

**Issues Involved During the Resolution - Factors Considered**

1. Alan requested \$150k
2. Chances of legal action - high
3. Chances of media action - 100%
4. Poor performance of Telecom:
  - historically ~~not~~
  - March ? problem
  - Local Portland problem fixed in October
  - wiring and cabling issues
  - RVA on congestion
5. Slow resolution of past problems both technical and claims
6. COT involvement:
  - chances of class action
  - chances of mass media action
  - chances of membership growth
  - Adelaide Pizza
  - Mt Gambia
  - Portland
7. Evidence of problems:
  - Many letters stating the problem of not getting through to Alan Smith
  - People prepared to make statements of problems
  - Claims that Alan had rung himself from his Goldphone and not got through
  - Austel and Ombudsman both had trouble getting through
  - Many claims which might be difficult to substantiate in court but would be credible in the media
  - Viability of business for the future - increased bookings since the service

Period of time
8. Costs incurred:
  - Additional phone calls to chase up business - about \$1000
  - Legal costs - about \$1000
  - Camps prepared but not run
  - Advertising
  - Time
9. Alan's time and other consequential costs - health, stress, etc

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10. Loss of business:
  - Camps lost because party could not contact Alan (evidence in letters - \$10,000 loss of profit)
  - Extrapolating - about \$40,000 over a period
11. Loss of partnership:
  - Alan claims \$100,000 loss because he had an opportunity to sell a share in his business but this opportunity was lost because the potential partner stated he could not contact Alan Smith initially and lost faith in the telephone service available - hence withdrew his offer
12. Possible legal costs:
  - If Alan took legal action Telecom would incur significant legal costs to defend it - about ?
  - If Telecom lost, we could also incur Alan Smith's costs
  - Estimated what possible bill?
13. Inquiry costs - both Austel and Ombudsman's Office has been actively involved. Enquiries are ongoing. Cost of ? - about <sup>saving</sup>
14. Cost of arbitration - Mr Smith wanted to use an independent arbitrator to resolve the dispute - cost in a case in Sydney \$25k
15. Management time - I have spoken to Alan Smith regularly (daily) over a period. I began making appointments for when I would ring him - he nearly always rings me prior to the call. When I did not ring him daily (even if I was not scheduled to) he wrote to Frank Blount and Doug Campbell or both. He had regularly rung Doug Campbell's office (Judy Lanstrom) several times a week and Austel and others in Telecom. This was despite my setting up a regular contact point (Mark Ross in Ballarat) for him and a specialist diagnostic technical manager (Bruce Pendlebury). Mark spoke with Alan Smith once a week at least. Bruce averaged 5-6 calls a week to and from Alan Smith. He also contacted the Area Manager, Don Lucas, on a regular basis. Don also visited Alan Smith at Cape Bridgewater. This was going to continue forever if all matters were not resolved.
16. Legal position - Mr Smith's service problems were network related and spanned a period of 3-4 years. Hence Telecom's position of legal liability was covered by a number of different acts and regulations. The immunity claimed has never been tested in court and the current immunity from paying loss of business compensation depends upon Section 8 of the BCS Tariffs lodged with Austel. This is probably the least clear of the immunities. In my opinion Alan Smith's case was not a good one to test Section 8 for any previous immunities - given his

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evidence and claims. I do not believe it would be in Telecom's interest to have this case go to court.

Overall, Mr Smith's telephone service had suffered from poor grade of network performance over a period of several years; with some difficulty to detect exchange problems in the last 8 months.

In the media Telecom would not have looked good at a time when we are working hard to improve general customer perceptions.

In a legal battle, Telecom's chance of winning would have to be about 50/50. The bad publicity for Telecom would have been significant.

In my view were Alan Smith to win a legal battle he could have been awarded payment as high as \$40,000. If we went to arbitration a payout of the order of \$80,000 would not be out of the question; with costs of setting up the arbitration extra.

In the interests of expediency and Commercial judgement I considered it better to reach a commercial settlement.

Mr Smith's communication arrangement is questionable:

- other ways eg second line, fax, 008, etc of contacting him not set up
- use of answering machine improper or incorrect
- answering arrangements when Mr Smith was not there *not satisfactory*
- Telecom's defence in some doubt on causality

*There are few personal notes recorded at the time of settlement. Alan Smith did not pay a cent to settle both substantiation of his claim.*

*Ranveer Pittard*

*17/2*