at this stage. Telecom is currently endeavouring to confirm with AUSTEL the location of the tape to which you refer. It is also Telecom's opinion that it is not appropriate for Telecom to comment on this piece of material at this time and it would be more appropriate for Telecom's comment to be conveyed during the Fast-Track arbitration procedure.

(ii) Prior to receipt of the letters provided by you to Telecom, Telecom had had reason to investigate the matters referred to in those letters and had completed those investigations without a fault being found. Telecom did not consider it necessary to conduct such investigations again when they had already been completed Mr Campbell's statement of "each of which have been investigated without fault" in his letter to Mr Hawker was therefore correct.

(iii) As noted above in Telecom's response to the questions raised in your paragraph 2, Telecom has not found any evidence of network faults applicable to and which could affect your service during the period to which you refer.

Yours faithfully
FREEHILL HOLLINGDALE & PAGE
per:

Denise McBurnie

Denise McBurnie
Solicitor

FHPMELC4\94025006.1

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COPY

CAPE BRIDGEWATER Holiday Camp

Host - Alan Smith
Ph. 055 267 267
Fx. 055 267 230

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

4th January 1994

Ms D MacBurnie,
Freehill Hollingdale & Page,
Collins Street,
MELBOURNE 3000

Dear Ms. MacBurnie,

I am writing this letter to confer with you or your Associate, seemingly you are on holidays, regarding the many letters and conversations I have had with you in reference to the faults and requests of these faults re Telecom

I am in point form again to ask for your help, Freehill Hollingdale & Page, again for the information which has not been supplied either by yourself or from Telecom to yourself.

1 Person or persons who supposedly contacted me on the 18th August 1993 at 9.16 a.m. having a conversation with me at Cape Bridgewater 055 267267 for 6 mins and 52 seconds, and again on the same day in the afternoon at 2.15 p.m. for 11 mons and 14 seconds. I have repeatedly asked for this request. The fact that we not got this information is hindering my claim under the fast ack proposal we have mutually accepted, both Telecom and C.O.T. casualties of Telecom)

2 Confirmation by Telecom that we have had faults on our line as late as August 1993. I ask or request for this confirmation.

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Rec'd May 93.

ELM1

3 Written confirmation by Telecom that the testing equipment that they had monitoring my lines (not the equipment I had on my premises) registering telecommunication faults. I would like clarification of the faults registered up to date. Telecom have not supplied this information.

✓ — CCAS equip. — Signalling monitoring (does not monitor faults)

4 I have not had to date any correspondence regarding the sample of bills to which I sent to your office re letter Denise MacBurnie dated the 12th November 1993. I still have not received any information regarding these questions ascertaining to the overcharges and short duration of calls. My own phone bills show similar discrepencies, so therefore this information I am seeking is part of my claim re settlement proposal

✓

5. Re letter sent to Denise MacBurnie 18th October 1993. I did not ask for aonly the originals and locations re paragraph 3 What I asked for is a clarification that the sort duration calls (test calls) were actually made to my premises. Those test calls came in, 6 in all, 5 registered engaged from Horsham exchange I have already spoken to Mr Peter Penny from the Horsham exchange on that evening. He has confirmed that each 5 calls came in as busy. The first call registered O.K. by which we had a conversation. I ask again of Telecom for confirmation of these 5 busy tone calls that did not reach this premises in letter form.

✓

6. As you are aware Austel have in their possession documentation regarding the Cape Bridgewater Holiday Camp. They have information regarding my communication faults over a certain duration. This briefcase having been inadvertently left by the Melbourne Network Support Group (Telecom).

(i) I would also like Telecom to be pro-active in forwarding their opinion of the tape which clearly shows short incoming registered calls This Elmi tape has monitored calls from the 13th, 14th, 15th, 18th, 19th and 20th May 1993. Telecom has at the side of these incoming calls, their own tick marks as to the assumption that these calls were not received at the destination intended. We also have outgoing unanswered registered discrepencies. Would Telecom please supply me with their own interpretation of this tape and discrepencies (if any). I might add, I have had this tape independently viewed by a Technical Communication Consultant and would like to marry up Telecoms opinions with those of the Communications Consultant

(ii) Re letter addressed to David Hawker MP Federal Member for Wannon, signed Mr Ian Campbell, Managing Director, Commercial Business, dated 23rd August 1993. Re paragraph 7. Mr. Campbell has written stating that several letters from the Cape Bridgewater Holiday Camp clients had supported my claims of an inadequate telecommunications service. I quote "Mr. Smith has provided several letters from his clients supporting his claims. Each of which have been investigated without a fault being found" I would like now for Mr Campbell to forward me or perhaps to Mr. Hawker MP the number of persons Mr Campbell checked by way of this paragraph

(iii) Re paragraph 8 Does Mr Campbell still maintain that I have had no known communication faults as mentioned in this paragraph and I quote "no network fault has been found over the last few months"

With reference to paragraph 8, no network fault has been found over the last few months although 2 problems with Mr Smith's private equipment have been identified including misoperation of his answering machine I would like to add to Mr Campbell's statement of 2 problems with Mr Smith's private equipment

On purchasing a hand set from Retravision a Telecom model 2000, hand held, this equipment and its faults was experienced by 2 Telecom Technical personell, Mr. Ray Morris from Melbourne and Mr. Gordon Stokes from Portland. This hand set would not switch off when completing telephone conversations Both Telecom employees found this fault to be prevalent on many occassions while testing this equipment. The fault was that the off button would not activate sometimes on the first try. Sometimes it took the operator of this equipment as many as 5 or 6 times before the set switched off. This would have allowed the line to be free for other incoming calls. This equipment was ONE week old. I then re-purchased another. A new hand set on the advice of Ray Morris, Melbourne Commercial Division, Telecom. This same equipment did the same thing again, here at Cape Bridgewater. I then contacted Telecom Commercial Suppliers of this equipment and told them of the malfunction. I then took the equipment back to my supplier. I have not been game to buy a third (this equipment is supplied by Telecom and GUARANTEED by Austel!!)

On answering the second reference of my private equipment, ...my answering machine. While in Melbourne, which was not a common occurance, Telecom's Mr. Ray Morris rang a Margaret Reefman who was working and staying at my premises, looking after my camp As she was living on the premises, she did not have the answering machine connected. While having a shower and attending to her normal daily toiletries, she activated the answering machine with the incoming call from Mr Ray Morris, Telecom, believing this non-answered call was a fault. FACT.

In summary I would like Freehill Hollingdale & Page to send me answers to the above questions, namely paragraphs 1 through 7

This request will enable me to gain the information that is required to further my claim re the fast track proposal

In closing however, I would like to ask again of Mr. Campbell, does he really believe or expect me to believe that in paragraph 9 of his letter, that I have been kept fully informed of all matters and conditions of his service? I would appreciate his reply in writing

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Your respe. and attention to this URGENT matter would be appreciated and I await your early response.

Yours faithfully,

ALAN SMITH

C.C. JOHN MAcMAHON,
CONSUMER AFFAIRS, AUSTEL,

MR IAN CAMPBELL,
TELECOM, GENERAL MANAGER COMMERCIAL.

R11449

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AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

93/596(6)

5 October 1993

Mr Ian Campbell
Managing Director, Commercial
Telecom

Fax 634 3876

Dear Mr Campbell

COT CASES
SETTLEMENT PROPOSAL

AUSTEL has been asked by the *COT Cases* to facilitate their agreeing with Telecom the terms of the proposal they have put to it on how their claims against it may be settled.

2. I understand from the terms of the letter, dated 29 September 1993, from your Corporate Secretary, Mr Holmes, to Mr Schorer, Spokesperson for the *COT Cases*, that Telecom agrees with AUSTEL's intervention as a facilitator.

Starting point

3. I am taking as my starting point the *"Settlement Proposal"* at Attachment 'A' which was prepared by Telecom for the purposes of clarifying its understanding of the nature of the proposal put by the *COT Cases*.

The *Settlement Proposal* in context

4. The *Settlement Proposal* is to apply to the following four *COT Cases* -

- G Schorer: Golden Messenger (Spokesperson)
- A Garms: Tivoli Restaurant
- M Gillan: Japanese Spare Parts
- A Smith: Cape Bridgewater Holiday Camp.

5. The *COT Cases* put their proposal against a background of -

- long standing disputes between each of the *COT Cases* and Telecom involving, amongst other things, allegations of poor quality of service provided by Telecom and shortcomings in customer equipment supplied by it
- the effect of the matters in dispute on their businesses

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- dissatisfaction with Telecom's responses to their complaints
- prior payments made by Telecom to each of the *COT Cases* in connection with their disputes.

6. When there is agreement between Telecom and the *COT Cases* as to the nature of their proposal, Telecom's Executive Council will consider it and Telecom will inform the *COT Cases* whether Telecom will adopt it.

Comments by the *COT Cases* on the *Settlement Proposal* at Attachment 'A'

7. The *COT Cases* have indicated to AUSTEL that the *Settlement Proposal* at Attachment 'A' does not accurately reflect their proposal because it does not include an opportunity for Telecom to proceed without reference to the proposed Circuit Breaker. That is, the Circuit Breaker is seen by the *COT Cases* as a last resort mechanism that would operate only if -

- a direct offer by Telecom were unacceptable
- Telecom chose not to make an offer.

8. While there may be merit in an opportunity for Telecom in the first instance to negotiate directly with the *COT Cases* and to have the Circuit Breaker as a fall back position, the history of the matter suggest to me that direct negotiations between Telecom and the *COT Cases* would not provide a resolution of the matters more quickly than an immediate move to a Circuit Breaker and I understand that the *COT Cases* do not press for that part of their proposal to be recorded in the *Settlement Proposal*.

Clauses 1-4

> *"1. Both Telecom and the four remaining active COT Cases are seeking a final settlement of the outstanding matters between them if that is possible.*
>
> *2. A final settlement is one that will be absolutely binding and, once entered into, has no chance of becoming unstuck.*
>
> *3. The settlement process envisaged requires a "Circuit Breaker" that is a person accepted by all parties as an honest broker who will investigate the claims of the COT members and propose terms for commercial settlement.*
>
> *4. The "Circuit Breaker" will be a person of clear independence and integrity who will have had experience in commercial assessment, mediation and arbitration."*

9. I understand that the *COT Cases* agree with Clauses 1-4 of the *Settlement Proposal*.

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Clause 5

> *"5. The person nominated as "Circuit Breaker" is Mr Barrie O'Sullivan of Freeman, Plumber & Pullinger, Loss Assessors of Brisbane."*

10. My understanding is that Mr O'Sullivan is the *COT Cases'* first preference but that if it were necessary for the *Settlement Proposal* to proceed, the *COT Cases* would be prepared to accept another person.

11. One suggestion that they have made in that regard is Mr Gordon Hughes. I understand that Mr Hughes is an immediate past President of the Victorian Law Society and is the Managing Partner of Hunt & Hunt, Solicitors of Melbourne. I further understand that Mr Hughes' personal expertise is one of information and communications technology law and the resolution of disputes in those areas. I also understand that if he were to be chosen he would undertake the task personally.

12. Another suggestion is a person nominated by the President of the Queensland Law Society.

13. Alternatively, I understand that a person nominated by AUSTEL skilled in alternative dispute resolution with a mandate to call upon others of his or her choice with professional skills (for example, accounting skills) relevant to the task would be acceptable to the *COT Cases*.

14. Would you please let me know which of the alternatives you would want to follow.

Clause 6 (a)

> *"6. The proposed procedure for settlement is -*
>
> *(a) Each COT member will provide the "Circuit Breaker" with details of their claim and whatever supporting material they have available."*

15. The *COT Cases* agree with Clause 6 (a).

Clause 6 (b)

> *"(b) The "Circuit Breaker" will check the circumstances of the business and industry of each COT member."*

16. I understand that the *COT Cases* intend that the Circuit Breaker should compare the performance of each of the *COT Cases'* businesses with the performances of other like businesses over a relevant period so that the Circuit Breaker may draw conclusions on how the *COT Cases* might have performed but for the matters in dispute between them and Telecom.

17. I suggest that Clause 6 (b) be amended to reflect that understanding as followings -

> *"The "Circuit Breaker" will check the circumstances of the business and industry of each COT member and compare the performance of COT members' businesses with the performances of other like businesses over a relevant period so that the "Circuit Breaker" may draw conclusions on how the COT members' businesses might have performed but for the matters in dispute between them and Telecom."*

Clause 6 (c)

> *"(c) The "Circuit Breaker" will verify the claim of each COT member, and will make adjustments to claimed amounts as seem justified by the investigation. Call losses need not be proved to be causally linked with amounts claimed."*

18. I understand that the *COT Cases* have in mind that the Circuit Breaker will, amongst other things, be looking at the circumstances of the *COT Cases* both individually and as a whole and at how Telecom responded not only to individual cases but also to the *COT Cases* as a whole.

19. I further understand that the *COT Cases* are not seeking to deny that there should be some causal link between Telecom's quality of service and their claims but that because not all call losses and other problems experienced by them have been recorded they should not have to be put to strict proof of each and every call loss or other problem.

20. Having regard to my above understandings, I suggest that the Clause 6 (c) be amended as follows -

> *"The "Circuit Breaker" will verify the claim of each COT members and will make adjustments to claimed amounts as seem justified by the investigation. In carrying out the investigation, the "Circuit Breaker" will, amongst other things, look at the circumstances of the COT members both individually and as a whole and how Telecom responded not only to individual cases but also the COT members as a whole. As not all call losses or other problems experienced by the COT members have been recorded, the "Circuit Breaker" will not require strict proof of a causal link between each and every call loss or other problem experienced by the COT members but may draw from the available information and material reasonable conclusions about the extent of the call losses and problems and their impact on the performance of the COT members' businesses."*

Clause 6 (d)

> *"(d) Each COT member will be bound to accept the evaluation of the "Circuit Breaker" in advance, including an evaluation that is less than the total amount of the member's claim, or less than the payments already made by Telecom to date."*

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21. The *COT Cases* agree to Clause 6 (d) as stated above.

22. The *Settlement Proposal* would be enhanced if Clause 6 (d) were also to include words to the effect that the Circuit Breaker may not assess a sum greater than the amount claimed by any COT Case and what those sums are in respect of each COT Case. That is a matter of detail that can be addressed if Telecom agrees to adopt the proposal.

Clause 6 (e)

> *"(e) Telecom will also be bound to accept the evaluation of each claim in advance."*

23. The *COT Cases* agree to Clause 6 (e).

Clause 6 (f) (i) and (ii)

> *"(f) COT members will be bound in advance by the outcome of the evaluation of one or more of the following arrangements:*
>
> *(i) by signing an irrevocable power of attorney authorising the "Circuit Breaker" to accept settlement on their behalf.*
>
> *(ii) by agreeing that no payout need be made by Telecom to any COT member until all have agreed to the evaluation of their respective claims."*

24. While the *COT Cases* agree that Clause 6 (f) (i) and (ii) as expressed above accurately reflects their proposal as they put it to Telecom, they have accepted my advice that further down the track Clause 6 (ii) may give individual *COT Cases* cause for concern and could lead to delays and real difficulties in individual *COT Cases* achieving a satisfactory settlement. Also, the clause seems to me to be unnecessary if Telecom is to commit itself to the Circuit Breaker's determination. Accordingly, I suggest that Clause 6 (f) (ii) be deleted.

Clause 6 (f) (iii)

> *"(iii) by withholding a portion of the payout for up to two years to ensure public acceptance by each COT member in practice."*

25. I think that it might be useful to specify in this clause that the *"... portion of the payout ..."* is to be determined by the Circuit Breaker having regard to the financial circumstances of individual *COT Cases*. I suggest that the clause be recast as follows -

> *"by withholding a proportion, to be determined by the "Circuit Breaker" having regard to the financial circumstances of each COT member, of the payout for up to two years to ensure public acceptance by each COT member in practice."*

Clause 6 (f) (iv)

> *"(iv) each COT member will sign in advance letters to the Minister and to AUSTEL publicly acknowledging the fairness of the process and that it is a model for reconciliation of commercial differences."*

26. The *COT Cases* agree to Clause 6 (f) (iv).

Clause 6 (g)

> *"(g) Telecom would be bound to accept the outcome of the process by entering into a bank guarantee to the maximum of each claim."*

27. As I understand what is intended by this clause, it might be better expressed as follows -

> *"Telecom is to provide to the "Circuit Breaker" a guarantee that it will meet any claim as assessed by the "Circuit Breaker" to the maximum of the claim."*

Clause 7

> *"7. Timing: The whole process would be expeditiously handled, and would take about ten-fifteen working days comprising -*
>
> - *one-two days spent with each COT member to verify each claim, examine the basis of claim and documentation*
> - *a few days to report on each case and to seek agreement (if possible) to the evaluation*
> - *a few days to reconcile not only between Telecom and each COT member but across all four members (see 6 (f) (ii) above)."*

28. While the *COT Cases* agree that Clause 7 accurately reflects the proposal as they put it to Telecom, they recognise that the timing of the implementation of the *Settlement Proposal* will need to be reviewed having regard to -

- the history of the matters
- the need for the Circuit Breaker to become familiar with the cases
- the nature of the investigations to be conducted by the Circuit Breaker
- the travel involved
- the need for the Circuit Breaker to consult with third parties.

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29. Accordingly, I suggest that the clause as it stands be deleted and replaced with a clause to the following effect -

> *"Timing: Speed is of the essence. The "Circuit Breaker" will be instructed accordingly and to give priority to preparing a mutually acceptable timetable for consideration by the parties."*

Other matters

30. I consider that it would be desirable for the *Settlement Proposal* to address the issues of -

- who will bear the costs of the Circuit Breaker - as I understand it the *COT Cases* would have Telecom bear the costs
- an indemnity for the Circuit Breaker - as I understand it the *COT Cases* would have Telecom indemnify the Circuit Breaker.

31. For ease of reference I have recast the *Settlement Proposal* at Attachment 'A' to reflect the above amendments - see Attachment 'B': *COT Cases - Settlement Proposal Mark II.*

32. The *Settlement Proposal Mark II* is acceptable to the *COT Cases.* As I understand it, the *Settlement Proposal Mark II* would also remove most of Telecom's difficulties with the earlier version as listed on page 3 of Mr Holmes letter of 29 September 1993 to Mr Schorer. I deal separately below with what I understand to be Telecom's difficulties with old claims versus new claims.

33. I should also add that Mr Schorer has addressed point 2 in Mr Holmes' letter and has obtained from the other three *COT Cases* written acknowledgments (Attachment 'C') that he is authorised to act as their Spokesperson.

Old v new claims

34. I understand from Mr Holmes' letter of 29 September 1993 to Mr Schorer that Telecom takes the position that -

> *"... all matters in issue up to the dates of individual settlements have been formally resolved, and that no outstanding (as opposed to possibly new) claims will be made."*

35. Mr Holmes' states in that regard -

> *"If there are, indeed, any new claims which, in the view of COT members, have arisen since settlement, details should be provided to Telecom or our solicitors, Freehill, Hollingdale & Page."*

36. While in normal circumstances that might be a reasonable position for Telecom to adopt, the circumstances of the *COT Cases* are beyond the norm - if Telecom is satisfied that from its perspective the prior *"... individual settlements ..."* it affected with the *COT Cases* were reasonable, it should not be concerned that an independent third party (the Circuit Breaker) might look at them anew. The terms of the *Settlement Proposal Mark II* enable the Circuit Breaker to make a finding to the effect that the prior *"... individual settlements ..."* were reasonable and, if so, the *COT Cases* would be bound by such a finding.

37. Also, as I understand it, the *COT Cases* claim, in effect, that when the prior *"... individual settlements ..."* were arrived at -

- not all relevant facts were taken into account
- they were under duress by virtue of their financial circumstances and forced to accept the settlements.

39. As a model corporate citizen Telecom would, no doubt, want all relevant facts to have been taken into account. The terms of the *Settlement Proposal Mark II* provide an opportunity to clear the air - they would enable the Circuit Breaker to test whether, as claimed by the *COT Cases*, all relevant facts were not taken into account and, to the extent they were not, to take them into account. Alternatively, the Circuit Breaker's investigation may confirm Telecom's position and from that perspective should be welcomed by Telecom.

40. Finally, if the attached letter (Attachment 'D') dated 7 July 1993 from Freehill, Hollingdale & Page to one of the *COT Cases'* solicitors is indicative of the way that Freehill, Hollingdale & Page have approached the *COT Cases* in the past, I would be more than a little concerned if they were to have a continuing role. I say that because in the context of the letter their selective quotation of what were then Telecom's general conditions of trading misleadingly omit critical qualifications in the clauses they were relying on to deny liability.

41. This is not the first occasion that I have had to take Telecom to task for misleading statements of its liability in the context of the *COT Cases* generally - see my letters of 30 August and 9 September 1993 re Dawson's Pest & Weed Control and my letter of 20 September 1993 re The Gourmet Revolution. While I am addressing these occasions separately from my consideration of the *Settlement Proposal*, combined with Freehill, Hollingdale & Page's letter they do reinforce my view that there would be merit in Telecom adopting the *Settlement Proposal Mark II*.

42. I am further reinforced in my view that Telecom should not resile from the Circuit Breaker looking anew at the claims by the four *COT Cases* by -

- the admission in your letter of 16 September 1993 to Senator Alston that -

  "We are also concerned (and can't deny) that, on occasions, Telecom officers may have made statements which were inaccurate or rude, such as:

  "You are the only one in the area with the problem"

  "Telecom has no liability ...."

  Such statements are typical of those claimed by the *COT Cases* to justify their allegations of misleading and deceptive conduct by Telecom.

- the statement in Mr Holmes' letter of 13 September 1993 to the Minister for Communications that Telecom's -

  "... responses to these customers have at times not been everything, which, in hindsight, we would have wished them to be."

43. Again, I stress the urgency of the matters and look forward to your early advice that the *Settlement Proposal Mark II* has received favourable consideration by Telecom's Executive Council.

44. I am available at your convenience or at the convenience of Telecom's Executive Council to elaborate on any of the above points.

Yours sincerely

Robin C Davey
Chairman

40. Finally, if the attached letter (Attachment 'D') dated 7 July 1993 from Freehill, Hollingdale & Page to one of the *COT Cases'* solicitors is indicative of the way that Freehill, Hollingdale & Page have approached the *COT Cases* in the past, I would be more than a little concerned if they were to have a continuing role. I say that because in the context of the letter their selective

Yours sincerely

Robin C Davey
Chairman

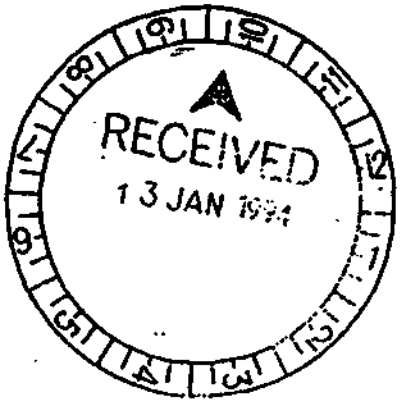
(4) knowingly made false or spurious claims to privilege?

There is also some potential prima facie evidence of (4) i.e. knowingly making false or spurious claims to privilege. For example, there is a potential structure set up for the possible abuse of the doctrine of legal professional privilege in the faxed document entitled "COT" Case Strategy, marked "Confidential" dated 10 September 1993 from Ms Denise McBurnie of Freehill Hollingdale and Page, Melbourne Office to Mr Ian Row, Corporate Solicitor, Telecom Australia.

I refer in particular to section 4 on page 6, which states:

> "Of critical importance in the constitution and function of the DMA (Dedicated Management Area) is the direction of the first referral of the claim by Business Unit Management. The initial point of referral should always be to the Corporate Solicitors Office. This is in order to bring into operation the potential protection of legal professional privilege for documentation and other reporting procedures. It may also be appropriate for the Corporate Solicitors Office to continue as the point of referral and control in order to maintain legal professional privilege (where possible). Over information and documentation created during the handling of the 'COT' case."

95/0614



Telecom AUSTRALIA

Commercial & Consumer
Customer Affairs

Locked Bag 4960
Melbourne Vic 8100

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

128

11 January, 1994

Mr Warwick Smith
Telecommunications Industry Ombudsman
Ground Floor
321 Exhibition Street
MELBOURNE VIC 3000

Dear Warwick,

I have attached for your information a copy of a letter sent to AUSTEL providing the results of two additional studies undertaken by Telecom to test the Rotary Hunting Groups and to provide supplementary inter-exchange network tests and the details of the tests. The additional testing was undertaken to provide further information on the reliability of the telecommunications services provided to those customers complaining of difficult network faults.

As you will see from the attached letter, the documents are rated "Commercial in Confidence" and are provided for the information of the TIO and not for release or disclosure to third parties without the permission of Telecom Australia. I would ask that this rating of the documents be respected.

It is anticipated that the release of these documents to the four customers currently proposed for the fast track arbitration process will be agreed at an appropriate time in consultation with yourself. The timing of the release can be finalised once the assessor has been appointed and the procedures for the arbitration have been agreed.

I also wish to confirm to you my previous advice regarding arrangements made with AUSTEL for the release of documents obtained from Telecom to the four customers currently proposed for the Fast Track arbitration process.

It was agreed at a meeting between Mr. Graeme Ward and Mr. Steve Black of Telecom and Dr Bob Horton and Mr Neil Tuckwell of AUSTEL on 7 January 1994 that:

- Information obtained from Telecom, in the course of AUSTEL's regulatory functions, and relevant to any parties involved in a formal arbitration process with Telecom under the control of the Telecommunications Industry Ombudsman (TIO) will only be released after consultation with the TIO and Telecom.
- The AUSTEL draft report will be expedited to ensure that it is available at an early stage of the arbitration process.
- The AUSTEL draft report will be released to the parties involved in the fast track arbitration process for comment in accordance with a process agreed with the TIO, and only after each party has signed a formal document committing to keeping the contents of the report confidential and giving an undertaking not to comment either privately or publicly on the report until after it has been released publicly by AUSTEL

Yours sincerely,

62A

Steve Black
GROUP GENERAL MANAGER - CUSTOMER AFFAIRS

FYI Gerry, Fil

Telecom AUSTRALIA

COMMERCIAL AND CONSUM
CUSTOMER AFFAIRS
37/242 EXHIBITION STREET
MELBOURNE
VICTORIA 3000
Australia
Telephone (03) 632 7
Facsimile (03) 632 3

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

M342

Steve Black
GROUP GENERAL MANAGER
CUSTOMER AFFAIRS

62B

MINISTER FOR COMMUNICATIONS AND THE ARTS

PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600

23 MAR 1994

Mr Alan Smith
Cape Bridgewater Holiday Camp
RMB 4405
PORTLAND VIC 3305

Dear Mr Smith

Thank you for your letters of 3 February 1994 concerning problems with your telephone and facsimile service.

In August 1992 AUSTEL commenced a detailed investigation of the way Telecom was handling complaints by members of the Casualties of Telecom (COT), including those made by you. I am advised by AUSTEL that the investigation is continuing and that they will be issuing a preliminary report shortly. I have asked that your letters be forwarded to AUSTEL to be included within the scope of the final report.

I have also arranged for your letters to be sent to senior management in Telecom with a request that they fully investigate your allegations.

Following my request of 20 January 1994 to the Attorney General, the Australian Federal Police have been asked to investigate possible breaches of the *Telecommunications (Interception) Act 1979* in relation to the monitoring of telephone conversations of some COT members. If you have any information concerning possible breaches of the Interception Act in relation to facsimile or other transmissions, I advise you to contact the Australian Federal Police.

It would be inappropriate for me to comment on any allegations of improper monitoring while the matter is under investigation by the Federal police.

Yours sincerely

MICHAEL LEE

63A

Telephone: (06) 277 7480 Facsimile: (06) 273 4154

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

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

C/94/195.C/94/225

CEO
Melb. Office
28/3/94 cp

05 March 1994

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.

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.

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

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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.

DAVIS CONSULTING

MEETING PLANNER

Date 12 January 93 Time 8.00 pm

Place T.I.O. Office
321 Exhibition St
Melbourne.

The purpose of this meeting is: ① FINALISE SELECTION OF ASSESSOR AND RESOURCE UNIT.

② PRIVACY AND FOI (FINFORMATION AND PLAN NEXT STEPS)

By the time we leave the meeting we should have achieved the following:

- T.I.O. support for free, fast access to all C.O.T. FOI requests
- Agreement to put foward choice of assessor to Telecom.
- Update on proposed action by TIO, Privacy Comm and Austel regarding live monitoring and recording.
-

To achieve these results we need:

People	Information
Warwick Smith Anne Garms Graham Schorer Maureen Gillan Alen Smith	

AGENDA ITEM	ACTION

END TIME DATE PARTICIPANT

Sources of Information

The information provided in this report has been derived and interpreted from the following documents:

- Smith - Letter of Claim (SM1)
- Smith - George Close Report dated 5/7/94 (SM8)
- Smith - George Close Report dated August 1994 (SM9)
- Smith - FOI Material 1994 (SM44)
- Smith - George Close & Associates Report 20 January 1995 - Reply to Telecom's Defence (SM50)
- Smith - Samples of FOI Telecom Documents (SM49)
- Smith - Appendix C Additional evidence (SM48)
- Smith - Summary of TF200 Report (SM47)
- Smith - Bell Canada International Inc. Further information (SM46)
- Smith - Assessment Submission (SM2)
  - 1-200
  - 200 - 400
  - 400 - 600
  - 600 - 800
  - 800 - 1,000
  - 1,000 - 1,289
  - 2,001 - 2,158
- Smith - Reply 18 January 1995 (SM53)
- Smith - Reply - Brief Summary January 1995
- Smith - Further Examples of Additional Evidence Two Volumes (SM16)
- Smith - Further FOI Material (SM17)
- Smith - Cape Bridgewater Par 1 & 2 (SM 20 & 21)
- Smith - Additional information (SM45)
- Smith - Telecom Defence Witness Statements
- Smith - Telecom Defence B004 Service History
- Smith - Telecom Defence B004 Appendix File 1
- Smith - Telecom Defence B004 Appendix File 2
- Smith - Telecom Defence B004 Appendix File 3
- Smith - Telecom Defence B004 Appendix File 4
- Smith - Telecom Defence B004 Appendix File 5
- Smith - Telecom Australia - Ref 1 Statutory Declaration of Ross Marshall. Ref 2 An Introduction to Telecommunications in Australia. Ref 3 Telecom Australia's Network Philosophy. Ref 4 Glossary of Terms
- Smith - Telecom Defence Principal Submission
- Smith - Telecom Defence Legal Submission
- Smith - Telecom Supplement to Defence Documents

THESE DOCUMENTS DO NOT APPEAR IN THE LIST OF THE COPY THE ARBITRATOR RECEIVED.

M34219

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ARBITRATORS COPY

Sources of Information

The information provided in this report has been derived and interpreted from the following documents:

- Smith - Letter of Claim (SM1)
- Smith - George Close Report dated 5/7/94 (SM8)
- Smith - George Close Report dated August 1994 (SM9)
- Smith - Telecom Defence Witness Statements
- Smith - Telecom Defence B004 Service History
- Smith - Telecom Defence B004 Appendix File 1
- Smith - Telecom Defence B004 Appendix File 2
- Smith - Telecom Defence B004 Appendix File 3
- Smith - Telecom Defence B004 Appendix File 4
- Smith - Telecom Defence B004 Appendix File 5
- Smith - Telecom Australia - Ref 1 Statutory Declaration of Ross Marshall. Ref 2 An Introduction to Telecommunications in Australia. Ref 3 Telecom Australia's Network Philosophy. Ref 4 Glossary of Terms
- Smith - FOI Material 19 December 1994 (SM44)
- Smith - George Close & Associates Report 20 January 1995 - Reply to Telecom's Defence (SM50)
- Smith - Samples of FOI Telecom Documents (SM49)
- Smith - Appendix C Additional evidence (SM48)
- Smith - Summary of TF200 Report (SM47)
- Smith - Bell Canada International Inc. Further information (SM46)
- Smith - Additional information (SM45)

A site visit was conducted on Wednesday 4th April 1995 covering:

- inspection of the Cape Bridgewater RCM exchange
- inspection of the CPE at the Cape Bridgewater Holiday Camp
- inspection of the exchange equipment at Portland (RCM, AXE 104, ARF)
- discussions with Mr Alan Smith, accompanied by Mr Peter Gamble of Telecom Australia.

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Facsimile

File CGT Cases Fast Track

4

Telecon AUSTRALIA

To	David Krasnostein	From	Simon Chalmers
Facsimile	42358		
Company	Telecom		
Location		File	
		Date	22 March 1994
		Total Pages	3
Dialogh.	Steve Black		

Commercial & Consumer

8th Floor
242 Exhibition Street
MELBOURNE VIC 3000
Australia

Telephone 634 6434
Message Bank
Facsimile 634 6411

Fast Track Arbitration Procedure

Dear David

I enclose minutes of our meeting with the TIO and the arbitrator earlier today.

Simon Chalmers.

Simon Chalmers

000136

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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.

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 Robin Davey, TIO & Hughes would be appropriate? ie. Rules now agreed to by Telecom, we understand [illegible] they asked [illegible] Hughes, TIO [illegible] 1908 [illegible] to await sign

R11908

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AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

14 April 1994

Mrs Ann Garms
66 King Arthur Terrace
TENNYSON QLD 4105

FAX: 07 892 3739

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 November 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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AUSTEL

AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

92/0596(9)

22 April 1994

Mr Alan Smith
RMB 4408
Cape Bridgewater
PORTLAND 3306

Dear Mr Smith

FACSIMILE TRANSMISSION FROM CAPE BRIDGEWATER

As requested by you today in our telephone conversation, I have enclosed three sheets of paper which were received this morning in our Records Management area on AUSTEL's facsimile number 03 820 3021. An AUSTEL Records Management staff member stated that these sheets possibly arrived around a time when you were attempting to send a facsimile to AUSTEL. This staff member also assured me that the Records Management area received no facsimile from the Cape Bridgewater Holiday Camp this morning. The journal transaction for AUSTEL's facsimile 03 820 3021, however, identifies 3 transmissions from your facsimile number 055 267 230 at 10:12, 10:15 and 10:17.

As I informed you in our conversation today, and as can be demonstrated by the sheets of paper themselves, they cannot be positively linked to your facsimile transmissions to AUSTEL. I have also enclosed a copy of the journal from AUSTEL's facsimile machine which was printed at 12.23 pm, this being the time I investigated the matter of your missing facsimile transmission.

Yours sincerely

B. D. Matthews

K37977

Bruce Matthews
Consumer Protection

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5 QUEENS ROAD, MELBOURNE, VICTORIA
POSTAL: P.O. BOX 7443, ST KILDA RD, MELBOURNE, VICTORIA, 3004
TELEPHONE: (03) 828 7100 FACSIMILE: (03) 820 3021

AUSTEL JOURNAL

JOURNAL

:AUSTE. (22 APR '94 12:23)

DATE	START TIME	REMOTE TERMINAL IDENTIFICATION	MODE	TIME	RESULTS	TOTAL PAGES	DEPT. CODE	FILE NO.
21 APR	17:46	CC [redacted]	G3ESR	00'49"	OK	01		
	18:17	DYNAMIC TECHNOLOGY	G3SR	01'49"	OK	03		
22 APR	07:02	CC [redacted]	G3ESR	00'37"	OK	01		
	08:32		G3SR	01'11"	OK	02		
	08:35		G3DR	01'51"	OK	02		
	09:13	CC [redacted]	G3ESRM	02'34"	OK	05		M-71
	09:18	TALKING TECHNOLOGY	G3ESR	00'53"	OK	02		
	09:29	CC [redacted]	G3SR	01'35"	OK	02		
	09:45	CC [redacted]	G3SR	01'26"	OK	01		
	09:47	CC [redacted]	G3SR	00'56"	OK	01		
	09:55	CC [redacted]	G3SR	00'57"	OK	01		
	10:01	CC [redacted]	G3SR	02'25"	OK	05		
	10:04	CC [redacted]	G3SR	03'09"	OK	06		
	10:12	055 267230	G3SR	01'40"	OK	01		
	10:14	055 267230	G3SR	02'13"	OK	01		
	10:17	055 267230	G3SR	02'22"	OK	01		
	10:26	CC [redacted]	G3SR	03'11"	OK	05		
	10:33	CC [redacted]	G3ESR	11'34"	OK	29		
	11:46	CC [redacted]	G3ESR	00'42"	OK	01		
	11:47	CC [redacted]	G3ESR	01'20"	OK	03		
	11:53	CC [redacted]	G3SR	00'48"	OK	01		
	11:54	CC [redacted]	G3SR	00'57"	OK	01		
	12:18	CC [redacted]	G3ESR	01'42"	OK	03		

K37981

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TX:006129 RX:045534

attached message on the 28th March. The attached message indicates that the problem did lie in the RCM and has been fixed. This was confirmed in a subsequent conversation with [redacted]

[redacted]

K00941

From: [redacted]
To: [redacted]
Cc: [redacted]
Subject: FW: CAPE1.DOC
Date: Monday, March 28, 1994 5:11PM
Priority: High

Grant,
Do you want any more on this RCM problem? [redacted] seems to have solved the problems and whilst the poor setting up of the supervisory system is a worry, I doubt if many new systems will be installed on copper bearers.

[redacted]

From: [redacted]
To: [redacted]
Cc: [redacted]
Subject: CAPE1.DOC
Date: Monday, March 28, 1994 3:04PM
Priority: High

Please find attached the results of testing of problems with Cape Bridgewater RCM system . This is additional information to that provided by Mark Hooper on 23-3-94.

I hope this assists.

<<File Attachment: CAPE1.DOC>>

[redacted]

Pendlebury, Bruce

K00940

From: Gamble, Peter
To: Pendlebury, Bruce
Cc: [redacted]
Subject: FW: CAPE1.DOC
Date: Tuesday, 26 April 1994 3:12PM

Bruce, for information.

Following a call from Alan Smith, I have just had a discussion with Les Churcher re a complaint that Alan Smith lodged earlier today (Leopard No 364 608). I described to Les more accurately what the problem is and he will discuss my comments with Alan Miles.

Peter.

From: Gamble, Peter
To: [redacted]
Cc: [redacted]; Black, Stephen; Rumble, Paul; [redacted]
Subject: RE: CAPE1.DOC
Date: Tuesday, 26 April 1994 2:33PM

John, thanks for the response.

I should have chased it up earlier, but I was on leave.

I am concerned to note that heat may be part of the problem. I had occasion earlier this year to get involved in another "ongoing" case involving an RCM with a heat problem at Murrumbateman (just outside Canberra). Although the problems experienced by the customer where different, as was the nature of the technical problem, the root cause seems to have been the same - viz heat.

I do note, however, that one of the symptoms from the Murrumbateman case was "Not Receiving Ring", something Alan Smith at Cape Bridgewater has been complaining about for some time.

Peter.

From: [redacted]
To: Gamble, Peter
Subject: FW: CAPE1.DOC
Date: Tuesday, 26 April 1994 1:09PM
Priority: High

Peter

Please see reply from Bob Braid. I dont know why you did not get a copy but I will follow up

Do you need anything else.

Regards
[redacted]

From: [redacted]
To: Gamble, Peter
Cc: [redacted]
Subject: FW: CAPE1.DOC
Date: Tuesday, April 26, 1994 12:40PM
Priority: High

Peter,
Reference your Mail message enquiring about the status of the DNF at Cape Bridgewater, I sent the

: - DOES NOT EXIST
:CUS - CUSTOMER

SOLUTION = 10/05/94 CSR: ZV333FIELD EMPLOYEE: E767 TONY WATSON
IN HAND TONY WATSON
10/05/94 I reported this incident in LEOPARD on 055217777 and notified Chris Doody. We were able to duplicate the incident during testing; 217777 was diverted to 236101 with easycall and when 236101 was busy, a call to 217777 would return one burst of ring then busy.
11/05/94 Chris Doody called me this morning and said the incident is caused by AXE104 system limitation, that is the incident is normal and the customer is aware of that.
11/05/94 09:25, Mr Alan Smith was notified of the result.
Tony Watson.....

SOLUTION = 11/05/94 10:33 ZV333
Chris Doody is sending a report on the incident.
Tony Watson.....

DATE	START	END	SYMPT	CAUSE	ACT'N	EMP
10/05/94	13.47	13.48	NF	WJ	YT	E767

********** NO PART DETAIL **********

ORDER = S6701981 STATUS = CL
CUSTOMER = 259289 TELEPHONE = 055 267267
CAPE BRIDGEWATER HOL. CAMP ALAN SMITH
BLOWHOLE RD
CAPE BDWTR VIC 3306
CALLED IN = 04/05/94 14.03
CLOSED = 04/05/94 14.04
DESCRIPTION = 27/04/94 13:30 Visit to Alan [redacted].....
NARRATIVE = 4/05/94 13:48 ZV333
27/04/94 13:30 Apointment for Ross Anderson to visit Alan Smith to investigate the report of 267230 possibly holding up, after the phone was hung up.
:BNU - BUSY NOT IN USE
: - DOES NOT EXIST
:CUS - CUSTOMER

SOLUTION = 4/05/94 CSR: ZV333FIELD EMPLOYEE: E767 TONY WATSON
This fault report was initiated by Peter Gamble. Peter was doing some testing with Alan Smith and apparently they were able to hang up Smith's phone and while Peter was still listening at his phone he could hear Mr Smith talking in his office. In fact Mr Smith counted to 10 then picked up his phone again and Peter had been able to hear the count to 10.
On the 27/04/94 at 13:30 Ross Anderson visited the premises to investigate these claims. Ross called Peter Raphael on 03 5507309 and made 10 test calls, Ross was hanging up then counting to 10 and picking the phone up again, each test call was released (that is line was heard to drop out) at

SOLUTION = 5/05/94 9:10 ZV333
within 1 second of hanging up. Peter was able to hear Ross count 1 then the line released.
I spoke to Ross whilst he was on site and we made further test call (18 calls of which 2 were from 267267), during these test calls we obtained the same result as previous, that is the line released within 1 second. We also tried the T200 from 267267 on 267230 and it released immediately on hanging up. We then tested the suspect T200 on 267267 and it displayed the same symptom on this different line.This T200 is an EXICOM and the other T200 is an ALCATEL, we thought that this may be a design "fault???" with the EXICOM so Ross

SOLUTION = 5/05/94 9:27 ZV333
tried a new EXICOM from his car and it worked perfectly, that is, released the line immediately on hanging up. We decided to leave the new phone and the old phone was marked and tagged, Ross forwarded the phone to FM&D.
I was speaking to Mr Smith the next day (28/04/94) and he said he has witnesses to prove that his phone used to hold up for over 10 seconds. He wants a letter to say nothing else has been fixed prior to the visit by Ross that could

****
* COMMERCIAL *
* IN CONFIDENCE *
****

CALL DETAILS 055 267230 Page 68

DAY	DATE AND TIME	CALL TYPE	NUMBER DIALLED	WAIT TIME (SEC)	CONV. TIME (SEC)	METER	METER PULSE REC'D	DIFF	RATE	R P	R O C
WED	27/04/94 15:38:30	OAS	038287389	30	259		0		Q		
WED	27/04/94 15:47:01	OAS	038287389	27	58		0		Q		
WED	27/04/94 17:03:55	IA		3	60		0				
WED	27/04/94 17:47:31	OUS	076387	11	0		0		Y		
WED	27/04/94 17:47:48	OUS	073847771	23	0		0		Y		
WED	27/04/94 17:52:50	OAS	076384777	33	22		0		Y		
WED	27/04/94 17:53:46	OAS	078161575	31	107		0		Y		
WED	27/04/94 18:56:24	IA		4	196		0				
WED	27/04/94 19:07:04	OUS	035628858	18	0		0		Q		
WED	27/04/94 19:07:22	OUS	035628858	14	0		0		Q		
WED	27/04/94 19:09:52	OAS	032877099	29	2848		0		Q		
WED	27/04/94 19:57:56	OAS	035628858	27	238		0		Q		
WED	27/04/94 22:23:01	OAS	1	3599	14718		0		N		
THU	28/04/94 10:23:27	OAS	032877099	26	26		0		Q		
THU	28/04/94 10:25:37	OAS	078925040	28	305		0		Y		
THU	28/04/94 10:31:19	OAS	038287389	28	150		0		Q		
THU	28/04/94 10:34:31	OAS	038287394	39	65		0		Q		
THU	28/04/94 10:37:02	OAS	038665255	28	76		0		Q		
THU	28/04/94 11:39:38	OAS	032877099	27	23		0		Q		
THU	28/04/94 11:41:17	IA		4	91		0				
THU	28/04/94 11:44:45	OAS	036164333	27	90		0		Q		
THU	28/04/94 11:47:23	OAS	036753616	37	25		0		Q		
THU	28/04/94 11:48:53	OAS	036753616	37	25		0		Q		
THU	28/04/94 11:54:56	OAS	036753616	37	197		0		Q		
THU	28/04/94 12:29:40	IA		4	104		0				
THU	28/04/94 12:43:21	OAS	032877099	26	379		0		Q		
THU	28/04/94 12:50:19	OAS	038287389	29	81		0		Q		
THU	28/04/94 12:59:04	OUQ		401	0		0		??		
THU	28/04/94 13:05:46	OAS	074453198	30	17		0		Y		
THU	28/04/94 13:07:38	OAS	621922	26	101		0		F		
THU	28/04/94 13:31:15	IA		4	3059		0				
THU	28/04/94 14:22:29	OAS	036753616	38	37		0		Q		
THU	28/04/94 14:26:47	ONU	132999	24	104		0		L		
THU	28/04/94 15:20:02	OAS	036327700	30	73		0		Q		
THU	28/04/94 15:35:36	OAS	032877099	28	73		0		Q		
THU	28/04/94 20:05:17	OAS	032877099	26	32		0		Q		
FRI	29/04/94 02:17:01	OUQ		****	0		0		??		
FRI	29/04/94 09:56:20	OAS	032877099	25	93		0		Q		

Records = 3523

C17498

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CAPE BRIDGEWATER HOLIDAY CAMP

CALL DETAILS - 267230

SOURCE DOCUMENTS F.O.I 0628 TO 0660 INCLUSIVE

These documents (attached) cover period 2200 hours on the 27.9.93 to 0715 hours on the 14.12.93, approximately 77 days.

They display lock up times of up to 17 hours, ring times > 1 hour, conversation times of up to 17 hours, short burst rings consecutively of 2 - 1 - 2 seconds.

It would appear that the majority (88) of lock ups are created by a generated "1", often followed by 3599 seconds of ring, then from zero to 17 hours conversation time. There are 88 such calls totalling 863 hours out of total time of approximately 1848 hours - this equals 46.7% unavailability.

From January to December '93 and through '94, Alan Smith repeatedly reported "echo" on the line, "dead lines", no dial tone, together with incoming fax complaints of busy when not. This explains why.

We have random sheets (non concurrent) for December '93 and January and February '94, showing the continuation of the fault. This (detail follows) gave blockage time of 52.7% of the period covered.

David Stockdale's (Telecom) letter instances that this is common (attached FOI 0125).

F.O.I NO.	LOCK UP I/C	LOCK UP OUT
		OUTGOING
0628		33.6
0629		7.4
0630		69.9
0631		19.5
0632		27.7
0633		31.9
0634	12.7	34.4
0635	1.0	14.2
0636		80.7
0637		11.7
0638		13.8
0639		9.3
0640		9.9
0641		55.8
0642		21.7
0643		31.1
0644		59.4
0645		23.1
0646		21.2
0647		33.8
0648		21.4
0649		55.7
0650		
0651		23.7
0652		12.2
0653		25.6
0654		11.1
0655		5.7
0656		19.2
0657		26.6
0658		9.5
0659		9.9
0660		18.8
TOTALS	13.7 HRS.	849.5 HRS.

COMBINED TOTAL = 863.2 HRS.

(17)

I, ALAN SM PROTECTED

of CAPE BRIDGEWATER in the State of Victoria

HOLIDAY CAMP PORTLAND do solemnly and

sincerely declare 3306

024

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 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. D. CREASEY
Senior Constable 21624

Camberwell Police Station
317 Camberwell Road,
Camberwell 3124

PROTECTED

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Warwick

URGENT

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

Smith is alleging that the documents are not in chronological order and blanking done for earlier POI 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 POI 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).

16/5 Spoke to Smith + Hughes relating to proposed etc.

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get them until that happens." He said, "I'll following instructions. I'm not prepared to debate the matter with you." End of story. He wrote back something a little bit different at that stage. It wasn't quite what he said on the phone.

MR WYNACK: Then you received documents in April?

MR SCHORER: On 14 April I had a whole lot of documents turn up, and I found out that these documents had been supplied outside of FOI. It took me a while to establish that. These were some of the freebie documents that were being referred to supposedly by Ian Campbell. Some of them had some of my past history. There was supposed 3300 documents. I went and got a numbering machine and got my girl to go and number them all, and as far as I'm concerned there's 2200.

MR WYNACK: And these documents were not described in any schedules attached?

MR SCHORER: No, there was no schedules attached to them.

MR WYNACK: There were deletions on documents, were there?

MR SCHORER: Yes, there was.

MR WYNACK: Were these explained?

MR SCHORER: No.

MR WYNACK: What were the documents primarily?

MR SCHORER: Part of the documents were to do with my court case, which arose out of the sale of Telecom selling me a telephone system, which is part of the conflict because they're just saying I wanted to buy one rather than - that was Telecom's solution to fix my phone service. Some of the tests as a result of that phone service, where they did some changes to the phone . . . . . (tape runs out). . . . . .

TAPE 2:

MR WYNACK: What are we up to? First of all, the time is 25 to 5 and we're just resuming the interview. You were explaining to us the efforts you have been making to continue - to have Telecom give you access to documents.

MR WYNACK: During that period, up until when you signed the fast track arbitration procedures, were you pressing Telecom to respond to your FOI request - the one you had lodged in November?

MR SCHORER: Yes, yes. I had had a number of discussions, including - I stopped talking to Black on the 15th or 16th or 17th of February because I told him he was a liar and I couldn't trust him and I'd only communicate to him in correspondence; that way we'd both have a record of what was said. I took it up with Ian Campbell, because I understood Black was his boss. I'd already done that in January, and I came back to him again, and that's when I found out, through Ian Campbell, to go to Paul Rizzio. Paul Rizzio would not take my calls, so I said, if I can't get Paul Rizzio, who Black reported to, I thought I'd go to Harvey Parker. I couldn't get Harvey Parker to take my calls.

I still made appeals to Ian Campbell and Ian Campbell said, "Graham, I don't have the authority or power. Leave me out of it now." He was helpful, but he couldn't help me. He was saying that don't waste my time there. And I put out a phone call to Frank Blunt, and Frank Blunt returned my call, very kindly - he has only ever not returned one call and that was on Easter - not Easter - Labour Day weekend in Melbourne. I think it was a Monday. Monday the 12th, I think it was, or 14th, and he rang me around about lunch time. I put the story to Frank, what was happening about how I was being denied these documents under FOI, and the condition now was that I would not get any of these documents until I either signed the arbitration procedure they were trying to force down our throat or I was fully enmeshed in the thingo.

Frank Blunt's comments to me about this FOI, and also the undertakings for the freed documents that were made by Ian Campbell to do with the Bell Canada and the Cooper and Lybrand. He said, "This is totally un-Australian. I will correct that." I then had a further discussion - and when I found out the other COT members were starting to get - their documents starting to really flow through by this stage - I had another phone call, when I found a new man on the block and not knowing his position, I rang a gentleman by the name of Rod Pollack.

I rang him on a Tuesday afternoon, if my memory is correct, it was about 20 minutes past 4, and the Tuesday afternoon was the Easter Tuesday. I think that's around about 6 or 7 April. I know it was before Wednesday lock up with AUSTEL - we were to read the AUSTEL report- and I put the question to him. All he would say to me was, "Graham, my instructions are you get no documents until such time as you're fully immersed in the arbitration procedure." I said, "Whose instructions?" He said, "I can't tell you that; but I can tell you I've got instructions you won't

94/0269-05

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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 Telecom 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 anti-ethical 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 the skills or experience 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, [redacted] 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. [redacted]

Not sure of context of this could be true if talking about 99's out in last 12 months

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.

((Warwick Smith has been dealing/escalated 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.

CEO
Melb. Office
10/5/94

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 Krasnostein
Ian Campbell
Sue Cook (Exec Office
(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

000721

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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) [illegible] paranoia ...
(2) [illegible]
(3) [illegible] prepare report. / Not
(4) Appreciation of reason...
(5) Not big stick
(6) Reference to new unit in response
Acknowledged

000722

COPY

Hunt & Hunt
LAWYERS

23 May 1994

Our Ref: GLH
Matter No:
Your Ref:

BY FACSIMILE: 055 267 230

Mr Alan Smith
Cape Bridgewater Holiday
Camp & Convention Centre
Portland VIC 3305

Dear Mr Smith

TELECOM - ARBITRATION

I acknowledge receipt of your facsimile dated 18 May 1994.

I have discussed your request with Mr Rumble of Telecom. Although Mr Rumble does not concede the matters asserted in your letter, he has agreed to an extension of time for the submission of your Claim Documents until 15 June 1994 as requested.

Mr Rumble has indicated that Telecom would be opposed to a further extension of time beyond 15 June 1994. He has also emphasised that he would inspect a similar indulgence, if requested, in relation to the lodging by Telecom of its Defence Documents.

Yours sincerely

GORDON HUGHES

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

Copy: To Steve 2625 ✓
Blank
E-file original
on ~~Ground~~ Fast Track
Arbitration File

Level 21, 459 Collins Street, Melbourne 3000, Australia. Telephone: (61-3) 614 87
Facsimile: (61-3) 614 8730. G.P.O. Box 1533N, Melbourne 3001. DX 252, Melbc

M34127

81

23rd May 1994 problems faxing documents to Dr Hughes

Telstra's CCAS data and my billed account for these calls show these five short duration call attempts lasting 45/46 seconds were charged as successful from (08:04am to 08:26am) the two pages I was sending finally transmitted successfully at 08:29am lasting 02:02 seconds. An extract from Telstra's arbitration BOO4 defence report page 45 (produced below) confirms Tony Watson of Telstra, admitted these fax transmissions were not successful because the arbitrators fax machines at his office were busy at the time I was attempting to fax these calls.

The fact that Telstra's B004 defence report was signed under oath 12th December 1994, which acknowledged on this occasion 23rd May 1994 that my faxes were not received at the arbitrators office adds further weight to my evidence that Telstra are aware they charge for non-transmitted faxes.

My Telstra Fax Account for the 23rd May 1994

3	026	23 MAY	08.13A	Maroochydore	074434022	D	0:46	0.3(
4	026	23 MAY	08.04A	Melbourne	036148730	D	0:45	0.38
5	026	23 MAY	08.05A	Melbourne	036148730	D	0:45	0.38
6	026	23 MAY	08.08A	Melbourne	036148730	D	0:45	0.38
7	026	23 MAY	08.11A	Melbourne	036148730	D	0:52	0.32
8	026	23 MAY	08.12A	Warrnambool	055613614	D	2:10	1.20
9	026	23 MAY	08.17A	Maroochydore	074434022	D	0:45	0.38
10	026	23 MAY	08.26A	Melbourne	036148730	D	2:02	0.82
11	026	23 MAY	08.29A	Melbourne	036148730	D	15:55	5.63
12	026	23 MAY	08.34A	Melbourne	032877099	D	2:34	1.40
13	026	23 MAY	08.57A	Maroochydore	074434234	D	0:49	0.53
14	026	23 MAY	09.05A	Maroochydore	074434022	D		

TELECOM AUSTRALIA DUPLICATE BILL
055 267267 626 A Z D CDTL 19 JUN 94 LIVE P 61/101 V34 025 001
MR ALAN SMITH
RMB 4408

Page 45 from Telstra's B004 Arbitration Defence Report

- On 23 May 1994, Smith complained that he was getting engaged signal when sending a facsimile to the Arbitrator's offices at Hunt & Hunt (614 8730). A subsequent investigation revealed that facsimile number 614 8730 is part of a two line rotary (hunt) group together with number 614 2189. Both 614 8730 and 614 2189 were tested and no fault was found. Telecom's Tony Watson telephoned Hunt & Hunt to inform them that a person had reported getting busy while calling their facsimile. The receptionist told Mr Watson that their facsimiles were very busy all the time. In light of this discussion and the testing undertaken, Mr Watson concluded that Hunt & Hunt was probably busy at the time when Smith attempted to send his facsimile and the incident was not the result of a network problem (reference document 4.10).

CAPE BRIDGEWATER
Holiday Camp
Host - Alan Smith
RMB 4408
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

21st June, 1994.

Dr. Gordon Hughes,
Fast Track Arbitrator,
Hunt and Hunt,
Lawyers,
Melbourne.

Dear Dr. Hughes,

Some weeks ago, out of frustration with the treatment meted out to me by Telecom, I produced a video clip of an interview regarding Telecom. It may appear to certain parties that this is merely just another attempt at having another shot at Telecom. This is definitely not so. This video clip was produced to provide visual and audio evidence that, despite denials, there is still something very rotten in certain areas of Telecom's management team.

It would be impossible to convey, in just one letter, the trials confronting a single individual when matched against Australia's biggest company. In an endeavour to enlighten you somewhat in this regard, I am enclosing copies of five other letters. These letters were all sent to the people to which they are addressed, on the indicated dates, and are just a few of the many that have been sent over the past years. These letters were born out of frustration and anger at the manner in which I, and other C.O.T. members, have been so callously treated.

The events of the evening on which the video was made can only been seen as damaging, not only to myself and my business, but also to Hiedi, the 1100 operator concerned. Somewhere within Telecom management there must be a hidden agenda which allows or tolerates this type of action by 1100 staff to fester.

My reluctance to forward this clip and explanation has been due to my concern for Hiedi. Is she become Telecom's sacrificial lamb and have her employment terminated? How will she be dealt with? . . . these thoughts have weighed heavily on my mind. I hold no grudge against any Telecom employee. I have conversed with a large number of them over the past years and found that many of them, every-day Australians, only wished for a better working relationship with their management divisions. Consequently I have contacted Mr. Len Cooper, General Secretary Communication Union, in defence of Hiedi.

I now respond to Telecom. View this video and, at a later date, I hope to ask the appropriate persons their views. In the first instance, when ringing 1100, I complimented Hiedi on her name. I was very pleasant towards her (I was talking to her on my out-going line, 055-267230) and asked her to ring my 008 number and tell me what she heard. I held on whilst she dialled. The in-coming phone rang just the once — a common ring burst problem with my in-coming line (one of the faults with my phone service). I lifted the hand-piece, but it was already dead. I did not speak on that line. When Hiedi

video will show — to the lady with whom I had originally chatted in such an amicable manner. It was a real Jeckle and Hyde transformation. I asked her to ring again, a second time. Very reluctantly, she did so. This time the phone rang normally and was answered by a Mrs. Trigg, who answered "Hello". There was never any mention of a Holiday Camp.

In their Report, Coopers & Lybrand have clearly documented many ways by which 1100 could improve their customer service. Some of those suggested improvements, no doubt, emanated from my discussions with a Mr. Robert Nason, a partner of that firm, to whom I expressed my concerns, that faults conveyed to 1100 were not passed on to other Telecom sections; likewise the marked change of manner by many 1100 operators as soon as my phone number was cited.

Some 18 months age — it is mentioned in Telecom Minutes — I made two bogus calls to 1100, because of continuing phone complaints and I was curious to know if these complaints were reported. (I reported this action to Telecom Commercial the following day.) The first lady to whom I spoke (both operators were female) was most polite, yet the second operator was extremely curt. The message she conveyed, most vehemently, was that, "This man is always complaining about his phone problems." I sought clarification of her statement and asked did "that man" ring in and complain, or were the complaints lodged by other members of the general public. She finally understood what I was getting at. "Yes!" she was aware of constant complaints regarding that phone number, "but it is a Telecom Commercial matter, not 1100."

I would mention a further episode concerning 1100 which occurred on 3rd June, this year. A Mr. Ellicott of Queensland, tried to ring my 008 number and received tow RVA announcements. He then tried my Fax number and again received that RVA. He contacted 1100 to report the faults and was told by the operator that it was . . . "a Telecom Commercial matter and I cannot report this fault." Mr. Ellicott is a former Queensland CID Detective and official with the NCA, so it is hardly likely that, with his background, he would be inventing fairy stories. I reported this incident, in writing, to Mr. Blount. A copy of Mr. Blount's response is enclosed.

That same evening Mr. Peter Gamble, Telecom Head Engineer, Melbourne, heard five incoming rings on my fax line whilst speaking to me on my phone. He is reluctant to document this incident, although he asked me to pick up the receiver the fourth time it rang. I received an engaged signal. As Mr. Gamble could not hear this, I asked a house guest to listen, and tell Mr. Gamble what he heard — it was an engaged signal.

Two days prior to this Mr. Steve Black, Telecom General Manager Customer Affairs Secretary, on ringing my 008 number heard a repeated message that the number he was ringing was not connected. This was also experienced by 132999 Faults Service Centre. Mr. Black's Office is, of course, most reluctant to give any official recognition to the fact that this fault still exists, despite its being heard by a number of Telecom employees. Telecom will, I feel, put forward the same hackneyed old excuse 'that it was a known problem which was rectified after a short time'. So many, many times have I heard that remark.

I most sincerely hope that the parties reading this letter will recognise the truth which I have tried most valiantly to portray. Curiously enough over the past two weeks there have been no apparent problems with either of my lines. Has Telecom finally gotten around to solving the problems? I would like to know.

Most respectfully,

ALAN SMITH,
Cape Bridgewater Holiday Camp.

(127

Special Case Invest. Comm. Vic

From: Special Case Invest. Comm. Vic
To: Special Case Invest. Comm. Vic
Subject: FW: Present Action on Smith and Schorer
Date: Thursday, 23 June 1994 3:39PM

SENT: CRU
24/6/1994
TELECOM C. & C.
REGIONAL COMPLAINTS
GROUP
SIGNED:

From: Special Case Invest. Comm. Vic
To: Black, Stephen
Cc: Gamble, Peter; Pollock, Rod; Rumble, Paul
Subject: Present Action on Smith and Schorer
Date: Thursday, 23 June 1994 2:03PM

Update on latest info for Smith/Schorer. You may already be aware.

SMITH

22/6/94- Received call from Dianne Langton - Bendigo TSC - ringing on behalf of Jessie Bell, centre Manager, who had been contacted by Doreen McDonald from the CWU in relation to contact she and Len Cooper had with Alan Smith.
Details were sketchy but it was something to do with Faults not being recorded on his services.

I contacted Alan Smith to ascertain what his concerns were. He began talking about COS on his 008 line and problems with his account.
When I advised the reason for my call again, it was clear he thought I was calling for some other reason than in relation to his contact with Len/Doreen.
Eventually I was able to get the following as a statement of his concerns.

1. He is experiencing COS on his 008 line
2. He believes he is being charged for short duration calls on his 008 line.
3. He believes that a number of these calls are incorrectly registered and were never made or received.
4. He claims he reported this to 1100 in Bendigo and spoke to a girl named Heidi, who made some "test" calls to his 008 number and then disagreed with Mr smith and another person who was on site as to what transpired. This was supposed to have occurred on 3/6/94
5. He claims that his calls are not disconnecting on termination. I questioned this statement as to whether he was referring to the T200 handset that was replaced and he said no, it was happening now, especially on his 008 line
6. He claims a number of Portland customers are coming to him with complaints of poor Telecom service. He listed these customers as, [redacted] OC

I have carried out the following action:

(a) Requested a copy of his latest 008 Account from 008 billing in Footscray Commercial
(b) Advised Mark Owen, Country NOCM, of above and committed to provide him with details of calls from 008 account.
(c) Advised Tony Watson FM&D so we can load faults on Service Plus data base.
(d) Requested Jessie Bell arrange for Heidi to provide written report on the incident she was alleged to be involved in
(e) Advised Rosanne Pittard of above

R24429

SCHORER

Mr Schorer rang into our Fault centre in Waverley wishing to report his service not working correctly as he

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

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:

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[redacted]. I made mention I could be coming to Melbourne then. However, I had a school group coming in on this day, a[redacted]

(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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Q54. Just one last thing Alan that I've got, there's a letter here that you've written to Mr Paul RUMBLE of Telecom?

A. Right.

Q55. And it relates to a conversation that you had on the 31st of June with him?

A. Mmhuh.

Q56. And I believe it also relates to the bus?

A. Right, it does yes.

Q57. Company matters etcetera. The thing that I'm intrigued by is the statement here that you've given Mr RUMBLE your word that you would not go running off to the Federal Police etcetera?

A. Mmhuh.

Q58. Can you tell me what he background of that is?

A. Well I rang Paul RUMBLE up and I said look, I want some sort of clarification with all these, I said we, we get people saying that my staff no longer, as soon as I leave, that they, turn me back they're away. I said we get people that are saying that this person no longer here, and I went through all this, what you've got there. And I said, now I come up with the documentation, I said with Malcolm FRASER that I spoke to Malcolm FRASER and I know damn well I didn't tell anybody. I said I come up with this document and I said and there's no, nobody, nobody's given me any information to, to, to where you got all this information from. And he said well look I'll, I said my.. the one thing I want to know I said, how the bloody hell did you, or what made you fella's write this notifications at the side of these columns of people I've rang, I said I want to know. And he said look, well I'll do anything, he said, just don't go running off to the Federal Police. I said I won't go, I said I'll tell you what, you do the right thing by me, you return, you give me some a letter back on this, then I said I won't go off to the Federal Police. Now I've had no letters regarding that, and I gave that copy to Warwick SMITH too.

Q59. And that, I mean that relates directly to the monitoring of your service where, where it would

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 6863
FAX: (07) 229 9735

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

SW response 21/7/94

Hunt & Hunt
LAWYERS

18 July 1994

Our Ref: GLH
Matter No:
Your Ref:

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

Dear Mr Rumble

COT MATTERS

On 13 July 1994, the Resource Unit requested copies of the Bell Canada Report, the Coopers & Lybrand Report and the Telecom response to these Reports. The purpose of the request was to enable the Resource Unit to commence perusing relevant background documentation.

This documentation was provided to me by Mr Rod Pollock by hand on 15 July 1994 and has now been passed on to the Resource Unit. In addition, certain other material was provided to me. The documents concerned are numbered 1, 4, 5, 6 and 7 in the attached Table of Contents.

I do not know whether this additional material has previously been made available to the Claimants. I also do not know, whether the additional material is considered by Telecom to be related to the documentation requested by the Resource Unit or whether perhaps,Telecom considers that the documentation requested by the Resource Unit cannot be read in context without the benefit of this additional material.

You will appreciate that I cannot forward material to the Resource Unit which is not made available simultaneously to the Claimants. You will also appreciate that Telecom will have an opportunity to submit its own evidence in respect of each of the current claims once the respective Claimants have finalised their submissions.

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.

M34047

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Against this background, could you please clarify the basis upon which documents 1, 4, 5, 6 and 7 in the attached Table of Contents have been submitted to me?

Yours sincerely

GORDON HUGHES

CC R Pollock, P Bartlett, W Smith

FAX FROM: ALAN SMITH DATE: 12.9.94

C. O. T.

FAX NO: 055 267 230

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

FAX TO: Dr Gordon Hughes
Hunt & Hunt
Lawyers
Melbourne
Fast Track Arbitrator

Dear Dr Hughes,

I have no difficulty with any information going to the Resource Team, if it will enable them to review evidence being forwarded to them: independent views of Telecom network faults, Telecom's response to these faults allegations etc; the Austel C.O.T. report which made a significant finding where the Bell Canada testing was concerned.

Cliff Matherson, Technical Officer of Austel has written documentation that should be read in conjunction with the Bell Canada Report. The Resource Team should apply for a copy of this documentation.

My final submission will be presented to your office at 3pm on Wednesday of next week.

I have still had no response from Telecom to my request for the number of customers connected to the old ARK exchange at Cape Bridgewater, prior to cut-over day in August 1991. This information has not yet been supplied. Again, with regard to a similar request for the number of Telecom customers presently connected to the new new RCM at Cape Bridgewater - Telecom Commercial Waverley has, in written form, conveyed to me that there are 50 customers. I challenge this information.

The information required from the above two requests was vital to my early completion of this Fast Track Submission.

I will be making two presentations to the arbitration procedure:

Firstly: Telecom has told me that they know the Bell Canada report is flawed in various areas. I am asking this Arbitration process to request, from Telecom, all raw data associated with the Bell Canada testing. An example of this incorrect technical reporting is Telecom's acknowledgement that test calls to some C. O. T. case premises were incorrectly tabled in the Bell Canada Report Mr Peter Gamble, Telecom Engineer, has admitted this testing has what he calls 'a typist error'.

In the case of the Cape Bridgewater Holiday Camp: I have evidence, as a result of cross-testing at various times into the one PTARS, from two different locations at the same time. No engaged, busy or congested signal registered. This happened in two separate situations on two different days.

The resource team has to view these tests as inadequate, for if a mistake has occurred (and Telecom have admitted that mistakes did happen when testing my services) then the whole testing of C.O.T. has a flawed taint to this much criticized international testing.

The raw data from all the testing of C.O.T. must be requested from Telecom. The fact that Telecom has denied me, as an individual involved in this arbitration process, the raw data from other testing suggests the same taint of a cover-up of incorrect testing.

I would also like to make the Resource Team aware that I have been denied the information regarding difficult network faults, which was sought as part of my F.O.I. request. Much of this information has been

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enforceable under the Legal Professional Privilege act.

This is against the F.O.I. act, yet Telecom still continue to go outside this agreement.

My second presentation relates to evidence of yet another Telecom cover-up.

Please view the two documents accompanying this facsimile. One can see a legal professional privilege stamp on a difficult network working document. This document must be read with the other document tabled. These are both about the same incident, it was luck only that the two documents have been able to be put together.

I ask for this incident to be viewed and the importance of both documents to be taken into account with what has been admitted internally within Telecom and RVA. This is only one of five faults experienced over six and a half years.

Again, Telecom did not instruct Bell Canada to run tests to my 008 number, even though this could have been done at any time. In this report there is no mention of 008 testing figures for either completed or not completed calls. Why was this not done? Dr. Hughes, John MacMahon, General Manager of Consumer Affairs, Austel, was aware of the many faults on my 008 line. In fact, at the Austel previewing of the final draft of this C. O. T. report, Mr MacMahon asked me to keep him and Cliff Matheson informed of results, faults etc. I have rung Austel on several occasions since, with evidence of incorrect charging short duration calls, only now these phone calls fall on deaf ears. The Chairman, Mr. Davey, has gone and Mr. MacMahon has been shifted.

Dr. Hughes, these are the only two requests I ask of the Arbitration procedure, although I have run out of time regarding my request for the relevant raw data etc. related to both customer counts on the old ARK before 1991 and the present number of customers now on the RCM.

I wait for this request in anticipation.

Sincerely,

Alan Smith

cc. Paul Rumble
Customer Resource Unit
Telecom

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FAX FROM: ALAN SMITH DATE: 15.8.94

C. O. T.

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

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Dear Dr. Hughes,

My submission will be a day late because of a telephone call I had from Paul Rumble's Office. I am now told any information regarding the RCM, numbers of customers will now be forwarded to me early this coming week.

This is too late for my binding and finished process of the final submission. I had hoped for this information by Tuesday of last week, however, this wait for information which never comes from Telecom has put me behind once again.

Thursday, 3 o'clock, at your office is my final dead-line. There will be no more claims for written submissions to be re-introduced.

However, again, I must draw your attention to Telecom's reluctance to forward relevant documentation to produce the evidence. Had I been given my true F.O.I. documentation, much more of this evidence, in support of my allegations of an inadequate phone service over these past years, would have been substantiated. I feel like a blind man without his stick. Telecom has in their favour the fact of what has been supplied.

My claim, as it is produced in this second interim submission, will, I feel sure, show you and your Resource Team many alarming facts.

I am asking, though the Arbitration Chair, for you to direct Telecom to produce the Bell Canada Raw Data. My two interim requests are for Telecom to respond in writing to the Arbitrator showing that there was incorrect documentation: calls which could not have possibly over-dialled other calls connecting to the PTARS at Cape Bridgewater at the time of the Bell Canada testing.

Telecom, likewise, did not test my 008 account at any time during this Bell Canada testing. This must be addressed through the Chair of this Arbitration process. I shall not write a response to their claim. I shall leave this in the hands of the Arbitration team, the Resource Team.

I have forwarded you a letter found by Ann Garms yesterday, while going through her F.O.I. I did not receive this Raw Data, as mentioned by Simon Chalmers. It did exist; I knew it did, but time has beaten my health and patience. Telecom has timed much to suit themselves.

I wish only for the second interim request to be granted: for Telecom to allow C.O.T. to view documentation under the Professional Privilege Act, to be done at their centre. This, of course, will be viewed under the secrecy agreement, the confidential agreement of this Arbitration. No copies will be made for distribution, other than for your perusal, and that of the Resource Team. If you think this information is a valid document then it will be submitted only, without a written submission as to the contents.

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I forwarded you a very interesting document last week which was tabled under this Professional Privilege Act. That document was of a network fault. The document has since been viewed by John Wynack, Commonwealth Ombudsman, F.O.I. as being illegal under the Act to be umbrellaed in legal privilege documents.

On Thursday I will present you with my claim, plus a further 8 pages of documents I believe are of importance to my claim (Privilege documents).

I thank you for your time and patience in these trying months.

Respectfully,

Alan Smith.

cc. Mr Paul Rumble
Customer Resource Unit
Telecom fax: (03) 634 6441

Freehills Geary Blake Chalmers

Hunt & Hunt
LAWYERS

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

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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.