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SENATOR THE HON RICHARD ALSTON

Minister for Communications and the Arts
Deputy Leader of the Government in the Senate

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Ms Sue Harlow
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AUSTEL

Dear Ms Harlow

Thank you for your letter of 11 July 1996 and for providing me with AUSTEL's sixth status report on Telstra's progress in implementing the recommendations of AUSTEL's April 1994 *The COT Cases Report*.

I have noted your advice that Telstra has implemented most of the recommendations of *The COT Cases Report*. I have also noted your concern about the delays which are occurring in the implementation of Telstra's Fault Management System and its current indecision as to which system it will implement, either MOSAIC or Service* Plus. I will await further advice in the next *Cot Cases Report* concerning this issue, but agree with you that Telstra should decide and proceed to pilot and implement the chosen system, without further delay.

I also look forward to further advice on the outcome of discussions between Telstra and the TIO concerning the *Status and Progress of the Fast Track, Special and Standard Arbitration Proceedings*. While Telstra has encountered criticism from various sources over the Arbitration Proceedings, it is a positive step to note that discussions will be held between the two parties in an effort to improve proceedings. I understand that Telstra has already agreed to some of the revised concepts suggested by the TIO for an improved scheme.

Yours sincerely

RICHARD ALSTON
Minister for Communications and the Arts



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11 July 1996

Senator The Hon Richard Alston
Minister for Communications & the Arts
Parliament House
CANBERRA 2600

Dear Senator Alston

**REPORT ON PROGRESS OF TELSTRA'S IMPLEMENTATION OF
RECOMMENDATIONS OF AUSTEL'S *THE COT CASES* REPORT**

I am pleased to provide AUSTEL's sixth status report on Telstra's progress in implementing the recommendations of AUSTEL's April 1994 *The COT Cases* Report.

This report consists of two parts: a summary of significant developments to date; and a more detailed commentary on the implementation of outstanding recommendations.

Telstra has now implemented most of the recommendations of *The COT Cases* Report. However, some significant recommendations remain to be implemented, and Telstra's progress in relation to these is of concern to AUSTEL. Of particular concern is Telstra's failure to introduce its enhanced fault management support system. Telstra continues to utilise the LEOPARD fault management system, which was identified by its consultants Coopers & Lybrand in November 1993 as being urgently in need of replacement.

On a more positive note, Telstra has now fully implemented recommendation 1 of the Bell Canada International *Network Consulting Study*, so that greater information is now available on reasons for call failure, thus allowing improved network fault identification. Telstra has also decided to adopt a universal complaint management system, known as CICERO. AUSTEL understands that Telstra is already deriving considerable benefit from its analysis of the complaint data produced by CICERO, and that this will lead to customer benefits.

Also included in AUSTEL's report is a report by the Telecommunications Industry Ombudsman (TIO) on the *Status and Progress of the Fast Track, Special and Standard Arbitration Procedures*. The TIO is critical of Telstra's behaviour and attitude in relation to these arbitrations.

Yours sincerely

Sue Harlow
Member

Telstra's comment states that the review of the *Standard Arbitration Procedure* has commenced. The TIO's report of 25 June 1996 (reproduced below) notes, however, that this review is still in its initial stages. At the completion of the review of the *Standard Arbitration Procedure* AUSTEL will reconsider its current requirement that Telstra provide AUSTEL with a statement of reasons in cases where Telstra rejects a customer's application to enter the procedure. AUSTEL remains of the view that this recommendation will not be considered completed until the review of the *Standard Arbitration Procedure* has been completed.

The TIO has provided the following report in response to AUSTEL's request for a *status report* on the progress of the respective arbitration procedures.

**TIO REPORT TO AUSTEL ON THE STATUS AND PROGRESS OF
THE FAST TRACK, SPECIAL AND STANDARD ARBITRATION
PROCEDURES** (provided 25 June 1996)

Fast Track Arbitration Procedure

4-2-6

The status of these arbitration is:

- *Two awards have been delivered; one in May 1995 and the other in June 1996;*
- *In one arbitration, claim, defence and reply documents have been submitted and the Arbitrator has stated he will deliver his award shortly;*
- *One claimant is yet to lodge his claim.*

Special Arbitration Procedure

The status of these arbitration is:

- *One customer elected not to pursue the matter;*
- *Three claims have been settled by direct negotiation between the parties;*
- *Two awards have been delivered. One was in December 1995 and the other in May 1996;* ✓
- *In the remaining six matters claims have been submitted. Telstra has provided defences in five of these. These claims are at different stages in the process of the delivery of an award.*

Standard Arbitration Procedure

There has been only one claim lodged under this procedure. That matter was settled by direct negotiation between the parties with the assistance of the Administrator. One further application for arbitration has been received by the TIO.

The TIO has instituted a review of the Standard Arbitration Procedure and has provided Telstra with some broad concepts for improvement. Telstra has indicated its willingness to canvass issues but is yet to provide any suggestions or reform proposals.

Conduct of the Arbitrations

The TIO believes some comment on the behaviour and attitude of Telstra in the conduct of these Arbitration is warranted.

Recommendation 30 of the AUSTEL COT report recommends that the "proposed arbitration procedure only require a finding on reasonable grounds as to the causal link between a claim for compensation and alleged faults and allow reasonable inferences to be drawn from material". All three arbitration procedures make provision for this lower standard of proof. However, Telstra's conduct in the defence of most (if not all) claims has tended to assert that strict legal proof in relation to causation is required and is characterised by reliance on legal principles not in keeping with the spirit with which these arbitrations were instituted.

The TIO believes that Telstra has, in all claims, responded in an overly legalistic manner. It has shown a tendency to deny liability under every potential clause of action on the basis of perceived statutory and contractual immunities. It has provided large and detailed defences, often out of proportion to the size or complexities of claims. It has lodged lengthy and detailed requests for further and better particulars in most arbitrations. In short, while the arbitration procedure has sought to relax the legal burdens, Telstra's conduct has certainly not.

This, in turn, has led many of the claimants to respond in kind, resulting in the expenditure of large amounts of money on technical, financial and legal advice. There is no provision in the Arbitration procedure for the recovery of these costs.

There have also been considerable delays in the provision of claim and defence materials and further information from both claimants and Telstra. Telstra has taken excessive time in the provision of material requested under FOI. This has been the subject of a report by the Commonwealth Ombudsman in two cases. These delays and

refusals to provide information have exacerbated the tension and mistrust displayed by both parties.

Finally, the TIO believes that neither Telstra nor the majority of claimants have been able to adopt a genuinely commercial approach to the settlement of these disputes because of the past history of antagonism.

AUSTEL Comment (continued)

AUSTEL understands that Telstra has now rejected an application for arbitration under the Standard Arbitration Procedure. AUSTEL has recently written to Telstra reminding it of its undertaking to provide AUSTEL with a detailed statement of reasons when it rejects an application for arbitration under this process.

TELECOM'S LIABILITY AND REPRESENTATIONS THEREOF

- Recommendation 6:** Telecom revise its instruction to its staff explaining its liability and how they are to convey that to its customers by including a reference to
- the Trade Practices Act 1974 as an example of legislation that gives to consumers rights that cannot be excluded by Telecom's contract
 - the Telecommunications Industry Ombudsman as an alternative to suggesting that a customer obtain independent legal advice.
- Recommendation 7:** Telecom institute a training program for all relevant staff to reinforce the instruction (cf: Coopers & Lybrand Recommendation 21).
- Recommendation 8:** Telecom amend its Commercial, Legal and Regulatory Management Manual to remove any suggestion that settlement of claims against it should be conditional upon its customers refraining from making a complaint to a regulatory authority such as AUSTEL or the Telecommunications Industry Ombudsman.
- Recommendation 10:** Telecom examine its files relating to post 16 December 1991 complaints with the object of identifying all instances in which its staff may have made inaccurate representations concerning its liability and inform the complainants of the correct position.