

Ref No: A/97/123

5 November 1998



Senator Patterson
Chair
Senate Environment, Recreation, Communications
and the Arts Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Senator Patterson

**Working Party Convened to Report on Various Matters Relating to
Telstra and COT/COT Related Cases.**

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I refer to my letter of 2 October 1998 to which I attached my report pursuant to the Senate Committee's direction of 9 July 1998. In that report I made 9 recommendations. Attached is a schedule which outlines the responses to those recommendations.

I have made this report brief as I have already reported on the detail of the Working Party's activities in several earlier reports.

↘ The Working Party has now been operating for over 13 months. During that period almost 150,000 documents have been provided to the Parties. Although many of those documents had been provided previously to the Parties in different forums, I understand that many of the other documents are useful to the Parties. Notwithstanding this limited success, the Parties have informed me that the process has yielded only between 10 and 15% of the documents which they requested and which had been endorsed by the Working Party's independent technical adviser.

I am awaiting some responses from Telstra to the Parties' statements of the shortcomings in documents provided. There are many important queries in their statements, but one particularly important category is documentation of significant works, including upgrades, in relevant exchanges and the network generally - the Parties stated that their technical advisers believe that such documentation is routinely produced during planning and implementation of

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significant works but the Parties have received little information about such works. I am awaiting a response from Telstra to my request for comments on the Parties' assertions.

Another important category of documents which the Parties claim Telstra has withheld is 'Ericssons documents'. The Parties argue that, as Ericssons provided 80% of the hardware and software used by Telstra during the periods of the Parties' claims, Telstra should have many documents concerning maintenance and upgrades requested of Ericssons. In my opinion, the Parties' arguments on this issue are persuasive. Telstra informed me today that Telstra did search for Ericssons documents when responding to the Arbitrator's directions and again during the Working Party process - the searches yielded only one file containing 80 documents. Telstra also informed me today that they had located recently the minutes of meetings in respect of 'National Top Ten AXE' for a period of three years (1991-1993) and that they are the minutes of meetings held between Telstra and Ericssons. Telstra are forwarding copies of the minutes to the Parties and I expect that the Parties will have some strong views on the issue and that they will request further documents relating to Ericssons activities. As Telstra is unable to provide Ericssons documents, the Senate Committee might wish to consider inviting Ericssons to make a submission to the Committee.

I am concerned that the Parties are of the view that only 10-15% of documents requested, and which were deemed reasonable by the Independent Technical Adviser, have been provided. If this is the case, the three possible answers I have considered are that (1) there is a conspiracy to deny the Parties access to documents which do exist, (2) the majority of documents requested have been lost or destroyed by Telstra or (3) the Working Party has not been effective in monitoring the searches. Regarding (1) I have not seen any evidence to support the view that there is a conspiracy in Telstra, and other places, to conceal documentation which still exists. Regarding (2) I have seen evidence that some documents were destroyed and reports by Coopers and Lybrand, AUSTEL and the Commonwealth Ombudsman attest to the poor record keeping and retention practices of Telstra in the period covered by the Parties' claims. Regarding (3) the Working Party has been partly effective in bringing into sharper focus the requests by the Parties, in retrieving some documents which the Parties consider relevant and in confirming that some documents never existed or are now not recoverable.

The Working Party is now operating in an environment of diminishing returns and it is my opinion that continuation of the Working Party will not show returns commensurate with the resources being applied by the Parties, the Working Party or Telstra. In my opinion the Working Party should remain in existence only to wrap up the major outstanding issues. To this end I suggest that the Committee requests Telstra to provide responses to all outstanding requests made by the Chair of the Working Party and to give

priority to responding to the important outstanding issue of explaining why few documents relating to significant works undertaken at the relevant exchanges and the relevant parts of the network have been provided to the Parties.

Also, it is my opinion that the Australian Communication Authority should be asked to provide to Telstra all of the copies of Telstra documents which AUSTEL obtained from Telstra during the course of its inquiry.

It is my opinion that it is impossible for Telstra to satisfy all of the requests by the Parties. This is due largely to Telstra's poor record keeping and retention practices and partly because many documents requested may never have been created.

I sent copies of this letter to Telstra, Mrs Garms and Mr Schorer.

Yours sincerely



John Wynack
Chair, Working Party