

**The Hon Malcolm Turnbull,  
Prime Minister of Australia**

**The Hon Barnaby Joyce  
Deputy Prime Minister**

**Mr Dan Tehan, Federal Member for Wannon**

**Ms Sue Laver, Telstra General Counsel**

**Mr John P Mullen, Telstra Board Chair**

**Cape Bridgewater Holiday Camp  
Service Verification Tests (Report)  
Collision, Deception, Misleading and Deceptive Conduct**

**Exhibits 46-F-to 62**

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3<sup>rd</sup> November 2008

Mr Chris Chapman  
Chairman  
Australian Communications & Media Authority  
P O Box Q-500  
Queen Victoria Building NSW 1230

Dear Mr Chapman,

Although you, and the ACMA Board, are already aware of various matters regarding my claims against Telstra and the unethical way in which the TIO administered my arbitration and the arbitrator arbitrated my claims material, it is important that you are particularly aware of the issues detailed in the following letters:

**18<sup>th</sup> October 2008:** I notified Mr Friedman of the numerous documents AUSTEL/ACMA has withheld from me, and other COT claimants, during our respective arbitrations, noting that I therefore: "... believe I have every right to suspect they will do it again ..." and asking the AAT "... to direct ACMA to provide me with ALL the relevant information covered by the period included in my FOI application, including those documents not yet included in ACMA's list."

**28<sup>th</sup> October 2008:** I wrote to Ms Alison Jerney, Senior Lawyer for ACMA (copied to Mr Friedman), advising that I had received some FOI documents but there were still many outstanding. I included a \$30.00 cheque to cover another FOI request for the missing documents, noting: "It is apparent by ACMA limiting this release of the FOI documents that they have in fact 'sanitized' evidence adverse against ACMA, and in doing so they have protected Telstra."

**31<sup>st</sup> October 2008:** During the Administrative Appeals Tribunal telephone conference, Ms Jerney stated that ACMA had already given me all the relevant FOI documents for the period covered in the FOI request currently being reviewed by the AAT. This made it seem that ACMA had abided by the agreement reached during the previous AAT hearing on 3<sup>rd</sup> October 2008, but this is not so because I can prove the existence of a number of documents that were not included in the information ACMA released as part of the AAT review.

**Exhibit 1:** This page from the Senate Estimates Committee Hearing of 25<sup>th</sup> February 1994 includes Senator Richard Alston's questions on notice to AUSTEL's Chairman Robin Davey noting: "I refer you to a minute from Telecom dated 2 July 1992 in relation to Mr Alan Smith of Cape Bridgewater - no doubt well known to you and to me. This minute says: "... Our local technicians believe that Mr Smith is correct in raising complaints about incoming callers to his number receiving a Recorded Voice Announcement saying the number is disconnected. They believe that it is a problem that is occurring in increasing numbers as more and more customers are connected to AXE"

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**Exhibit 2:** Is the Telstra FOI document referred to by Senator Alston in Exhibit 1.

**Exhibit 3:** This document, "Senate Estimates Committee Responses By AUSTEL To Questions On Notice", relates to the Portland/Alan Smith/AXE exchange problem (see Exhibit 1). It states: "By letter dated 2 March 1994, AUSTEL sought from Telecom an explanation of the opinion expressed in Telecom's minute of 2 July 1992 as quoted by Senator Alston". Although the rest of the page is blank, this document confirms that AUSTEL wrote to Telstra during the time period of 1<sup>st</sup> February to 1<sup>st</sup> June 1994, the I nominated in my FOI application. However, this 2<sup>nd</sup> March 1994, letter is not included in ACMA's FOI schedule and/or the documents produced by ACMA on 27<sup>th</sup> October last, perhaps because, as I have commented above, the letter is most detrimental to Telstra.

The AXE / RVA / 008-1800 billing / and lockup problems were incredibly important to my claims against Telstra and, between 4<sup>th</sup> October 1994 and 16<sup>th</sup> December 1994, many letters were exchanged between AUSTEL's Bruce Matthews, Telstra's Steve Black, Telstra's Ted Benjamin and Dr Hughes in relation to these AXE / RVA / 008-1800 billing / lock-up problems. None of these specific issues raised in these letters the (008 billing problems, the RVA Recorded Messages or the lock-up problems) were never addressed during my arbitration. Although, AUSTEL/ACMA did allow Telstra to address these issues *secretly* on 16<sup>th</sup> October 1995, five months after my arbitration failed to address these issues. Even then, Telstra did not disclose to AUSTEL/ACMA that the Ericsson AXE and 008-1800 software problem was a national problem.

**Exhibit 4:** This document confirms I provided Ferrier Hodgson, the arbitrators Resource Unit, a claim document titled: "*Smith Reply - Samples of FOI Telecom documents - known AXE Faults and Phone Problems*," this part of my claim submission confirmed I was still having massive RVA / billing / lock-up problems while connected to the Portland AXE Exchange.

**Exhibit 5:** This is a list of Telstra's defence material and my claim documents that were provided by Ferrier Hodgson to the TIO-appointed Technical Consultants for assessment. This list does not include the "*Smith Reply - Samples of FOI Telecom documents - known AXE Faults and Phone Problems*" document referred to in Exhibit 4. Clearly Ferrier Hodgson kept this very relevant AXE report from being investigated in a so far successful attempt to protect their knowledge of the problems Telstra was having nationally with the Ericsson AXE exchange equipment, the very same problems I raised with DMR & Lane regarding both the AXE Ericsson equipment and the 008-1800 faults which the arbitrator would not allow DMR & Lane to address in their final report (see pages 84 & 85 in my AAT Statement of Facts and Contentions).

**Exhibit 6:** This Telstra internal document dated August 1992 title AXE report states on page 1: "*Productivity. The most inhibiting factor affecting our productivity is the crappy standard of software from LME, - and on page 2, notes: "These numbers indicate to me the poor standard of Ericsson software. For as long as we have had AXE we have been having software lockups."*

**Exhibit 7-a:** Two separate Telstra memos, written in November 1993, refer to the AXE / RVA / billing / lock-up problems. One notes: "*I have long held the view that AXE switch provides an inadequate and crude Fault Analysis & Diagnostic tools*" and the other states: "*Apparently Ericsson have known about this condition for some time and in Holland have a temporary patch in their exchanges to stop the LI's.*" Put these memos with the other attached exhibits related to

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the AXE problem and you can see clearly just how bad some of the AXE exchange problems really were.

**Exhibit 7-b** Two Telstra FOI documents folio H36293 and H36178 dated between 1<sup>st</sup> and 5<sup>th</sup> November 1993, reveal that Telstra had another national network billing software problem affecting customers who had installed a 008-1800 service to promote their businesses. Document H36293, notes: "All admin groups are being inundated with complaints from customers who have advertised their numbers as 1800 but their customers are simply unable to get through to them. I have spoken to our fault staff at Waverley who are also being inundated with the same complaints." Document H36178, notes: "Bruce is concerned that the matter requires fixing at a national level not just on a fault by fault basis. He also raises the question whether we should be actively promoting 1800 in the current circumstances."

**Please note:** Telstra did not advise the public or the Senate Estimates Committee, that there was a national and overseas network software problem with the Ericsson AXE exchanges or advise the same that this problem became a two-fold problem when the 008-1800 call was routed through an already faulty Ericsson AXE exchange.

**Exhibit 8:** This internal Telstra email dated 24<sup>th</sup> February 1994, also discusses the many ongoing Ericsson AXE problems noting: "You are quite correct in your thought that the anecdotal references applies more to AXE than ARE-11. 'Lockups' are generally well-known as a problem in AXE exchanges, not only in Australia but in overseas countries as well. Kevin, I did not use your comments on software (COMPATBL) of this time as they didn't seem relevant to the additional information that AUSTEL have provided. Ericsson are said to have suggested that call loss could be up to 15%."

**Exhibit 9:** This internal Telstra email dated 22<sup>nd</sup> June 1994 is another important document that discusses the Ericsson AXE exchange problems noting: "You may recall were trying to find a reference in our software problem data bases that matched a query from John McMahon at AUSTEL. Rob Brooker of Ericsson Australia advised that Telecom had a problem for a long time with an incapability problem with computer software in their exchanges and telephone equipment, the call loss resulted in a 50% loss"

**Exhibit 10:** These two documents titled Senate Estimates Hearing – 25 February 1994, although out of date sequence to the above exhibits, have been included here to highlight the true extent of Telstra's deception and contempt for the questions Senator Richard Alston, placed on notice during the Senate Estimates Committee hearing see also **Exhibit 2** and **3** above.

#### Questions:

- a) Could you explain why more problems are occurring as more and more customers are connected to the upgraded AXE exchange and has this problem since been rectified? if not, why not?
- b) Could you advise how widespread this problem is with other exchanges which have been upgraded to AXE?
- c) As Telecom intends on upgrading all exchanges to AXE by 1997 does it expect the same problems to occur as outlined in this minute?

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**Answer:**

"...In Summary, there was a single fault incident which affected Portland AXE Exchange for a short period of time. This was not a genetic problem in the network, but reflected the need for improved verification in the data preparation and loading procedures relating to AXE exchanges. Revised procedures were introduced promptly"

**Exhibit 11** This Telstra fault report dated 5<sup>th</sup> March 1993 notes: "...Rang Cape Bridgewater but Mr Smith was out, his assistant stated she had received several calls where on lift off all she heard was dial tone, this is after we shifted 267267 and 267230 into system3 in the RCM. I believe this is tied up with the AXE network problem which gives 1 burst of ring and the calling party gets busy," does not coincide with the answers given by Telstra to Senator Alston in Senate Estimates Committee as being a single fault problem in and around June/July 1992.

**Exhibit 12:** This letter dated 27<sup>th</sup> May 1997, from John Pinnock, TIO to COT claimant Graham Schorer notes: "I have recently been advised that Lane Telecommunications' business has been purchased from Pacific Star by Ericsson. I have been advised that Ericsson business such as equipment sales to Telstra and other carriers is conducted by different Business Units."

Lane was supposed to be the independent, TIO-appointed technical consultants to the COT arbitrations. How could Lane have been sold to Ericsson's, at the same time that Lane were assessing various COT arbitration claims that the Ericsson AXE equipment, including the Ericsson monitoring equipment, had contributed to the telephone problems that brought them to the arbitration process? Did my Ericsson AXE submission (that Ferrier Hodgson failed to provide DMR & Lane for assessment) end up in Ericsson's hands after Lane switched sides? Did Telstra get to Ferrier Hodgson so that my AXE and 008-1800 claim documents would not see the light of day?

**Page 84:** On the 30<sup>th</sup> April 1995, the TIO-appointed technical consultants DMR and Lane present their draft Technical Report to the arbitrator advising the report needs further weeks to complete. However, there were many problems with this report, not the least being that DMR and Lanes skipped a six-month period of my claim, from August 1994, to April 1995, including only assessing 23 fault claim examples from over 200 fault complaints (mostly concerning the continuing AXE / RVA / 008-1800 billing / lockup problems) I provided to the TIO-appointed arbitration resource unit Ferrier Hodgson for assessment. DMR & Lane also failed to address 13 bound volumes of evidence which demonstrated Telstra's continuing incorrect charging on my phone lines, including the Ericsson AXE submission that Ferrier Hodgson mischievously hid so that this damning information could not be assessed see *Exhibits 4 & 5*.

One of the exhibits attached to my AAT Statement of Facts and Contentions see (AS 26) is a list from the DMR & Lane Report dated 30<sup>th</sup> April 1995, which I have marked Arbitrators copy. The other attachment at (AS 26) is marked Final copy also a list from the DMR & Lane Report dated 30<sup>th</sup> April 1995. Both lists include the words "The information provided in this report has been derived and interoperated from the following documents." Any person with average intelligence would conclude that both reports dated 30<sup>th</sup> April cover the same twenty-three assessments and include the same technical information. The arbitrators list of sourced documents, are minus 13 documents to that which appear of the final report list. So who added the 13 sets of claim documents to the final list? And where is the Ericsson AXE problem Report which Ferrier Hodgson's acknowledged they received from me see *Exhibit 4 & 5*?

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In the DMR & Lane Report provided to Dr Hughes 30<sup>th</sup> April 1995, where this condensed list came from, there is one difference, although not a technical matter. Included on page 2 of this report are the words: "...There is, however, an addendum which we may find it necessary to add during the next few weeks on billing, i.e. possible discrepancies in Smith's Telecom bills" and on page 3: "...one issue in the Cape Bridgewater case remains open, and we shall attempt to resolve it in the next few weeks, namely Mr Smith's complaints about billing problems. Otherwise, the technical Report on Cape Bridgewater is Complete. How can the report I received be complete when the arbitrator's version with the same date needed extra weeks to be complete?"

According to the Commonwealth Fraud Control Guidelines – May 2002, which applies to all agencies that are subject to the Financial Management and Accountability Act 1997 and the Commonwealth Authorities Act 1997 (CAC), agencies that are at least 50% budget funded for their operating costs have an obligation to expose any evidence they uncover during their regulator duties that confirms a crime has been perpetrated against Australian citizens and/or the Commonwealth, as was in the case when Telstra misleading the Senate Estimates Committee on 25<sup>th</sup> February 1994.

Documents received seven years after my arbitration, show AUSTEL secretly negotiated with Telstra to address the AXE / RVA / 008-1800 billing software problems in an effort to finally have these problems properly addressed. AUSTEL's behaviour, in this instance, was totally immoral and unethical and, because this all happened outside the legal arena of my arbitration there was no way for me to challenge the corrupt material Telstra used in their 16<sup>th</sup> October 1995 submission, in their successful attempt to hide the true extent of the problems from AUSTEL.

It is so blatantly obvious that Telstra's submission dated 16<sup>th</sup> October 1995 does not address either the Ericsson AXE / RVA / software problem, nor the national 008/1800 billing problems that Telstra knew were not only continuing to affect my business throughout my arbitration and beyond, but were seriously affecting many other customers too.

This AXE letter dated 2<sup>nd</sup> March 1994 see Exhibit 3, is only one of many FOI documents that I have clearly proved exist somewhere, but which ACMA has failed to make available to me. Please *also* make sure that the Board investigates why their FOI unit has failed to locate the missing documents which were part of my FOI matters recently under review by the AAT.

Thank you,



Alan Smith

cc Mr Mark Hughes, Case Officer, Administrative Appeals Tribunal, P.O. Box 9955, Melbourne 3001

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The document identified some 70 circuits about 25 of which affected Telecom's Fortitude Valley exchange - an exchange which also services another of the *COT Cases*, Mrs Garms.

7.37 The contemporaneous reports reinforce the anecdotes of businesses attending the Brisbane meetings referred to in Chapter Two and in responses to Mrs Garms' questionnaire referred to in that Chapter about the difficulties they experienced when serviced by Telecom's Fortitude Valley exchange.

7.38 The problem was not confined to Brisbane. Telecom's February 1994 report indicates that the potential fault condition was detected in the vast majority of the suspect systems before it caused *call drop out* on a large scale and that only one circuit in a call path affecting traffic in Mitchelton (servicing Mrs Gillan) and one circuit in a call path affecting traffic to Maidstone (servicing Mr Dawson of Dawson's Pest & Weed Control) deteriorated to the extent that calls were lost. Again, the conflict between contemporaneous evidence of the extent of the fault in the Brisbane area and the more recent report is difficult to reconcile.

#### AXE network fault

7.39 In the period February to April 1993, Telecom staff responding to complaints lodged by Mr Smith of the Cape Bridgewater Holiday Camp recorded in their notes that there was a fault known to exist in AXE (digital) switching equipment which could give rise to a single burst of ring, followed by a busy tone to the caller and dial tone to the called party. For example -

*"I spoke to Alan Smith .... He received one burst of ring at 1.15 pm and 5.05 pm yesterday, when he picked up the receiver he heard dial tone. This problem occurs intermittently through-out the Network and although it is recognised as a problem there appears to be no one person or group involved in resolving it."*

(Customer Complaint Form, 4 February 1993)

*"I rang Cape Bridgewater but Mr Smith was out, his assistant stated she had received several calls where on lift off all she heard was dial tone, this is after we shifted 267 267 and 267 230 into sys 3 in the RCM. I believe this may be tried [sic] up with the axe network problem which gives only 1 burst of ring and the calling party gets busy tone."*

(Customer Complaint Form, 9 March 1993)

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*"Rang Mr Smith to check on cordless phone he was still not entirely happy with its operation he then mentioned receiving one burst of ring and on lift off getting dial tone. I rang Gordon ... at Portland exchange who said it was a problem caused by the AXE at Warrnambool not having enough software blocks released and this was to be done on 26/03/93. I then rang Mr Smith back and he accepted the explanation that it was not just him suffering the problem."*

(Customer Complaint Form, 25 March 1993)

*"Visited Mr Smith, 6/04 to do end to end test calls. The first call in prior to me starting testing gave two bursts of ring and when the phone was lifted there was only dial tone. The receptionist said it was the 2nd call that morning with the same result. She also stated several people had commented they receive busy tone when they rang the previous evening when she knew the phone was free."*

(Customer Complaint Form, 7 April 1993)

7.40 AUSTEL recently became aware that Telecom had prepared an internal document on the subject of this AXE fault and on 21 March 1994 sought a copy from Telecom.

#### RAM Relay Armatures

7.41 Telecom's *Victoria Work Specification V-T 3189* refers to -

*"RAM relay armatures sticking in the unoperated position have been reported by Telephone Exchange since 1969. Complaints have been of 'sub busy when free' (SLMIS D and U relays), 'wrong numbers' (PBX rack relays), non-operation of vertical in GV Stage (GV-XY relays)."*

This problem poses a special risk in services using the rotary hunt facility.

7.42 The fault was apparently first identified in 1969 and was managed by active maintenance. In 1982 a work specification which would address the problem by modification of equipment was issued by Telecom's New South Wales Administration. Corresponding specifications were issued considerably later in other administrations -

- Western Australia February 1983
- Queensland August 1983

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AUSTRALIAN TELECOMMUNICATIONS AUTHORITY

95/0569

8 March 1995

Mr S Black  
Group General Manager  
Customer Affairs  
TELECOM

Facsimile No: (03) 632 3241

Dear Mr Black

**Freedom of Information Application - Graham Schorer, Associated Entities and Companies etc**

I refer to my letter dated 6 March 1995 seeking to transfer part of Mr Schorer's Freedom of Information ("FOI") request to Telecom and to our subsequent telephone conversation on 8 March 1995 relating to this matter.

In considering AUSTEL's actions in response to Mr Schorer's FOI request, I believe that documents containing (a) people's business or professional affairs and (b) the business, commercial or financial affairs of Telecom are encompassed by the request.

While I have not identified all of the documents as yet, I would appreciate it if you could advise me if Telecom or any of its employees (who may be referred to in documents encompassed by the part of the FOI request not proposed for transfer to Telecom) would be likely to make any submissions in support of a s43 exemption under the FOI Act 1982. If this is likely to be the case, submissions may be made by Telecom or any of its employees in relation to documents encompassed by the part of Mr Schorer's FOI request not proposed for transfer to Telecom.

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