COPY

Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

28 June 1995

Strictly Confidential

Mr Alan Smith
Cape Bridgewater Holiday Camp
Blowholes Road
RMB 4408
CAPE BRIDGEWATER VIC 3306

By facsimile: (055) 267 230

Dear Mr Smith

I refer to your recent correspondence.

So far as your request concerning the Bell Canada raw data is concerned, our file shows that on 15 August 1994 you asked the Arbitrator to direct Telecom to produce this information. On 16 August 1994 Dr Hughes asked Telecom for its reaction to your request so that he could consider appropriate directions on the matter. There is no indication on our file that Telecom responded. Nonetheless, on 25 August 1994 you provided statutory declarations to the Arbitrator to the effect that your claim documentation was complete.

Our file then shows that by letter dated 28 December 1994 you again formally requested the Arbitrator to require Telecom to provide the raw data associated with the Bell Canada testing. The Arbitrator wrote to Telecom that day enclosing a copy of your letter and requesting a submission in relation to your request. Telecom's submission, dated 13 January 1995, insofar as it related to your request for the raw data stated:

> *" Telecom located some of Bell Canada International's working documents which were thought to be in the possession of Bell Canada Interrational but which were later found to have been left with Telecom staff in Australia.*
>
> *Those working documents, insofar as they related to Mr Smith's business and fell within the scope of his FOI request of December 1993 were provided to Mr Smith under cover of my letter dated 21 October 1994. Mr Smith has previously been informed (by letter dated 15 December 1994 from Telecom to Mr Smith) that, as far as I am aware, all Bell Canada International's working documents (including raw data) in Telecom's possession have already been provided to him."*

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Melbourne Victoria

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Telephone (03) 9277 8777
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Dr Hughes provided you with a copy of this submission on 23 January 1995, noting that Telecom did not consider it had any further information of relevance in its possession. Dr Hughes then invited you, within twenty-four hours, to respond to Telecom's submission. Our file does not indicate that you took the matter any further.

In other correspondence you refer to what you apparently now see as problems in the process of developing the Fast-Track Arbitration Procedure, an agreement which flowed from the Fast Track Settlement Proposal negotiated by AUSTEL and the parties in November 1993.

I understand that during that negotiation process Mr Schorer and Mrs Garms sought their own independent legal advice. Of course you had the opportunity to do likewise.

The Arbitration Procedure that was subsequently agreed to by all the parties set out a fair and realistic framework within which these longstanding disputes could be resolved.

The problems in the provision of documentation under FOI did cause delays in the progress of these arbitrations. However, as you are aware, this office has no jurisdiction over FOI, which is instead within the realm of the Commonwealth Ombudsman.

As you know, Dr Hughes took the view that it would assist neither the parties nor the process itself to insist on the adherence to submission deadlines when FOI applications by the claimants remained outstanding. It was not possible or appropriate for Dr Hughes or this office to play a more active role in the FOI issue.

Your concerns, only recently expressed, with the Arbitration Procedure appear to be based on the grounds that you had no guidance as to how to present your claim to the Arbitrator, in the face of the far greater resources available to Telstra for the preparation of its defence. Of course, in order to maintain the integrity and impartiality of the arbitration procedure, neither this office nor the Arbitrator could provide you with such guidance. Dr Hughes states in his Award that he took into account the fact that you formulated your claim submissions without legal representation. He also notes that he did not believe it would have been reasonable to expect you to present your claim in a manner similar to that which would have been adopted by a legal practitioner.

While you may be disappointed with the Arbitrator's findings as to the losses which flowed from the considerable technical difficulties for which Telecom was found liable, this should not detract from your justifiable sense of great achievement with regard to the technical findings.

The Arbitration process has run its course, and a final resolution has been achieved. There is nothing to be gained by revisiting issues which have been dealt with in the arbitration procedure. Neither Dr Hughes nor this office has any further role to play in the matters which gave rise to your dispute with Telecom which has now been resolved.

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However, if you do experience any further problems with your telecommunications services that are unrelated to the matters resolved by the arbitration procedure please do not hesitate to contact us.

Yours sincerely

John Pinnock
Ombudsman

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Hunt & Hunt
LAWYERS

COPY

28 December 1994

Our Ref: GLH
Matter No: 5126886
Your Ref:

BY FACSIMILE 632 3235
Mr E Benjamin
C/- S Gill
National Manager
Customer Response Unit
Level 37, 242 Exhibition Street
MELBOURNE Vic 3000

Dear Mr Benjamin

ARBITRATION - SMITH

I enclose copy facsimiles from the Claimant dated 28 December 1994 in which he requests me to apply to Telecom for access to specified information.

As you are aware, I have the power under clause 7.6 of the Fast-Track Arbitration Procedure to order the production of documentation.

Do you wish to make a submission in relation to Mr. Smith's request?

Yours sincerely

GORDON HUGHES

Encl.

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

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FAX FROM:	ALAN SMITH C. O. T.	DATE:	24.1.95
FAX NO:	056 267 230		
PHONE NO:	008 816 522	NUMBER OF PAGES (including this page)	

FAX TO: DR GORDON HUGHES
HUNT & HUNT
LAWYERS
MELBOURNE

Dear Dr Hughes,

ARBITRATION - TELECOM

I refer to your letter of 23 January, 1995.

Please may I suggest that, after viewing my reply to Telecom's Defence Documents titled "Brief Summary Witness Statements Conflicting Evidence", under the heading of "Bell Canada International", you and the Resource Team will be in a better position to see the point I am making regarding the CCS7 data.

The report clearly shows that such CCS7 data was used in the Bell Canada testing for their findings regarding faults, switching losses, busy, congestion etc. This information would have only come from the CCS7 equipment used to trap these test calls.

Mr Ted Benjamin of Telecom, in his letter to Dr Hughes, states that Telecom have supplied to Mr Smith all CCS7 and working documents associated with the Bell Canada testing, but Telecom have only sent me one day of CCS7 data, for the 4/11/93. The Bell Canada testing did not start until 5/11/93 and it ended at 14.30 hours on 9/11/93. The working documents that have been supplied, copies of which are being sent with this document, do not completely correspond with those from the Bell Canada Publicly Released Documents. Although I do not wish to confuse the main issue in your response to Telecom's letter, I do believe that there are still issues related to this Bell Canada testing that should be clarified, along with the response to this letter.

After the Resource Team views this report of mine, using the Bell Canada Report and Telecom notes, the Resource Team will again see variations, conflicting testing results associated not only with the Bell Canada testing, but also associated with the NEAT testing which was carried out at the same time as the Bell Canada testing.

My letter to you on the 28th August, 1994 regarding the contents of this report shows three different sets of testing on the 5/11/93, from three separate locations and all to the same PTARS at the RCM in Cape Bridgewater. This letter spells out my concerns.

Dr Hughes, Telecom's defence documents show testing from 1988, some 44 monthly test sheets, tests to a PTARS at Cape Bridgewater. Not one of these test sheets was signed We have so many tests that were supposed to have been received at Cape Bridgewater yet NO signatures can be seen anywhere.

On 11th December, 1992, Jim Holmes of the Corporate Secretary's Office, sent a letter to Jill Cardiff, Senior Assistant Ombudsman at the Commonwealth Ombudsman's Office. This letter speaks of test calls. There are improprieties apart from this issue concerning these test calls that I have addressed with the Commonwealth Ombudsman's Office under section 9 of the Act. However, in relation to the test calls in question, some 34,686 calls that were supposed to have been generated to Cape Bridgewater. Telecom has not been able to produce

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technical data to validate any of these test calls. Telecom has though, in their letter to Ms Cardiff, stated that, out of those 34,686 test calls only 106 failures occurred. However, in Telecom's own Defence Documents, appendix 5 at 31, they state that the failure rate was 1,569.

C.O.T. and its members, myself included, have asked Telecom repeatedly to provide this technical data regarding these so called 'received calls' at our businesses and at test stations. Telecom has failed here at Cape Bridgewater to supply any data at all to validate even one set of test calls.

Further to my report on the Bell Canada testing it will be seen, from Telecom's own documents, that the NEAT testing was capturing (or should I say, was supposed to capture) all tests to my business. My question is, did Telecom have two sets of CCS7 operating at the one time; one to my business and one to the PTARS at the RCM at Cape Bridgewater? Whichever, not one piece of CCS7 data has been produced for my viewing.

Also in this Bell Canada report, again using Telecom's own documents, it will be seen that Telecom had raw ELMI tape testing at this business sent directly to AUSTEL, but I have not yet seen the raw tape data which was asked for some six months ago.

The claim that I have against Telecom is that I did not receive all the calls which were intended for this business. Telecom states that they were received on a percentage basis. Telecom says that I received those calls percentage-wise but I have documentation that shows that this is not the case: letters from clients, businesses and from Telecom themselves, stating that they could not make contact at will. Test calls were a part of Telecom's proof that these calls did get through.

Telecom used CCAS and CCS7 testing equipment to capture these test calls to present a pattern in a graph/table form, for their own NNI investigating teams. The proof is in the CCS7 data. If Telecom have been unable to provide any testing results or data to show that test calls did finish at the intended location, the PTARS RCM at Cape Bridgewater or this business, then Telecom have no defence.

Your letter of 23 January, 1995 specifically mentioned that you wanted to be sure that there was no confusion surrounding the CCS7 data; that the dates shown in Mr Benjamin's letter were not misunderstood. My request is once again presented in this letter: CCS7 data had to be used in this testing, it is shown in the Bell Canada Report as being used. Without these CCS7 test results it must be seen that either Telecom is hindering my case, or they fabricated the testing.

I leave this matter in your hands.

Sincerely,

Alan Smith

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Hunt & Hunt
LAWYERS

23 January 1995

Our Ref: GLH
Matter No: 5126886
Your Ref:

BY FACSIMILE 055 267 230
Mr A Smith
Cape Bridgewater Holiday Camp
RMB 4408
CAPE BRIDGEWATER
Portland Vic 3305

Dear Mr Smith

ARBITRATION - TELECOM

I enclose copy letter from Telecom dated 13 January 1995 in response to your facsimile of 28 December 1994.

You will note Telecom does not consider it has any further information of relevance in its possession.

I invite you, within the next twenty four hours to respond to Telecom's submission. Specifically, I want to be certain that there is no confusion between the parties as to the documentation which is being sought.

Yours sincerely

GORDON HUGHES

Encl.

cc E Benjamin, W Smith, P Bartlett, J Rundell

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Telecom
AUSTRALIA

Customer Response Unit
Commercial & Consumer

Level 37
242 Exhibition Street
Melbourne Vic. 3000

Telephone (03) 634 2977
Facsimile (03) 632 3235

12 January 1995

Dr Gordon Hughes
Hunt & Hunt
Level 21
459 Collins Street
MELBOURNE VIC 3000

By facsimile: (03) 614 8730

Dear Dr Hughes

Fast Track Arbitration Procedure - Alan Smith

I refer to your letter dated 27 (sic) December 1994 enclosing a copy of a letter dated 28 December 1994 received from Mr Smith. I wish to comment as follows:

1. Mr Smith has requested the Arbitrator *"to apply to Telecom for access, of all the raw data, associated with the Bell Canada testing at the RCM, PTARS at Cape Bridgewater"*.
Telecom located some of Bell Canada International's working documents which were thought to be in the possession of Bell Canada International but which were later found to have been left with Telecom staff in Australia.

   Those working documents, insofar as they related to Mr Smith's business and fell within the scope of his FOI request of December 1993 were provided to Mr Smith under cover of my letter dated 21 October 1994. Mr Smith has previously been informed (by letter dated 15 December 1994 from Telecom to Mr Smith) that, as far as I am aware, all Bell Canada International's working documents (including raw data) in Telecom's possession have already been provided to him.

2. Mr Smith has on numerous occasions requested Telecom to provide CCS7 call statistics dated 4 November, 5 November 6 November and 9 November 1993. (Letters dated 27 October and 3 November 1994) Extensive searches were carried out by Telecom in an attempt to identify these documents. Mr Smith was informed by letter dated 15 December 1994, that as far as I am aware, no such documents exist for the specific dates requested and therefore could not be provided to Mr Smith.

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Mr Smith has now requested CCAS and CCS7 call statistics for the dates 5 November, 8 November and 9 November 1993. Telecom has not denied Mr Smith access to these documents but is unable to provide documents which do not, as far as I am aware, exist for the specific dates requested by Mr Smith.

Yours faithfully

Ted Benjamin
National Manager
Customer Response Unit

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