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# THE COT CASES

## AUSTEL's Findings and Recommendations

April 1994

## CHAPTER TWO

### THE COT CASES, THEIR COMPLAINTS AND THE EXTENT OF THE PROBLEM

*This Chapter provides an overview of the COT Cases, their complaints and the extent of the problem. Further detail of their complaints may be found in Chapter Five and the following Chapters.*

#### THE COT CASES

*COT* (an acronym for *the Casualties of Telecom*) has been coined by a group of Telecom's customers to describe their loose association for the purpose of bringing pressure to bear on Telecom to resolve their individual complaints about Telecom's service.

2.2 The members of *COT*, or the *COT Cases* as they call themselves, are persons who are, or were, the proprietors of small businesses that rely, or relied, very much on the telephone to conduct their business and to generate business. For example, some came from the hospitality industry and were dependent on telephone bookings and reservations. Another runs a courier service.

#### *The original COT Cases*

2.3 The persons referred to in this report as the *original COT Cases* were -

- Mr Graham Schorer, Golden Messenger, North Melbourne, Victoria (spokesperson)
- Mrs Ann Garms OAM, Tivoli Restaurant, Fortitude Valley, Queensland
- Mrs Maureen Gillan, Japanese Spare Parts, Enoggera, Queensland
- Mr Alan Smith, Cape Bridgewater Holiday Camp, Cape Bridgewater, Victoria
- Ms Shelagh Hawkins, Society Restaurant, Melbourne, Victoria.

2.4 It is relevant to note that Ms Hawkins no longer carries on the business referred to and there is minimal further reference to her case. Also, Mrs Gillan ceased to carry on her business and certain of the monitoring and testing

- a RAM relay armature problem which posed a risk to services using a rotary hunting facility
- local access network problems in the Fortitude Valley area
- problems inherent in the use of diverters
- Telecom's number assignment procedures for rotary hunting group line assignments which may, as suggested by Bell Canada International, lead to problems.

AUSTEL's finding that the above matters have the potential to affect the services of particular *COT Cases* does not extend to whether Telecom has failed to meet acceptable service standards or caused the losses claimed - those are issues to be addressed in the *Fast Track Settlement* and proposed arbitration procedures.

#### The extent of the problem

1.15 While the information available to AUSTEL does not allow it to determine with real precision the number of Telecom's customers who have experienced, or are experiencing, service difficulties and faults like those experienced by the *COT Cases*, it is reasonable for AUSTEL to conclude that -

- the number of Telecom customers experiencing *COT* type service difficulties and faults is substantially higher than Telecom's original estimate of 50
- the number of Telecom customers who are in the *COT Cases'* category, that is, customers who have -
  - experienced *COT* type service difficulties and faults; and
  - received similar treatment in Telecom's handling of their complaints,

is higher than Telecom's original estimate of 50.

Telecom has conceded that its original estimate requires revision - see paragraph 1.65.

1.65 Telecom objected to extrapolations in the draft of the REARK survey (Chapter Two) as to the extent of the problem. When first expressing its objection orally, its representatives conceded that -

- Telecom needs to revise its earlier estimate that "... the number of customers experiencing difficult faults, including 'blatant' cases, is likely to be less than 50 nation wide, very much lower than the 'hundreds' claimed despite considerable national publicity"
- the figure could be "substantially in excess of 50" and "maybe in the hundreds".

Telecom subsequently informed AUSTEL in writing as follows -

*"... 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, Telecom indicated that it accepted that the number of customers reporting DNF-type problems might potentially 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."*

(Letter dated 11 April 1994, Telecom's Group General Manager Customer Affairs to AUSTEL)

While AUSTEL agrees with Telecom on the need for agreed service standards, their absence does not invalidate a finding that the number of Telecom customers experiencing COT type service difficulties and faults is substantially higher than Telecom's original estimate of 50. In light of the above concessions, the extrapolations objected to which appeared in the draft does not appear in this report.

1.66 Telecom also objected to a paragraph in the draft reporting allegations by the COT Cases about the nature of a briefing given by Telecom to Senators. As the allegations were based on hearsay only and the paragraph was not essential to AUSTEL's findings, the paragraph does not appear in this report.

1.67 Telecom further objected to the findings in the draft report relating to the Bell Canada International report. It said that the findings were -

*"... misleading in that they focus on minor issues and ignore the primary finding of the BCI report in relation to those same issues, and are also in*

2.71 Notwithstanding the qualifications that must attach to any finding AUSTEL may make, it is reasonable for AUSTEL to conclude that -

- the number of Telecom customers experiencing *COT* type service difficulties and faults is substantially higher than Telecom's original estimate of 50
- the number of Telecom customers who are in the *COT Cases'* category, that is, customers who have -
  - experienced *COT* type service difficulties and faults; and
  - received similar treatment in Telecom's handling of their complaints,

may be higher than Telecom's original estimate of 50. ↙

customers who have experienced service difficulties and faults of the kind described by the *COT Cases* is significantly higher than Telecom's estimate of 50 and possibly in the hundreds.

## FINDINGS

2.69 Telecom's original estimate of 50 as the number of customers who have experienced *COT* type service difficulties and faults was too low. Telecom has conceded that its original estimates requires revision - see paragraph 1.65.

2.70 While the information available to AUSTEL does not allow it to determine with real precision the number of Telecom's customers who have experienced, or are experiencing, service difficulties and faults like those experienced by the *COT Cases*, the following indicates that the number of customers experiencing *COT*-type service difficulties and faults is substantially in excess of Telecom's original estimate of 50 -

- the complainants known to AUSTEL (paragraph 2.29)
- Telecom's policy of settling matters conditional upon its customers refraining from complaining to a regulatory authority (paragraph 2.30)
- Telecom's statements of its liability (paragraph 2.30)
- the possibility that some customers have stopped complaining or are prepared to accept a less than satisfactory service (paragraph 2.30)
- the geographic spread of the complaints known to AUSTEL (paragraph 2.31)
- the attendances at the Brisbane meetings (paragraphs 2.37 and 2.39)
- the responses to Mrs Garms' questionnaire (paragraph 2.40)
- AUSTEL's analysis of the Brisbane matters (paragraph 2.46)
- the REARK survey (paragraph 2.57).

The following letters, dated 8 and 9 April 1994, to AUSTEL's chairman from Telstra's group general manager, suggests that AUSTEL was far from truly independent, but rather could be convinced to alter their official findings in their COT reports, just as Telstra has requested in many of the points in this first letter. For example, Telstra writes:

*"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. 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" (See Open Letter File No/11, page 3, point 4) website [absentjustice.com](http://absentjustice.com), also attached here.*

The following day, Telstra again writes to AUSTEL stating:

*"the number of Telecom customers experiencing COT type service difficulties and faults is substantially higher than Telecom's original estimate of 50". (Public Government Report)*

The fact that Telstra (the defendants) were able to pressure the government regulator to change their original findings in the formal 13 April 1994 AUSTEL report is **deeply disturbing**. The 120,000 other customers – ordinary Australian citizens – who were experiencing COT-type problems are not referred to in the Department of Communications Information Technology and the Arts (DCITA) report (see Senate Evidence File No/28), although this was used by them to determine the validity of the COT claims during the 'so called Senator Helen Coonan's April 2006 government COT Case independent assessment process'.

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.

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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.

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.

#### **Key Issues of Major Concern to Telecom**

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

1. The allegation that the Chairman of Telecom misled 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.
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 Mr Wright 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 Mr Wright on his views on this matter. Telecom's view is that this allegation must be removed from the Report.
3. The allegation originally made by Mrs Garms 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.

Mrs Garms' original allegations were investigated by the Australian Federal Police and they found no evidence to support her claims. Mrs Garms was unsatisfied with their findings and made allegations of corruption directly against the Australian Federal Police.

When Mrs Garms 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 Mrs Garms' 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 given to the Australian Federal Police to comment on this material before it is published.

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.

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.

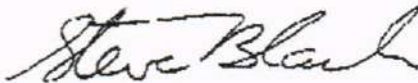
5. Paragraph 6.106 of the Report uses the word 'cover-up' to describe the attitude of Telecom staff in relation to COT matters. Telecom considers that the use of this term is defamatory, inflammatory and inappropriate and requests that it be replaced by the word 'defensive'.

#### 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.

Yours sincerely,



Steve Black  
GROUP GENERAL MANAGER  
CUSTOMER AFFAIRS

R11848

9 April 1994

Mr Robin Davey  
Austel  
By Facsimile: 828 7394

*Sent  
7 Apr 94*

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.

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 Garms' 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.

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  
CUSTOMER AFFAIRS

R11836