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**ORIGINAL**

**DOCKET NO. 951232-TI [Telecommunications Services, Inc.]**

**WITNESS: Direct Testimony of Jerry Bir, Appearing on Behalf of Respondent,  
Telecommunications Services, Inc., as an adverse witness.**

**DATE FILED: June 15, 1998**

**DOCUMENT NUMBER-DATE**

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IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR  
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 92-11654 CA 28

TRANSCALL AMERICA, INC., :  
d/b/a ATC Long Distance, :  
a Georgia corporation, :  
qualified to do business :  
in the State of Florida, :-

Plaintiff, :

vs. :

TELECOMM SERVICES, INC., a :  
Florida corporation, a/k/a :  
TELECOMMUNICATION SERVICES, :  
INC., a/k/a T.S.I., :

Defendant. :

-----:

ORIGINAL

4000 Hollywood Blvd.  
Suite 710 N  
Hollywood, Florida  
Tuesday, May 25, 1993  
3:40 p.m.

DEPOSITION OF JERRY BIR

taken before Susanne Dunay Siegel, Court Reporter  
and Notary Public in and for the State of Florida  
at Large, pursuant to Notice of Taking Deposition  
filed in the above cause.

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA

3 CASE NO. 92-1775-CIV-KMM  
4

5 S.H. DOHAN & COMPANY, P.A., a :  
6 Florida Professional Association :  
7 f/k/a DOHAN/SIMON/FRIEDMAN, P.A., :  
8 a Florida Professional Association, :  
9 individually and as class, :  
10 representative of all those :  
11 similarly situated, :  
12

13 Plaintiffs, :

14 vs. :

15 TRANSCALL AMERICA, INC., a :  
16 Georgia corporation doing :  
17 business in Dade County, Florida :  
18 as "ATC LONG DISTANCE," :

19 Defendant. :  
20 -----;

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Suite 710 N  
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**APPEARANCES:**

**ADAMS & QUINTON, P.A.**  
By: **A. EDWARD QUINTON, III, Esq.**  
    **And**  
**MESSER, VICKERS, CAPARELLO,**  
**MADSEN, LEWIS, GOLDMAN & METZ**  
By: **FLOYD SELF, Esq. (Via telephone)**  
On behalf of Transcall

**MALAND & ROSS**  
By: **ROBERT C. MALAND, Esq.**  
On behalf of Telecom

**BRADLEY and BRADLEY**  
By: **JOHN F. BRADLEY, Esq.**  
On behalf of Jerry Bir

**ALSO PRESENT:**

**CARLOS RODRIGUEZ**  
- - - - -

	<u><b>I N D E X</b></u>	
<u><b>Witness</b></u>	<u><b>Direct</b></u>	<u><b>Cross</b></u>
<b>JERRY BIR</b>	<b>4</b>	<b>--</b>

**E X H I B I T S**

**Defendant's Exhibit A** **Page 50**

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Thereupon--

JERRY BIR

the Witness herein, called at the instance of the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MALAND:

Q. Good afternoon, sir.

Would you please state and spell your name?

A. My name is Jerry, last name is Bir, "B" as in "boy", I-R.

My address is 2331 Northeast 35th Drive, Fort Lauderdale, Florida. Zip is 33308.

Q. Is that your house?

A. Yes, home residence.

Q. What is your work address?

A. 1660 Northwest 65th Avenue, Plantation, Florida, 33313.

Q. What is the name of the company you are employed by at this time?

A. W. E. Tech, T-E-C-H.

Q. Would you kindly tell us your educational background from high school to present?

1           A.    Two years of college at BCC; several,  
2    too numerous to state, technical and telephony  
3    type training programs, and so forth; and  
4    basically that's roughly it.

5           Q.    Would you generally tell us the type of  
6    technical course work and training that you just  
7    made reference to?

8           A.    It's various types of equipment, how it  
9    operates, how it functions, packet switching,,  
10   DS1, fiber optics, some switching technology, and  
11   that's all I can remember right now.

12          Q.    Are you referring now to telephone  
13   system equipment, because those references that  
14   you made to equipment might not be known by  
15   someone who were to just read this transcript.

16          A.    Well, there are pieces and parts and  
17   they all can be put together to form a system or a  
18   network, which is what it's called.

19          Q.    Would you tell us in summary fashion  
20   your work background?

21          A.    I began in 1966 with Western Electric as  
22   an installation technician.

23          Q.    Is that telephones?

24          A.    Yes, which was part of the Bell system;  
25   progressed to a section chief and orbit supervisor

1 and left there in '78 to pursue my own business  
2 interests; went back to a Bell operated company in  
3 1981; had two years of service between Southern  
4 Bell and AT&T; left there in April of '84 and went  
5 to a company by the name of Microtel in April of  
6 '84.

7 Then Microtel was acquired--ATC, reverse  
8 merger, and was the senior vice-president of  
9 operations and engineering there.

10 Q. That's with ATC?

11 A. Yes, and left there in November of '91,  
12 '90 or '91, and went to W. E. Tech subsequently  
13 from there.

14 Q. Let me backtrack for just a moment.

15 The three year period or so that you  
16 were pursuing your own business interests from  
17 1978 to 1981, did you stay generally in the  
18 telephone industry?

19 A. No.

20 Q. You were doing something unrelated?

21 A. Totally unrelated.

22 Q. Then you came back to Bell and you said  
23 you had a couple of years of service with Southern  
24 Bell, AT&T.

25 Generally speaking, what were you doing



1 during that period of time?

2 A. During that period of time I was  
3 responsible for running 19 centers in retail sales  
4 and in January of '84 was put in charge of AT&T's  
5 customer service division for the State of  
6 Florida.

7 MR. MALAND: Off the record for a  
8 second.

9 (Whereupon, Mr. Carlos Rodriguez joined  
10 the deposition.)

11 BY MR. MALAND:

12 Q. To understand what you did at ATC on a  
13 day to day basis, would you please give us a  
14 little bit more information about that, Mr. Bir?

15 A. I was responsible for the operations and  
16 engineering functions on a day to day basis, which  
17 included customer service, order processing,  
18 switching, optronics, network costs, network  
19 planning, outside plant, field operations,  
20 repair. That's about it.

21 Q. I am going to ask you, if you can, to  
22 explain to me the relationships, as you understand  
23 them, among three different companies.

24 We have Telus Communications, that would  
25 be the first company; Transcall America, Inc., a



1 second company; and Advanced Telecommunicatons  
2 Corporation, a third company.

3 How do you understand those three  
4 companies relate to each other?

5 A. Transcall America was a company that  
6 was, I believe, acquired initially by Steve  
7 Raville and Jack Phillips, which subsequently  
8 became also known as ATC. ATC acquired Telus and  
9 they are basically one in the same company.

10 Q. So when I say "ATC," for purposes of  
11 this deposition you understand them to be the same  
12 as Advanced Telecommunications Corporation,  
13 Transcall America, Inc. and Telus Communications?

14 A. Yes, sir.

15 Q. When you got your paycheck, what company  
16 name was on it?

17 A. I believe for a period of time it  
18 was--well, not believe--it was "Microtel"  
19 initially, "Transcall America," and then finally  
20 "ATC."

21 Q. Do you recall as the time went, or  
22 between 1984 and approximately the time when you  
23 left in 1990 or 1991, who you reported to? In  
24 other words, who was your senior in the chain of  
25 command?

1           A.    From April, '84 until June, '90 it was  
2 Dale Gregory.

3           Do you want me to clarify like when I  
4 first started in April of '84, because Gene  
5 Johnson and Dick Smith preceded Dale, but it was  
6 maybe six, eight months that those two--

7           Q.    For the longest stretch of time it was  
8 Dale Gregory that you reported to?

9           A.    Yes.

10          Q.    What was his title at ATC?

11          A.    He was president and chief executive  
12 officer.

13          Q.    After June, '90 until you left, if there  
14 is a period of time there, who did you report to?

15          A.    There was a period of time approximately  
16 maybe two or three weeks that I reported to Norman  
17 Klugman, and after that I reported to,  
18 from--probably the first of July to, I believe,  
19 the end of November, to Steve Raville, chairman of  
20 the board.

21          Q.    Was it to Mr. Raville that you reported  
22 at the time that you resigned from the company?

23          A.    Yes.

24          Q.    I am using the term "resigned" only in  
25 the sense of indicating that's when you left.

1 A. That's correct.

2 Q. Do you know where Mr. Gregory can be  
3 located now in terms of where he works and lives?

4 A. Yes.

5 Q. Where is that, sir?

6 A. Mr. Gregory works at Rochester  
7 Telephone, Rochester, New York.

8 Q. Did Mr. Gregory leave ATC's employee  
9 before you did or after you did?

10 A. Before.

11 Q. Are you aware of any of the reasons why  
12 Mr. Gregory left employment with ATC?

13 A. No, not to the specifics. I'll put it  
14 that way.

15 Q. I am going to go back now and just lay a  
16 foundation for some of the questions that I'm  
17 going to be asking you later on and, again, I'm  
18 doing this because there's a possibility that when  
19 this case goes to trial I may have to read this  
20 deposition to the jury if you've moved off  
21 somewhere else or otherwise unavailable.

22 We're going to mark as Exhibit A to this  
23 deposition a document titled "Agreement" by and  
24 between Telus Communications, Inc. and Telecomm  
25 Services, Inc., July, 1989, and on the one that

1 will be attached to the original of the deposition  
2 I've highlighted in yellow I think certain of the  
3 packages and I would like to ask you some  
4 questions about them for purposes of the  
5 foundation.

6 MR. QUINTON: Can I take a look at it  
7 first?

8 Are you going to have this marked?

9 MR. MALAND: Yes. That will be marked  
10 as Exhibit A.

11 BY MR. MALAND:

12 Q. Under the heading "general scope of  
13 service" and under the sentence that says, "Telus  
14 will perform the following services listed below,"  
15 paragraph 1 reads, Act as agent for all T.S.I.  
16 customers in interfacing with local exchange  
17 carriers."

18 Then it says, "(LEC) and/or  
19 Interexchange carriers (IXE) for processing of  
20 service orders related to switched access for  
21 installation of new or additional service and or  
22 disconnection of said service and/or cancellation  
23 of said service per T.S.I. request."

24 Since that package contains references  
25 to terms of art in the telephone industry and to

1 equipment that may be well known to you but not  
2 well known to the jury, I would appreciate it if  
3 you would explain for our benefit what that  
4 means.

5 MR. QUINTON: I want to state an  
6 objection for the record to the extent there has  
7 been no foundation that this gentleman has ever  
8 seen this document before and to the extent that  
9 the gentleman is unaware of any conversations that  
10 may have related as to the meaning of the contract  
11 at the time the contract was entered into, I would  
12 object to his giving an opinion as to what the  
13 document means.

14 MR. MALAND: Let me rephrase the  
15 question.

16 BY MR. MALAND:

17 Q. There is a phrase here called, "switched  
18 access for installation of new or additional  
19 service."

20 To your knowledge, what does that mean?

21 A. Switched access gives you the ability as  
22 a carrier, such as here T.S.I. or Telus, gives the  
23 customer, be it Joe Q. Public, the ability to get  
24 access to an interexchange carrier via telephone  
25 company.

1 Q. What is an interexchange carrier?

2 A. Interexchange carrier, such as AT&T,  
3 MCI, Telus, ATC. They are all interexchange  
4 carriers.

5 Q. Interfacing with those interexchange  
6 carriers and/or local exchange carriers, which is  
7 also another term used in paragraph 1 of that  
8 document, what are local exchange carriers?

9 A. Local exchange carriers, be it in this  
10 area Southern Bell. A local exchange carrier  
11 gives Joe Q. Public access to interexchange  
12 carriers.

13 You can do that by either dialing "1"  
14 and you would be what they call picked to a  
15 certain interexchange carrier, or you can do it by  
16 dialing a 1-0-XXX, which is the interexchange  
17 carrier's ID code to the telephone company.

18 Q. Let me ask you to take the example of  
19 T.S.I. bringing a customer named John Smith into  
20 ATC.

21 What mechanically is done by ATC with  
22 regard to that customer to interface with local  
23 exchange carriers and/or interexchange carriers  
24 for processing of service orders related to  
25 switched access for installation of new or



1 additional service?

2 What does that mean in practical terms  
3 happens?

4 A. Okay. In paragraph 1, as it reads, it's  
5 saying that--I believe this is Telus.

6 Q. That was a Telus agreement.

7 A. That Telus will be T.S.I.'s agent to  
8 process orders to, in this case, Southern Bell to  
9 allow customers to make calls on someone's  
10 network. It doesn't state whose network at this  
11 juncture, so if T.S.I. comes to Telus and says, "I  
12 have customer number one here and their telephone  
13 number is this," that they will process the order  
14 to Southern Bell to allow that customer to get to  
15 T.S.I.

16 Q. Paragraph 2 of the agreement reads in  
17 context that Telus will switch traffic from all  
18 Telus' FG-A originating groups from Telus'  
19 switching sites, from a technical standpoint.

20 What does that mean?

21 A. Okay. That means that feature group--  
22 FG-A is a feature group A trunk. Feature group A  
23 gives you a line side connection.

24 In that type of networking a customer  
25 must dial a local seven digit number, enter a PIN



1 number, which is a personal identification number,  
2 which allows--I I believe it's going to be Telus'  
3 switch at this juncture--to identify the customer  
4 as a T.S.I. customer and the customer then would  
5 dial the area code and the number that they're  
6 trying to reach and the call would be processed  
7 through Telus' switch.

8 Q. So in practical terms customer number  
9 one, as you referred to him or her, is assigned a  
10 seven digit access number plus a PIN number. They  
11 dial that on their own telephone number and then  
12 they dial the area code and the phone number and  
13 that's how the call goes through?

14 A. Correct.

15 Q. Paragraph 3 makes reference to billable  
16 records as reported by the DSC 400 switching  
17 system.

18 What is the DSC 400 switching system?

19 MR. QUINTON: Let me cite another  
20 objection. Maybe we can have a standing  
21 objection.

22 I object to this witness answering  
23 questions as to what the terms in this agreement  
24 mean because there's been no foundation that this  
25 witness participated in the drafting of this

1 agreement or the negotiations or preparation of  
2 this agreement so he has no knowledge of what the  
3 parties meant at the time they set up this  
4 agreement, so I object to him giving his opinion  
5 as to what the agreement means.

6 BY MR. MALAND:

7 Q. Go ahead, Mr. Bir.

8 A. Could you state the question again?

9 Q. Yes, sir.

10 What is the DSC 400 switching system?

11 A. That is the type of switch manufactured  
12 by Digital Switch Corporation. It's called a DSC  
13 400 switch.

14 Q. What does that piece of equipment do?

15 A. It provides a networking function to  
16 switch calls once you complete your dialing  
17 function to allow the interexchange carrier to  
18 switch the call to the called number to process  
19 the call through the network.

20 Q. In terms of the billing process, what,  
21 if anything, did the DSC 400 switching system do?

22 A. DSC 400 switch generates a call detail  
23 record for every call that is originated. That  
24 goes into what you call a raw detailed call  
25 record.

1 Q. Were those records utilized by ATC in  
2 generating billing thereafter for calls made  
3 through the ATC system?

4 A. According to what I read in paragraph 3  
5 here, it says that the calls will be billed based  
6 upon completed calls for T.S.I. and customers  
7 identified by off codes.

8 That's the method that they would  
9 identify the customers and the call to be billed,  
10 yes.

11 Q. Please explain to us the ways that you  
12 were familiar with that employees of ATC could  
13 adjust the DSC 400 switching system to have an  
14 impact on time billed?

15 A. There's no way for them to adjust the  
16 DSC switch billing record from the switch to  
17 impact billing.

18 Q. Let me then enlarge the question and ask  
19 you in the various steps that were mechanically  
20 followed by ATC in the utilization of its  
21 equipment until the billing came out in written  
22 form, at the end of the line where along that  
23 route could there be a manipulation of the  
24 equipment in such a way as to change the billing  
25 time?

1           A.    I won't narrow--I will just tell you how  
2 it can be done. I don't know any details of how  
3 anybody did it or anything.

4           In this type of call detail record you  
5 have several what they call time points in the  
6 switch. Time point 1 is the time when the trunk  
7 is seized. Time point 3 is digit collection.

8           In other words, when a customer finishes  
9 dialing the digits, all the digits are collected.  
10 Time point 6 is called completion at the distant  
11 end. Time point 7 is disconnect at the called  
12 number.

13           Based upon these time points and the  
14 parameters of which interexchange carriers  
15 determine to bill customers, then they could be  
16 billed from any one of these time points.

17           Q.    How would the time point for billing  
18 purposes as you've just outlined it mechanically  
19 be changed within the mechanical system utilized  
20 at ATC?

21           For example, to go from a time point 1  
22 to a time point 6 or viceversa?

23           A.    Okay. If someone so chose to bill a  
24 customer from time point 1 to time point--you said  
25 "6" but it's probably "7"--that customer would be

1 charged for the dial event, post dial delay, the  
2 ring event, conversation time.

3 Q. Until the conversation terminated and  
4 the phone was hung up?

5 A. Correct.

6 Q. That is the consequence of changing it  
7 from time point 1 to time point 7.

8 Q. What I'm asking you is mechanically or  
9 from an engineering standpoint, where within the  
10 equipment would the reprogramming occur so the  
11 time point would be changed for billing purposes?

12 A. It would take place in the switch.

13 Q. Where would it take place?

14 A. In the billing system that they chose  
15 which parameters that they were going to bill a  
16 customer.

17 Q. Where within ATC's organizational chain  
18 of command would the decision be made as to what  
19 billing system time parameter to use?

20 A. Based upon my knowledge?

21 Q. Yes, sir. That's all I can ask you.

22 A. My knowledge, and I can only base it  
23 upon the fact when I worked with Dale Gregory,  
24 that faction came from the executive pricing  
25 committee, which was comprised of four

1 individuals.

2 Q. Who were those four individuals?

3 A. Dale Gregory, myself, Pat Delaney and  
4 Mike Grimley.

5 I take that back. There was one more.  
6 There was Ray Bermond.

7 Q. So the five of you as a committee acting  
8 for ATC would make a determination as to whether  
9 it would be time point 1 or time point 7 for  
10 billing purposes. Is that correct?

11 A. No.

12 Q. How did it work from a decision making  
13 standpoint?

14 A. It could be the pricing committee's  
15 determination whether to bill from time point 1 to  
16 time point 7, time point 3 to time point 7, or as  
17 the industry standard is, conversation minutes  
18 time point 6 to time point 7.

19 Q. The industry standard is what again,  
20 sir?

21 A. Conversation minutes.

22 Q. That means from the time the person who  
23 is receiving the call picks up the receiver until  
24 that person who has received the call hangs up the  
25 receiver?



1           A.    That is correct.

2           Q.    That is the industry standard for  
3 billing purposes?

4           A.    Yes.

5           Q.    At any time while were you at ATC did  
6 the executive pricing committee make a decision  
7 for ATC to bill a larger amount of time than that  
8 industry standard?

9           A.    No, sir.

10          Q.    When you left ATC, to your knowledge did  
11 ATC charge more than that industry standard for  
12 billing?

13          A.    I have no factual knowledge of that.

14          Q.    Do you have any information at all  
15 concerning that?

16          A.    Only hearsay and I really don't think  
17 that's admissible.

18          Q.    Well, this is a discovery deposition at  
19 this point. We will examine admissibility at a  
20 later point.

21                    In other words, what I would like you to  
22 do is tell me what you've heard about that,  
23 please.

24          A.    There has to be, you know, a little more  
25 background established here in order to understand



1 the entire realm of this.

2 To go back to the acquisition of Telus  
3 by ATC and the factors that were disclosed by  
4 Telus at the time of due diligence in which it was  
5 disclosed that Telus billed for network minutes,  
6 so that based upon that information network  
7 minutes are defined as the time that the telephone  
8 company charges you for what they call access  
9 minutes.

10 Access minutes are defined as the time  
11 from which the customer seizes the circuit  
12 assigned to a particular interexchange carrier and  
13 under the due diligence that we went through  
14 during the acquisition of Telus, it was disclosed  
15 that they billed for network minutes.

16 Q. That's what Telus told ATC as part of  
17 the due diligence investigation where ATC was  
18 acquiring Telus?

19 A. Correct. There was quite a bit of  
20 financial analysis done at that time to determine  
21 what the loss of revenue would be if we after the  
22 acquisition of Telus reverted their customers to  
23 the billing parameters that ATC had set forth  
24 being billed for conversation minutes only.

25 Q. To understand the context of what you're

1 telling me, you're telling me that the ATC billing  
2 practice at that time was to bill customers only  
3 for conversation minutes?

4 A. That's correct.

5 Q. And so the analysis that you are telling  
6 us about now refers to comparing the economic  
7 impact of taking Telus' customers and changing  
8 them from network minutes, as you've described it,  
9 to conversation minutes only. Is that correct?

10 A. That's correct, yes.

11 Q. Explain to us in practical terms what  
12 that means in terms of dollars and cents.

13 A. I don't recall all the raw numbers that  
14 we crunched but if you just take this into  
15 consideration, it will vary by call and it also  
16 varies by how you have your tariff filed, and so  
17 forth, so I might as well get into that while  
18 we're on the same conversation because Telus at  
19 that time I believe, to the best of my  
20 recollection, had a tariff filed with the Florida  
21 Public Service Commission that allowed them and  
22 stated in their tariff to bill customers for  
23 network minutes, so if you just look at the  
24 difference in the billing and the events and what  
25 has to take place in a telephone call, maybe you

1 can get a good feel for what the difference would  
2 be.

3 From the time the customer seizes that  
4 trunk, dials the PIN number, or access code, dials  
5 the area code and number, maybe a post dial delay  
6 which can vary anywhere from 6 seconds to 18  
7 seconds, depending upon whose network you  
8 terminated on, then your ring event, which depends  
9 again on at the distant end how many times they  
10 let it ring, so one ring is roughly six seconds,  
11 so in some cases before any conversation minutes  
12 could go on you could have a half a minute, 45  
13 seconds, so as you can see if you took that over  
14 20, 30 million calls a month at 45 seconds a call,  
15 then you can see the impact upon the revenue that  
16 would be felt, so--

17 Q. To understand the context of the  
18 practical explanation you just gave us, as you  
19 understood it the tariff that Telus had on file  
20 for its customers at the time ATC was deciding to  
21 acquire Telus allowed Telus to charge its  
22 customers for network minutes, which were all of  
23 those minutes from when the customer seizes the  
24 trunk, does all the pre-dialing events and all the  
25 way through the conclusion of the call. Is that

1 true?

2 A. That's correct.

3 Q. But the ATC tariff was a different one  
4 and was a more restrictive one in that it only  
5 allowed ATC to charge its customers for actual  
6 customer talk time. Is that true?

7 A. That's correct, and I'm going to preface  
8 that, too, because at some point in time through  
9 all the acquisition of companies and so forth  
10 there were numerous tariffs and so forth and, as  
11 you had asked me before, regulatory was not one of  
12 the functions that reported to me.

13 We did, however, have regular regulatory  
14 meetings of which there was a lot of issues of  
15 that nature discussed, so it was our intent as ATC  
16 whenever we acquired a company to integrate their  
17 customer base into the ATC billing system as  
18 quickly as possible and also to not impact the  
19 revenue base that was there in doing that.

20 Q. Was it your understanding that once  
21 Telus, for example, was acquired by ATC its  
22 customers in effect became ATC customers who had  
23 to be billed under the ATC tariff?

24 A. Once the acquisition was--the letter of  
25 intent was signed and the acquisition, quote, was

1 put into place, I was taken out of the picture to  
2 make those decisions so I can't answer that  
3 question.

4 Q. Who made those decisions?

5 A. I can't honestly answer that either  
6 because again I'll say I was taken out of that  
7 position and put into what we call the enhanced  
8 services division of ATC.

9 Q. I would like to go back to the analysis  
10 that you made mention of earlier of the impact on  
11 revenue after the acquisition of Telus in  
12 comparing the network minutes method of billing  
13 versus the talk time method of billing.

14 Was that reduced to writing?

15 A. Was that what?

16 Q. Was that reduced to writing? Was there  
17 any study done in writing? Was there a memo or  
18 anything that I could get ATC to turn over to me  
19 so I could prove that they made an informed and  
20 intelligent decision with regard to their conduct  
21 thereafter?

22 MR. QUINTON: Object to the form of the  
23 question in counsel providing a little speech  
24 there, but to the best there was a question  
25 presented--



1           **THE WITNESS:** On every acquisition we  
2 did a lot of number crunching.

3           For me to say, "Hey, yeah, we did all  
4 that and it's recorded somewhere," no. Not that  
5 I'm aware of.

6           I mean, we took customer bases by  
7 product and so forth, you know, after the fact for  
8 every acquisition and did in-depth studies, the  
9 marketing department did those, to see what  
10 product there was a fit for between an acquired  
11 company and the ATC product line, so I mean that  
12 was all after the fact.

13           Once the decision to go forward with a  
14 letter of intent and so forth, all of that, you  
15 know, was not recorded as such that I'm aware of.

16           **Q.** We know that the analysis was made and  
17 you talked about some of the names, Dale Gregory,  
18 Pat Delaney, Mike Grimley and Ray Bermond.

19           **Q.** Who in that group was involved in the  
20 comparative analysis of one method of billing  
21 versus another method of billing?

22           **MR. QUINTON:** Let me state an objection  
23 in that it mischaracterizes his testimony. Names  
24 he provided us was the executive pricing committee  
25 regarding ATC.

1           The witness has not stated that these  
2 same gentlemen performed an analysis in regard to  
3 Telus.

4           MR. MALAND: Fair comment.

5 BY MR. MALAND:

6           Q. Who were the people who performed the  
7 analysis of billing methodology in terms of  
8 revenue?

9           A. For the purposes of acquisition and  
10 depending upon the availability of each executive  
11 and their functions and what the focus at the time  
12 was when we made acquisitions, we didn't want to,  
13 you know, cripple the revenue base that we had at  
14 the time so we took whoever was available to do  
15 that analysis.

16           I believe at this juncture on Telus it  
17 was Dale Gregory, Pat Delaney, myself.

18           Q. Do you know Pat Delaney's current  
19 whereabouts in terms of where Pat works and lives?

20           A. I don't know where Pat is employed at  
21 this time. He resides in, I believe, Atlanta,  
22 Georgia.

23           Q. Do you know when Pat left ATC's employ?

24           A. After the merger of LDDS and ATC.

25           Q. That is relatively recently, though?



1 A. Yes.

2 Q. Mike Grimley and Ray Bermond? Is it  
3 B-E-R--

4 A. B-E-R-M-O-N-D.

5 Q. Do you know where Ray Bermond currently  
6 resides and works?

7 A. Ray Bermond resides in Boca Raton and I  
8 don't know his current place of employment.

9 Q. To your knowledge is Ray still with ATC?

10 A. No.

11 Q. When did Ray leave ATC?

12 A. Ray left when I was in Washington so it  
13 had to be July or August, I believe, of '90.

14 Q. Mike Grimley, do you know where Mike  
15 currently lives and works?

16 A. I believe Mike resides in Jersey. He's  
17 currently employed by Metro Media.

18 Q. Going back to the analysis you indicated  
19 you and two others participated in, what was the  
20 conclusion of that analysis in terms of revenue  
21 impact, although it seems fairly self-evident.

22 A. Well, there would have been a  
23 significant dollar impact after the acquisition  
24 was complete based upon the revenue base that  
25 Telus had given us, so significant impact.

1 Q. Who up the chain of commands at ATC to  
2 your knowledge was involved in the decision as to  
3 whether or not to continue the billing practice  
4 that Telus had used referring to it generally as  
5 network minutes for the Telus customers as opposed  
6 to switching them over to the ATC talk time method  
7 of billing?

8 MR. QUINTON: Let me object to the form  
9 of the question.

10 Could you read the question back  
11 please?

12 (The question was thereupon read by  
13 the reporter as above recorded.)

14 THE WITNESS: I don't have any knowledge  
15 as to who made the decision to do that because,  
16 like I said, I was taken out of the--once the deal  
17 was cut and Dale Gregory left in June of '90, I  
18 was taken out of that function.

19 BY MR. MALAND:

20 Q. Without asking you who made the  
21 decision, because you appear to not be really  
22 certain of that, what decision was made as to the  
23 methodology of billing what used to be Telus'  
24 customers?

25 A. Only from conversation with some friends

1 and associates and so forth that they had decided  
2 to bill for network minutes.

3 Q. That is ATC decided to bill in that  
4 method, or someone high up in the chain of command  
5 at ATC made that decision?

6 A. I don't know who made the decision.

7 Q. But regardless of who made the decision,  
8 ATC after acquiring Telus, continued to bill the  
9 former Telus customers for network minutes. Is  
10 that true?

11 MR. QUINTON: I am going to object to  
12 the form of the question.

13 BY MR. MALAND:

14 Q. As best as you can understand it.

15 A. As best as I understand, yes.

16 Q. Who was it that informed you of that?

17 A. You know, there were just--you know, it  
18 was just--I can't even remember who  
19 specifically--but there were--I mean, I met some  
20 people at a social function and the conversation  
21 just, you know, wandered about ATC and Telus and,  
22 "What do you do," and "How's everything going,"  
23 and I really don't recall who specifically said it  
24 but there was conversation regarding the billing  
25 system and how there was going to be--there would

1 be some problems down the road if it continued  
2 like that, and then I believe shortly after that  
3 there were articles in the paper about the PSC and  
4 State of Florida, which described the very--the  
5 network minute billing method that Telus had  
6 deployed.

7 Q. I am going to ask you to assume that the  
8 ATC tariff on file in Florida only allowed billing  
9 of ATC customers for talk time.

10 Is it fair to say then that if that is a  
11 true statement that ATC billing for anything more  
12 than actual talk time violated its tariff?

13 MR. QUINTON: Let me state an  
14 objection. I don't think this witness has been  
15 qualified as an expert to testify as to tariffs.  
16 He's already stated that the regulatory people did  
17 not report to him so I object to the question.

18 MR. SELF: This is Floyd Self. I  
19 apologize for interrupting.

20 I would in addition to that ask that it  
21 be clarified as to which tariff we're talking  
22 about.

23 BY MR. MALAND:

24 Q. Go ahead, Mr. Bir.

25 So you understand, the attorneys have a

1 duty to state objections as they feel is in their  
2 client's best interest, but this is a discovery  
3 deposition at this point and I'm trying to get  
4 educated and trying to get to the bottom of this?

5 A. Such as ATC's tariff was filed, when I  
6 was involved in the decision making of how the  
7 customers were to be billed the tariff read as  
8 conversation minutes. That's how the customer was  
9 to be billed.

10 Q. Only for conversation minutes?

11 A. Correct.

12 Q. The second part of my question was:  
13 Then the method of billing for network minutes  
14 would have been improper on the part of ATC given  
15 that tariff. Is that true?

16 MR. QUINTON: Same objection.

17 For the record, this witness is not  
18 qualified to answer that question. He hasn't been  
19 established as an expert on giving opinion  
20 testimony on tariffs.

21 MR. MALAND: We will let the judge make  
22 that decision.

23 THE WITNESS: Yes.

24 MR. QUINTON: I want to state I don't  
25 think this witness has been qualified to having

1 knowledge for or in regard to ATC for the period  
2 of time which you're asking him.

3 BY MR. MALAND:

4 Q. Mr. Bix, was part of your job to  
5 determine that the systems within ATC you were  
6 responsible for managing were operating in such a  
7 manner as to comply with the ATC tariff on file  
8 with the State of Florida?

9 A. When I was responsible for operations in  
10 engineering, that is true and correct.

11 Q. You educated me a the bit earlier about  
12 some records that I would like to get my hands on  
13 and I would like to learn a little bit more about  
14 it.

15 The call detail record for every call  
16 generated by the DSC 400 switch, would you tell me  
17 physically what those detail records look like,  
18 please?

19 A. Well, depends upon the mode in which  
20 they're retained or whatever. You can get the  
21 call detail record in a physical printout from a  
22 printer. However, the normal method is either by  
23 mag tape or by a method called file transfer,  
24 which then goes onto a tape which you mount onto  
25 the computer which then determines the call detail



1 record.

2 Q. While you were working for ATC, what was  
3 the company's policy in terms of retaining those  
4 call detail records as you just described them?

5 A. I believe in compliance with the FCC  
6 that you must retain billing records for an 18  
7 month period.

8 Q. Where were the call detail records  
9 physically stored while you were still an employee  
10 of ATC?

11 A. I don't recall.

12 Q. Were they up in Boca Raton, Florida?

13 A. I believe they were, yes.

14 Q. Do you recall who was responsible within  
15 the organization for overseeing the storage of  
16 those records?

17 A. It was the vice-president of information  
18 services, which his name was Ed Janowsky.

19 Q. To your knowledge, is Mr. Janowsky still  
20 an employee of ATC?

21 A. No.

22 Q. Is anyone still an employee of ATC that  
23 you used to work with? Just kidding.

24 Let's focus on Mr. Janowsky.

25 Is Mr. Janowsky to your knowledge



1 working in the phone industry or, to put it as I  
2 did with the others, do you know where he resides  
3 and works at this time?

4 A. Yes. Mr. Janowsky works for Cellular  
5 One in a similar position as to ATC.

6 Q. Is that in South Florida somewhere?

7 A. Yes.

8 Q. If I understand you correctly, the  
9 second type of record keeping was raw detail call  
10 records.

11 Is that something different than the  
12 call detail records?

13 A. The raw detail record comes off of the  
14 switch itself. It provides you the raw detail  
15 based upon time points 1, 3, 6 and 7 and the raw  
16 detail record is then manipulated by the billing  
17 system to bill the customers based upon the call  
18 parameters that are set up and decided by the  
19 billing company.

20 Q. Physically what raw detail call records  
21 were retained by ATC while you were still employed  
22 there?

23 A. All of the call detail records of--to  
24 comply with the FCC regulations of 18 months.

25 Q. The manipulation of the billing system,

1 I would like to focus on that for a moment.

2 Is it fair to state that if ATC  
3 manipulated or changed the time point for billing  
4 purposes that that would have an impact on the  
5 amount of money they charged to a customer of ATC?

6 A. That's correct.

7 Q. While you were at ATC who was  
8 responsible for overseeing that very function?

9 By that I mean the time points in the  
10 billing system for ATC's customers.

11 A. Ed Janowsky.

12 Q. Are you aware of any instance or  
13 instances where the time point parameters for the  
14 billing of ATC customers was changed at the  
15 direction of any high officials at ATC?

16 A. Only upon an acquisition would there be  
17 a change in a billing parameter and that would be  
18 done--I will give you an example of that--when we  
19 acquired ATC--when Microtel acquired ATC, ATC had  
20 no less than five or six billing systems, and the  
21 number escapes me at this time, and each billing  
22 center had their own mechanism and way of billing  
23 customers.

24 In other words, the billing center in  
25 San Antonio, Texas didn't look anything like the

1 billing center in Atlanta. The billing center in  
2 Austin, Texas didn't look anything like the  
3 others, so when you acquire a company and you have  
4 to kind of integrate those customers that you  
5 acquire into your billing system, the one you're  
6 going to stick with, so once you acquire a  
7 customer base and you make the decision to bill  
8 them in a certain manner, such was at that  
9 juncture, Microtel/ ATC's decision to bill the  
10 customers from time point 6 to 7, be it  
11 conversation minutes, then that was the time that  
12 you made a decision in upper management knowing  
13 the impact it was going to have on the revenue  
14 base with all those factors in hand. Then you  
15 made the decision to change the billing parameters  
16 to the conversation minutes.

17 I mean, that's at least the decisions  
18 that were made when I was in the decision making  
19 process.

20 Q. If I wanted to show how much time was  
21 billed to ATC customers over and above actual talk  
22 time, and for purposes of this question I am  
23 asking you just to assume that occurred, what  
24 records would you suggest I get to do that?

25 A. You'd probably have to start with the

1 raw call detail records from the switch and look  
2 at what time points were flagged and go from  
3 there.

4 Q. Assume that I know nothing about what  
5 you mean by "what time points were flagged and go  
6 from there" and that I'm going to have to sit down  
7 with the circuit judge or U. S. district judge,  
8 who maybe knows a little bit more than me but not  
9 a whole lot more, what do you mean when you say  
10 "look at what time points were flagged"?

11 A. Whoever is doing the billing system at  
12 this juncture for ATC, which I believe it's EDS, I  
13 mean I'm sure the people that run the billing  
14 system for them would not change a billing  
15 parameter unless they were directed by someone at  
16 ATC so, I mean, I think you ought to start right  
17 there to start with if you're looking for some way  
18 to find out information because I can't answer the  
19 question you're asking to tell you where to find  
20 it.

21 Q. Is there a specific thing within the raw  
22 call detail records for the switch, a code or  
23 something of that nature, that shows me as a  
24 layperson what time points were flagged?

25 A. You'd have to get a printout from the

1 raw call detail record. You'd have to get it  
2 physically printed out and it will give you on  
3 there time point 1, 3, 6, 7 and it will give you  
4 the elapsed time on each one.

5 Q. On each phone call?

6 A. Yeah.

7 Q. What would I be comparing there in those  
8 records to know how much the actual talk time was  
9 versus the billed time, assuming it was billed  
10 above the talk time? Do you follow me?

11 A. You're going to have to look at each  
12 call detail record and get the billing--see, you  
13 have to get--you can't just say, "Hey, I can do  
14 this. I can do that," because there are things in  
15 the switch called clicks and every click is three  
16 seconds so, I mean, the closest you can get is  
17 three seconds, so, you know, you've got to look at  
18 the call detail record, the raw record, and get  
19 the time point 1 to time point 7 event seconds or  
20 minutes or whatever it is and then compare it to  
21 the bill for that particular call to whatever  
22 customer it is.

23 Q. I've been involved in cases before where  
24 you get the computerized information. I don't  
25 profess to know a whole lot about computers but



1 you get the raw data on its computer disc or the  
2 tapes and you feed that into another computer and  
3 it tells you the difference, for example, between  
4 the actual talk time and the billing time, if  
5 there is a difference.

6 Mechanically, do you think that could be  
7 done, here?

8 A. I'm sure it can be done. You'd have to  
9 find a billing company that would do it for you.

10 Q. So if I were to get ATC to turn over to  
11 me the physical printouts and/or the mag tapes  
12 and/or the file transfer tapes of the call detail  
13 records for the switch and then compare that to  
14 similar computer based information for a billing  
15 company, that sophisticated computer should be  
16 able to tell me the differential and the volume of  
17 difference between the actual talk time and the  
18 billing time?

19 A. Yes.

20 Q. Do you know such a billing company that  
21 has that capacity?

22 A. No.

23 Q. Would Mr. Janowsky do you think be a  
24 good person to ask about that?

25 I guess what I'm trying to find is who



1 is it whose knowledge about computer and billing  
2 and so forth that I could tap into to get to the  
3 right place.

4 A. I'm sure Ed could answer the question.

5 Q. Could the computers at ATC itself  
6 accomplish that comparative analysis?

7 A. I'm sure they could.

8 Q. If it's not Ed, who would have been in  
9 charge of doing that when you were there? Was it  
10 Ed Janowsky?

11 A. Right.

12 Q. Do you know who took over Ed Janowsky's  
13 position at ATC?

14 A. Ray Yeager.

15 Q. When were you at ATC did you ever  
16 destroy any of the raw call detail records for the  
17 switch?

18 A. No, sir. I did not personally.

19 Q. Are you aware of them being destroyed or  
20 were they always retained?

21 A. I'm sure that after a period of time  
22 which exceeded the requirement to which you must  
23 retain call detail records that they were--those  
24 mag tapes are not cheap so they reuse them over  
25 and over again.

1           Once you get through the 18 month  
2 process you are going to take the tape and reuse  
3 it.

4           Q.    Do you know for a fact that happened at  
5 ATC or are you just supposing that?

6           A.    I know it happened, yes.

7           Q.    I am going to go back now to the  
8 agreement marked as Exhibit A and ask you to look  
9 at paragraph 4 for a second where it says, "Telus  
10 was to generate end of the month reports relevant  
11 to traffic distribution and tape output of  
12 relevant T.S.I. CDR call distribution reports."

13                   What is traffic distribution?

14           MR. QUINTON: Note my same objection  
15 regarding this witness' qualifications to  
16 interpret this document.

17           THE WITNESS: To the best of my  
18 knowledge, relevant to what I understood, ATC,  
19 which is not their document, would base that  
20 traffic distribution from point of origin to  
21 wherever the call terminated, which would be the  
22 traffic distribution based upon your calling  
23 customer base, which would allow you at some  
24 juncture--I'm just going to tell you what it would  
25 be used for, okay, what the report would be used

1 for.

2 The report would be used for--say that  
3 if I at some juncture down the line did not want,  
4 to be a switchless carrier, which I understand  
5 T.S.I. was, that I could acquire my own switch and  
6 acquire circuits, terminating circuits, circuits  
7 to accomodate the traffic distribution based upon  
8 my customer base.

9 Q. The relevant T.S.I. CDR, call  
10 distribution reports, what are the call  
11 distribution reports?

12 MR. QUINTON: Same objection.

13 THE WITNESS: I'm not familiar with what  
14 a call distribution report is but a CDR is a call  
15 detail record.

16 BY MR. MALAND:

17 Q. And we've talked about that earlier?

18 A. Right.

19 Q. Where on page 3 of the agreement under  
20 the heading "method of service" it says all,  
21 T.S.I. customers will be turned up through FG-A  
22 facilities with the use of dialers," would you  
23 explain to us what FG-A facilities are?

24 A. Those are facilities that are provided  
25 by the local exchange carrier to allow access to

1 an interexchange carrier's network.

2 Q. In this particular case was that  
3 Southern Bell that provided that?

4 A. Yes.

5 Q. What equipment exactly did ATC or  
6 Transcall America or Telus furnish to T.S.I.?

7 A. No physical equipment.

8 Q. So they're like a middle man Southern  
9 Bell and T.S.I.?

10 Is that a fairly overbroad but accurate  
11 statement?

12 A. It's kind of a broad statement, put it  
13 that way.

14 Q. But is it accurate?

15 A. They were--they owned feature  
16 groups--feature group A facilities from Southern  
17 Bell that the T.S.I. customers accessed the  
18 terminating network. That's it.

19 Q. If you ain't an expert, I don't know  
20 what is, but when someone sits in a deposition and  
21 says stuff like that, and he's the only one in the  
22 room that knows what's going on, I think you  
23 qualify as an expert.

24 Let me just take it down a couple  
25 notches so that I can understand it.

1           What is the feature group A equipment  
2 that you referred to as being owned by ATC?

3           A. Well, feature group A, those circuits  
4 are provided by Southern Bell to allow customer A  
5 or customer 1 or customer 2, or whoever, to dial a  
6 seven digit number, get access to that particular  
7 interexchange carrier's network switch, then  
8 continue dialing an access code or a PIN number,  
9 which allows the switch to identify that  
10 particular customer, continue dialing the area  
11 code and the terminating telephone number, and the  
12 call is then processed through that interexchange  
13 carrier's switch to the distant end called number  
14 and then the call is terminated at the distant  
15 end.

16           MR. RODRIGUEZ: Can I speak with you for  
17 a second?

18           MR. MALAND: We'll take a five minute  
19 break.

20           (Short break.)

21 BY MR. MALAND:

22           Q. Going back to the agreement where the  
23 heading is on "domestic traffic", briefly could  
24 you explain to us the four different areas  
25 referred to?



1           A.    They have traffic broken down in four  
2 different areas, intraLATA traffic or South East  
3 traffic LATA 460, that being defined as an  
4 example--Bell has established what they call a  
5 LATA, which is a Local Access Transport Area, and  
6 that defines a geographic area, geographic calling  
7 area, and in this example it is cited as intraLATA  
8 traffic in LATA 460, which extends from Key West  
9 to Sebastian, thus being the defined LATA, that  
10 traffic would be a call from, as an example, Miami  
11 to West Palm would be intraLATA.

12           The next category is interLATA, which is  
13 defined as originating from the South East LATA  
14 and terminating outside of LATA 460, which is the  
15 LATA I defined from Key West to Sebastian, so that  
16 as an example would be a call from Miami to  
17 Jacksonville, so it would be a 305 area code to a  
18 904 area code.

19           Interstate private lines.  If we're  
20 talking about--which it's hard to determine at  
21 this juncture here, from this document, interstate  
22 private lines are defined as thus:  TSI being a  
23 switchless and a non facility based carrier would  
24 not have interstate private lines.  ATC because  
25 they own their own fiber network have interstate



1 private lines.

2 Interstate private lines in this context  
3 as it's stated, it says, "Originating South East,  
4 terminating interstate on net."

5 ATC's fiber network that they own  
6 themselves that originated in the southeast to  
7 define this example, would be from, say, Miami to  
8 Atlanta and a private line being defined as a T1  
9 or an individual VF, which is a voice frequency  
10 circuit on that individual T1, say from Miami to  
11 Atlanta.

12 I really can't--like I said, I can't  
13 determine whether they're talking about switch  
14 traffic or whatever they're talking about here  
15 because you can't determine it from the wording  
16 that's here in this agreement.

17 Interstate all others--I'll have to  
18 assume here because it's not clear at all--I'm  
19 going to have to assume that that interstate would  
20 mean something that was terminated on someone  
21 else's network, and it's very unclear here so I  
22 can't ascertain the last two from the document  
23 that's here.

24 Q. The reference to, "All calls will be  
25 billed in six second increments," to your

1 knowledge was there a standard in the industry at  
2 the time you worked for ATC insofar as billing  
3 increments was concerned?

4 A. Well, there was a--yes and no. You get  
5 back to the point of how your tariff is filed and  
6 so forth. When I first began at Microtel you had  
7 some products that were billed in minimum--I mean  
8 whenever you made a call you had a 30 second  
9 minimum bill no matter if your call was ten  
10 seconds, you just got a 30 second bill. Some  
11 products, they had a one minute minimum so--but as  
12 time evolved on and the competitive nature of the  
13 business became more and more and more, and  
14 carriers went to six second increment billing,  
15 then if you were going to be a viable player in  
16 the industry you had to evolve your billing system  
17 to be billed in six second increments.

18 Q. Thank you.

19 I'm going to turn now to certain of the  
20 allegations made by my client against ATC and  
21 Transcall, which I am referring to as ATC.

22 MR. QUINTON: Can we go ahead and have  
23 this marked while we're still on the eleven page  
24 document.

25 (Whereupon, the document referred

1 to was marked Defendant's Exhibit A for  
2 Identification.)

3 BY MR. MALAND:

4 Q. I am going to refer now to paragraph 33  
5 of our complaint in the state court action.  
6 Paragraph 33A alleges certain wrongful conduct by  
7 ATC and Transcall, A, saying that they billed in  
8 violation of and in excess of the charges allowed  
9 under Transcall's tariff on file with the Florida  
10 Public Service Commission.

11 Mr. Bir, I would like to know what  
12 information you possess concerning billing by ATC  
13 and/or Transcall in violation of its tariff with  
14 the Florida Public Service Commission.

15 MR. QUINTON: Object to the form of the  
16 question.

17 THE WITNESS: I have no knowledge of  
18 their incorrect billing, no personal knowledge.

19 BY MR. MALAND;.

20 Q. Whatever knowledge you have has just  
21 been told to you by others. Is that true?

22 A. That's correct.

23 Q. Would you go ahead and relate to us what  
24 you have heard, please?

25 A. It goes back, I guess, to the original

1 question earlier in the deposition that it was  
2 just hearsay and that the billing had been changed  
3 to what Telus and the method that Telus used to  
4 use prior to the acquisition by ATC.

5 Q. So we don't go over ground we already  
6 traveled, you are referring now to your earlier  
7 testimony about having heard that was done and  
8 reading reports of that being done in the  
9 newspaper and the Attorney General's  
10 investigation?

11 A. Yes, sir.

12 Q. Is there anything in addition to that  
13 that you're aware of?

14 A. No, sir.

15 Q. Let me turn now to paragraph 33B, direct  
16 billing of T.S.I.'s customers despite a course of  
17 dealing which was not permitted in an effort and  
18 with the intent to steal T.S.I.'s customers.

19 Do you have any information as to why  
20 ATC would have direct billed any of T.S.I.'s  
21 customers?

22 MR. QUINTON: Object to the form of the  
23 question. It assumes that it was done.

24 MR. MALAND: It was done.

25 BY MR. MALAND:

1 Q. Go ahead.

2 A. No, sir. I don't.

3 Q. Do you know anything from your own  
4 personal knowledge about the course of dealing  
5 between TSI and ATC?

6 A. No, sir.

7 Q. Do you have any knowledge of any of the  
8 dealings between ATC and other parties similarly  
9 situated to TSI, meaning switchless resellers like  
10 TSI?

11 A. Maybe there's a question. I don't  
12 understand the question.

13 Q. You may not have first-hand knowledge of  
14 the way that ATC and T.S.I. dealt with each other  
15 on a day to day basis and what the practice was in  
16 terms of whether ATC would send a bill to T.S.I.  
17 and then T.S.I. was responsible for billing  
18 directly to their customers or some other practice  
19 was concerned, but you may know about what was  
20 done in similar cases where ATC had a business  
21 relationship with other switchless resellers, so  
22 what I'm trying to find out is what you know about  
23 that area of ATC's business practices generally.

24 A. It was a determination by ATC as a  
25 company when I was with ATC and in a position to

1 make decisions of this nature that we did not  
2 allow switchless resellers on the ATC switch and I  
3 can explain why. Okay? You're opening yourself  
4 up to several different issues here.

5           Number one, you own the feature groups  
6 that they're accessing, that the switchless  
7 reseller is accessing, and you are--you as the  
8 owner of that feature group from the Bell  
9 operating company are held liable for the bills  
10 for access minutes both originating and  
11 terminating.

12           It was ATC's decision based upon that  
13 fact that we have no way to collect the money from  
14 a switchless reseller other than rendering a bill  
15 and then we were directly liable to the telephone  
16 company for the access minutes that we decided not  
17 to do that particular function.

18           If the particular reseller determined  
19 that they would like to acquire their own access  
20 circuits, we would lease them ports on our switch  
21 and they then would be liable for the access  
22 minutes to the local exchange carrier.

23           That is the only way when I was an  
24 officer of ATC that we allowed a switchless  
25 reseller to be on our switch.



1 Q. When you say be on your switch,  
2 mechanically what does that mean?

3 A. That means that that particular reseller  
4 such as a T.S.I. could acquire their own access  
5 trunks, their own feature group A's from the local  
6 telephone company and they would be physically  
7 connected to the ATC switch.

8 Q. Turning now to 33C, are you aware of any  
9 advertising and soliciting of T.S.I.'s customers  
10 made by ATC?

11 A. No, sir.

12 Q. Is that outside of the realm of your day  
13 to day functioning at ATC?

14 A. Yes.

15 Q. Turning to 33D, there's an allegation  
16 that ATC and/or Transcallimproperly billed for  
17 calls that were not made, that were not completed,  
18 that had busy signals and/or bad connections.

19 Is that more in the realm of information  
20 that you would have dealt with on a day to day  
21 basis?

22 A. As far as this T.S.I. and so forth, I  
23 really can't answer to any knowledge of the T.S.I.  
24 billing parameters or functions as such to this  
25 particular scope.

1 Q. But, generally speaking, would you have  
2 knowledge concerning allegations or claims made by  
3 customers of ATC generally of improper billing for  
4 calls?

5 A. No, sir.

6 Q. Do you have any knowledge of customers  
7 of ATC complaining that they were charged for  
8 calls where they had busy signals and/or bad  
9 connections?

10 A. Not that I'm aware of.

11 Q. Who would have handled those type of  
12 complaints, improper billing, being charged for  
13 calls that were not completed or they were busy  
14 signals or bad connections?

15 A. In this time frame, this is a Telus  
16 contract. I don't know who at Telus would have  
17 handled this.

18 Q. I am talking now from 1989 all the way  
19 through the time when you left ATC, which is some  
20 time--I'm really not clear when you left.

21 A. '90, I believe.

22 Q. So now that we fixed that, between,  
23 let's, say July 7, '89 through November '90 when  
24 you left, who would have been the person at ATC  
25 who fielded customer complaints?

1           A.    The director of customer service who  
2 would have been responsible for that function  
3 would have been Sheila Ackerman.

4           Q.    Is she still with ATC?

5           A.    I don't believe so.

6           Q.    Do you know where she resides and works?

7           A.    I believe she resides in Boca Raton,  
8 Florida. I have no knowledge of where she's  
9 employed.

10          Q.    Do you happen to know if she's married  
11 or single and, if she's married, what her  
12 husband's name is?

13          A.    Her husband's name is Steve Ackerman.

14          Q.    A-C-K-E-R-M-A-N?

15          A.    Yes, sir.

16          Q.    Paragraph 33E, and again I'm going to  
17 make it a little broader because of the comments  
18 you've made about not necessarily having personal  
19 knowledge about T.S.I.'s customers, I'm going to  
20 ask you generally about your knowledge of  
21 overcharging and adding time to calls by ATC or  
22 Transcall while you worked there.

23          A.    Was it done?

24          Q.    Yes, sir.

25          A.    No, it was not, not while I was there.

1 Q. Was it done after you left?

2 A. I have no personal knowledge of that.

3 Q. Have you heard it was done?

4 A. I heard that they changed their billing  
5 methodology to the way that Telus had done it and  
6 the knowledge that I have of Telus' billing method  
7 was based upon the due diligence that was  
8 performed in the acquisition of Telus by ATC.

9 Q. How could ATC have added time to calls?

10 I guess what I'm looking at is a primer  
11 on the way ATC could have cheated its customers.

12 MR. QUINTON: I object to the form of the  
13 question.

14 Move to strike it.

15 BY MR. MALAND:

16 Q. Go ahead.

17 A. I mean, I can sit here and make up  
18 thousands of scenarios how somebody could add  
19 minutes to something or whatever. That's a real  
20 hard one to answer.

21 MR. QUINTON: I also object on the basis  
22 you are asking the witness to speculate. He's  
23 already advised that he has no idea.

24 MR. MALAND: That's a  
25 mischaracterization of his testimony.

1           What he said is he could think of a  
2 thousand ways for them to add time.

3           I would like to know some of the more  
4 common ones so when I ask the ATC executives or  
5 employees if they did those, I can ask with  
6 intelligence.

7           **THE WITNESS:** I mean, you could take a  
8 billing system and say, "Okay, I've got this time  
9 point that I'm billing from," be it time point 6  
10 to 7, and automatically say, "Hey, I'm going to  
11 add 30 seconds to each call." There's no magic to  
12 that. It's something that could be done. You  
13 could add a minute. You could add five minutes.  
14 You could at whatever amount you wanted.

15           **MR. QUINTON:** Just for the record, I'm  
16 going to move to strike this question and the  
17 whole answer as totally speculative based on the  
18 witness' testimony.

19           There's been no precedent that he is  
20 aware of any of this being done at Telus Transcali  
21 or ATC.

22           **MR. MALAND:** You don't have to make  
23 speaking objections and you reserve your right to  
24 move to strike at the time of trial, Counsel, so  
25 why don't we just get on with the discovery

1 deposition where the witness who obviously is very  
2 knowledgeable about how the mechanics of how ATC  
3 ran its business can tell me the different ways it  
4 was possible to manipulate the billing to add  
5 time.

6 That's the nature of the question here  
7 and that's perfectly permissible.

8 BY MR. MALAND:

9 Q. I've heard one way, which is to take the  
10 billing system and I guess you are saying  
11 reprogram it in such a way as to add time to each  
12 call. That's one way.

13 How else?

14 A. There was--there are certain things that  
15 you can look at on the switch, such as ring back  
16 tone default, which is described as I make a long  
17 distance call, switch gets the call, the call gets  
18 to the distant end, it rings and rings and rings  
19 and rings, and if you set a parameter on your  
20 switch, not the switch, the bill system, that  
21 says, "Okay, if I get this ring back tone default  
22 parameter and it's 45 seconds," as an example,  
23 "then I bill the call as though it's an answered  
24 call even though it was not answered."

25 You can have the same exact parameter on



1 busy tone default. You can get customers that  
2 will call and the line will be busy on the distant  
3 end and they will sit there with the receiver off  
4 the hook for X amount of seconds, or whatever, and  
5 however you define it in the software of your  
6 billing system, you can either pick up revenue or  
7 throw revenue away based upon how you want to bill  
8 calls.

9 Again, I'm going to say that calls at  
10 ATC while I was in control of the decision making  
11 process or part of the decision making process  
12 were billed for conversation minutes only.

13 MR. RODRIGUEZ: I want to make a note.

14 MR. QUINTON: I am going to object to  
15 you saying--you have an attorney here representing  
16 you. If you want to speak with him, that's fine.

17 BY MR. MALAND:

18 Q. Whose billing system was T.S.I. on  
19 there, Telus' billing system or ATC's?

20 A. I'm going to have to recall here for a  
21 second when the acquisition of Telus was made. I  
22 believe it was in March or so of '90. I can't  
23 recall.

24 MR. RODRIGUEZ: Might even be a little  
25 bit earlier, actually.

1           **THE WITNESS:** I really can't recall so  
2 they were--based upon this agreement or exhibit we  
3 have here in front of us, that's a Telus exhibit,  
4 so they had to be on Telus' billing system.

5 **BY MR. MALAND:**

6           **Q.** Then after the acquisition are you  
7 saying they remained on Telus' billing system or  
8 went over to ATC's billing system?

9           **A.** I'm sure that they remained on Telus'  
10 billing system.

11          **Q.** Why is that? Why are you sure of that?

12          **A.** Well, ATC had a switch in Fort  
13 Lauderdale. Telus' switch was in Miami. Just the  
14 sheer size of the feature groups that both  
15 companies had on those two switches would not  
16 allow the combination of the switch to take place,  
17 that the port capacity of the two 400's, you  
18 couldn't do it.

19          **Q.** Just so you know, Mr. Bir, I'm not  
20 suggesting that you personally had any control  
21 over the billing system by my questions because,  
22 you know, you've taken a particular point of  
23 saying that while you were involved in the  
24 decision making process certain things took place  
25 but I also want to make it clear that you--is it

1 true that you were not the person responsible for  
2 hands on controlling the billing computers at ATC  
3 while you were there? Is that true?

4 A. That's correct.

5 Q. Who was responsible for the hands on  
6 control of the billing systems? By that I mean  
7 the computer billing systems at ATC while you were  
8 there.

9 A. Ed Janowsky.

10 Q. So is it fair to say that if your  
11 earlier testimony was you didn't have any personal  
12 first hand knowledge of there being any  
13 manipulation of ATC's computer billing system  
14 while you were there to add seconds or to change  
15 the defaults on the billing parameters, that  
16 doesn't necessarily mean that someone else didn't  
17 do it?

18 In other words, it may have been done by  
19 someone without your knowledge. Isn't that true?

20 MR. QUINTON: Object to the form.

21 THE WITNESS: It's possible.

22 BY MR. MALAND:

23 Q. Let's be clear. Anything is possible.

24 A. Sure.

25 Q. I would like the record to be clear that

1 what your testimony is here today you don't have  
2 any personal knowledge, meaning you, Jerry Bir,  
3 don't have any personal first-hand knowledge of  
4 the computer billing system at ATC being  
5 manipulated to add time to calls or to change the  
6 default so it billed improperly. Is that true?

7 A. That's true.

8 Q. But let's be equally clear that you  
9 don't know if that was done or was not done by  
10 someone else at ATC. Is that true?

11 A. That's correct.

12 Q. Just finishing up here on paragraph 33B,  
13 there are certain allegations made about billing  
14 twice for calls that were overlapping. In other  
15 words, two separate line items on a bill for a  
16 call being made twice at the same time.

17 Again, is that a function of the billing  
18 computer or something that would have been outside  
19 of the realm of your day to day handling?

20 A. Yes.

21 Q. So the actual--maybe I can hold an  
22 umbrella up here on these questions--from a big  
23 picture standpoint the questions dealing with the  
24 physical mechanics of how the bills were generated  
25 by ATC's billing computers were not within your

1 personal knowledge and domain?

2 A. That's correct.

3 Q. I would have to ask Ed Janowsky about  
4 that?

5 A. That's correct.

6 Q. Who ran the Telus switch when it was  
7 acquired by ATC?

8 A. I don't know the individual's name that  
9 ran it but the person that was ultimately  
10 responsible was Rudy McGlashan.

11 Q. Who ran the Telus billing after Telus  
12 was acquired by ATC?

13 A. Ray Yeager.

14 Q. Why did you not have control over the  
15 Telus switch after Telus was acquired by ATC?

16 A. Because I was the--the acquisition as I  
17 stated before--once the acquisition was signed and  
18 we agreed as the two companies that the networks  
19 needed to be integrated in order to achieve the  
20 most network efficiencies and, you know, get the  
21 synergies of the two companies together as quickly  
22 as possible, Norman Klugman was named as chief  
23 operating officer and Rudy McGlashan was named as  
24 vice-president of operations and engineering, and  
25 I was placed as vice-president of enhanced

1 services, so I was taken out of the quote unquote  
2 long distance operations and put into the enhanced  
3 services.

4 Q. What reasons were you given for taking  
5 you out of the long distance area?

6 A. The fact that--really I wasn't given any  
7 reasons, okay, but the fact that there was a shift  
8 in control of the company to the Telus  
9 organization.

10 I wasn't Norman Klugman's right hand  
11 man, so to speak, and therefore I was shifted out  
12 of that organization.

13 Q. Did you ever express the opinion to  
14 anybody that in your mind it would be improper in  
15 any way to charge Telus customers for network  
16 minutes as opposed to talk time after the  
17 acquisition by ATC?

18 A. No. I didn't express that to anyone  
19 there.

20 Q. Did you ever express that to anyone?

21 A. Not that I can recall. I don't believe  
22 I did.

23 Q. Let me see if I can put it this way: To  
24 what extent do you believe that your concern that  
25 ATC's customers be billed properly and in



1 accordance with the tariff affect ATC's decision  
2 to move you out of the long distance area.

3 MR. QUINTON: Object to the form.

4 THE WITNESS: I'm not the person you  
5 should be asking that question.

6 BY MR. MALAND:

7 Q. I will get to him sooner or later but I  
8 would like to ask your opinion because you were  
9 there and you seem to be someone who is concerned  
10 about that.

11 A. I'll just say that, you know, based upon  
12 the due diligence and based upon the way that ATC  
13 had billed customers being for conversation  
14 minutes that--and it had always been our practice  
15 as a company to bill for conversation  
16 minutes--that if I had been--if the organization  
17 had stayed the way it was, then the decision would  
18 have been made to convert the customers to  
19 conversation minutes billing, the Telus customer  
20 base.

21 Like I said, that decision making  
22 process was alleviated.

23 Q. Was that made at a higher level than  
24 your level of office in ATC?

25 A. Was what made?

1 Q. The decision concerning the method of  
2 billing.

3 A. I have no personal knowledge to that.

4 Q. To what extent do you understand that  
5 Norman Klugman participated in the decision making  
6 concerning the billing method by ATC after the  
7 Telus acquisition?

8 A. I can only say that based upon the  
9 levels of the people that were there prior to the  
10 acquisition such as the chairman of the board  
11 being Steve Raviile, Dale Gregory being the  
12 president and chief operating officer, and then  
13 your executive vice-presidents under that making a  
14 decision process, that I would have to say that  
15 based upon that structure that Norman being  
16 ultimately Dale Gregory's replacement was in that  
17 decision process along with the other senior  
18 vice-presidents of the company.

19 Q. And the chairman of the board, Mr.  
20 Raviile?

21 A. I would have to assume that because that  
22 was the way it was when Steve was the chairman of  
23 the board and Dale was there.

24 Q. Forgive me if I already asked you this,  
25 but why did Ray Yeager continue to handle the

1 Telus billing after the acquisition as opposed to  
2 Mr. Janowsky or someone else?

3 A. Mr. Janowsky's services were rendered no  
4 longer necessary by the company.

5 Q. So his employment was ended and Mr.  
6 Yeager took over the billing function?

7 A. Yes, sir.

8 Q. Did controlling the Telus switch after  
9 the acquisition of Telus by ATC become a problem  
10 relating to loss of personnel?

11 A. I'm not sure of that. I don't know.

12 Q. You don't have personal knowledge of  
13 that?

14 A. See, because you have to remember this,  
15 okay--you have to go back to where I went right  
16 after the acquisition was completed. In June when  
17 Dale Gregory left we had acquired a company--we  
18 had invested in a company in Washington D.C. <sup>f</sup>  
19 called Data America and there were several  
20 participants in that, be it Telesphere, ATC and a  
21 gentleman by the name of Francesco Galesi.

22 Somewhere I'd say 90 days into the  
23 investment by these groups of people the money  
24 that they had invested seemed to be gone so the  
25 chairman of the board, Steve Raville, who I

1 reported to at the time, asked me to go to  
2 Washington to find out what was going on with Data  
3 America, so from July or even I believe it was  
4 even prior to that--in other words, there were  
5 some times when I flew up there for the week and  
6 flew back on the weekends and so forth.

7 From that time frame to mid November I  
8 was in Washington D.C. at Data America trying to  
9 resolve the problems and to straighten out the  
10 revenue and get the costs in line at that company,  
11 so I'm not privy to the personnel problems that  
12 were going on in Boca and--at that time.

13 Q. Are you aware of a letter being issued  
14 by Mr. Norman Klugman directing that the time  
15 parameters be switched from time point 6 to time  
16 point 1?

17 A. Only from the standpoint that--that the  
18 State Attorney General's office informed me that  
19 that letter did exist.

20 Q. Are you aware of that letter being given  
21 to any employees at ATC by Mr. Klugman to be  
22 effectuated and the reaction of those employees?

23 A. I believe that there was some concern by  
24 some individuals saying that they were concerned  
25 about their large users, if this change were

1 effected.

2 Q. Who was it within ATC that expressed  
3 that concern?

4 A. I'm getting this third hand, so, there  
5 was an employee that worked in the IS department  
6 for Telus that was eventually retained by EDS, and  
7 I cannot recall that gentleman's name.

8 Q. Dan Merit?

9 A. No.

10 Q. Joe Signorelli?

11 A. Joe Signorelli.

12 Q. What do you recall about--

13 A. There again, that was--when  
14 conversations that were related to me by a third  
15 party and conversation that went on at that social  
16 function, there were several prior employees of  
17 ATC and still employees of ATC.

18 Q. Just generally speaking, what was the  
19 concern there concerning if that change were  
20 effectuated and what the backlash would be from  
21 major users?

22 A. Well, there wasn't really a cold blanket  
23 statement that came out but being in the industry  
24 the effect that--as an example, I will use this as  
25 a broad base because this has been in the press

1 and everything else, that the State of Florida was  
2 concerned about their billing because it came--one  
3 month it was this amount and all of a sudden it  
4 went to this amount, so the concern, you know,  
5 obviously should have been that, "Hey, here's a  
6 revenue jump and a billing increase."

7           Somebody is going to ask a question,  
8 "Where the hell did it come from? Why this month  
9 and not last month?"

10           Q. Do you know a Cathy Biondillio?

11           A. Yes. Cathy Biondillio.

12           Q. Where does she reside?

13           A. Cathy is, I believe, currently manager  
14 of switch engineering.

15           Q. Is that at ATC?

16           A. Yes. I'm sorry.

17           Q. Is it true that Cathy was one of the  
18 people who expressed a concern about the  
19 effectuation of that change and the time point  
20 parameters that had been requested by Norman  
21 Klugman?

22           A. Yes.

23           Q. Please tell me what she expressed to  
24 you.

25           A. She only expressed the fact that



1 there--she was concerned about the large users.

2 (Discussion off the record.)

3 Q. Was there a concern expressed that to  
4 effectuate the change that had been requested by  
5 Mr. Klugman in the time point parameters would  
6 violate the tariff on file with the Florida Public  
7 Service Commission?

8 A. I don't believe that that was--you know,  
9 here again, this conversation took place after the  
10 social function and there was, you know, partaking  
11 of alcoholic beverages and so forth so it's, you  
12 know--I don't believe that there was a concern  
13 there.

14 That's just my interpretation. I can't  
15 answer for that.

16 Q. Did you derive from those comments that  
17 there was a concern that it would have been an  
18 unethical practice to have effectuated the change?

19 MR. QUINTON: Object to the form.

20 THE WITNESS: I really can't say one way  
21 or the other.

22 BY MR. MALAND:

23 Q. Who was present when those conversations  
24 took place?

25 A. There was a lot of people. There

1 was--you know, it was just general conversation.

2 When you work with people for a period  
3 of time and you meet them again and you say, "Hey,  
4 how's work going? How's this? How's that," I  
5 don't recall all of the people that were there.

6 Cathy, myself, Tom Richards. There were  
7 a lot of people in and out at various times.  
8 People would have a couple of drinks and leave and  
9 so forth, so--

10 Q. Where was this conversation or the  
11 social gathering that you were referring to?

12 A. I believe it was at the Cove, Deerfield  
13 Beach.

14 Q. Approximately when was it?

15 A. Oh, God.

16 Q. It was after you left the company?

17 A. Long after, yes.

18 Q. What was the occasion? Do you know?  
19 Was it someone's birthday party or something in  
20 particular?

21 A. No. It was just--"What are you going  
22 to do tonight?" Social gathering.

23 Q. "Let's get together and have a drink and  
24 chit chat" ?

25 A. Yeah.

1 Q. Tom Richards. Do you recall his name?

2 A. Tom is just a very good friend of mine  
3 that works at ATC. He was at one point the  
4 director of engineering when we were building the  
5 network. He worked arm and arm with me when we  
6 turned up the Tallahassee to Atlanta segment, so  
7 he's just a good friend that's been around a long  
8 time.

9 Q. What is the IS department at ATC?

10 A. Information services.

11 Q. What is the responsibility of the IS  
12 department at ATC?

13 A. To develop services.

14 (Discussion off the record.)

15 MR. BRADLEY: Jerry will agree to appear  
16 again at a time and location convenient to all and  
17 we will schedule it convenient to him and by  
18 location, we're probably talking about closer to  
19 him.

20 MR. MALAND: Is your office a better  
21 venue?

22 (Discussion off the record.)

23 MR. MALAND: We've agreed to postpone  
24 the conclusion of the deposition because we've  
25 lost the telephone link-up with Mr. Self, the

1 Tallahassee attorney. It's a late hour. People  
2 have places to go. They have turned off the air  
3 conditioning here, and we all agreed that Mr. Bir  
4 will voluntarily appear at a time convenient to  
5 him for the conclusion of his deposition and we're  
6 going to try to schedule the location closer to  
7 his counsel's office or closer to downtown Fort  
8 Lauderdale.

9 Is that agreeable to everybody?

10 MR. QUINTON: Try to reset it within a  
11 reasonable time. Is that okay?

12 MR. MALAND: Okay.

13 MR. BRADLEY: Okay.

14 (Whereupon, the deposition adjourned at  
15 6:15 p.m.)  
16  
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25

CERTIFICATE

1  
2 STATE OF FLORIDA )  
3 COUNTY OF DADE ) ) SS:

4  
5 I, Suzanne Dunay Siegel, Court  
6 Reporter and Notary Public in and for the State of  
7 Florida at Large, hereby certify that I reported  
8 in shorthand the deposition of JERRY BIR, a  
9 witness herein; that the deponent was first duly  
sworn by me; that reading and signing of the  
deposition were waived by the deponent and  
counsel; that the foregoing pages, numbered 1 to  
75, inclusive, constitute a true record thereof.

10 I further certify that I am not of  
11 counsel, I am not related to nor employed by an  
12 attorney to this suit, not interested in the  
outcome thereof.

13 The foregoing certification does not  
14 apply to any reproduction of this transcript by  
any means unless under the direct control and/or  
direction of the certifying shorthand reporter.

15 Dated at Miami, Dade County,  
16 Florida, this 9th day of June, 1993.

*Suzanne Dunay Siegel*

**EXHIBIT \_\_\_\_\_**  
**(JB - A)**



**AGREEMENT**  
**BY AND BETWEEN**  
**TELUS COMMUNICATIONS, INC.**  
**AND**  
**TELECOMM SERVICES INC.**

**JULY 1989**

**EXHIBIT**  
**A**

EXHIBIT - A  
DATE 5-25-93  
BY SP 505

**AGREEMENT**

This Agreement is entered into on July 7<sup>th</sup>, 1989, by and between Telus Communications, Inc., a Florida corporation with an office at 1020 N.W. 163 Drive, Miami, Florida 33169, (hereinafter "Telus"), and Telecomm Services Inc. a Florida corporation with an office at \_\_\_\_\_ (hereinafter "T.S.I.").

Whereas, T.S.I. desires to receive the services described in the Service Descriptions and related Exhibit A attached hereto and incorporated herein (hereinafter the "Service") from Telus, and Telus is willing to provide the Service pursuant to the terms and conditions set forth herein:

Now, therefore, T.S.I. and Telus hereby mutually agree as follows:

**GENERAL SCOPE OF SERVICE**

Telus and T.S.I. agree that Telus will perform the following services listed below under the following terms and conditions contained in this document.

1. Act as agent for all T.S.I. customers in interfacing with Local Exchange Carriers (LEC) and or Interexchange

- carriers (IXC) for processing of service orders related to switched access for installation of new or additional service and or disconnection of said service and/or cancellation of said service per T.S.I. request.
2. Switch traffic from all Telus' Pg-A originating groups from Telus' switching sites.
  3. To bill and receive revenue at our P. O. Box from billable records as reported by the DSC 400 switching system generated from completed calls for T.S.I. customers identified by auth codes. Billing would extend to actual mailing of each invoice by Telus to all T.S.I. customers.
  4. To generate end of month reports relevant to traffic distribution and tape output of relevant T.S.I. CDR, call distribution reports.

**TERMS AND AGREEMENT**

The minimum term of this agreement will be 1 year which will commence at the signing of this contract.

**PAYMENT & DEPOSITS DISPUTES**

Telus reserves the right to require a deposit in the event it is determined that T.S.I. has been delinquent in its payment to Telus for services rendered.

**METHOD OF SERVICE**

All T.S.I. customers will be turned up through FG-A facilities with the use of Dialers. The Dialers Purchase, Installation and Maintenance will be the sole responsibility of T.S.I. Each T.S.I. customer will be assigned with an auth code to access Telus' network on a customer by customer basis to a designated point of contact at T.S.I.

**DOMESTIC TRAFFIC**

The Rate Structure will be as outlined below for Domestic and International traffic. Traffic is divided into four areas.

- IntraLATA Traffic or (South East traffic LATA 460)
- InterLATA Traffic (Originating South East  
Terminating outside of LATA 460)
- Interstate Private Lines (Originating South East  
Terminating Interstate on Net\*)
- Interstate all other areas.

The rates quoted will be for all periods i.e. Day/Evening/Night-Weekend. All calls will be billed in 6 second increments.

COST PER MINUTE

	Day	Evening	N/Weekend
IntraLATA	.12	.12	.12
InterLATA	.125	.125	.125
Interstate on NET	.14	.14	.14
Interstate All Other	.15	.15	.15

\*All interstate on NET will be defined in Exhibit A.

INTERNATIONAL RATES

International traffic will be at rates currently filed in Telus' Tariff but will be billed to T.S.I. full minute rounding for the first minute and 6 second increments for each additional minute.

1-800 TRAVEL

In the event T.S.I. customers require a 1-800 travel number, Telus will provide a specific 1-800-780-XXXX for this purpose. This number will be accessed through an auth code which will be assigned per customer. The rates will be as follows:

	DAY	EVENING	NIGHT
1-800	.195		

**1-800 NXX-XXXX ASSIGNED**

In the event each T.S.I. customer requires a full 1-800-780-XXXX to be assigned exclusively for their purpose, Telus will do the necessary translation to achieve this at the rates listed below:

	<u>COST PER MINUTE</u>		
	DAY	EVENING	NIGHT
1-800	.21		

Fixed charge of \$5 per 800 number per month.

**FRAUD**

Due to the nature of access, Telus will hold T.S.I. liable and responsible for all fraud which might occur on the auth codes assigned. Telus will offer the full capability of its resources to monitor those auth codes for fraud but will not assume or be responsible for any determined fraud as a result of its monitoring.

**CANCELLATION**

If T.S.I. cancels this agreement within the initial term agreed for any reason or reasons other than a material breach of the terms and conditions contained herein, T.S.I. will be liable for the minimum charge per month as contained in this agreement for that period of time from the date of



receipt of cancellation to the end of the agreed upon term. T.S.I.'s failure to obtain or maintain any necessary certificates, permits, licenses or other authority required to receive Services or to maintain Equipment on the premises at each of T.S.I.'s sites.

**MINIMUM CHARGE**

Telus will require T.S.I. to pay a minimum charge per month equating to the total monthly billing or a fixed charge of \$5,000 per month if T.S.I. proposes to cancel this agreement outside the terms of this agreement under the cancellation clause.

**SUSPENSION AND OR TERMINATION OF SERVICE**

In the event payment in full is not received from T.S.I. by Telus or on before the due date as described in this agreement, Telus shall have the right, on or after the tenth calendar day after Telus has given T.S.I. written notice of non-payment in accordance with this agreement temporarily suspend all Service to T.S.I. (either completely or only with respect to any affected Segments, as Telus may at its option elect) until such time as T.S.I. has paid in full all arrearages, including any late fees of 1 1/2% specified herein, or to terminate Service (either completely or only with respect to any affected Segments, as Telus may at its option elect), at Telus' option. Further, the Service provided by Telus to T.S.I. is subject to the condition that

actions of Telus or its agents). If Telus' failure of performance by reason of force majeure specified above shall be for (i) thirty (30) days or less, then this Agreement shall remain in effect, but an appropriate percentage of charges shall be abated in the discretion and determination of Telus; and (ii) more than thirty (30) days, then this Agreement may be cancelled by either party without liability whatsoever on the part of any party.

This Agreement shall be binding on Customer and its respective successors and assigns. Customer may not assign this Agreement, whether by operation of law or otherwise, without the prior written consent of T.S.I., which agreement shall not be unreasonably withheld. T.S.I. may terminate this Agreement in the event of a change in control of Customer without T.S.I.'s prior written consent.

This offer shall remain open and be capable of being accepted by Customer until July, 1989. Any and all prior offers made to Customer, whether written or oral, shall be superseded by this offer. Exclusive of any Tariff modifications initiated by T.S.I., once this Agreement has been executed, any amendments hereto must be made in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

TELECOMM SERVICES INC.  
A Florida Corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*[Signature]*  
PRESIDENT.  
7/7/89

) Notary Public in the  
) State of Florida

*Neil Buckman*  
7/7/89

Date  
NOTARY PUBLIC, STATE OF FLORIDA.  
MY COMMISSION EXPIRES: JAN. 24, 1992.  
SIGNED THIS NOTARY PUBLIC UNDERWRITERS

My Commission expires:

TELU COMMUNICATIONS, INC.  
A Florida Corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*[Signature]*  
Vice President  
July 7 1989

) Notary Public in the  
) State of Florida

*Neil Buckman*  
7/7/89

Date  
NOTARY PUBLIC, STATE OF FLORIDA.  
MY COMMISSION EXPIRES: JAN. 24, 1992.  
SIGNED THIS NOTARY PUBLIC UNDERWRITERS

My Commission expires:

ADDENDUM TO CONTRACT BETWEEN  
TELUS COMMUNICATIONS, INC. AND  
TELECOM SERVICES, INC.

Telus will provide installation of dialers for TSI  
at a rate of \$10.00 per line.

Maintenance of these dialers will be done by TSI.

The \$10.00 charge covers installation only.

  
TELUS COMMUNICATIONS, INC.

  
TELECOM SERVICES, INC.

**EXHIBIT A**

**ON-NET INTERSTATE**

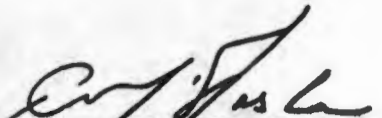
<b><u>LATA</u></b>	<b><u>CITY</u></b>
128	Boston
132	New York
222	Delaware Valley
224	North Jersey
228	Philadelphia
234	Pittsburgh
236	Washington, D.C.
238	Baltimore
320	Cleveland
322	Youngstown
324	Columbus
325	Akron
328	Dayton
336	Indianapolis
340	Detroit
348	Grand Rapids
358	Chicago
422	Charlotte
426	Raleigh
438	Atlanta
470	Nashville
490	New Orleans
520	St. Louis
552	Dallas
560	Houston
628	Minneapolis
656	Denver
722	San Francisco
730	Los Angeles
920	Connecticut

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