

Commercial & Consumer

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8 April 1994

Mr Robin Davey
Austel
By Facsimile: 820 3021

Dear Mr Davey

Preliminary Draft Austel Report ("the Report")

The purpose of this letter is to confirm Telecom's comments made to your officers in respect of the preliminary draft of the Austel Report which was made available to Telecom for comment.

Those comments are covered in the following three sections: General Comments, Key Issues of Major Concern to Telecom, and Comments on Secondary Issues.

Telecom's General Comments

As a broad comment, if the Recommendations in the Report reflect the amendments and additions I discussed with Mr MacMahon yesterday, then Telecom would consider the Recommendations substantially acceptable and would so state.

However, Telecom understood the purpose of Austel's Report was to assess defects in Telecom's process of dealing with customer complaints of persistent faults, and the Report fails to accomplish this objective. Telecom is willing to accept a report that illustrates the history of the problem by describing the COTs' complaints, fairly presenting Telecom's responses to those complaints, analysing how Telecom's processes and systems may have failed to address and resolve those complaints in a satisfactory and timely manner, and then presenting Austel's Recommendations for improvements. Telecom cannot accept a report that merely repeats unsubstantiated, and in some cases defamatory, claims without giving equal space to Telecom's reply, thereby giving express and implied support to those claims. Austel is not in a position to arbitrate on the merits of those allegations.

Austel and Telecom have agreed that Dr Gordon Hughes, as arbitrator, will adjudicate on the merits of those claims and will determine the amount of compensation, if any, required. This is not Austel's function, nor has it conducted the kind of investigation that would enable it to responsibly make such determinations of law or fact.

Telecom acknowledges that its handling of aspects of the COT cases has not always been ideal and recognises that improvements need to be made, as has been evidenced by Telecom's prompt and diligent response to the recommendations of the Coopers and Lybrand Report.

However, in respect of the narrative in the Report, Telecom considers that the Report is unbalanced in that allegations against Telecom by many parties, many of which are defamatory and still unsubstantiated, are simply repeated without providing adequately for Telecom's response to these allegations. By repeating these allegations, Austel cloaks them with credibility.

We acknowledge that - see 1.2 2.21

Must be whole story before can address investigation into allegations

Handwritten annotations: a large arrow pointing to the first paragraph, a circled '2' next to the second paragraph, and a circled 'A' next to the third paragraph.

Circled '1' next to the final paragraph.

In addition, I spent some four hours with Mr MacMahon yesterday going through in detail Telecom's comments and concerns on the narrative of the Report. In general, Telecom considers that Austel's selective use of technical information in the Report has the potential to mislead readers and, in a number of cases, the conclusions drawn from the material presented are unsound and unsubstantiated by the evidence. Telecom is also concerned that in the more general areas the information presented demonstrates an unacceptable bias against Telecom.

In our discussion yesterday, Mr MacMahon offered me the opportunity to provide responses to a number of these allegations and I have agreed to do so. I will provide these responses by Monday 11 April 1994.

insert and see

Telecom also considers that two additional issues for which Austel has a primary responsibility, should be specifically included in the Recommendations. The two matters are firstly, the need for Austel and the carriers to agree a definition of a satisfactory standard of service against which future performance can be measured, and secondly, the requirement for Austel to move promptly to set limitations on carriers' liability under section 121 of the Telecommunications Act 1991. The latter matter has now become urgent. Recent media coverage has heightened the public awareness of the availability of compensatory payments for business losses without reference to the normal limitations of liability which are provided to telecommunications carriers worldwide. In addition, customer response to the recent damage to Telecom plant in Melbourne and Hobart has demonstrated the need for stability in this area.

*1 Agree
2 We acknowledge but not a matter for comment*

Key Issues of Major Concern to Telecom

There are five key issues of major concern to Telecom. Each is dealt with in turn below.

*See paras 7.38-8.39
his own letter comments*

1. The allegation that the Chairman of Telecom mised the then Minister for Communications, Mr David Beddall. This allegation is supposedly supported by Austel by quotations from letters from Telecom and Austel. Telecom has not previously been given the opportunity to comment on this allegation. Telecom is also concerned that AUSTEL does not appear to have consulted the previous Minister on his views on this matter. Telecom's view is that this allegation must be removed from the Report. No

No! We say does not convey the true nature and content of the problem.

2. The allegation that Mr Ian Campbell misled the Senate and that Telecom misled other Parliamentarians. From our review of the Report, there is no evidence offered to support the allegation that Mr Campbell misled the Senate, and from my personal knowledge of the comments of at least one of the Senators briefed at these sessions, Telecom considers that this allegation is completely unfounded. I understand from Mr Campbell that you have indicated that this allegation is to be withdrawn. Would you please confirm this in writing. The allegation that [redacted] was misled by the information that was given to him by Telecom has also been included in the Report apparently without investigation. Telecom is concerned that you do not appear to have consulted [redacted] on his views on this matter. Telecom's view is that this allegation must be removed from the Report. No

*Will do so
Not necessary documents speak for themselves*

3. The allegation originally made by [redacted] that Telecom misled the Australian Federal Police in an earlier investigation of allegations in respect of her telephone service, which is repeated in the Report by Austel in an authoritative way. Telecom considers that the presentation of this matter in the Report is misleading and defamatory. It is my understanding that Austel has made no inquiries of the Australian Federal Police in respect of this matter.

Not necessary documents speak.

[redacted] original allegations were investigated by the Australian Federal Police and they found no evidence to support her claims. [redacted]

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When [redacted] repeated her allegation to Telecom on 27 February 1994, Telecom referred the allegation to the Australian Federal Police for their information and review. Whilst Telecom has not received a formal response from the Australian Federal Police, it is my understanding from oral comments that they have considered the allegation and the impact of [redacted] statements on the original findings, and do not consider that the matter needs to be reviewed further. Under these circumstances, Telecom considers that the allegations repeated in the Report are unwarranted and must be withdrawn. Opportunity should be give to the Australian Federal Police to comment on this material before it is published.

Let us check with the AFP if correct we might note

This misses the point that we have a summary of a briefing and the briefing is wrong

4. The Report, when commenting on the number of customers with COT-type problems, refers to a research study undertaken by Telecom at Austel's request. The Report extrapolates from those results and infers that the number of customers so affected could be as high as 120 000. Telecom is of the view that this statement is patently flawed and is not supported by the outcomes of the study and the subsequent follow up interviews and evaluated material which has been provided to Austel.

This has been deleted (2.68)

In view of the high media profile that this Report is likely to generate, and Austel's failure to limit carrier liability under Section 121 of the Telecommunications Act, it is considered by Telecom that the inclusion of this reference is unnecessary, inflammatory and must be deleted.

5. Paragraph 6.106 of the Report uses the word 'cover-up' to describe the attitude of Telecom staff in relation to COT matters. Telecom considers that the use of this term is defamatory, inflammatory and inappropriate and requests that it be replaced by the word 'defensive'.

I would be prepared to accept this.

Comments on Other Issues

As Telecom has spent some four hours briefing Mr MacMahon on the detailed comment, it is not proposed to deal with those detailed matters in this letter.

However, it is appropriate to raise the issue of Austel's interpretation of the Bell Canada International consultant's report. It is Telecom's view that the comments purporting to be derived from the information in this report and the statements made that the Bell Canada International report supports the COT allegations are not soundly based. Opportunity should be given for Bell Canada International to comment on this material before it is published.

We do not say that the ascribe to us - see 1.53 and 11.26 11.27 11.28 11.29 11.30 11.31 11.32.

Yours sincerely,

Steve Black

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GROUP GENERAL MANAGER
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9 April 1994

10/4/94
Mr Robin Davey
Austel
By Facsimile: 828 7394

Dear Mr Davey

Preliminary Draft Austel Report ("the Report")

I refer to my previous letter dated 8 April 1994 and our subsequent conversation, and

in relation to the key issues of major concern to Telecom which I raised in that letter, I confirm the following:

1. In relation to point 5, you have accepted Telecom's requested amendment;
2. In relation to point 4, you have agreed to withdraw the reference in the Report to the potential existence of 120,000 COT-type customers and replace it with a reference to the potential existence of "some hundreds" of COT-type customers; and
3. In relation to point 2, you have agreed to withdraw the allegation that Mr Ian Campbell misled the Senate, and you will also alter the wording in respect of the reference in the Report to the statements made by Telecom to Mr Wright, to read that the statements had the "potential to mislead".

I also confirm your advice that you will include a recommendation in the Report that Austel will settle with the carriers a standard of service which they will offer, and that you will include a statement in the Report that Austel will move to determine limitations on carriers' liabilities under section 121 of the Telecommunications Act as a matter of urgency.

Key Issues Which Remain of Major Concern to Telecom

Telecom still holds the following concerns about the key issues which were raised in my previous letter.

1. In respect of the first key issue raised in my previous letter, you have refused to withdraw the disputed reference on the grounds that the words of paragraphs 8.38 and 8.39 of the Report only indicate that the Chairman of Telecom did not disclose the true nature and extent of COT case problems, and do not specifically state that the Chairman of Telecom misled the then Minister for Communications, Mr David Beddall.

Telecom's concern is that this statement comes directly under a heading "COT case allegations" and a clear statement in the first line that Telecom misled the Parliament. Telecom is of the view that the juxtaposition of these paragraphs carries the clear inference that the Chairman of Telecom misled the then Minister for Communications, Mr David Beddall.

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Telecom is also concerned that the Report purports to be an independent review of the COT allegations by Austel, which holds itself out as being disassociated from the matters under review. However, the evidence led to support Mrs Garms' allegations that Telecom has misled the Parliament refers to documents evidencing a personal disagreement between the Chairman of Austel and Telecom as to the efficacy of a ministerial briefing note. Telecom disputes the Chairman of Austel's views on this matter and is of the view that unless the allegation is removed from the Report, the Report will still imply that the Chairman of Telecom misled the then Minister. This is unacceptable to Telecom.

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Telecom is also concerned that AUSTEL does not appear to have consulted the previous Minister on his views on this matter. Telecom's view is that this allegation must be removed from the Report.

2. In respect of the second key issue raised in my previous letter, I note your advice that you propose to retain the altered reference to Mrs Garms' allegations in respect of Mr Keith Wright. Telecom still has the following concerns with your proposal. Telecom is concerned that it has not been given sufficient time to contact the officer who gave the briefing and obtain a statement of his understanding of Telecom's systems and to prepare a proper response in relation to this matter for inclusion in the Report. Telecom is of the view that if this allegation is to remain, then Telecom should be given adequate time to prepare a formal response for publication in the Report.
3. In respect of the third key issue raised in my previous letter, I note your advice that you propose to include the findings of the initial Australian Federal Police (AFP) investigation into Mrs Garm's allegations of corruption to make it clear that there was no evidence to support her allegations, and also to withdraw any specific reference to Telecom having misled the AFP. However, Telecom's concern is that this statement comes directly under the heading "COT case allegations" and is presented in the context of a section where allegations by Mrs Garms that Telecom misled the Australian Federal Police are presented. This clearly infers that Telecom misled the Australian Federal Police in the conduct of their investigation.

Telecom is concerned that this makes the Report misleading for two reasons. First, the statements relied upon by Mrs Garms to support her allegation, were not relevant to the subject matter of the investigation carried out by the Australian Federal Police. It would therefore not have affected the outcome of the Australian Federal Police investigation which related to the physical disconnection of her service.

Secondly, Mrs Garms' allegation that Telecom is corrupt and has misled the AFP, is untrue. The basis of her allegation is that Mr Bennett's purported statement to the AFP, that Telecom did not have access to check her old Commander telephone system, is not consistent with the file note dated 31 May 1990. Her allegation is that Mr Bennett's statement is untrue because Telecom had physical access to view her equipment, as evidenced by the file note.

Access to check equipment from a technical point of view refers to the ability to physically access equipment and the capacity to disassemble the equipment for testing and repair. The file note indicates that Mrs Garms had not taken out a maintenance contract for that equipment with Telecom and the equipment was privately installed and maintained. From a technical perspective Telecom did not have access to check the equipment, in that it did not have Mrs Garms' authority or the responsibility to disassemble the equipment for testing and repair. Therefore the two statements are consistent.

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Mrs Garms has accused Telecom of corruption twice, and has also made allegations of corruption against the AFP. The first allegation of corruption against Telecom has been investigated by the AFP and found to be without foundation. The allegation of corruption against the AFP has also been investigated and found to be without foundation. The allegations which Austel now seeks to re-state in the Report in an authoritative way have also been referred to the AFP and it is Telecom's understanding that, after further consideration, the AFP does not consider that the matter needs to be reviewed further. Telecom considers that the proposed changes to the Report are insufficient and considers that the allegations repeated in the Report are unwarranted and must be withdrawn.

Telecom is also concerned that Mr MacMahon has been incorrectly informed that the AFP officer who conducted the original inquiry into Telecom, has been found guilty of corruption charges and is in prison. I have taken this matter up with the AFP who have advised me that this is totally unfounded. As Austel appear to have been seriously misinformed about the status of the AFP inquiries and AFP personnel, Telecom considers that any matters dealing with AFP investigations must be formally cleared with the AFP.

Telecom also considers that it should be given the opportunity to provide specific responses to any allegations of COT members re-stated in the Report, and that adequate time should be allowed for this purpose.

4. In respect of the fourth key issue raised in my previous letter, Telecom is still concerned that, in the absence of agreed service standards, the proposed reference to "some hundreds" of customers has the potential to be misleading.

At our meeting on 6 April 1994, Mr Ian Campbell indicated that Telecom accepted that the number of customers reporting DNF-type problems might be more than 50. However, in the absence of agreed service standards, it is not possible to define objectively how many customers are not receiving a satisfactory level of overall service.

The number of customers currently in serious dispute with Telecom on all service-related matters of which Telecom is aware, is substantially less than 100. Accordingly Telecom's view is that the only reference made in the Report to the number of potential COT customers, should be the original reference to "more than 50" customers.

Telecom considers that the Report's findings which purport to be derived from the information in the Bell Canada International (BCI) report, are misleading in that they focus on minor issues and ignore the primary findings of the BCI report in relation to those same issues, and are also in some cases factually incorrect. The Report is also unbalanced because the findings do not deal with the primary findings of the BCI report but only deal with peripheral issues favourable to the views of the COT customers.

In the concluding section of the section of the Report dealing with BCI, Austel makes no reference to the primary findings of BCI, but instead focuses on the following statement.

"The BCI report suggests the following weaknesses:

- potential problems attributable to older technology
- inadequacies in monitoring and testing equipment
- inadequacies of maintenance spares
- inadequacies of maintenance procedures
- potential problems attributable to number assignment procedures."

The executive summary of the BCI report directly contradicts a number of these points. It states that "the testing and fault locating equipment and systems, as well as procedures to detect and correct network troubles were found to be comparable with world standards...". It also states that "the TEKELEC/CCS7 test system with enhancements by Telecom is the most powerful tool available in a digital network." In view of this, Telecom considers that the Report is factually incorrect. Telecom is also of the view that the statement that BCI found inadequacies of maintenance spares, is factually incorrect.

If the following amendments are made, this section of the Report will be more balanced. The amendments include:

- relating Telecom's responses to COT issues and dealing with them together,
- correcting the errors of fact in Austel's findings in relation to technical matters,
- referring to the fact that supplementary testing addresses Austel's concerns regarding the original testing, and
- provide prominence to the primary findings of BCI in the relevant sub-section of the Report dealing with Austel's findings.

In addition, opportunity should be given for Bell Canada International to comment on this material before it is published.

It is also critical to point out that repetition of the unsubstantiated allegations of the four COT customer (unsubstantiated because AUSTEL recognises that an arbitrator will make these final determinations) without at the same time offering Telecom's response to those claims, is misleading and biased.

AUSTEL must either (1) not publish four COT customer's allegations at all, or (2) publish them alongside Telecom's responses, state that AUSTEL does not take one side or the other since the allegations will be determined by an arbitrator, point out how these disputes illustrate defects IN THE PROCESS of Telecom's process for resolving customers' complaints, and proceed to make recommendations on IMPROVING THE PROCESS. This will involve much new material being inserted in the Report to present our position on each quoted COT claim.

Finally, Telecom understands that you may amend the Report to reflect concerns raised with you by the COT customers. As these changes may raise further issues of concern to Telecom, Telecom is of the view that it should have an adequate opportunity to comment on any such changes.

Yours sincerely,



Steve Black
GROUP GENERAL MANAGER
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