

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 ^{Saving}
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

These are for personal notes recorded at the time of settlement. Alan Smith does not seem to present both substantiation of his claim.

Ronnie Pittard