Telecom AUSTRALIA

Commercial & Consumer
Customer Affairs

Locked Bag 4990
Melbourne Vic 3100

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

11 January, 1994

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

Dear Warwick,

I refer to your suggestion re. Mr Pengilly as an alternative assessor. Telecom's position is still as per my original letter to you of 24 December 1993. Telecom's view is that your nominee, Mr Rogers QC, is a suitable person who will provide an independent and impartial view. In respect of Mr Pengilly I do not have a detailed CV, but my enquiries have revealed that his primary expertise is Trade Practices Law and this background is not of direct relevance to this arbitration. An assessor with a greater level of direct commercial expertise and judicial background such as Mr Rogers QC is seen as necessary.

I have received your facsimile of 11 January 1994 and the attached letter from Mrs Garms. Mr Rumble's contact with Mrs Garms was in direct response to the voice monitoring issue and was also intended to deal with the supply of information under her FOI request. At no stage did Paul Rumble raise the issue of alternative assessors. Please be assured that Telecom will only consider assessors nominated by yourself and has not, and has no intention of, entering into discussions with the other parties to the arbitration in respect of potential assessors.

I have asked the Corporate Solicitor to comment on Mrs Garms' statement that Telecom had previously accepted the appointment of Mr Fox as suitable to themselves. Apparently, the name of Mr Fox was included on a list of names which was discussed with Mrs Garms some time ago. My understanding is that this matter never progressed and does not appear relevant to the current deliberations.

My personal view is that the appropriate way forward is to appoint one assessor to ensure the consistent application of legal principles in these cases. In addition, the assessor needs to be a person of some eminence in legal and commercial negotiations as the outcome of these cases is likely to establish a precedent for future complaint handling.

However, it does appear to me that the claimants are losing sight of an important factor and that is the fact that the TIO is the person with the responsibility for arbitrating on this matter, and that the assessor that is now under discussion is in fact making a recommendation to the TIO. Under these circumstances it appears to me that far too much weight is being placed on the appointment of the assessor. The primary requirement is that this person is definitively impartial and has the necessary professional standing and legal and commercial qualifications.

Please contact me directly (6327790) if I can be of any further assistance in obtaining a speedy resolution of this matter.

Yours sincerely,

Steve Black
GROUP GENERAL MANAGER CUSTOMER AFFAIRS

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