

I N D E X

MISCELLANEOUS - VOLUME 2

ITEM	PAGE NO.
CERTIFICATE OF REPORTERS	328
WITNESSES - VOLUME 2	
NAME	PAGE NO.
JOEL ESQUENAZI	
Direct Examination By Mr. Parsons	147
Prefiled Direct Testimony Inserted	151
Cross Examination By Mr. Self	162
Cross Examination By Ms. Keating	164
Redirect Examination By Mr. Parsons	174
Recross Examination By Mr. Self	179
Further Direct Examination By Mr. Parsons	180
WILLIAM SHULMAN	
Direct Examination By Mr. Parsons	181
Prefiled Direct Testimony Inserted	184
Cross Examination By Mr. Gimbel	188
Cross Examination By Ms. Keating	203
Redirect Examination By Mr. Parsons	210
KATHY WELCH	
Direct Examination By Ms. Keating	216
Prefiled Direct Testimony Inserted	221
Prefiled Rebuttal Testimony Inserted	233
Cross Examination By Mr. Parsons	235
Cross Examination By Mr. Self	270
Redirect Examination By Ms. Keating	275
MARY JO DAURIO	
Direct Examination By Mr. Self	278
Prefiled Rebuttal Testimony Inserted	279
Cross Examination By Ms. Keating	286
Redirect Examination By Mr. Self	287
DENNIS SICKLE	
Direct Examination By Mr. Self	288
Prefiled Rebuttal Testimony Inserted	290
Cross Examination By Mr. Parsons	293
Cross Examination By Ms. Keating	301

1	DOUGLAS METCALF		
	Direct Examination By Mr. Self		303
2	Prefiled Rebuttal Testimony Inserted		305
	Cross Examination By Ms. Keating		320

3

4

EXHIBITS - VOLUME 2

5

NUMBER**ID.****ADMTD.**

6

7

15 JE-1, JE-2 and JE-4

150

181

8

16 WS-1 and WS-2

182

215

9

17 Work papers of Lopez-Levi

183

215

10

18 ATC billing 4/4/92, page 4

199

215

11

19 ATC billing 4/4/92, page 194

199

215

12

17 (withdrawn from record)

216

13

20 KIW-1, KIW-2

219

277

14

21 Billing excerpts,
Pages 2, 6 and 18

256

277

15

16

17 Lopez-Levi workpapers with legend

325

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P R O C E E D I N G S

(Hearing reconvened at 1:15 p.m.)

(Transcript follows in sequence from

Volume 1.)

COMMISSIONER CLARK: We'll go back on the record. I believe the next witness is Mr. Esquenazi.

MR. PARSONS: TSI calls Mr. Joel Esquenazi to the stand.

- - - - -

JOEL ESQUENAZI

was called as a witness on behalf of Telecommunications Services, Inc. and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PARSONS:

Q Mr. Esquenazi, you did you stand, raise your right hand, and were you sworn at the commencement of this hearing?

A Yes.

Q Did you cause to be prepared prefilled written testimony in this proceeding?

A I'm sorry. I didn't hear the question.

Q Did you prepare prefilled written testimony in this proceeding?

A Yes.

1 Q And did you also assist in preparing the
2 exhibits to that testimony?

3 A Yes.

4 Q Do you reaffirm that the testimony that you
5 presented in the prefiled testimony is true?

6 A Yes.

7 Q Do you reaffirm that the exhibits are true
8 and accurate?

9 A That's correct.

10 Q Mr. Esquenazi, am I correct there was a
11 copying error in one of your exhibits whereby
12 Exhibit No. 1 was copied so that it actually comprises
13 the last six pages of your prefiled testimony?

14 A That is correct.

15 Q Mr. Esquenazi, since you've heard the
16 testimony of Transcall today, have you formed any
17 conclusions or have you given any thought to the
18 collectibility of the accounts receivable of TSI?

19 MR. SELF: Excuse me, Commissioner. I would
20 object that this is improper at this time.

21 COMMISSIONER CLARK: Mr. Parsons, first of
22 all, we need to get the testimony into the record, the
23 prefiled testimony. What I have is seven pages of
24 prefiled testimony; is that correct?

25 MR. PARSONS: (Nodding head.)

1 **COMMISSIONER CLARK:** That will be inserted
2 in the record without objection. Now, how many
3 exhibits do we have?

4 **MR. PARSONS:** We have three exhibits.

5 **COMMISSIONER CLARK:** And those exhibits are
6 JE --

7 **MR. PARSONS:** JE-1, JE-2, and I have JE-3 is
8 withdrawn. I have JE-4 with me.

9 **COMMISSIONER CLARK:** Okay. So we'll show as
10 a Composite Exhibit 15, JE-1, 2, and 4.

11 **MR. PARSONS:** Yes, Commissioner.

12 **MR. SELF:** I'm sorry Commissioner Clark. I
13 don't have a copy of JEA -- excuse me -- JE-4. Can I
14 see that a moment, please?

15 **MR. PARSONS:** (Handing document to
16 Mr. Self.)

17 **COMMISSIONER CLARK:** Mr. Self?

18 **MR. SELF:** If I could ask, Mr. Parsons, I'm
19 assuming that this was not something that was
20 originally submitted with the prefiled; is that
21 correct?

22 **MR. PARSONS:** It was not submitted with
23 prefiled, but it was listed later in the prehearing
24 statement.

25 **MR. SELF:** We would have no objection to

1 this being included in Exhibit 15.

2 (Exhibit 15 marked for identification.)

3 COMMISSIONER CLARK: All right. It will be
4 included in Exhibit 15.

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1 DIRECT TESTIMONY OF JOEL ESQUENAZI

- 2 Q. What is your name?
- 3 A. Joel Esquenazi.
- 4 Q. By whom are you employed?
- 5 A. Telecommunications Services, Inc.
- 6 Q. What is your position with Telecommunications Services, Inc., which I'll
- 7 call TSI?
- 8 A. I am its President, the sole owner, and the founder.
- 9 Q. When did you found TSI?
- 10 A. 1989.
- 11 Q. Where was it incorporated?
- 12 A. Florida. Its principal place of business has been and is in Dade County.
- 13 Q. What was your employment prior to that?
- 14 A. I worked for International Telephone and Telegraph.
- 15 Q. What was your position with that company?
- 16 A. I was major accounting representative, marketing long-distance service.
- 17 Q. How long did you work for ITT?
- 18 A. Approximately five years.
- 19 Q. What is your education?
- 20 A. One year of college.
- 21 Q. What led to the formation of TSI?
- 22 A. I saw a target market, the Hispanic market, that was not being serviced.
- 23 Q. What sort of marketing did you do at the beginning?
- 24 A. I was marketing direct sales.
- 25 Q. Were you focusing or concentrating on business, versus residence?

- 1 A. Strictly business.
- 2 Q. Was there a geographic market that you targeted?
- 3 A. We sold to anyone that we could sell to within the State of Florida, but
- 4 because of our resources, obviously, we concentrated on South Florida -- Dade,
- 5 Broward, and Palm Beach counties.
- 6 Q. How would you describe the long-distance business at that time?
- 7 A. It was a great time to get into it, simply because the competition was not
- 8 as intense as it is now, and there was a big spread between the margins of profit
- 9 that were able to be obtainable at the time, versus what they are today.
- 10 Q. What has caused that change in the marketplace over time?
- 11 A. The continued heavy competition.
- 12 Q. When did TSI first obtain approval from the Florida Public Service
- 13 Commission to be a telecommunications provider?
- 14 A. November 16, 1989, under Certificate 2385.
- 15 Q. When TSI went into business, did it seek to enter an agreement to use the
- 16 services of another telecommunications company?
- 17 A. Yes.
- 18 Q. Why?
- 19 A. TSI needed a long-distance carrier, a billing system, and a switch.
- 20 Q. Which company did TSI enter into an agreement with?
- 21 A. Telus. In 1990 Telus became ATC and/or Transcall America, Inc.
- 22 Q. When you were dealing with ATC, how did it represent itself?
- 23 A. As ATC and as Advanced Telecommunications Corporation.
- 24 Q. How did you decide that ATC was the company that you wanted to work
- 25 with in the long-distance business?

1 **A. I had a colleague that worked for ITT, that her husband worked for Telus,**
2 **and I was approached by her. I told her what my business plans were, and she ran**
3 **it by her husband, and her husband was interested in it, and that is how it all**
4 **began.**

5 **Q. Who was the husband?**

6 **A. Dennis Sickle.**

7 **Q. When did this occur?**

8 **A. Sometime in the middle of 1989.**

9 **Q. What did you and Dennis Sickle discuss?**

10 **A. I wanted to open up my own long-distance company, and I wanted to**
11 **begin by doing reseller basis. We discussed this plan and he was interested in it.**

12 **Q. What was his attitude?**

13 **A. He was very optimistic and favorable about it.**

14 **Q. In terms of establishing the initial working relationship with Telus, did**
15 **you work with Dennis, or were there other individuals that you actually worked**
16 **out the specifics of the deal?**

17 **A. There were other individuals. Prior to the Telus merger, my your**
18 **principal, day-to-day business contact at Telus, in terms of activating accounts,**
19 **terminating accounts, requests for service, were Mary Jo Daurio and Betty**
20 **DeSimon. We would deal with Ruddy McGlashan for new services. Disputes**
21 **and problems were brought to the attention of Mary Jo Daurio. Later, I also dealt**
22 **with Joe Ambersley and Clara Reynardus.**

23 **Q. How was customer billing handled between TSI and Telus/ATC?**

24 **A. Telus would print the bills and give them to TSI to mail. TSI would add a**
25 **summary page and mail them to the customers.**

1 Q. Did you mail them exactly as received, or did you add your own cover
2 sheet or other materials to those supplied by Telus?

3 Q. Where did the TSI customers mail their payments?

4 A. To TSI.

5 Q. How did TSI pay Telus/ATC?

6 A. TSI was supposed to pay Telus the rates for those calls established in their
7 agreement, which was a different rate, than what the TSI customers would pay to
8 TSI.

9 Q. Did TSI receive copies of the detail from Telus/ATC was generating for
10 the customer bills?

11 A. Yes. We have kept over 50 boxes of such detail, mainly computer
12 printout, which we have made available for ATC's counsel and the Commission.
13 These are called "green-bars" because they are computer print-outs with green
14 bars on them.

15 Q. Was this detail supposed to be consistent with the invoices received by
16 TSI?

17 A. Yes. it was supposed to. But it was not.

18 Q. Was the agreement between TSI and ATC successful?

19 A. No. ATC breached the agreement.

20 Q. In what ways did ATC breach its agreement with TSI?

21 A. In the following ways:

22 1. Direct billing of TSI's customers despite a course of
23 dealing which would not permit this, in an effort and with the intent to steal TSI's
24 customers;

25 2. Advertising and soliciting TSI's customers directly.

1 **contrary to the course of dealing between the parties, with the intent of stealing**
2 **TSI's customers;**

3 **3. Improperly billing for calls that were not made, that**
4 **were not completed, had busy signals and/or bad connections;**

5 **4. Overcharging and adding time to calls, double**
6 **billing for the same phone call and billing for items that had been billed in a**
7 **previous months billing and charging twice for calls that were overlapping and**
8 **appeared on two month's bills;**

9 **5. Improper charges on 800 numbers for calls which**
10 **were made outside of the marketing area and billing for calls not received by 800**
11 **customers;**

12 **6. Billing in one minute increments instead of 6 or 30**
13 **second increments as required under the between the patties;**

14 **7. Billing for travel cards customers did not have;**

15 **8. Billing on accounts long after the accounts had been**
16 **canceled by TSI;**

17 **9. Supplying bills where the billing details did not**
18 **match the time and billing summaries related thereto;**

19 **10. Billing for "800 use" where the customer did not**
20 **have an "800" number; and**

21 **11. Overbilling of nine second per call as demonstrated**
22 **in the Dohan proceeding and overbilling by manipulation of time points as in the**
23 **Bott proceeding.**

24 **I am aware the some of these matters are not within the jurisdiction of the**
25 **Commission. With regard to others, I have not been able to determine an exact**

1 amount that TSI was overbilled.

2 Q. Has TSI retained an accountant to determine how much TSI was
3 overbilled for those matters within the Commission's jurisdiction for which an
4 amount can be determined?

5 A. Yes. TSI retained Lopez Levi and Associates, P.A. They are submitting a
6 report to the Commission.

7 Q. What overbilling did your accountant find?

8 A. It is set forth in their report. Basically, the accountant found overbilling in
9 the form of differences between charging TSI at one-minute rather than six-
10 second increments, and in overbilling for duplicate calls, busy signal calls, and
11 "stuck clock" calls. Attached here as Respondent's Exhibit ___ (JE-1) are ATC
12 records showing TSI being charged at one-minute rather than six-second
13 increments, and attached hereto as Respondent's Exhibit ___ (JE-2) are ATC
14 records showing overbilling for duplicate calls, busy signal calls, and "stuck
15 clock" calls. (The handwriting on these records is that of TSI's accountant.)

16 Q. Did TSI receive complaints about the bill generated by ATC from its
17 customers?

18 A. Yes.

19 Q. How did TSI respond to those complaints?

20 A. We usually gave the customers credits. Also, many customer never paid
21 their bills, and received a de facto credit.

22 Q. Did you ask customers for any documentation with respect to those
23 credits?

24 A. For the most part, yes.

25 Q. In what way?

- 1 **A. We would ask them to send us the bill and would indicate, for example, if**
2 **they were duplicate-billed calls, to indicate which were the duplicate calls.**
- 3 **Q. Did you ever discuss the billing errors with Telus/ATC?**
- 4 **A. Numerous times.**
- 5 **Q. What was their explanation of the situation?**
- 6 **A. That they would look into it, and that is as much as I got from them.**
- 7 **Q. Did ATC/Telus ever ask you to provide any documentation for those**
8 **credits?**
- 9 **A. Yes. We provided many of them, which often did not result in any**
10 **correction. The period in which we are requesting these credits was the beginning**
11 **of the investigation regarding billing practices by the Florida Public Service**
12 **Commission, and the Attorney General, and ATC/Telus was denying the**
13 **allegation. It became very frustrating and difficult to deal with them at that time**
14 **in terms of credits.**
- 15 **Q. Were the credits that were requested by your customers given by TSI?**
- 16 **A. In every incident, we provided every credit that was requested by a**
17 **customer.**
- 18
- 19

1 **COMMISSIONER CLARK:** Now, Mr. Parsons, if
2 you would like Mr. Esquenazi to give a summary, that
3 would be fine, but it has to stay within the prefiled
4 direct testimony.

5 **Q** **(By Mr. Parsons)** Mr. Esquenazi, could you
6 provide a summary of your testimony in your prefiled
7 material?

8 **A** On or about 1989 I approached Telus
9 Communications at that time with an idea of I starting
10 a company to approach a specific niche market in which
11 I met with Rudy McGlashan and Dennis Sickle, and we
12 agreed my main focus was to market the product and do
13 all the collections, as said before. And I basically
14 went after companies, small, medium companies in south
15 Florida that were Hispanicly owned. Not necessarily
16 that's a market that I was only catering to, but it's
17 really the focus in which I've opened up the company.

18 I thought that there was a big gap between
19 the large carriers providing services to these
20 particular entities. We sat down numerous times
21 before we actually got into an agreement, and we
22 discussed all the specifics that needed to take place.

23 And as the agreement states, I was to go
24 out, get these accounts. They would be switched over
25 by Telus, and then they would be put into my billing

1 system being provided by Telus and billed at the rates
2 in which were tariffed under the TSI tariff.

3 I believe that we started around September
4 providing sales or new orders to Telus, and they were
5 supposed to have changed them over to my system. And
6 as time went by, obviously -- I started as a one-man
7 operation from my own home, and gradually I built the
8 business where I was able to hire other people and
9 start taking away from me some responsibilities, such
10 as collection, customer service, and attending to
11 customers' complaints.

12 As we went along we started getting a large
13 amount of complaints in which Mr. Metcalf claims that
14 he doesn't have all the credits that we issued, but
15 there was quite a bit of other boxes that were
16 provided at one point to Telus, and I don't believe we
17 ever got them back.

18 In addition, we lost some data as well.
19 During the hurricane our office was completely
20 destroyed. Luckily for these documents that were on
21 the bottom floor, and they were -- they survived the
22 hurricane.

23 We got complaints in all different ways;
24 customer basically just deducted it off of their
25 bills, sometimes they submitted the information,

1 sometimes they didn't.

2 Since we knew it was an inherited problem,
3 there was not much we can do. We will usually collect
4 anywhere between 80 to 85% maximum of the actual bills
5 that came to the customers, because most of the rest
6 was deducted by the customers themselves because of
7 all the previous problems that were identified here
8 with Telus' billing problem.

9 As Mary Jo Daurio mentioned before, she was
10 only giving us a part-time care to our account. As
11 she said before, she was obviously much more involved
12 in other areas in the company, which I don't know what
13 they were, but that happens to be the fact. I know
14 that in many cases I would call and never get a
15 response days in and days out, and we would write,
16 fax, we would talk to other people.

17 The billing problem existed from the
18 beginning all the way towards the last day in which we
19 conducted business with Telus, late part of 1991 when
20 there had been about two mergers between the
21 companies, between Microtel, ATC, and Telus, and we
22 saw that we weren't getting anywhere. And the ex-VP
23 of carrier sales, which was Joe Ambersley at that time
24 that worked for ATC, left the company.

25 He approached us, and he never took our

1 account when he was with ATC, and the reason for that
2 is because he clearly knew that the system in which we
3 were being billed under was a terrible system in terms
4 of billing. He stated that it had numerous
5 problems --

6 **MR. SELF:** Excuse me, commissioner Clark. I
7 have an objection and would request to strike these
8 last couple of portions of his testimony because
9 they're not issues that are addressed within his
10 prefiled direct.

11 **COMMISSIONER CLARK:** Mr. Parsons?

12 **MR. PARSONS:** Mr. Ambersley is not
13 addressed. The issue itself, that of overbilling, is
14 certainly addressed in his prefiled testimony.

15 **COMMISSIONER CLARK:** Well, I do think he's
16 venturing afar from his prefiled testimony.

17 And let me just remind you to keep it to the
18 information you have filed in the prefiled testimony.
19 I'll let the testimony stand at this point, but,
20 please, from here on out, keep it within the confines
21 of what you have prefiled.

22 **WITNESS ESQUENASI:** Okay. Let me retrack
23 again and try to get my train of thought here.

24 One again, the billing errors were very
25 noticeable. In fact, I brought many samples that have

1 not been utilized, I guess, on some of the exhibits
2 that we have.

3 But to correct Mr. Metcalf's testimony
4 previous in reference to the duplicate calls --

5 MR. SELF: I would object, Commissioner
6 Clark, because now he's providing rebuttal testimony.

7 COMMISSIONER CLARK: Yes. Keep it to your
8 direct testimony. It is not the time to respond to
9 any live testimony you've heard.

10 WITNESS ESQUENAZI: I'm trying to do that.
11 I just don't know how to get there. That's all.

12 COMMISSIONER CLARK: You don't have to
13 proceed with any further summary. We have read your
14 testimony.

15 WITNESS ESQUENAZI: Okay. Then that's all I
16 got, then.

17 COMMISSIONER CLARK: Okay.
18 Cross-examination?

19 MR. SELF: I have one or two questions I'd
20 like to ask.

21 CROSS EXAMINATION

22 BY MR. SELF:

23 Q Good afternoon, Mr. Esquenazi.

24 A Good afternoon.

25 Q You stated in your summary, you mentioned

1 about Hurricane Andrew. When was Hurricane Andrew?

2 A August of 1992.

3 Q Do you recall in approximately February of
4 1992 having a meeting with some ATC personnel in which
5 you were requested to produce copies of the credits
6 that you had issued to your customers at that point?

7 A We provided approximately five boxes and
8 which we had at that time, yes.

9 Q And do you recall that when ATC added up all
10 of those credits that you had issued, the total of the
11 credits appearing in those boxes, that those credits
12 totaled approximately \$51,000?

13 A They added, and that's what they claim, yes.

14 Q Have you taken any steps to determine
15 whether or not the addition of the credits that are
16 indicated on those totaled a number other than the
17 51,000?

18 A I have not done that.

19 Q Would you agree that in producing those
20 documents to ATC that you were producing all of the
21 credits that you could accumulate at that point in
22 time?

23 A I wouldn't agree with that, no.

24 Q So you're saying when the company asked you
25 to produce all of the documentation of all of the

1 credits that you have given, that you failed to
2 produce all of the credits that you had, in fact,
3 given?

4 A Exactly as I said before, the majority of
5 many customers did not provide us with the call
6 records, copies, and they would just deduct it off
7 their bills. It was a normal procedure. They
8 would -- they basically detest having to do it every
9 single time. It was an ongoing problem, and not all
10 the time did they provide us with the information.

11 Q So the answer to my question is yes; yes,
12 you did not provide all of the documentation with
13 respect to those credits?

14 A That's correct.

15 MR. SELF: That's all we have. Thank you.

16 COMMISSIONER CLARK: Staff?

17 MS. KEATING: Just a few questions.

18 **CROSS EXAMINATION**

19 **BY MS. KEATING:**

20 Q Good afternoon, Mr. Esquenazi.

21 A Good afternoon.

22 Q Do you recall approximately how many
23 customers you had on your system during the period of
24 time that you were dealing with Transcall?

25 A I could look at the greenbar. I don't

1 recall offhand, no.

2 Q Just a general estimation would be fine.

3 A I think it was somewhere close to 1,000
4 customers or so.

5 Q Now, regarding the billing, was there an
6 agreement between TSI and Transcall regarding disputes
7 over bills such that TSI would not be required to pay
8 any part of a bill if there was a dispute of the
9 amount that had been billed to TSI?

10 A I believe that the agreement in which we
11 have states something to the disputes. I don't
12 recall -- I don't know the exact context of the -- of
13 that. But, again, many things were done verbally
14 between us and them, and a lot of times they would
15 say, well, send us the difference and send us the
16 information you have to send us.

17 Q But do you recall any agreement between TSI
18 and Transcall whereby TSI would not have to pay any
19 portion of a bill if there was a dispute over the
20 amount that had been billed?

21 A I don't recall of any such agreement, no.

22 Q With regard to customer complaints, do you
23 recall any of your customers complaining to you about
24 extraordinarily long phone calls, which is also
25 sometimes referred to as stuck clock calls?

1 A Yes.

2 Q Do you recall how many customers complained
3 about that?

4 A We had quite a few. In fact, in that five
5 boxes -- and unfortunately I didn't go through the
6 boxes, but I know that in those boxes we do have some
7 that relate to long duration calls.

8 Q On average, could you estimate how many
9 customers complained about that?

10 A I couldn't give you that number, no.

11 Q Do you have a copy of Ms. Daurio's 1998
12 deposition transcript?

13 A Not on me, no.

14 Q And just to be clear for the record, this
15 has already been identified as hearing Exhibit No. 8.

16 And I'd like to refer you to her deposition
17 Exhibit No. 2. Are you looking at that?

18 A Yes.

19 Q And I'm referring you to the last statement
20 in that exhibit.

21 A Okay.

22 Q Could you read that statement for me,
23 please?

24 A The whole paragraph?

25 Q Just the last sentence.

1 A The last sentence. "If I was billed at
2 6-second for all calls made by customer base --
3 customer base, I would make an additional 40% profit
4 due to the 30-second minimum in 1-minute billing."

5 Q And could you explain exactly what that
6 exhibit is?

7 A Well, once again, this is me noting to them
8 that they have not started billing me accordingly to
9 the agreement as was agreed upon, and they were
10 billing me exactly the same amount of minutes that
11 were being billed to my customers.

12 Q This is a letter, is it not, from you to
13 Ms. Daurio?

14 A Yes, it is.

15 Q Could you explain to me how you determined
16 that an additional 40% was due based on the 30-second
17 minutes -- based upon the billing? How did you
18 determine the 40%?

19 A Well, what I did was I took the normal
20 industry standard, which is 3 to 4-minute duration
21 calls, and if a call's duration was 3.1 -- 3.6
22 seconds, it would obviously be billed at four sec --
23 4 minutes, which represents about 25 %. And in some
24 cases on fax calls if it was a one-page and it was
25 half a minute duration and it was 30/6-second, and

1 they get billed for a full minute, I would obviously
2 advantage almost half of the time for us to make that
3 profit in addition to our discounts.

4 Q Now, just to be clear, what documentation
5 did you base that calculation on?

6 A What documentation? What? I'm sorry.

7 Q What were you looking at to come up with
8 that 40%?

9 A Again, industry standard; and I basically
10 concluded that that was fair.

11 Q But as far as complaints or bills that had
12 been issued to TSI, was there some specific
13 documentation that you were using other than industry
14 standards?

15 A I wasn't using any other documents, no.

16 MS. KRATING: Thank you, Mr. Esquenazi.

17 That's all the questions I --

18 COMMISSIONER GARCIA: Let me go back to
19 that, if I can, Madam Chairman.

20 Tell me how you got to that number, then?

21 Why is it that you think you were owed --

22 WITNESS ESQUENAZI: The 40%? Well, once
23 again, if you have a caller that makes a 1-minute and
24 let's say a fraction of over that 1 minute, he would
25 be billed on an international call, which --

1 **COMMISSIONER GARCIA:** Let's go back to the
2 average you used. You used the average -- I believe
3 you said the typical call is about 3 minutes, you --

4 **WITNESS ESQUENASI:** That's correct.

5 **COMMISSIONER GARCIA:** As an industry
6 standard. So why would a fraction of a 4-minute call
7 represent an additional 40% discount? Is it of that
8 minute that you're speaking of?

9 **WITNESS ESQUENASI:** Of that additional
10 minute that they get billed that I would only be
11 billed at --

12 **COMMISSIONER GARCIA:** If you were --

13 **WITNESS ESQUENASI:** -- a fraction of --

14 **COMMISSIONER GARCIA:** -- billed -- right.

15 But the overall bill wouldn't represent an additional
16 40% You're just speaking of the fraction --

17 **WITNESS ESQUENASI:** Of that one phone call;
18 that's correct.

19 **COMMISSIONER GARCIA:** -- call. Now, there
20 was a question earlier asked, and I probably took it
21 down wrong, but -- and just so I can clarify it in my
22 mind, compare the -- and it's around what we're
23 talking about this. Compare how much you lost in your
24 mind by the discount that the company agreed to give
25 you because, according to them, they couldn't do what

1 you wanted or what they had agreed to do in the
2 contract, how much you lost in comparison. I mean,
3 when you flushed out the numbers, how much of a loss
4 was it for you?

5 WITNESS ESQUEMASI: You know, that --

6 COMMISSIONER GARCIA: Because a 40% discount
7 to me seems like a sizeable chunk, or 15% discount on
8 local calls is a sizeable chunk, so --

9 WITNESS ESQUEMASI: Right. But that --

10 COMMISSIONER GARCIA: I know it --

11 WITNESS ESQUEMASI: That's a difficult
12 number to really determine. It's all based on the
13 length of the call. It could be anywhere to 50%. It
14 could be 70%. It could be --

15 COMMISSIONER GARCIA: If you sat --

16 WITNESS ESQUEMASI: -- as little as nothing.

17 COMMISSIONER GARCIA: Right. But if you sat
18 down -- and obviously you have a discrepancy, and I
19 expect that as you entered the business, you knew what
20 you were doing. Clearly you wanted the three -- was
21 it 3-second intervals of the --

22 WITNESS ESQUEMASI: 6 seconds.

23 COMMISSIONER GARCIA: 6-second intervals
24 that you wanted, and they couldn't do. But clearly
25 you saw a certain profit margin by doing it that way.

1 And obviously we all see a certain profit margin that
2 you're making the difference; and in this industry
3 that's a common practice. The phone card industry is
4 based on nonused minutes and rounding up.

5 So that said, compare that to the 40¢. What
6 did that mean to you financially? Because you must
7 have had an idea. You must have at some -- and you
8 did at some point go through a bill and say, this is
9 what this would have been, this is what I got.

10 WITNESS ESQUEMASI: Uh-huh. Keep in mind I
11 think there's two items here that kind of conflict
12 with the 40¢ issue. Remember we were --

13 COMMISSIONER GARCIA: 40 or 15; that's
14 right. I'm sorry.

15 WITNESS ESQUEMASI: Right; 40¢. We were
16 getting a discount off of the international rates
17 to --

18 COMMISSIONER GARCIA: Right.

19 WITNESS ESQUEMASI: -- begin with --

20 COMMISSIONER GARCIA: Right.

21 WITNESS ESQUEMASI: -- okay. That was one
22 discount. And then the other discount in which we
23 requested was a 6-second versus a 1-minute increment
24 billing.

25 COMMISSIONER GARCIA: Right. Let me -- just

1 so I understand, and I'm going to dumb down the
2 conversation for my understanding.

3 Clearly you were already making a profit,
4 and those who did business with you were having an
5 advantage that you were buying a cheaper time for them
6 through Transcall.

7 **WITNESS ESQUENASI:** Okay.

8 **COMMISSIONER GARCIA:** And then in addition
9 to that, you were going to make an additional profit
10 by the way that you rounded up the minutes. So your
11 customers benefitted in theory, or at least that's how
12 you sold the service, that they got a cheaper rate
13 than what they were getting. But on top of that, you
14 got a much cheaper rate to the company that you billed
15 to your customer, and on top of that, you were
16 rounding up at 6-second intervals. The company turned
17 back and said -- now it said, we're going to do a 40%
18 discount on international and a 15% on national,
19 right?

20 **WITNESS ESQUENASI:** Well, again, that's why
21 I said there's --

22 **COMMISSIONER GARCIA:** Okay.

23 **WITNESS ESQUENASI:** -- a conflict. Because
24 there was a 40% discount originally agreed upon from
25 the rates in which they had for international so I can

1 make that spread. And in addition to that, then you
2 had the 6-second versus the 1-minute.

3 COMMISSIONER GARCIA: Right.

4 WITNESS ESQUENASI: So the question -- I'm
5 sorry?

6 COMMISSIONER GARCIA: I'm sorry. I think
7 we're saying the same thing. We've repeated the
8 same --

9 WITNESS ESQUENASI: Right.

10 COMMISSIONER GARCIA: -- as each other --

11 WITNESS ESQUENASI: And, again --

12 COMMISSIONER GARCIA: Right.

13 WITNESS ESQUENASI: -- it's difficult for me
14 to quantify how much it represents. How did I come up
15 with the 40%? You know, you shoot as high as you can,
16 and if you get that, obviously then -- you know, I
17 went with a number. I went with a number to negotiate
18 for the 6-second versus a 1-minute increment.

19 I mean, obviously I had headaches in order
20 for me to be able to quantify how much that represents
21 in terms of revenues. I don't know. I don't know how
22 much revenues -- I don't know how much profit I would
23 have generated if I would have been billed properly.
24 It could have been 40%, it could have been 70, it
25 could have been zero.

1 **COMMISSIONER GARCIA:** Okay. Thank you.

2 Thank you, Madam Chairman.

3 **COMMISSIONER CLARK:** Redirect?

4 **COMMISSIONER JACOBS:** Okay. I'm sorry. I
5 have a question. Did we discuss this exhibit that we
6 just got, the check?

7 **MR. PARSONS:** No, I haven't asked him about
8 it.

9 **COMMISSIONER JACOBS:** Okay. I'm just
10 wanting to understand the import of this exhibit that
11 we just got.

12 **COMMISSIONER CLARK:** That was what you
13 tendered to -- as I understood it, earlier you said --
14 maybe you said you tendered a check for 250,000 as
15 payment for the --

16 **MR. PARSONS:** Just to make the record clear,
17 if I could, I'll just ask Mr. Esquenazi that.

18 **REDIRECT EXAMINATION**

19 **BY MR. PARSONS:**

20 **Q** Mr. Esquenazi, did you attempt to make a
21 good faith payment of what you thought approximately
22 you owed at some point to Transcall?

23 **A** That is correct. We were trying to work out
24 new contracts because ATC had taken over and they
25 wanted to kick us out and the reseller without

1 switch-type scenario. They wanted us to purchase our
2 own system. They wanted to get involved in a lot of
3 other areas that we weren't experienced in, and since
4 we knew that they had some sort of billing problem,
5 and the FPSC was already in certain situations with
6 them legally, we said, well, we know we owe you some
7 money and here it is; we want to get this thing over
8 and done with.

9 Q Is Exhibit No. 3 the check that you
10 tendered?

11 A I'm sorry?

12 Q Is Exhibit No. 3 the check that you
13 tendered?

14 A I believe you have it as Exhibit 4, JE-4.

15 Q I'm sorry. Exhibit 4. And then later you
16 wrote "void" on it?

17 A What was the question?

18 Q Later, after they refused the check, you
19 wrote "void" on it?

20 A That's correct.

21 COMMISSIONER JACOBS: I have a couple other
22 questions. I knew you spoke about this, but kind of
23 for my edification, I want to understand this
24 crediting process pretty clearly.

25 First of all, how was the -- how was the

1 credit first -- the idea that a credit was merited
2 first determined? Would it have come from you, or
3 would the company approach you and tell you that you
4 were due for a credit? Would you go to them and ask
5 for the credit?

6 WITNESS ESQUENASI: You mean ATC?

7 COMMISSIONER JACOBS: Yes.

8 WITNESS ESQUENASI: Well, what we did was we
9 go after them for credits. I mean, understand this
10 went on from day one.

11 COMMISSIONER JACOBS: How would you
12 determine that a credit was called for?

13 WITNESS ESQUENASI: We would usually get it
14 from the customer.

15 COMMISSIONER JACOBS: So the customer --

16 WITNESS ESQUENASI: They would reduce their
17 payment to us by \$30, \$50, depending on how much the
18 bill -- usually it came out to be somewhere around 15,
19 20% over with what they -- we got billed.

20 COMMISSIONER JACOBS: And each instance that
21 you asked for a credit, it was initiated by a
22 customer?

23 WITNESS ESQUENASI: For the most part, yes.

24 COMMISSIONER JACOBS: Okay. Go ahead.
25 Proceed.

1 **WITNESS ESQUENASI:** And what we did was
2 basically ask ATC for the same credits.

3 **COMMISSIONER JACOBS:** Now, would you have
4 submitted the credit to the customer in advance and so
5 you basically are seeking reimbursement?

6 **WITNESS ESQUENASI:** That's correct. The
7 customer usually sent the amount in which they feel
8 that the invoice should have been for. That's how
9 much they would pay us. They didn't send the whole
10 amount expecting that we'd give them a check or give
11 them a credit on their next bill. They would discount
12 that off of the payment and send us that amount that
13 they felt that the bill should have been.

14 **COMMISSIONER JACOBS:** And that was the end
15 of the dealings that you would have with your
16 customer. From that point on it was dealings with
17 ATC; is that correct?

18 **WITNESS ESQUENASI:** I'm sorry. I missed
19 part of it.

20 **COMMISSIONER JACOBS:** At that point you did
21 not go back to your customers to dispute the credits.
22 You essentially would deal with ATC to resolve the
23 issue from that point forward?

24 **WITNESS ESQUENASI:** I never -- I never took
25 for granted that the customer was wrong. I always

1 thought that the customer was right. I mean, it was
2 very obvious, and the times in which they were all
3 asking for credit is vividly there. The majority of
4 my accounts were three, five, seven phone line
5 accounts. They didn't have sophisticated hardware, as
6 previously mentioned by Mr. Metcalf. That is a
7 possibility of how he came up with his duplicate
8 scenario.

9 So it was vivid. Many of these customers
10 complained for all kinds of things; calls they never
11 made, calls that weren't completed, attempts that they
12 never made and that kind of thing. And when we saw it
13 in the bill, it was very vivid there.

14 **COMMISSIONER JACOBS:** Okay. Thank you.

15 **COMMISSIONER CLARK:** Redirect?

16 **Q** **(By Mr. Parsons)** On the subject of
17 credits, Mr. Esquenazi, did some of your customers
18 take credits just by deducting amounts on their bills
19 when they paid you?

20 **A** That's correct. In fact, after everything
21 was said and done, we probably left uncollectibles of
22 excess of 400 and some thousand dollars that we never
23 went after. We attempted to go through an attorney,
24 and it was costing us money to retain the attorney to
25 collect, so therefore we just basically let it go, and

1 we wrote it off.

2 **MR. PARSONS:** Thank you, sir. That's all I
3 have.

4 **MR. SELF:** Commissioner Clark, I need to
5 have a follow-up question to the one that Mr. Parsons
6 asked.

7 **COMMISSIONER CLARK:** Mr. Self, why do you
8 need a follow-up? I thought that was something that
9 was -- it's not new.

10 **MR. SELF:** Well, the answer that he gave,
11 what I'd like to ask him is, he testified that he had
12 some \$400,000 in uncollectibles; and he's trying to
13 assert that every bit of that \$400,000 in
14 uncollectibles is attributable to customers who quit
15 his service because they had billing problems.

16 I simply want to ask him that he has no
17 basis for knowing how those people -- why those people
18 quit him unless they actually wrote him and
19 communicated with him to that effect.

20 **COMMISSIONER CLARK:** I'll allow you to ask
21 the question.

22 **RE-CROSS EXAMINATION**

23 **BY MR. SELF:**

24 Q Mr. Esquenazi, have you produced any
25 documentation with respect to your claimed \$400,000

1 that those customers terminated service with you
2 because they had billing problems?

3 A I don't have any documentation that I
4 provided, no.

5 WITNESS ESQUENAZI: Thank you.

6 COMMISSIONER CLARK: Mr. Parsons, would you
7 like to follow up?

8 FURTHER DIRECT EXAMINATION

9 BY MR. PARSONS:

10 Q How do you know that, then, Mr. Esquenazi?

11 A Well, it so happened that it happened during
12 that period of time. And, like I said, we tried
13 collecting, and many of these people wouldn't just --
14 were not available. They didn't want to pay. The
15 attorneys wanted retainer moneys, and I don't want to
16 put good moneys into trying to collect some
17 uncollectibles.

18 MR. PARSONS: That's all I have.

19 COMMISSIONER CLARK: Thank you. Thank you
20 Mr. Esquenazi. You're excused.

21 (Witness Esquenazi excused.)

22 - - - - -

23 COMMISSIONER CLARK: Mr. Shulman?

24 MR. SELF: I believe Mr. Parsons would want
25 to move Exhibit 15.

1 **COMMISSIONER CLARK:** Without objection,
2 Exhibit 15 will be entered in the record.

3 **MR. PARSONS:** Thank you.

4 (Exhibit 15 received in evidence.)

5 - - - - -

6 **WILLIAM SHULMAN**

7 was called as a witness on behalf of
8 Telecommunications Services, Inc. and, having been
9 duly sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 **BY MR. PARSONS:**

12 **Q** Mr. Shulman, at the beginning of the hearing
13 did you raise your hand and swear to tell the truth?

14 **A** I did.

15 **Q** Have you prepared prefiled testimony to be
16 entered into the record in this hearing containing
17 exhibits, sir?

18 **A** I did.

19 **Q** Do you reaffirm that the testimony in the
20 prefiled material is true and that the exhibits are
21 correct and accurate?

22 **A** Yes.

23 **Q** Do you have any modifications to your
24 testimonies or exhibits or corrections to them?

25 **A** No, sir.

1 **MR. PARSONS:** I think I would move
2 Mr. Shulman's prefiled testimony and exhibits into the
3 record at this time.

4 **COMMISSIONER CLARK:** Mr. Parsons, identify
5 the exhibits for me.

6 **MR. PARSONS:** Exhibit No. 1 is Mr. Shulman's
7 curriculum vitae.

8 **COMMISSIONER CLARK:** In the prehearing
9 order, what are they labeled?

10 **MR. SELF:** They're WS-1 and WS-2.

11 **COMMISSIONER CLARK:** We'll mark WS-1 and 2
12 as exhibits, and we will insert the prefiled direct
13 testimony in the record as though read.

14 (Exhibit 16 marked for identification.)

15 **MR. PARSONS:** There is also a WS-3, which
16 are the work papers of Lopez-Levi & Associates. I
17 would ask those to be additionally inserted into the
18 record.

19 **COMMISSIONER CLARK:** They will be included
20 in Exhibit 16.

21 **MR. SELF:** Commissioner Clark, could I ask
22 for a copy of WS-3, of what it is that he would like
23 included within WS-3?

24 **MS. KEATING:** Staff also needs a copy of
25 that.

1 **MR. PARSONS:** It's difficult to copy,
2 because as a result of a discovery order, it has color
3 coded tabs interspersed throughout considerable
4 accountant work papers.

5 **COMMISSIONER CLARK:** Well, if we don't have
6 it as an exhibit, the document, we can't include it in
7 the record.

8 **MR. PARSONS:** I have one copy that could be
9 included in the record.

10 **COMMISSIONER CLARK:** I'll tell you what.
11 Let's take it out of Exhibit 16, make it Exhibit 17,
12 and at a break give you an opportunity to look at what
13 he has? Okay?

14 **MR. PARSONS:** Yes, Commissioner.

15 **MS. KEATING:** To be clear, it's no longer
16 part of 16?

17 **COMMISSIONER CLARK:** No. WS-3, which is the
18 work papers from Levi-Lopez -- the other way around --
19 excuse me -- will be identified as 17. It will be a
20 separate exhibit.

21 (Exhibit 17 marked for identification.)
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DIRECT TESTIMONY OF WILLIAM SHULMAN

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Q. What is your name?

A. William Shulman.

Q. By whom are you employed?

A. Lopez Levi & Associates, P.A., a Miami accounting firm.

Q. Where is Lopez Levi located?

A. 815 N.W. 57th Avenue (Red Road), Suite 304, Miami Florida 33126, (305) 266-8580.

Q. What is the background of Lopez Levi?

A. The principal is Ray Lopez-Lima Levi, a certified public accountant. Mr. Levi was with Arthur Andersen & Co. from April 1985 to 1991. Mr. Levi formed Lopez Levi & Associates, P.A. in June 1992. We employ eight accountants in our office. Our practice is primarily in the field of audit, taxes, and litigation support.

Q. What is your position with Lopez Levi?

A. I am Director of Litigation Support Services.

Q. Are you a Certified Public Accountant.

A. Yes.

Q. In what states are you licensed and what is the date of your license in the states in which you are licensed?

A. I was licensed in New Jersey in May of 1962. I was licensed in New York in 1972. I was licensed in Florida in 1982.

Q. What is your educational background?

A. I received a Bachelor of Science degree from Rutgers University, cum laude, in 1957.

Q. Were you in the military?

- 1 A. Yes, the United States Army, from 1951 to 1953.
- 2 Q. Did you receive an honorable discharge?
- 3 A. Yes.
- 4 Q. What did you do after being discharged from the Army?
- 5 A. I went to college and received my accounting degree. At that time, you had to clerk
6 for three years with an auditing firm before you could sit for the CPA exam. I was with Ernst
7 and Ernst, now Ernst and Young, working my way up from a junior to a supervisor, for about
8 six years.
- 9 Q. Have you served as an expert witness in litigation before.
- 10 A. Yes, approximately 50 times.
- 11 Q. How many times have you testified in court?
- 12 A. About 50 times.
- 13 Q. In what courts have you testified?
- 14 A. Florida Circuit Court, New York Supreme Court, New Jersey Superior Court, and
15 Pennsylvania Circuit Court.
- 16 Q. Do you have a curriculum vitae?
- 17 A. It is Exhibit WS 1.
- 18 Q. Have you been retained in the Matter of Transcall America Inc. d/b/a ATC Long
19 Distance v. Telecommunications Services, Inc., Docket No. 951232-TI, before the Public
20 Service Commission?
- 21 A. Yes.
- 22 Q. Who retained you?
- 23 A. Telecommunications Services, Inc.
- 24 Q. What were you asked to do?
- 25 A. We were asked to review schedules and other information provided by ATC/Transcall

1 for billing errors.

2 Q. Did you receive assistance?

3 A. Yes, an employee of Lopez Levi, assistant, Ignacio DuQuesne, a CPA, assisted me in
4 this analysis.

5 Q. What documents did you review.

6 A. We reviewed:

7 The agreement between the parties dated July 18, 1989 (attached to the complaint in
8 this matter).

9 Customer agreements

10 Customer complaints

11 TSI documentation on billing problems

12 The invoices from ATC to TSI (attached to the complaint in this matter).

13 Canceled checks from TSI to ATC.

14 A report known as the CompuOne report which compared minutes per ATC's records
15 and minutes per TSI's records.

16 Detailed statements provided by ATC to TSI on monthly traffic, referred to as
17 "greenbars."

18 Summaries of statements provided by ATC to TSI on a monthly basis.

19 Q. Has this documentation been made available to Transcall's counsel and accountant
20 and the staff of the Commission?

21 A. Yes.

22 Q. What else did you do?

23 A. We interviewed Joel Esquenazi, the principal of TSI, concerning his relationship with
24 ATC, and we interacted with Kathy Welch, C.P.A., with the staff of the Commission, who
25 was also conducting an audit.

1 Q. Have your results been compiled into a written report?

2 A. Yes. It is attached hereto as Exhibit WS-2.

3 Q. Could you summarize your results.

4 A. We conclude that TSI was overbilled \$468,384.24 by ATC.

5 Q. How does the overbilling break down?

6 A. Into six areas. First, we found ATC failed to credit payments in the amount of
7 \$6,727.62. Second, we found that ATC overcharged TSI \$29,111.28 as a result of a nine
8 second timing error on TSI traffic. Third, ATC overcharged TSI \$91,578.42, as a result of
9 billing the wrong increment (one minute instead of six seconds) to TSI. Fourth, we found
10 that ATC overcharged (again separate from the preceding) TSI the amount of \$314,817.92
11 due to billing for calls over one hour (which we are informed are not legitimate calls for
12 which TSI should be billed), busy signals, duplicate calls, and other errors. Fifth, we
13 credited TSI with \$26,149.00, which was the size of the Commission-ordered payment to TSI
14 as a result of the timing error (TP-7 versus TP-6) in the Bott case. (Although TSI received a
15 check for this amount, it returned it.) Details concerning our analysis are set forth in the
16 report.

17 Q. Did you also find errors in the bills that did not lead to overbilling?

18 A. Yes. That is detailed on page 2, Schedule IV(a), and Schedule VII of the report.
19 There were gross extension errors and beginning balance errors.

20 Q. Have you received supplemental information about the timing error?

21 A. Yes. I understand that the Commission auditor calculated the size of the overbilling
22 due to this error from first principles, and came to the amount of \$83,350.43.
23

1 **COMMISSIONER CLARK:** Mr. Parsons?

2 **Q** (By Mr. Parsons) Mr. Shulman, would you
3 like to provide a summary of your prefiled testimony?

4 **A** Well, I indicated what my background and
5 experience was. I have gave a history of my business
6 background, my educational history, and in addition to
7 that, I rendered a report with regard to the various
8 and sundry billing and computational errors that I had
9 that, the firm, actually -- discovered with regard to
10 the business relationship between TSI and ATC.

11 **MR. PARSONS:** I would tender Mr. Shulman for
12 cross-examination.

13 **COMMISSIONER CLARK:** Mr. Self?

14 **MR. SELF:** Mr. Gimbel will handle this.

15 **COMMISSIONER CLARK:** Okay, Mr. Gimbel. Go
16 ahead.

17 **CROSS EXAMINATION**

18 **BY MR. GIMBEL:**

19 **Q** Good afternoon, Mr. Shulman.

20 **A** Good afternoon, Mr. Gimbel.

21 **Q** It's nice to see you again.

22 **A** Likewise.

23 **Q** Sir, prior to the filing of your testimony
24 and the completion of your report in this case, did
25 you study or review information on how telephone

1 switches operate?

2 A No, I did not.

3 Q Did you study or review information on how
4 telephone networks operate?

5 A No, I did not.

6 Q Did you study or review information on how
7 telephone billing systems operate?

8 A I did not study how telephone billing
9 operations operate, but I have studied in the past
10 many, many, many billing operations for various
11 business entities; and by and large, except for some
12 technical aspects, they don't change.

13 Q All right, sir. Have you received any
14 special training or attended any seminars on how
15 telephone switches operate?

16 A No, sir.

17 Q What about the same question as it relates
18 to telephone networks?

19 A No, sir.

20 Q Now, you indicated previously that
21 Mr. Ignacio DuQuesne and Ms. Liz Solomon (phonetic),
22 also members of Lopez-Levi, assisted you in the
23 preparation of the report you've attached to your
24 testimony; is that not correct?

25 A With a modification. Ms. Solomon was

1 involved very, very early on in the case, and then she
2 left the firm; and Mr. DuQuesne and I worked pretty
3 extensively together on it.

4 Q All right, sir. Prior to the completion of
5 the report, do you know whether or not Mr. DuQuesne
6 had any special training with respect to how telephone
7 switches or telephone networks operate?

8 A I do not.

9 Q Same question as to Ms. Solomon.

10 A I do not.

11 Q Sir, are you a telecommunications expert?

12 A No, sir.

13 Q And in fairness, sir, you don't hold
14 yourself out as one, do you?

15 A I absolutely do not.

16 Q Sir, part of your analysis, as I understand
17 it, has consisted of identification of perceived
18 billing irregularities in the form of stuck clocks,
19 duplicate calls, busy signals and overlapping calls;
20 is that correct?

21 A Yes, sir.

22 Q Now, did you consult any industry related
23 material or other published industry sources with
24 respect to helping you develop the criteria you used
25 to identify a stuck clock?

1 A Only as to the definition of a stuck clock.

2 Q Okay, sir. And what was your definition of
3 a stuck clock?

4 A A stuck clock, as defined to me, was an
5 instance where the hardware on a switch malfunctions
6 and, therefore, the call never gets hung up.

7 Q All right, sir. And what industry source
8 did you gather that information from?

9 A I didn't gather it from an industry source.
10 As I indicated in my depositions, I conferred with
11 Mr. Esquenazi very, very early on in the
12 investigation, and he defined the various malfunctions
13 and billing errors.

14 Q So when I just asked you a minute ago
15 whether you consulted industry related material, you
16 answered that in reference to your discussions with
17 Mr. Esquenazi?

18 A That's correct.

19 Q Well, sir, let me ask you, then, did you
20 consult with any industry related material to help you
21 determine how to identify a duplicate call?

22 A No, sir.

23 Q What about with respect to overlapping
24 calls?

25 A No, sir.

1 Q And what about busy signals?

2 A No, sir.

3 Q Now, sir, prior to the filing of your
4 report, did you consider or review any material that
5 discussed industry standards with respect to stuck
6 clocks?

7 A No, I did not.

8 Q And what about same question with respect to
9 overlapping calls?

10 A I did not.

11 Q What about with duplicate calls?

12 A I did not.

13 Q And busy signals?

14 A I did not.

15 Q Sir, you defined duplicate calls, did you
16 not, as two calls being made at the same time to the
17 same recipient; is that not correct?

18 A Yes.

19 Q And, sir, so I understand, sir, you excluded
20 what you believed to be duplicate calls in your
21 analysis; is that correct?

22 A Yes.

23 Q Now, sir, you've just been handed one of
24 your own work papers, and I point you down to 162,
25 call number 162 and 163, which can be identified in

1 the far left column.

2 Now, you've identified those two columns --
3 excuse me -- those two calls, 162 and 163, as
4 duplicate calls. One is to number -- well, just the
5 last seven digits are 652-5529, and the next call,
6 163, is to a number 652-6089.

7 Now, sir, if you had defined duplicate calls
8 as two calls at the same time to the same recipient,
9 how is that a duplicate call to two different numbers?

10 A I happen to think this is an overlapping
11 call. The first call was started at 9:15 for 1 minute
12 and 20 seconds, and the second one started 9:16, which
13 is -- which would have been at -- should have been
14 made at 9 minutes and 35 seconds. So I believe this
15 is an overlapping call.

16 Q Well, sir, let me ask you, in the circle I
17 believe I see the initials "DB" for duplicate billing,
18 which was pretty consistent in your -- throughout your
19 work papers; is that accurate?

20 A Well, I can't read it because the pencil
21 goes over it. But it still would be an error, whether
22 it's a duplicate call or overlapping.

23 Q Well, if it's duplicate, sir, how could it
24 be a duplicate if you define duplicate calls as being
25 made at the same time to the same recipient? Those

1 are made at different times to different number; is
2 that not correct?

3 A Yes. That's why I think it's an overlapping
4 call.

5 Q You agree that would not be a duplicate
6 call?

7 A Yes.

8 COMMISSIONER GARCIA: Tell me why it's an
9 overlapping call.

10 WITNESS SHULMAN: Well, the first call was
11 made at 9:15, and it lasted for 1-minute and
12 20 seconds.

13 COMMISSIONER GARCIA: Right.

14 WITNESS SHULMAN: So that would make the
15 second call at 9:35. But the second call was shown as
16 starting at 9:16.

17 COMMISSIONER GARCIA: I'm sorry. Could you
18 go again? Run that -- I mean, I seen the 9:15 and
19 then the 9:16.

20 WITNESS SHULMAN: Well, no. The call
21 started at 9:15, and it lasted for 1 minute and
22 20 seconds.

23 COMMISSIONER GARCIA: Right.

24 MR. GINBEL: Excuse me. I hate to
25 interrupt. I believe that means 1 minute and

1 12 seconds. That's .2.

2 COMMISSIONER GARCIA: Right. But -- I agree
3 with you, and I just didn't correct that. It doesn't
4 matter whether a 1-minute --

5 WITNESS SHULMAN: Two-tenths of a minute.

6 COMMISSIONER GARCIA: Right. Right.

7 WITNESS SHULMAN: Which would mean that it
8 would end at 9:17.

9 COMMISSIONER GARCIA: Why? If I begin at
10 call at 9:15 and I add a minute, I would still be
11 at -- if I begin precisely at 9:15 and I -- just
12 assuming that -- but if I begin precisely at 9:15, and
13 I begin a call a minute 30 seconds --

14 WITNESS SHULMAN: A minute --

15 COMMISSIONER GARCIA: Well, let's say -- let
16 me just go --

17 WITNESS SHULMAN: A minute and 20 seconds.

18 COMMISSIONER GARCIA: All right. But let's
19 say I hung up and then I picked up the phone again,
20 whatever time that added to the call, and I placed
21 another call, I could still -- I'd still have enough
22 time to complete that call before 9:16 terminated,
23 right?

24 WITNESS SHULMAN: No.

25 COMMISSIONER GARCIA: No?

1 **WITNESS SHULMAN:** If it started at --

2 **COMMISSIONER GARCIA:** Tell me why.

3 **WITNESS SHULMAN:** If it started at 9:15 --

4 **COMMISSIONER GARCIA:** Right.

5 **WITNESS SHULMAN:** -- okay, and let's assume

6 it was just 1 minute, it would --

7 **COMMISSIONER GARCIA:** Okay.

8 **WITNESS SHULMAN:** -- be 9:16 --

9 **COMMISSIONER GARCIA:** Right.

10 **WITNESS SHULMAN:** -- but this is greater

11 than a minute, so how can it start at 9:16?

12 **COMMISSIONER GARCIA:** Because there are 60

13 seconds in 9:16 that are not taken up?

14 **WITNESS SHULMAN:** Well, yeah, but this call
15 started, the second call started, before the first one
16 was hung up.

17 **COMMISSIONER GARCIA:** I don't see it that
18 way, but that's fine. Maybe it's technical ignorance
19 on my part. I'll ascribe it to that maybe.

20 **COMMISSIONER JACOBS:** Can I ask a quick
21 question. It was my understanding that multiple calls
22 could come from several originations. One or more
23 calls could be originated into, I guess it's ATC's
24 switch, is that correct, and they could reach there at
25 approximately the same time, and they would be --

1 these could be TSI customers, and they could be
2 recorded in this manner. Was that not the testimony?

3 WITNESS SHULMAN: That wasn't my testimony.

4 COMMISSIONER JACOBS: Okay. Well, then
5 based on your experience, is that possible? Is it
6 possible for two TSI customers to reach the switch at
7 approximately the same time and their calls be
8 recorded at approximately the same time?

9 WITNESS SHULMAN: I think it's possible.

10 COMMISSIONER JACOBS: And would that be an
11 overlapping -- that would not be an overlapping call,
12 would it?

13 WITNESS SHULMAN: No.

14 COMMISSIONER JACOBS: How would you
15 distinguish that circumstance from an overlapping
16 call?

17 WITNESS SHULMAN: Well, an overlapping call
18 would be where a call is made at one period of time
19 and ends at another period of time, but the second
20 call starts before the first call ends.

21 COMMISSIONER JACOBS: Okay.

22 COMMISSIONER CLARK: Okay?

23 COMMISSIONER JACOBS: Okay.

24 COMMISSIONER CLARK: Mr. Gimbel?

25 MS. KRATING: Commissioner Clark, may I ask

1 a question of counsel for Transcall regarding this?

2 COMMISSIONER CLARK: Yes.

3 MS. KEATING: Is this document going to be
4 marked and offered as an exhibit?

5 MR. GIMBEL: These are all portions of the
6 work papers that were color coded. That's how I
7 can -- by way of explanation, I didn't argue with the
8 witness --

9 COMMISSIONER CLARK: These are portions of
10 Exhibit 17?

11 MR. GIMBEL: I'm sorry?

12 COMMISSIONER CLARK: These are portions of
13 Exhibit 17?

14 MR. GIMBEL: That is correct.

15 MS. KEATING: Thank you for that
16 clarification.

17 MR. GIMBEL: For purposes of clarification,
18 do you think it would be better to just give these a
19 new number?

20 COMMISSIONER CLARK: We can do that. Let's
21 go ahead and mark the one you just finished
22 questioning him on as Exhibit 18, and we'll call
23 that --

24 COMMISSIONER GARCIA: Madam Chairman, we --
25 I might suggest that Mr. Gimbel may have a whole slew

1 of these.

2 COMMISSIONER CLARK: Do you?

3 MR. GIMBEL: I have many, but I'm only going
4 to use one more, I think, just in the interests of
5 brevity.

6 COMMISSIONER CLARK: All right. We'll title
7 it "ATC billing information."

8 MR. GIMBEL: That would be fine.

9 COMMISSIONER CLARK: For the invoices dated
10 4/4/92, and it's Page 4.

11 (Exhibit 18 marked for identification.)

12 COMMISSIONER CLARK: And then we'll mark as
13 Exhibit 19, ATC billing information dated April 4th,
14 1992, Page 194.

15 (Exhibit 19 marked for identification.)

16 COMMISSIONER CLARK: Okay. Go ahead.

17 Q (By Mr. Gimbel) Mr. Shulman, you've been
18 handed another document and if you again, for purposes
19 of identifying the calls I'm discussing, look to the
20 far left-hand corner and you'll see call number 9027,
21 9028, and 9029. Do you see where I'm focusing my
22 attention?

23 A Uh-huh.

24 Q Now, sir, these are overlapping calls.

25 These were identified by Lopez-Levi as overlapping

1 calls.

2 Now, sir, your definition of overlapping
3 calls were calls made at a certain time and during
4 that, there was another call made by the same caller,
5 and that is what you consider to be overlapping; is
6 that not true?

7 A Yes, except that the second call was made
8 while the first one was still in progress.

9 Q Okay, sir. Well, let's focus on these three
10 calls. As to 9027, the party picks up the line and he
11 dials directory assistance 704 area code, correct?

12 A Yes, sir.

13 Q He gets an answer. Obviously it lasts over
14 a minute, 1.2. Perhaps he realizes he has the wrong
15 area code; he transposed the four and the seven. So
16 he dials 9028 at the 407 area code for directory
17 assistance, correct?

18 A Yes.

19 Q All right. He gets the number he's seeking
20 from the proper directory assistance, and he turns
21 around and dials the number, which is represented by
22 line 9029 in the same area code, 407, and he talks for
23 16.7 minutes; correct?

24 A Yes.

25 Q And you consider those to be overlapping

1 calls, sir?

2 A We considered the two -- the one made at
3 2:50 p.m. and 2:51 p.m. to be overlapping, because the
4 one started at 2:50 p.m., it lasted one minute and a
5 fraction, which would make it at 2:51 and a fraction,
6 and the second call started at 2:51.

7 Q Yes, sir. Now, both of the calls that
8 you're identifying are directory assistance calls,
9 correct?

10 A Yes.

11 Q All right, sir. Now, do you also agree that
12 it is possible to terminate a call, pick the phone
13 back up and begin a new call all within one minute; is
14 that not true? Or do you believe that to be
15 impossible?

16 A I think it's highly unlikely. I would
17 modify that to say it's highly unlikely that that is
18 what happened, or if it did, the first call should not
19 have been billed at 1.20. It should have been billed
20 at 1.00 or less.

21 Q Sir, in any of your documents that you have
22 reviewed to determine overlapping, duplicate, or busy
23 signal calls, did you review any information that
24 contained more detail than simply hours and minutes on
25 the call time?

1 A No.

2 Q Now, sir, with respect to your analysis,
3 after you identified all the calls that you felt were
4 improper and you -- let me go back a second.

5 You took these assumptions, and your
6 statistical sampling was a ten-day period; is that not
7 true?

8 A Yes.

9 Q And based upon those assumptions, you
10 identified what you believe were overcharges
11 attributable to overlapping, duplicate, stuck clock,
12 and busy signal calls, correct?

13 A Yes.

14 Q Now, to the extent that calculation included
15 calls that, in fact, were not in error, assuming you
16 could hang up the phone and dial another number all
17 within a minute, your number included those errors --
18 strike that -- your calculation included those errors;
19 is that not correct?

20 A Yes.

21 Q And to the extent that number -- those
22 errors were included, you multiplied your factor by
23 the 31 months of the relationship; is that not
24 correct?

25 A Yes.

1 Q And that would have caused -- assuming those
2 errors exist, that would have caused your number, your
3 overcharge number, to be greater than it actually was,
4 correct?

5 A Yes.

6 MR. GIMBEL: We have nothing further.

7 COMMISSIONER CLARK: Staff?

8 **CROSS EXAMINATION**

9 **BY MS. KEATING:**

10 Q Good afternoon, Mr. Shulman.

11 A Good afternoon.

12 Q My first question relates to that same
13 Exhibits 18 and 19 that Transcall was asking you
14 about, and I just want to make sure I understand what
15 your understanding of these exhibits is.

16 In reviewing these, did you have any
17 underlying assumptions regarding how these calls were
18 billed as far as what increments they were billed in?

19 A Are you talking from ATC to TSI?

20 Q I want to understand what you think these
21 calls that are reflected in these exhibits, what
22 increments they were billed in. Do you believe they
23 were billed in 6-second increments or 1-minute
24 increments?

25 A These were billed to TSI in 1-minute

1 increments.

2 Q In your review of these documents -- and I'm
3 moving on past Exhibits 18 and 19 -- but in your
4 review of this case, did you find instances where
5 Transcall had billed TSI's end use customers directly?

6 A You'll have to repeat that. I have a
7 problem understanding you.

8 Q In conducting your review and in compiling
9 your report, did you find any instances or any
10 examples that Transcall had directly billed any of
11 TSI's end use customers rather than billing TSI?

12 A Yes.

13 Q How many?

14 A We didn't make an overall independent
15 survey. We noted that Ms. Welch had made a survey and
16 indicated that ATC had billed TSI customers, and we
17 relied on this.

18 Q Were you able to determine whether these
19 customers that were direct billed by Transcall,
20 whether they were billed at a particular tariff?

21 A I believe they were billed the same as the
22 TSI tariff.

23 Q So just to be clear, when Transcall direct
24 billed TSI's end use customers, you found that
25 Transcall was billing based on TSI's tariff?

1 A I believe so.

2 Q How did you make that determination?

3 A Well, we made that determination because
4 when Kathy -- when Ms. Welch had done her analysis, I
5 believe that's the premise that she made.

6 Q Did you yourself conduct a review?

7 A No.

8 Q So your assumptions are solely based on
9 Ms. Welch's testimony?

10 A On that particular issue.

11 Q Did you use a sample of billing in
12 developing your report?

13 A Explain what do you mean by sample of
14 billing.

15 Q In preparing your report, did you obtain
16 certain documents that you reviewed in order to
17 compile your report?

18 A Yes.

19 Q How did you determine which documents you
20 would review in order to compile your report?

21 A Well, it depends on what aspect of the
22 report. If it was, for example, on the ten-day
23 statistics that we used, we took about 47,000 calls
24 that were made, and we looked at the calls to
25 determine if, based on our criteria, there were

1 overbillings, duplicate billings, stuck clock, busy
2 signals, et cetera. And we determined which of 50 --
3 well, 47,000 calls were errors.

4 We then took those errors and set it up as
5 part of the statistical field, and we compared that to
6 the entire field. We came up with 22% sampling,
7 22 and a half percent sampling, and then we applied
8 that error factor to the 30 and a half months.

9 Q Did you develop your sampling in a similar
10 manner for other aspects of your report?

11 A Yes.

12 Q And overall, how many months did you look at
13 when you obtained those 47,000 calls?

14 A We looked at two months. We looked at ten
15 days for two different months. And I might add that
16 we looked at the months that were the most recent
17 months prior to the termination because we wanted to
18 be sure that we didn't take the early months where we
19 knew there were a lot of billing errors, and we look
20 the later months where they were trying to correct the
21 billing errors.

22 Q And of those 47,000 calls, how many actual
23 separate accounts did those cover?

24 A How many calls? There were 47,000.

25 Q Of the 47,000 calls, did those cover 47,000

1 separate accounts?

2 A No, ma'am. 47,000 calls for various
3 accounts.

4 Q Do you have any idea how many accounts?

5 A No, I do not.

6 Q My next question goes to something that
7 Mr. Esquenazi stated a few minutes ago in his
8 testimony. He indicated that when a customer asked
9 for a credit, TSI credited the customer and then asked
10 Transcall for the credit.

11 In your review, did it appear that TSI asked
12 for the identical credit that it had given to its
13 customers?

14 A I really can't answer that with a great deal
15 of authority, but I think that when a customer asked
16 for a credit, Mr. Esquenazi gave that customer the
17 credit and then went back to Transcall and asked them
18 for a credit.

19 However, in my opinion, contrary to maybe
20 what some of the other people in this room think, this
21 case appears to me to be a situation where -- and
22 maybe I'm going a little far afield, but where there
23 was a poor operation, accounting operation, hardware,
24 software billing operation, and ATC could not control
25 their billings, and that's why a lot of errors crept

1 into the system. And, therefore, when a customer
2 asked for a credit, he was granted the credit, and I
3 think post facto Mr. Esquenazi went back to ATC and
4 tried to get a credit from ATC.

5 Q You indicate that you believe that
6 Mr. Esquenazi gave the credit to his customers and
7 then asked Transcall for the credit, and you believe
8 that this was based on a faulty accounting system. Is
9 there some documentation that you base that on?

10 A I can base the pooriness of the accounting
11 system on the documents that we reviewed. There were
12 errors inherent in the accounting system that you
13 would only probably find in a small candy store.

14 I mean, there was a problem with software.
15 There was a problem with hardware. There is a problem
16 with extension errors. There was a problem with the
17 items that we discussed, such as overlapping, stuck
18 clock and billings. There was a problem with no
19 balance being brought forward.

20 There is a problem with alleged credits
21 being granted without documentation. In other words,
22 credits were allegedly granted right on the bottom of
23 an invoice without a credit memo being issued. There
24 was just very, very poor bookkeeping and billing
25 systems in place.

1 Q Do you believe that same poor bookkeeping
2 applied to both Transcall and TSI, or was this solely
3 a problem with Transcall's billing?

4 A Well, I think it was a problem that emanated
5 with Transcall and went right through to TSI. If TSI
6 was misbilled -- try to imagine getting a statement
7 from a vendor that's Transcall and looking at it and
8 seeing an extension error of \$356,000. Now, that's
9 going to precipitate a lot of telephone calls, a lot
10 of problems, and these are -- that's just one of many,
11 many, many errors that were encountered by TSI. And
12 so, he had difficulty controlling his customers, his
13 clients.

14 Q I guess my question, though, really relates
15 more to TSI's system and their issuance of credits to
16 their customers and then seeking credit from
17 Transcall.

18 Did you have an opportunity to review TSI's
19 ledger and its accounts receivable?

20 A We did not review their ledger and accounts
21 receivable, but we looked at documentation that
22 indicated that they were giving credits to their
23 customers.

24 Whether they gave it to all their customers,
25 I don't know. Whether they gave it in the precise

1 amount that they got from Transcall, I do not know.

2 Q So there is documentation of TSI's granting
3 credits to its customers?

4 A Yes.

5 Q Has that documentation been submitted in
6 this proceeding?

7 A That question I don't know. I'd have to
8 check that with Mr. Parsons.

9 MS. KEATING: Thank you, Mr. Shulman.
10 That's all I have.

11 COMMISSIONER CLARK: Commissioners?

12 COMMISSIONER JACOBS: No.

13 COMMISSIONER CLARK: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. PARSONS:

16 Q Mr. Shulman, Mr. Gimbel showed you some
17 examples of what were indicated to be billing
18 irregularities in your work papers. Those examples
19 had pairs of calls that were 1 minute apart.

20 Let me ask you, were there also many, many
21 pairs of calls which supposedly were made at the same
22 minute?

23 A That's correct.

24 Q Now, would Mr. Gimbel's explanation of how
25 that might be possible apply to a pair of calls that

1 were made the same minute?

2 A I don't think so. I don't think it's
3 logical.

4 Q Yes, sir. Do you have any conclusions, sir,
5 about whether very many of TSI's customers in this
6 time frame, late '80s, early '90s, had PBXs?

7 A I don't think so.

8 Q Why is that?

9 A Well --

10 COMMISSIONER GARCIA: What was the question?

11 Q (By Mr. Parsons) Mr. Shulman, do you have
12 any conclusion about whether many of TSI's customers
13 in this time period had PBXs, private branch
14 exchanges?

15 A I think the only conclusion I can reach that
16 they didn't is that we made a test, pretty extensive
17 test, as to -- and it's in our report -- as to what
18 the duration of the average call was for TSI's
19 customers, and we came up to 4.1 minutes on an
20 average.

21 Now, granted there were many, you know, many
22 longer ones, and there were others that were shorter,
23 but that was an extensive review, and we came up with
24 4.1 minutes.

25 Now, based on that, I don't think you'd need

1 that sophisticated system.

2 Q Thank you, sir. One final question. Did
3 you do an analysis whereby you compared the minutes
4 listed on the greenbar summaries for two months?

5 A Yes, we did.

6 Q With the minutes on the invoices to TSI?

7 A Yes, we did.

8 Q Which two months were those?

9 A December 1991 and September 1991.

10 Q What were your findings?

11 A Well, our findings were that on the -- well,
12 on the greenbars the total calls were 102,645 calls,
13 whereas on the invoice rendered, the calls were
14 121,132 calls.

15 On the minutes for that same month the
16 greenbars indicated minutes of 371,464.8, and the
17 invoice submitted from ATC to TSI reflected
18 444,728.8 minutes.

19 Q And that is the total, but it pervaded
20 itself through international calls, day calls, evening
21 calls, and night weekend calls.

22 MR. GIMBEL: Excuse me. I move to strike
23 that answer as I don't think it's gone to any question
24 at all that was taken up in direct.

25 MR. PARSONS: It's responsive to questions

1 asked of him in cross-examination about the billing
2 irregularities. The --

3 COMMISSIONER GARCIA: Mr. Gimbel, you raised
4 the billing irregularities. I think he's addressing
5 them in a broad way.

6 MR. GIMBEL: I don't believe it's --

7 COMMISSIONER CLARK: I'll allow the
8 question.

9 Q (By Mr. Parsons) Mr. Shulman, would you
10 consider those differences to be material?

11 A I consider them to be excessively material,
12 and that's part of the whole billing problem. This is
13 an accounting and billing problem.

14 Q Do you agree with Ms. Daurio in her
15 testimony today that those numbers should have been
16 identical?

17 A Absolutely.

18 MR. GIMBEL: I'm going to object to that
19 question. That's definitely rebuttal.

20 MR. PARSONS: That's all I have, sir.

21 MR. GIMBEL: I move to strike that last
22 question and answer.

23 COMMISSIONER CLARK: I don't think he
24 answered it. We'll strike the question. Well, we'll
25 leave the question. There was no answer.

1 **MR. PARSONS:** Could I ask the witness for an
2 answer? I actually thought I did hear an answer.

3 **WITNESS SHULMAN:** I said very quickly --

4 **COMMISSIONER CLARK:** Wait a minute. Don't
5 answer it. Hang on, even if you did. What was
6 your --

7 **COMMISSIONER GARCIA:** The question had an
8 answer in it also.

9 **COMMISSIONER CLARK:** Go ahead. Your
10 question was -- just give the question. Then I want
11 to hear the objection. Please don't answer until I
12 tell you.

13 **WITNESS SHULMAN:** Yes, ma'am.

14 **MR. PARSONS:** "Do you agree with Ms. Daurio
15 that the numbers should have been identical?"

16 **MR. GIMBEL:** He's asking specific questions
17 as to Ms. Daurio's direct testimony. There was no
18 rebuttal filed by this witness. We believe it's
19 clearly rebuttal testimony from this witness.

20 **MR. PARSONS:** I think it's excessively
21 technical. There should be some leeway granted for
22 the fact that testimony developed in an open hearing
23 sometimes is expanded upon by the witness. And this
24 witness did sit for deposition. They have had
25 discovery of him.

1 **COMMISSIONER CLARK:** I agree with you,
2 Mr. Parsons. I guess my difficulty, really, is I
3 think you have given a spin to that testimony that was
4 not there. Ask your question again.

5 **Q** **(By Mr. Parsons)** Mr. Shulman, do you
6 agree with Ms. Daurio that the amounts should have
7 been identical?

8 **A** Yes.

9 **MR. PARSONS:** Thank you.

10 **COMMISSIONER CLARK:** Exhibits?

11 **MR. PARSONS:** I would move into evidence
12 WS-1, WS-2 and WS-3.

13 **COMMISSIONER CLARK:** Exhibits 16 and 17 will
14 be admitted in the record without objection.

15 **(Exhibits 16 and 17 received in evidence.)**

16 **MR. GIMBEL:** We would move Exhibits 18
17 and 19.

18 **COMMISSIONER CLARK:** They will be admitted
19 in the record without objection.

20 **(Exhibits 18 and 19 received in evidence.)**

21 **COMMISSIONER CLARK:** Thank you Mr. Shulman.

22 **(Witness Shulman excused.)**

23 - - - - -

24 **MR. SELF:** Commissioner Clark, with respect
25 to Exhibit 17, we have no objection to that, but we

1 would like to reserve -- since we don't have a copy of
2 it, we --

3 **COMMISSIONER CLARK:** I'm not going to admit
4 Exhibit 17 at this time. The court reporter will
5 indicate that it is not admitted. There will be a
6 break at which you can consult, and then at that point
7 you need to move it back into the record. Okay?

8 **MR. SELF:** I don't anticipate a problem, but
9 I would at least like to see it before --

10 **COMMISSIONER CLARK:** That's fine.

11 (Exhibit 17 withdrawn from the record.)

12 **COMMISSIONER CLARK:** Ms. Welch?

13 **MS. KEATING:** Staff calls Kathy Welch.

14 - - - - -

15 **KATHY WELCH**

16 was called as a witness on behalf of the Staff of the
17 Florida Public Service Commission and, having been
18 duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 **BY MS. KEATING:**

21 **Q** Good afternoon, Ms. Welch. Could you please
22 state your name for the record?

23 **A** Kathy Welch.

24 **Q** And could you tell us by whom you're
25 employed and at what address?

1 A The Florida Public Service Commission,
2 3625 N.W. 82nd Avenue, Suite 400, Miami.

3 Q What is your position at the Commission?

4 A I'm a regulatory analyst supervisor.

5 Q And did you cause to be prepared and filed
6 in this docket 11 pages of direct testimony?

7 A I did.

8 Q Do you have any changes or corrections to
9 that testimony?

10 A Based on an attachment to Douglas Metcalf's
11 testimony, I would probably not have filed Audit
12 Disclosure No. 7.

13 Q Does that relate to --

14 A Which is in Exhibit KLM, Page 22 of 79. But
15 I have not personally had an opportunity to review his
16 numbers, so I'm not sure what I would have had in
17 there instead.

18 Q Why don't we address your direct testimony
19 itself, though, first. Do you have any changes?

20 A No, I don't.

21 Q And if I ask you the same questions
22 contained in your testimony today, would your answers
23 be the same?

24 A Yes.

25 COMMISSIONER CLARK: Beth, excuse me.

1 We're not making any changes to your direct
2 testimony?

3 **WITNESS WELCH:** Well, there is some
4 reference to that Disclosure No. 7 in there. It's on
5 Page 4, the last paragraph, Lines 24, 25, and Page 5,
6 Lines 1 through 5.

7 **Q** **(By Ms. Keating)** Do you then wish to
8 strike that testimony?

9 **A** Yes.

10 **COMMISSIONER CLARK:** All right. On Page 4,
11 Lines 24 and 25 through Page 5, Lines 1 through 5, you
12 wish to strike that?

13 **WITNESS WELCH:** Yes.

14 **COMMISSIONER CLARK:** Okay.

15 **Q** **(By Ms. Keating)** Any other changes,
16 Ms. Welch?

17 **A** No.

18 **MS. KEATING:** With that change, Commissioner
19 Clark, I'd ask that Ms. Welch's direct testimony be
20 inserted into the record as though read.

21 **COMMISSIONER CLARK:** Ms. Welch's direct
22 testimony will be inserted in the record as though
23 read.

24 **Q** **(By Ms. Keating)** And, Ms. Welch, did you
25 also prepare two exhibits to your direct testimony?

1 **A** Yes, I did.

2 **Q** Do you have changes or corrections to those
3 exhibits?

4 **A** Yes. That's the one where I have KL-1,
5 Page 22 of 79, and the attachments are Page 23 and
6 Page 24.

7 **COMMISSIONER CLARK:** Ms. Welch, you are
8 taking those pages --

9 **WITNESS WELCH:** Out.

10 **COMMISSIONER CLARK:** -- out. All right.
11 Give me the exhibit numbers.

12 **WITNESS WELCH:** KL-1 --

13 **MS. KEATING:** As identified in the
14 prehearing statement, it's KLV-1 is the exhibit to
15 which she's referring.

16 **COMMISSIONER CLARK:** And that's attached to
17 her direct testimony?

18 **MS. KEATING:** That's correct.

19 **COMMISSIONER CLARK:** But you have taken out
20 what pages?

21 **WITNESS WELCH:** 22 through 24.

22 **COMMISSIONER CLARK:** Okay. We'll identify
23 it as Exhibit 20, KLV-1, without Pages 22 through 24.

24 (Exhibit 20 marked for identification.)

25 **Q** (By Ms. Keating) Do you have any changes

1 to KLV-2?

2 A No.

3 MR. SELF: I just want to clarify, since
4 there's two sets of page numbers on the exhibit.
5 We're talking about the page numbers at the top
6 right-hand corner?

7 WITNESS WELCH: Yes.

8 MR. SELF: Thank you.

9 COMMISSIONER CLARK: KLV-2 is part of her
10 direct testimony?

11 MS. KEATING: Correct. We would ask that
12 that be marked.

13 COMMISSIONER CLARK: That will also be part
14 of Exhibit 20.

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DIRECT TESTIMONY OF KATHY L. WELCH

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2 | Q. Please state your name and business address.

3 | A. My name is Kathy L. Welch and my business address is 3625 N.W. 82nd
4 | Ave., Suite 400, Miami, Florida, 33166.

5 | Q. By whom are you presently employed and in what capacity?

6 | A. I am employed by the Florida Public Service Commission as a Regulatory
7 | Analyst Supervisor in the Division of Auditing and Financial Analysis.

8 | Q. How long have you been employed by the Commission?

9 | A. I have been employed by the Florida Public Service Commission for
10 | approximately 19 years.

11 | Q. Briefly review your educational and professional background.

12 | A. I have a Bachelor of Business Administration degree with a major in
13 | accounting from Florida Atlantic University and a Masters degree in Human
14 | Resource development. I have a Certified Public Manager certificate from
15 | Florida State University. I am also a Certified Public Accountant licensed
16 | in the State of Florida. I was hired as a Public Utilities Analyst I by the
17 | Florida Public Service Commission in June of 1979. I was promoted to
18 | Regulatory Analyst Supervisor on January 2, 1990.

19 | Q. Please describe your current responsibilities.

20 | A. Currently, I am a Regulatory Analyst Supervisor with the
21 | responsibilities of administering the District Office and reviewing work load
22 | and allocating resources to complete field work and issue audit reports when
23 | due. I also supervise, plan, and conduct utility audits of manual and
24 | automated accounting systems for historical and forecasted financial
25 | statements and exhibits.

1 Q. Have you presented expert testimony before this Commission or any other
2 regulatory agency?

3 A. Yes. I testified in the following cases: Tamiami Village Utility, Inc.
4 rate case, Docket No. 910560-WS; Tamiami Village Utility, Inc. transfer to
5 North Fort Myers, Docket No. 940963-SU; General Development Utilities, Inc.
6 rate case, Docket No. 911030-WS; and Econ Utilities Corporation transfer to
7 Wedgefield Utilities, Inc., Docket No. 960235-WS.

8 Q. What is the purpose of your testimony today?

9 A. The purpose of my testimony is to sponsor the staff audit report for
10 the audit of Transcall America, Inc. Docket No. 951232-TI. The audit report
11 is filed with my testimony and is identified as K LW-1. Several audit work
12 papers supporting issues in the report are attached as K LW-2.

13 Q. Did you prepare this audit report?

14 A. Yes. I performed the audit and prepared the audit report.

15 Q. Do you have a general statement regarding your findings in this audit?

16 A. Yes. page 51 of the audit report summarizes my calculation of the
17 corrected billings of Telus Communications, Inc. (Telus, ATC, or Transcall)
18 to Telecommunication Services, Inc. (TSI), the payments made by TSI to ATC,
19 the credits given by ATC to TSI, and the difference or amount due. My final
20 calculation indicates that TSI owes ATC \$501,369.

21 Q. Please review the audit disclosures you are sponsoring.

22 A. Audit Disclosure No. 1 is an introductory disclosure that discusses some
23 of the issues in the contract between TSI and Telus. This disclosure also
24 introduces the report prepared for TSI by Lopez, Levi & Associates that
25

1 estimates "total damages to TSI's business as a result of ATC's improper
2 services."

3 Audit Disclosure No. 2 addresses Schedule 1 of the Lopez Levi report and
4 various extension errors. I found that most of these errors were
5 typographical errors that were not carried down to the total amount billed.
6 However, in September and October, 1990, the extension errors affected the
7 total bill. Page 51 of the audit report reflects the corrected bill amounts
8 for these months as \$40,689.13 and \$54,563.60, respectively.

9 Audit Disclosure No. 3 addresses Schedule 3 of the Lopez Levi report
10 which discusses a difference between the checks paid by TSI to ATC and the
11 payments recorded in the ATC statements. Page 51 of the audit report includes
12 the total of all the canceled checks presented by TSI.

13 Audit Disclosure No. 4 addresses Schedule 4 of the Lopez Levi report
14 which compares minutes from the ATC bill to minutes determined by TSI based
15 on an outside consultant's report. The Lopez Levi report indicates the total
16 billing from ATC should be reduced by \$98,242. I believe that there are
17 several errors in this calculation. After making my corrections to this
18 calculation I believe that there are two areas in this analysis that require
19 adjustment to the billing from ATC. Both adjustments are based on a larger
20 variance than average between the bills and the summary reports. A difference
21 always exists because the bills to TSI customers show international minutes
22 in one minute increments and the summaries show them in six second increments.
23 The first adjustment is for the months of September, November, and December,
24 1991 when the bills are substantially higher than the summary. I have
25 recalculated the bills for these three months and find that they should be

1 reduced by \$38,108.59. The second adjustment is for the months November, and
2 December, 1990 when the minutes billed are substantially lower than those
3 found on the detail billing summaries. My calculation to adjust for this
4 difference results in an increase in the billing from ATC of \$12,898.03.

5 Audit Disclosure No. 5 addresses Schedules 6 and 7 of the Lopez Levi
6 report which estimates the impact that billing TSI for international calls at
7 one minute increments (60/60) had on TSI, as compared to billing the first
8 minute at a full minute increment and then at six second increments (60/6) as
9 required by the contract between the parties. Although ATC was not billing
10 pursuant to the contract, ATC may have given TSI 15% and 40% discounts (that
11 were also not in the contract) as compensation for this difference in the
12 billing. Therefore, I have not made an adjustment similar to that made in the
13 Lopez Levi report.

14 Audit Disclosure No. 6 addresses Schedules 8, 9, and 10 of the Lopez
15 Levi report which addressed four types of problems: calls over one hour,
16 overlapping calls, short repetitive calls, duplicate calls. I did not make
17 a similar adjustment on page 51 of the audit report. I believe that there are
18 errors in the logic used in the adjustment as well as errors in the numbers
19 used. I recalculated the schedules after correcting the logic errors and
20 found a possible error of \$26,409.49. However, ATC gave credits of \$74,751.79
21 to TSI for these same types of problems and the overlapping problem is
22 addressed in Disclosures 8 and 9. Therefore, I do not believe that any
23 adjustment needs to be made.

24 Audit Disclosure No. 7 discusses the March, 1992 and May, 1992 billing
25 format. It appears that for these two months the bills were computed

1 according to a new contract that was never signed. The subsequent bills and
2 the April, 1992 bill were in the previous format. I have recomputed these two
3 bills in the old format and believe that a reduction of \$6,771.06 should be
4 made to the March bill and a reduction of \$2,005.38 should be made to the May
5 bill.

6 Audit Disclosure No. 8 discusses the nine second overbilling that was
7 the subject of a previous ATC docket. I worked with our Electronic Data
8 Processing staff to review the switch tapes and this problem was not resolved
9 on June 18, 1991 for TSI, as it was for other customers. We tested tapes for
10 June 21, and July 6 and found the 9 seconds added in for both days.
11 Therefore, I have used the same calculation as was used in the audit report
12 submitted in Docket No. 951270-TI to determine the total overbilling for the
13 nine seconds. This calculation results in a reduction to the bill from ATC
14 of \$37,714.59. This overbilling would also have been passed on to TSI's
15 customers at a higher rate.

16 Audit Disclosure No. 9 discusses the time points ATC used to bill TSI.
17 On switch tapes, the time that is considered actual conversation time is
18 considered the difference between Time Point 7 (TP-7) and Time Point 6 (TP-6).
19 Time Point 1 (TP-1) time is the time that the first dialed digit is received
20 by the interexchange carrier switch. Commission order PSC-93-1237-AS-TI
21 approved a settlement to ATC's customers based on charging for TP-7 time less
22 TP-1 time instead of TP-6 for the period December 1990 to May 1991.

23 In June, 1991, the problem was supposed to be corrected. I traced the
24 tapes for June 21, 1991 and July 6, 1991 to the detail billing information
25 given to TSI. I found that the problem was not corrected for TSI but was

1 corrected for other ATC customers. ATC was still charging for TP-7 less TP-1.
2 However, TSI was billed according to a contract and not the ATC tariff (except
3 for international rates.) The contract did not make any specifications as to
4 the timing of the calls except whether it would be billed in six second or one
5 minute increments. At the exit conference ATC indicated that in the absence
6 of specific language in the contract, the tariff should prevail. According
7 to TSI's tariff, effective as of November 9, 1989, (no changes filed during
8 the time of the contract) the call will be timed as follows:

9 "Billing for all completed calls (as defined in Section 1) will commence
10 from the time a customer utilizes originating access facilities. The
11 measured use of service is then based upon the total time the customer
12 utilizes such facilities. When a calling party allows the distant end
13 to ring in excess of 60 seconds or approximately 8 to 10 rings, the call
14 will be considered a completed call. This only applies when hardware
15 answer supervision is absent on the terminating end."

16 Based on TSI's tariff, the calls appear to be correctly billed. However, I
17 still made the adjustment for December 1990 to May 1992, in view of the
18 approved settlement and the attempted refund by ATC. In interviews conducted
19 during the audit, ATC responded that they do not believe they could change the
20 billing methodology because of TSI's tariff and that the 15% domestic
21 adjustment and the 40% international adjustment compensate TSI for the
22 difference.

23 I computed an adjustment for the period December 1, 1990 to May 1992,
24 using the number of calls made multiplied by 22.44 seconds (the average
25 difference between T6 and T1 for the tapes reviewed by staff). I then

1 converted this number into minutes and multiplied it by the billing rate and
2 applied the unaffected call factors and credit factor. The calculation using
3 the order required a refund to TSI of \$26,170.49. TSI returned the check
4 because they were already in litigation. My calculation amounted to
5 \$83,350.43 for December 1990 to May 1992 and has been adjusted on page 51 of
6 the audit report. I also calculated, for informational purposes, the
7 adjustment for the entire time of the contract, July 1989 to May 1992, in case
8 the Commission determines that the ATC tariff did not apply and retroactively
9 applies the adjustment. The schedule is also attached and amounts to \$111,521
10 for July 1989 to May 1992.

11 Audit Disclosure No. 10 addresses differences between the TSI tariff and
12 its billing rates. I randomly selected details in January 1990, December
13 1990, February 1991, August 1991, and March 1992 and asked ATC to provide the
14 rates used to bill. ATC provided the "slick" sheets given to them by TSI.
15 Except for March, 1992 the rates on the sheets were the rates used to prepare
16 the billing. I also compared these rates to TSI's tariff. I believe that TSI
17 is not billing according to its tariff. In addition, these slicks appear to
18 be advertisements for services and state that all calls are billed in 6 second
19 increments. Since domestic calls are billed at 30/6 and international calls
20 at one minute increments these sheets do not appear to be accurate. I could
21 not determine the amounts without the summary bills by TSI which were asked
22 for but never provided. It appears that TSI overbilled its own customers.
23 It also appears that a separate investigation of TSI's overbilling may be
24 warranted.

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1 Audit Disclosure No. 11 discusses errors in billing 800 numbers. I
2 found that the minutes of use for the 800 calls did not agree between the
3 detail billing reports and the summary reports. According to the contract
4 between Telus and TSI, all 800 calls were to be billed in full minute
5 increments at 21 cents per minute. However, the 800 interstate calls were
6 shown on the summary as interstate calls instead of 800 calls, and, therefore
7 billed to both TSI and its customers at a lower interstate rate. I estimate
8 the difference in billing due to this error as \$3,539.42. This is based in
9 part, however, on inaccurate source data. I did not pursue information on the
10 exact numbers because the detail provided to TSI to give its customers was
11 also under billed. Therefore, TSI was unable to bill for the revenue. The
12 profit earned by TSI should not have been materially different since the
13 markup for the two products was almost the same.

14 Audit Disclosure No. 12 discusses the amounts billed for international
15 calls. I compared the dollars billed for international calls from the bill
16 from ATC to TSI to the dollars in the detail call summaries to determine if
17 a 40% discount was actually given. Various discount rates were used. Also,
18 in December of 1990, an error seems to have been made, which resulted in TSI
19 not receiving the full 40% discount. In April 1992 an adjustment of
20 \$21,375.85 was given to TSI for international credit for October, 1989 to
21 June, 1990 to adjust the credits to 40%. My calculation indicates that the
22 credit was overstated by \$3,935.95.

23 Audit Disclosure No. 13 discusses TSI's concern that ATC continued to
24 bill some phone numbers after TSI requested that they be disconnected. I
25 looked at all numbers that could be verified with a fax correspondence to ATC

1 and reviewed summary and detail billing information to determine the dollar
2 impact. I only found \$149.57.

3 Audit Disclosure No. 14 addresses accounts billed by ATC directly. I
4 found that ATC did bill some of TSI's customers directly. Correspondence that
5 I reviewed indicated that if TSI signed up a customer that was formerly an ATC
6 customer, the ATC billing cycle picked up the customer. Correspondence also
7 indicates several customers were affected. I attempted to compare a list of
8 affected customers to the billing microfiche from ATC, however, the company
9 claims the microfiche cannot be found. I also requested that TSI provide
10 additional data, and they did not. From my review of the correspondence, I
11 believe that TSI paid ATC \$7,094.35 related to these accounts. If ATC sent
12 the bill, TSI was never billed for usage on these accounts. The \$7,094
13 payment appears to pay ATC for their portion. It does not seem reasonable
14 that TSI would pay its portion unless it had already collected revenue for
15 these accounts. However, I could not determine the actual dollars billed
16 because of ATC's failure to comply with the request for microfiche and the
17 lack of billing information shown in the correspondence I reviewed. Neither
18 could I determine if ATC or TSI ever received the revenue for these accounts.
19 Therefore, I have recommended no adjustment for this error.

20 Audit Disclosure No. 15 addresses bills for calls that were not
21 complete. I traced switch tape information to detail call billing information
22 for four days. My review revealed that ATC included some calls that had an
23 answer qualifier other than a hardware answer. ATC billed for some calls that
24 had a zero qualifier. Calls with an answer qualifier of zero were designated
25 by the switch as "no answer" calls. According to ATC, there was a manual

1 process used to review calls with the zero qualifier to determine if they were
2 billable. The criteria used in this process could not be located. The calls
3 that were given a rate and billed appeared to have bad data in the "Time Point
4 6" field, which is where conversation time begins. These calls appear to be
5 rated using Time Point 7-Time Point 1, the same as all other calls but they
6 did not include the extra 9 second error. However, not all calls with bad
7 data in the Time Point 6 field were rated, so I could not determine the
8 criteria used. The company appears to have discontinued this practice in
9 June, 1991, since no zero qualifier calls were given a rate and billed from
10 the June 21 tape. I also found calls with answer qualifiers that indicate a
11 busy signal was received but that the caller did not hang up after a set
12 number of seconds, calls that had a long number of rings but the caller did
13 not hang up after several seconds, and calls that received silence but the
14 caller did not hang up after several seconds. I could not determine the
15 number of seconds the software was set to. According to switch data, the
16 software could be set between zero and 120 seconds. I estimated the dollar
17 affect of the busy, long ring, and silence calls using the percent of calls
18 for each qualifier in the sample, times total calls, times an average cost per
19 call to TSI of 63 cents. The busy calls billed amounted to \$315, long ring
20 amounted to \$46,284 and calls recorded with silence amounted to \$958.
21 According to TSI's tariff, the call will be timed as follows:

22 "When a calling party allows the distant end to ring in excess of 60
23 seconds or approximately 8 to 10 rings, the call will be considered a
24 completed call. This only applies when hardware answer supervision is
25 absent on the terminating end."

1 | Since the zero qualifier calls were less than 1% of the billable calls it does
2 | not appear to be material and the other answer qualifiers appear to be valid
3 | according to the tariff. However, I could not determine the time the software
4 | was set to, to be able to determine if it was the same as the 60 seconds in
5 | the tariff.

6 | In conclusion, I estimate that TSI owes ATC \$501,369 as shown on page 51
7 | of the audit report. These numbers are based on the 40% international
8 | discount and the 15% domestic discount being given as compensation for not
9 | being able to bill at 60/6 increments for international and 6/6 for domestic.
10 | It is also based on the assumption that TSI was entitled to a refund for the
11 | difference between time point six (TP-6) and time point one (TP-1) because of
12 | the attempted refund made by ATC based on Order PSC-93-1237-AS-TI.

13 | Q. Does this conclude your testimony?

14 | A. Yes, it does.

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1 Q (By Ms. Keating) Ms. Welch, did you also
2 cause to be prepared two pages of rebuttal testimony?

3 A Yes, I did.

4 Q Do you have any changes or corrections to
5 that testimony?

6 A No, I don't.

7 Q And you did not have any exhibits to your
8 rebuttal testimony --

9 A No.

10 MS. KEATING: Commissioner Clark, I'd ask
11 that Ms. Welch's rebuttal testimony be inserted into
12 the record as though read.

13 COMMISSIONER CLARK: It will be inserted in
14 the record as though read.

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REBUTTAL TESTIMONY OF KATHY L. WELCH

1 |
2 | Q. Please state your name and business address.

3 | A. My name is Kathy L. Welch and my business address is 3625 NW 82nd Ave.,
4 | Suite 400, Miami, Florida 33166.

5 | Q. By whom are you presently employed and in what capacity?

6 | A. I am employed by the Florida Public Service Commission as a Regulatory
7 | Analyst Supervisor in the Division of Auditing and Financial Analysis.

8 | Q. How long have you been employed by the Commission?

9 | A. I have been employed by the Florida Public Service Commission for
10 | approximately 19 years.

11 | Q. Are you the same Kathy Welch that has previously filed testimony in the
12 | case?

13 | A. Yes.

14 | Q. What is the purpose of your testimony today?

15 | A. I would like to respond to the testimony of Douglas S. Metcalf on behalf
16 | of Transcall America Inc. On page 9, Mr. Metcalf discusses his objection to
17 | the correction by staff of the September, November, & December, 1991 bills.
18 | On line 8, he states "I believe that the staff had no basis for utilizing
19 | these alternative summaries." I disagree with Mr. Metcalf's conclusion. I
20 | verified the December summary to the detail green bar billing printouts which
21 | were provided from Transcall America Inc, d/b/a ATC Long Distance (ATC) to
22 | Telecommunication Services Inc.(TSI). Although I did not personally verify
23 | the summaries I used for September and November to the detail greenbars, I did
24 | compare them to reports done by Compu-1, TSI's consultants, which were
25 | prepared using the detail green bar reports. In addition, the November

1 summary used by staff was printed on December 14. The one used by ATC to
2 prepare the bill was dated December 4. It appears that for some reason ATC
3 determined that they needed to redo the run. Considering the quality of the
4 records for this time period, the absence of any notes or telephone log notes
5 describing reasons for the re-run is not surprising.

6 Q. Does this conclude your rebuttal testimony?

7 A. Yes, it does.

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1 **Q** **(By Ms. Keating)** Now, Ms. Welch, you did
2 not prepare a summary of your testimony, correct?

3 **A** No, I didn't.

4 **MS. KEATING:** Thank you, Ms. Welch. The
5 witness is tendered for cross.

6 **COMMISSIONER CLARK:** Mr. Parsons?

7 **CROSS EXAMINATION**

8 **BY MR. PARSONS:**

9 **Q** Ms. Welch, would you agree with me as a
10 general matter, that where you and Lopez-Levi part
11 company is essentially on two issues; the first being
12 the issue of the 6-second billing increment, and the
13 second issue being duplicate billings, overlapping
14 billings, and stuck clock billings?

15 **A** I don't believe that on the 6-second
16 increment issue I made an opinion. I think I
17 presented both sides to that issue in my report. So I
18 wouldn't say that I have a direct conflict with them.
19 I left it open, even in my testimony.

20 In the other issue as to overbilling
21 overlapping calls, I have a very serious problem with
22 that, yes.

23 **Q** Dealing with the 6-second issue first, as
24 you say, you declined to make an adjustment in TSI's
25 favor.

1 **A** I declined to make an adjustment either way,
2 yes.

3 **Q** Well, you say either way, but if you
4 declined to make an adjustment in TSI's favor,
5 essentially you're finding in favor of Transcall.

6 **A** Fine.

7 **Q** And you're declining to make an adjustment
8 in TSI's favor because in your view you didn't see the
9 evidence that TSI had proven it was entitled to an
10 adjustment for the 6-second problem. Is that fair
11 enough?

12 **A** That's fair.

13 **Q** You see that as TSI's burden to prove?

14 **A** I don't know whose burden of proof it is. I
15 didn't get evidence from either side. The only
16 letter -- the only evidence I did get was the letter
17 from Dennis Sickle.

18 **MS. KEATING:** Commissioner, I object. He's
19 asking the witness for a legal conclusion. The Staff
20 auditor doesn't determine what a burden of proof is.

21 **COMMISSIONER CLARK:** Mr. Parsons?

22 **MR. PARSONS:** Well, she answered the
23 question, and she -- I believe she indicated that she
24 didn't see evidence, so she didn't make the
25 adjustment.

1 **COMMISSIONER CLARK:** No. I think you did
2 ask for a conclusion. Should we get your question
3 read back? I think the answer can stand if it's with
4 the understanding that it's based on what she saw in
5 the audit and it is not a legal conclusion.

6 **MR. PARSONS:** I'll accept that amendment to
7 my question, Commissioner.

8 **COMMISSIONER CLARK:** Okay.

9 **Q** **(By Mr. Parsons)** Ms. Welch, as part of
10 your audit you, of course, read the agreement between
11 the parties?

12 **A** Yes, I did.

13 **Q** Do you agree that the parties' contract
14 calls for billing in 6-second increments from
15 Transcall to TSI?

16 **A** Yes, but I think for international it was
17 30/6. Do you want me to verify that?

18 **Q** I don't want the initial packet, be it 30
19 seconds or 60 seconds. The increments were 6 seconds,
20 weren't they?

21 **A** Well, 30/6 is different than 6/6, so --.

22 **COMMISSIONER CLARK:** Ms. Welch, you said the
23 increments for domestic calls was 6 seconds. And what
24 was it for international?

25 **WITNESS WELCH:** The contract, if I'm

1 correct -- and I'd like to look at it before I made
2 that decision -- but I think that the contract for
3 international said 30 for the first 30, which would be
4 considered 30/6, and then 6 seconds for after the
5 first 30 seconds, and that for domestic it was
6 6-second increments.

7 **COMMISSIONER CLARK:** If you want to check
8 it, go ahead.

9 **MR. SELF:** If I could help, it's also
10 attached to Ms. Daurio's testimony, and I --

11 **WITNESS WELCH:** It's also in my report in
12 Disclosure 1.

13 **MS. KEATING:** We have a copy.

14 **WITNESS WELCH:** Okay. It wasn't 30/6. It
15 was 1 minute for the first minute, and 6 seconds for
16 every minute after that, or each increment after that
17 for international calls. It was 6-second increments
18 for domestic.

19 **COMMISSIONER CLARK:** Thank you.

20 Mr. Parsons?

21 **Q** **(By Mr. Parsons)** So I understand, for
22 both economic and international the increment, after
23 the first unit, the increment was 6 seconds?

24 **A** Yes, according to the contract.

25 **Q** You agree, don't you --

1 **COMMISSIONER GARCIA:** For the first minute,
2 not the first unit, right? Because the units would
3 then be expressed in 6-second increments.

4 **MR. PARSONS:** After the first unit, the unit
5 being either one minute or one-half minute.

6 **COMMISSIONER GARCIA:** And the units after
7 that are 6 seconds.

8 **MR. PARSONS:** Yes, sir.

9 **Q** **(By Mr. Parsons)** Do you agree today that
10 Transcall did not bill TSI in 6-second increments?

11 **A** For international calls?

12 **Q** Yes, ma'am.

13 **A** Yes.

14 **Q** Or for domestic calls?

15 **A** No. For domestic calls they were billed in
16 6-second increments.

17 **Q** For international calls you say they were
18 not?

19 **A** Right.

20 **Q** Did you review the Lopez-Levi report with
21 regard to the 6-second increment issue?

22 **A** Yes, I did.

23 **Q** Do you have any problem with the way, the
24 methodology, by which Lopez-Levi went about computing
25 an adjustment, assuming that my client was entitled to

1 an adjustment for the 6-second increment issue?

2 **A** No. And I think even using an alternate
3 method, I came up very close. I don't have the
4 Lopez-Levi report in front of me, but I came up with
5 about 91,000, and I think that they had 91,000 in
6 their report also.

7 **Q** Okay. So assuming for the moment that TSI
8 is entitled to the adjustment, we're in rough
9 agreement about what that adjustment ought to be?

10 **A** Yes.

11 **Q** Ms. Welch, isn't it basically a credibility
12 issue right now whether to believe TSI's explanation
13 that they're entitled to an adjustment for the
14 6-second increment or to believe Transcall's
15 explanation that they already gave a discount for the
16 6-second increment --

17 **MS. KEATING:** Commissioner, I object.

18 **MR. SELF:** I have an objection also.

19 **MS. KEATING:** This goes beyond Ms. Welch's
20 testimony. She didn't make an assessment of
21 credibility. She reviewed evidence.

22 **COMMISSIONER CLARK:** Mr. Parsons?

23 **MR. SELF:** And I would object, Commissioner
24 Clark, that this is improper cross-examination. It's
25 not her job to value the credibility of the witnesses

1 or the testimony that's been heard.

2 MR. PARSONS: I'll stipulate to that.

3 That's my point in asking the question.

4 COMMISSIONER CLARK: I sustain the objection
5 on both bases.

6 Q (By Mr. Parsons) Ms. Welch, you've heard
7 the explanation that Transcall gave my client a 40%
8 discount instead of billing them in 6-second
9 increments, haven't you?

10 A Yes.

11 Q Now, if that were true, if that explanation
12 were true, then if you took 40% of the international
13 traffic, that ought to equal about \$90,000, that being
14 the amount of the adjustment that we seem to be in
15 accord on about the 6-second increments.

16 A Okay. Your logic would make sense if that's
17 what happened, but he was originally getting a
18 discount already, the 40%. It wasn't 40% initially.
19 It increased to 40% after a while. So he already had
20 some basic discount in there. The 40% was an
21 increase. It was increased to 40%.

22 And you should be able to find that in my
23 disclosure -- Audit Disclosure 12. Let me see where
24 that is in the testimony exhibits. (Pause) It's on
25 Page 45 of my audit report. So it's on KL-1, Page 47.

1 Originally he was getting 31 to 32%, and they raised
2 that to 40%.

3 Also, Mr. Esquenazi asked for 40% in that
4 letter that was brought up from Mary Joe Daurio's
5 exhibits earlier, and so the actual increase he was
6 given here was about 8%.

7 Q Let me get back to my question. Isn't it
8 true that if one were to give a discount as a
9 substitute for billing in 6-second increments, that
10 discount would be much nearer 10% for the
11 international traffic than 40%?

12 A I'm not sure about the 10% exactly. I know
13 that if you included domestic and international
14 together, overall it would change the minutes about
15 1.5%. I believe that you're probably close on the
16 international, but I haven't verified that myself.

17 Q So, really, it doesn't matter whether it was
18 originally a 30 odd percent discount or a full 40%
19 discount, because that is just completely out of the
20 ballpark from what the discount should have been if
21 Transcall's explanation is true?

22 A Yeah, but it's a lot closer to the 8% that
23 it changed.

24 Q Thank you. Now, you reviewed considerable
25 documents in the creation of your audit report,

1 Ms. Welch?

2 A Yes, I did.

3 Q Did you ever see a written instrument signed
4 by the parties that reflected that my client would get
5 a 40% discount instead of being billed in 6-second
6 increments?

7 A No, I did not.

8 Q Did you ever see a draft of such a thing?

9 A No, I did not.

10 Q Other than Mr. Esquenazi's letter that you
11 referred to, did you ever see anything in writing of
12 any kind?

13 A No.

14 Q Now let me ask you about Mr. Esquenazi's
15 letter. In fact, that letter was talking about
16 domestic usage, not international usage, wasn't it?

17 A I don't -- let me look at it. (Pause)

18 MS. KEATING: Just so the record is clear,
19 would you identify specifically what the letter is and
20 where it's located?

21 MR. PARSONS: Just a moment.

22 WITNESS WELCH: Should I answer?

23 Q (By Mr. Parsons) Do you have the letter,
24 Ms. Welch?

25 A Yes, I do.

1 Q Am I correct?

2 A You're correct. It does talk about
3 domestic. But he was being billed in 6-second
4 increments for domestic, so I don't understand --
5 (inaudible) --

6 COMMISSIONER CLARK: Ms. Welch, when you
7 start putting things away, your voice kind of --

8 WITNESS WELCH: I'm sorry. He was billed in
9 6-second increments for domestic calls.

10 Q (By Mr. Parsons) Ms. Welch, isn't it also
11 true that there's no written evidence that
12 Mr. Esquenazi got that 40% adjustment he asked for in
13 the letter?

14 A Well, he didn't get a 40% adjustment on
15 domestic calls. He did get a 40% adjustment on
16 international, and he did get the 15% on domestic.

17 Q But there's no documentary evidence, is
18 there, that the discount, the 40% discount
19 Mr. Esquenazi had been getting all along, is the same
20 as the 40% in the letter?

21 A No.

22 Q In fact, it could be that, you know, 40%
23 it's a round number; it's just a pure coincidence?

24 A I don't know.

25 Q Now, Ms. Welch, you understand that

1 Lopez-Levi found very substantial duplicate billings,
2 overlapping billings, and stuck clock billings?

3 A Yes.

4 Q And they proposed an adjustment in excess of
5 \$300,000 for what they found.

6 A Yes.

7 Q And I understand that you've proposed no
8 adjustment above and beyond what you think TSI may
9 already have gotten back in the early 1990s from
10 Transcall for those problems.

11 A That's correct.

12 Q Do you disagree with the Lopez-Levi
13 methodology?

14 A Yes, I do.

15 Q What do you disagree about?

16 A The same problem that Commissioner Garcia
17 had a little while ago with figuring out what actually
18 constituted an overlapping call, because Mr. Shulman
19 decided because the seconds were not included on the
20 bill, that seconds shouldn't be taken into account,
21 and the same example that Commissioner Garcia had
22 where it -- it could be feasible to have another call
23 in the next minute, because it wasn't a full minute
24 call. But because it's billed in full minute
25 increments if it's an international call, you don't

1 know if it was less.

2 Q Your point is that those two calls that
3 Mr. Gimbel used as an example could have been
4 sequential calls rather than overlapping calls because
5 we don't know at what second they began or ended. Is
6 that fair enough?

7 A Actually what happened was, Mr. Parsons, was
8 that I went through Mr. Shulman's calls and figured
9 out with how many seconds would have been added --
10 because most of these were domestic calls and were in
11 6-second increments -- how many seconds would have
12 been there, and it still would have been in the time
13 frame that the next call was made. So I went through
14 every single call, and I have the documentation of why
15 I thought most of those should have been allowed.

16 COMMISSIONER CLARK: Ms. Welch, are you
17 saying because of the second increments, all those
18 calls could, in fact, have been sequential?

19 WITNESS WELCH: Not all of them. There were
20 a few. And in my summary in Disclosure -- Disclosure
21 No. 6, it starts at Page 18 of KLV-1 and goes to
22 Page 21 -- in that disclosure I summarize how many of
23 the calls I think were actually overlapping, and
24 probably most of those were caused by that 9-second
25 error problem that's another disclosure that's already

1 been addressed somewhere else.

2 COMMISSIONER CLARK: Okay. Go ahead,
3 Mr. Parsons.

4 Q (By Mr. Parsons) Ms. Welch, I appreciate
5 your explanation.

6 To get back to my question, for a large
7 number of those calls there's a possibility they could
8 have been sequential, that is, nonoverlapping?

9 A Yes.

10 Q There's also a possibility they could have
11 been overlapping if they started and ended at an
12 overlapping point; isn't that right?

13 A I don't believe there was any reason to
14 indicate that they were overlapping.

15 Q Okay. What you were doing is that you were
16 looking for evidence that they were overlapping rather
17 than looking for evidence that they were sequential,
18 right?

19 A I don't understand what you mean by being
20 sequential. You just mean being in that order?

21 Q Yeah, nonoverlapping, one after the other --

22 A Yeah.

23 Q -- in sequence.

24 COMMISSIONER GARCIA: But you did say --

25 WITNESS WELCH: I was looking to see if it

1 was possible to make the call.

2 COMMISSIONER GARCIA: And did you say you
3 found some that were?

4 WITNESS WELCH: Yes.

5 Q (By Mr. Parsons) My point is this: In
6 the examples Mr. Gimbel gave -- again because we had
7 those explained at length -- there's a possibility
8 they were in sequence, nonoverlapping. There's also a
9 possibility they were, in fact, overlapping calls.

10 You didn't want to count them because you
11 saw no evidence that they were overlapping; isn't that
12 right?

13 A That's correct; I saw no evidence.

14 Q You were essentially putting the burden of
15 proof on my client to prove they were overlapping if
16 there was a possibility they could go either way.

17 MS. KEATING: I object.

18 MR. SELF: No, too.

19 COMMISSIONER CLARK: Mr. Parsons?

20 MR. PARSONS: It's not a legal conclusion.

21 It's a methodology how Ms. Welch came to the
22 conclusion.

23 COMMISSIONER CLARK: Well, maybe it's the
24 choice of your words. You put the burden on this
25 party. If you use some other words, maybe we can get

1 to it.

2 **MR. PARSONS:** Let me not use burden of
3 proof, then, and try to phrase the question a
4 different way.

5 **Q** **(By Mr. Parsons)** You put the onus on my
6 client to prove that there was overlapping when
7 there's a possibility that the calls could be
8 overlapping or not overlapping. We don't know because
9 we can't see the seconds.

10 **A** I don't believe there was any reason to
11 think these were overlapping calls.

12 **Q** Ms. Welch, I'm not criticizing you by saying
13 this. I just want to know --

14 **A** I understand.

15 **Q** -- what your methodology is. And your
16 methodology was essentially, you know, "TSI, prove
17 they're overlapping."

18 **MR. SELF:** I object.

19 **MS. KEATING:** I object.

20 **MR. SELF:** Commissioner Clark, we're now
21 getting argumentative.

22 **COMMISSIONER CLARK:** Ms. Welch, I think what
23 he's asking is, when you saw that there was a
24 possibility that they were sequential, you assumed
25 they were sequential absent proof that they were at

1 the same --

2 WITNESS WELCH: Correct.

3 COMMISSIONER CLARK: -- time. All right.

4 MR. PARSONS: That was a much better
5 question than I asked, Commissioner.

6 Q (By Mr. Parsons) Ms. Welch, shouldn't
7 there be some benefit of the doubt accorded my client,
8 given the acknowledged billing errors in the Telus and
9 the Transcall invoices?

10 MR. SELF: I have to object to that
11 question, too.

12 COMMISSIONER CLARK: I believe that's a
13 decision for the trier of fact.

14 COMMISSIONER JACOBS: Let me try and ask it
15 a different way. In your consideration of the calls,
16 were you aware of the prior problems in the billing
17 systems?

18 WITNESS WELCH: Yes. And I think I've
19 identified the problems that we found in other
20 disclosures.

21 COMMISSIONER JACOBS: And you didn't see any
22 relevance, that those prior problems had anyway
23 relevance to these calls?

24 WITNESS WELCH: No, the -- well, actually
25 one of the problems could have relevance, and that's

1 the 9-second overlap and actually the answer qualifier
2 problem, but they've been addressed elsewhere.

3 COMMISSIONER JACOBS: Okay. While I've
4 interjected, let me just see if I can go through this
5 for a second to make sure I understand it.

6 You may not have this exhibit. This is one
7 of the -- I guess 17 or 18 that we got. If you don't
8 have it, let me just describe it to you. It's pretty
9 simple.

10 We had two calls, different numbers called;
11 okay. This is in an instance where they were 1-minute
12 apart.

13 WITNESS WELCH: Can I get one? (Pause)

14 COMMISSIONER JACOBS: Let's look at one
15 where we look at the Wichita, Kansas calls, Lines 162
16 and 163. Do you see that?

17 WITNESS WELCH: Right.

18 COMMISSIONER CLARK: Mr. Shulman, you want
19 to give that to Mr. Parsons?

20 (Document handed to Mr. Parsons.)

21 COMMISSIONER JACOBS: Do you see that?

22 WITNESS WELCH: Okay. Which -- you're
23 looking at these two calls that are circled here,
24 area code 316?

25 COMMISSIONER JACOBS: Yeah. Okay.

1 **WITNESS WELCH:** Okay.

2 **COMMISSIONER JACOBS:** Okay. Let me just go
3 to the point of confusion I have. The duration of
4 that call is a minute and two-tenths of a minute;
5 is --

6 **WITNESS WELCH:** Right.

7 **COMMISSIONER GARCIA:** -- that correct?

8 **WITNESS WELCH:** Right.

9 **COMMISSIONER JACOBS:** It began at 9:15.
10 Following logic, I would assume that if this were a
11 sequential call, then the next call would have to
12 begin sometime after 9:16 and two-tenths of a --

13 **WITNESS WELCH:** But it would begin before
14 9:17, and because they don't put the seconds on here,
15 it would still be considered 9:16.

16 **COMMISSIONER JACOBS:** But I thought the deal
17 was it got rounded up.

18 **WITNESS WELCH:** It doesn't -- the time
19 doesn't get --

20 **COMMISSIONER GARCIA:** If I can clarify,
21 Commissioner, that time is not relevant to the call as
22 it is relevant to when the call is made.

23 **COMMISSIONER JACOBS:** That's my point of
24 confusion --

25 **COMMISSIONER GARCIA:** Because if one were --

1 at least the way I saw it, if one were to use
2 Mr. Shulman's thinking, time would speed up as one was
3 using the call. In other words, once you began a --
4 you know, our time would move quicker as a call was
5 not finished within the time. Clearly the time that
6 the call is being made remains the same. In other
7 words, the clock keeps ticking.

8 **COMMISSIONER JACOBS:** We just don't see the
9 seconds here.

10 **WITNESS WELCH:** Right.

11 **COMMISSIONER GARCIA:** Exactly. Although I
12 would ask this, Ms. Welch -- and maybe this gets to
13 what Mr. Parsons is getting at -- if we did find
14 overlapping -- in other words, what you did is if the
15 call -- if it was a mathematical possibility with the
16 limited information that you have, in other words, you
17 don't have seconds, or when the call began you figured
18 out as I did here simply -- and I'm sure you probably
19 used a more worthy system as an accountant that --

20 **WITNESS WELCH:** Probably not.

21 **COMMISSIONER GARCIA:** -- can be verified.
22 So I just used simple math. But if it was
23 mathematically possible, then you ascribed it to
24 having been a sequential call, and --

25 **WITNESS WELCH:** Yes.

1 **COMMISSIONER GARCIA:** -- that is because you
2 don't have those 10ths of a second to work with on the
3 clock, time which wouldn't be typical anyway because
4 it's a --

5 **WITNESS WELCH:** Right.

6 **COMMISSIONER GARCIA:** -- it's a chronometer
7 more than anything, right? It's just a --

8 **WITNESS WELCH:** That's correct.

9 **COMMISSIONER GARCIA:** -- running chronometer
10 of what's occurring.

11 **WITNESS WELCH:** And the time is actually a
12 calculation, because the actual switch tapes show it
13 in ticks, which are 3-second increments. So time is
14 actually a calculation.

15 **COMMISSIONER GARCIA:** But that's only the
16 billing time, not the chronometer time.

17 **WITNESS WELCH:** Right.

18 **COMMISSIONER JACOBS:** Don't take me back
19 there. Thank you.

20 **COMMISSIONER CLARK:** Mr. Parsons.

21 **MR. PARSONS:** Commissioner Clark, we've been
22 busy over here working with our greenbars finding
23 examples of duplicate or overlapping calls where it's
24 just not possible that Transcall's explanation is
25 valid, and we found one.

1 I only have one copy of it, but if it
2 pleases the Commission, I'd like to show it to the
3 witness and ask her about it, and I'll read the
4 description of the calls into the record.

5 COMMISSIONER CLARK: All right. Show
6 Mr. Self and Mr. Gimbel, and show it to Ms. Keating,
7 please, and then you can ask Ms. Welch.

8 MS. KEATING: Would it be possible to make a
9 quick copy of that?

10 COMMISSIONER CLARK: We'll take a break and
11 get that done.

12 (Brief recess.)

13 - - - - -

14 COMMISSIONER CLARK: We're back on the
15 record. Mr. Parsons?

16 Q (By Mr. Parsons) Ms. Welch, do you have
17 the three pages of greenbars?

18 A Yes, I do.

19 COMMISSIONER CLARK: Mr. Parsons, let's go
20 ahead and identify this as Exhibit 21, and it will be
21 "Billing Excerpts." And what exhibit is it from? Is
22 it already an exhibit, the greenbars? They aren't,
23 are they?

24 MR. PARSONS: I don't think the greenbars
25 themselves are an exhibit.

1 **COMMISSIONER CLARK:** I'm sorry. They are or
2 aren't?

3 **MR. PARSONS:** Are not.

4 **COMMISSIONER CLARK:** Okay. We'll just make
5 these "Billing Excerpts, Page 2, 6 and 18."

6 (Exhibit 21 marked for identification.)

7 **Q** **(By Mr. Parsons)** Ms. Welch could you look
8 at the first page, the third and fourth entries?

9 **A** Yes.

10 **Q** Do you see the pair of phone calls is one
11 minute apart and that the first call had a duration of
12 9 minutes and the second, a duration of 7 minutes?

13 **A** Yes.

14 **Q** Is that the sort of thing that would be
15 evidence to you that there is a duplicate or an
16 overlapping billing?

17 **A** Those are the kind of calls that I did allow
18 my adjustment, which is in Disclosure 6. It's part of
19 my numbers that show on Page 20 of KLV-1 where it
20 shows per staff minutes overlapping.

21 There were minutes that I found to be
22 overlapping. It's just that when I extrapolated them
23 in a manner similar to what Lopez-Levi did, my
24 extrapolation came out less than the total credits
25 given to TSI and, therefore, I did not adjust.

1 Q You don't have any evidence, do you, that
2 this particular pair, for example, were calls that TSI
3 got a credit for from Transcall?

4 A No.

5 Q If you look further down on the page the
6 last starred pairs, is that also the sort of possible
7 duplicate or overlapping for which you would give a
8 credit?

9 A Yes, but I should also note that this page
10 also talks about 800 Florida. I'm not sure if these
11 were 800 calls or not, but I think both you and
12 Mr. Self told me that 800 calls were treated
13 differently, that you could have called in and had two
14 calls come in at the same time to an 800 number.

15 Q Setting aside the 800 issue, these would be
16 overlapping calls in your methodology?

17 A Yes.

18 Q Could you turn to the second page, please?
19 If you could, look at the first pair of calls that
20 have the arrows beside them.

21 A Uh-huh.

22 Q Do you see they're both made at 2:44 p.m.
23 with a duration of .6 minutes each?

24 A Yes.

25 Q Now, these would be the sorts of call that

1 Mr. Gimbel asked about where theoretically there would
2 be a possibility that both these calls could have been
3 made in the minute 2:44 p.m.?

4 A Yes, but this looks to me like a duplicate
5 call. And I did allow all of these in the
6 calculation. I did not remove those.

7 Q Can you look at the pair of calls
8 immediately below that?

9 A Uh-huh.

10 Q That's a pair of calls starting at 2:56 p.m.
11 with identical duration, 18.3 minutes.

12 A Correct.

13 Q Again, that's the sort of thing you would
14 allow?

15 A Yes. I allowed -- in the Lopez-Levi report.
16 I did not remove it from Lopez-Levi is what I'm
17 saying. Not that I allowed ATC to do it; I did not
18 remove it from the numbers that I corrected in
19 Lopez-Levi.

20 Q Do you see how going downwards there's a
21 string of apparently duplicate calls.

22 A Yes.

23 Q To Henrietta, to Rochester, to -- I guess
24 that's East Rochester, to Henrietta, to East
25 Rochester, and to East Rochester again.

1 **A** Yes. And I agree with you, they're
2 incorrect. And I left them in my analysis, and I
3 still come up with less than what was given.

4 **Q** Could you look at the final page. Do you
5 see the question mark called --

6 **COMMISSIONER GARCIA:** Before you get there,
7 let me ask you -- because I guess this begs the
8 question that Mr. Parsons was trying to ask, and maybe
9 he'll get there, and if you're going to get there,
10 I'm -- I don't want to take your bang away.

11 But just for my understanding here --
12 Mr. Parsons makes the point that if this was
13 happening, then clearly the other ones that
14 Mr. Lopez-Levi -- although not using his criteria,
15 using the criteria that I guess you and I agreed was
16 more reasonable --

17 **WITNESS WELCH:** Uh-huh.

18 **COMMISSIONER GARCIA:** -- it is possible,
19 though, that they were overlapping --

20 **WITNESS WELCH:** Certainly possible that it
21 was happening. But I also think Mr. Esquenazi was
22 very good about telling people he wanted credits, and
23 I believe he got credits during the month it happened.
24 He himself told me that he went through the bills
25 every month and looked for these kind of calls, and he

1 deducted them from his bill. So I believe he received
2 credit for these.

3 Q (By Mr. Parsons) I'll just ask you about
4 the final page to complete the analysis of the
5 exhibit, Ms. Welch.

6 This is another example on Page 3 of the
7 duplicate calls you would allow; is that right?

8 A Yes. And I probably did allow it, but I do
9 think that that .6 second -- or that .6 minute call
10 could have happened at 4:31, and the second one still
11 could have happened. It's just it would have been in
12 the opposite order, but -- I probably would have
13 allowed it.

14 Q I see what you mean. So at the end of the
15 day we're left with both you and Mr. Shulman of
16 Lopez-Levi agreeing that there were duplicate calls,
17 but you've come to very, very different conclusions
18 about the amount to be credited for those calls?

19 A Yes.

20 Q Do you have a sense of why you came to such
21 different conclusions, ma'am?

22 A Yeah; because I don't agree with the way he
23 calculated what was allowed and what wasn't allowed.

24 Q Essentially he gave the benefit of the doubt
25 to TSI, and you gave the benefit of the doubt to

1 Transcall.

2 A I don't see it that way.

3 COMMISSIONER GARCIA: The rationale being
4 that you think that when these things were found, that
5 they were corrected for anyway, and they were --

6 WITNESS WELCH: Correct.

7 COMMISSIONER GARCIA: -- dealt with by what
8 you understood to be Mr. Esquenazi's standard
9 operating procedure --

10 WITNESS WELCH: Yes.

11 COMMISSIONER GARCIA: -- on these issues.

12 Q (By Mr. Parsons) As part of your audit,
13 Ms. Welch, did you look at the September 1991 or the
14 December 1991 invoice to TSI?

15 A I'm sure I did. I looked at all of them.

16 Q If you could put the September 1991 invoice
17 in front of you.

18 A For the period September?

19 Q Yes; the period September invoice date,
20 April 8th, 1992.

21 A Okay.

22 Q Was it your understanding when you did look
23 at this invoice that the amounts of minutes and calls
24 in this invoice ought to tie in exactly to the
25 greenbar summary, to the greenbars going to the

1 clients?

2 A To the greenbar or the summary? They're two
3 different things.

4 Q To the summary.

5 A Yes.

6 Q Did you, in fact, look to see if it did tie
7 in exactly to the greenbar summary?

8 A I traced all of them. (Pause) Yes, I do.

9 Q Ms. Welch, could you look at the invoice and
10 tell me for the invoice what's the total number of
11 calls for international day usage?

12 A Well, I can tell you that what I have on my
13 note here is that the bill does not tie to the summary
14 at all, and that I have an adjustment on 41-1 over
15 8-1, which I will be glad to find for you to see why I
16 don't think it agreed. (Pause)

17 Okay. That was one of the billing months
18 that I reported in audit disclosure -- if I could find
19 it. (Pause) Well, I was organized at one time.
20 (Pause)

21 It's on KL-1, Page 13 of 79 where I adjust
22 the September '91 bill to the summary that I found at
23 TSI, which I felt represented the bills.

24 Q I'm sorry. Which page was that?

25 A It's KL-1, Page 13 of 79. And I have the

1 minutes per the bill and the minutes per the summary
2 that I found that I believe is correct, and I adjust
3 it.

4 Q How much is the adjustment?

5 A Well, I adjust three months together, so I
6 can't really tell you how much for that particular
7 months. There were three months that I found the
8 bills didn't match the summaries.

9 Q What was the total adjustment?

10 A The total adjustment here is \$38,108.59.

11 Q Did it give you any discomfort

12 professionally as an accountant that you had invoices
13 supposedly created out of greenbars that didn't match
14 the greenbar summaries at all.

15 A But I also had summaries that did tie to
16 those bills. It looked to me like the summaries were
17 rerun and so was the billing. It looked like the one
18 that tied to the bill was a later run. So I had two.

19 COMMISSIONER CLARK: Let me ask you a
20 question. What you're saying is it appeared that the
21 company was aware of it and corrected for it by
22 printing -- doing the reconciliation.

23 WITNESS WELCH: I'm assuming that that's
24 what happened. I mean, there were two summaries, and
25 the summary that I found at TSI did agree with the

1 bill.

2 COMMISSIONER CLARK: Okay.

3 WITNESS WELCH: I'm sorry. It didn't agree
4 with the bill; it agreed with the bills that he had,
5 so I adjusted it. But it does look like ATC did not
6 adjust their bill to TSI.

7 COMMISSIONER CLARK: I'm sorry, Mr. Parsons.
8 Go ahead.

9 Q (By Mr. Parsons) Is there any sort of
10 accounting principle -- I ask you this of course as a
11 CPA -- that when you find a discrepancy of that sort
12 of that magnitude extending over three months, that
13 you apply a more skeptical eye when you're looking at
14 other accounting documents generated by that company?

15 A Because I found that, I certainly looked at
16 all the bills and traced them all to the summaries.

17 Q Wouldn't you look at everything generated by
18 that company more skeptically?

19 A I always look at everything skeptically,
20 Ms. Parsons.

21 Q I can tell that's true, Ms. Welch. There
22 are degrees of skepticism. Did you enhance your
23 degree of skepticism once you came across this
24 inconsistency?

25 A I looked at the ATC information with a very

1 high degree of skepticism through the entire process.

2 Q Did you see the two invoices, the November
3 and December 1990 invoices, where you had the same
4 dollar amount for the international traffic?

5 A Yes. And I corrected that also.

6 Q Did that enhance your skepticism at all?

7 A As I said, I thought I was extremely
8 skeptical through the entire process and I think
9 because I have this thick a report, it shows that I
10 looked at it very closely. (indicating)

11 Q Does it rise to the level of evidence of
12 fabrication of invoices when you see an amount
13 duplicated down to the penny like that?

14 A To me, that looks like an error, an
15 out-and-out error. Somebody looked at the wrong
16 summary when they made their calculation, which I
17 believe is a human error that's easy to do.

18 It certainly wasn't something that could be
19 followed through on every month. It wasn't an error
20 that was done every month. It was an error that
21 somebody looked at the wrong schedule and carried it
22 forward.

23 Q If it were an error like that, though,
24 wouldn't you have more than one item being from the
25 wrong schedule, either --

1 A No, because the --

2 Q -- a column or a row?

3 A I'm sorry -- because the international calls
4 were calculated differently, because they did that 40%
5 calculation differently. It wasn't done the way the
6 rest of the bill was done. So it would have been easy
7 to look at the wrong summary for that one line.

8 Q Did you form any conclusions about ATC's
9 internal control procedures at the end of your review?

10 A It was difficult to determine internal
11 control procedures back that far. I believe that
12 there were errors made. I don't believe there were a
13 lot of checks and balances over the billing
14 calculation of the actual bill; not the billing system
15 itself, but the calculation of the bill that went to
16 TSI, which was that one-page document that either
17 Mary Jo or the other person, Clara Raynardus, did. I
18 think there was very little internal control over that
19 process, not necessarily the whole billing system.

20 **COMMISSIONER GARCIA:** But clearly if this
21 would have been a -- excuse me for a second,
22 Mr. Parsons -- if this would have been a -- and I know
23 you've got experience with this -- a regulated
24 company, you would have had some serious doubts to the
25 way they did their billing in terms of --

1 **WITNESS WELCH:** The way they did their
2 billing for resalers.

3 **COMMISSIONER GARCIA:** Right.

4 **WITNESS WELCH:** And actually because of the
5 9-second error, yes, to everyone.

6 **Q** **(By Mr. Parsons)** Did you give any credit
7 for stuck clock billings?

8 **A** No, I did not.

9 **Q** Do you recognize that there were systemic
10 industry-wide problems with stuck clocks in this
11 period of time?

12 **A** I've heard that from many of the witnesses
13 here. I also did my own independent calling of
14 different engineers, and they didn't feel it was as
15 much a systematic problem that you do.

16 I'm not arguing the fact that it was a
17 problem. And what I did to determine the
18 reasonableness of the number of calls that occurred in
19 the Lopez-Levi sample was I went to our own phone
20 bills here at the Commission for the Miami office, and
21 I took the numbers of calls over an hour and
22 determined what percent of calls it was; and we had a
23 higher percent of calls than the number of calls in
24 the sample.

25 I also followed up with questions to

1 Mr. Esquenazi about it, who told me that he thought
2 international calls didn't go over an hour. So I went
3 back and looked, and they were not international
4 calls; they were domestic calls.

5 And I also -- I looked because, you know,
6 everyone was telling me about seven-hour calls and
7 that kind of thing. So I looked at all the calls, and
8 all of them were under three hours, and I know that
9 I've been on the phone just for these depositions for longer
10 than that, just for these depositions, so --.

11 Q Did you see the nine-hour call today?

12 A No, I didn't. And I'm not surprised that it
13 happened. I just think that in the sample Lopez-Levi
14 took compared to what our office did -- and I think
15 our office is probably a fairly good representation --
16 I don't think that the percent of calls that happened
17 that were over an hour in the sample that they took
18 was that unreasonable.

19 Q When you took your sample, that was a
20 current sample, was it not?

21 A No -- I used theirs. Oh, yes. I'm sorry.
22 Yes, it was.

23 Q Now, six or eight years ago people were
24 getting disconnected a lot more because of the
25 inferior state of the hardware and software, weren't

1 they?

2 A Yes.

3 Q So really it's not comparable to use a
4 current sample to try to get inside into whether there
5 were stuck clocks eight years ago?

6 A I'd be glad to go back and get an old one.

7 Q I think this is the time and the day to have
8 everything in place.

9 MR. PARSONS: One moment, please.

10 MS. KEATING: Commissioners? While he's
11 taking a moment, could I ask the court reporter to
12 read back Mr. Parsons' next previous question to
13 Ms. Welch?

14 COMMISSIONER CLARK: Yes.

15 MS. KEATING: I ask that that be stricken.

16 COMMISSIONER CLARK: Let her read the whole
17 question and the response.

18 (The reporter read the requested portion as
19 follows:)

20 QUESTION: "Now, six or eight years ago
21 people were getting disconnected a lot more because of
22 the inferior state of the hardware and software,
23 weren't they?"

24 ANSWER: "Yes."

25 MS. KEATING: I'd ask that that be stricken.

1 It assumes facts not in evidence.

2 MR. PARSONS: I think she's testifying on
3 personal knowledge as to an issue that's probative.
4 It's relevant. It shows that her sample is not very
5 meaningful to what was going on in the early part of
6 this decade.

7 MS. KEATING: I don't think she's testified
8 specifically, though, that disconnection was more
9 prevalent six or seven years ago.

10 COMMISSIONER CLARK: Ms. Welch, do you know
11 if disconnection of calls were more prevalent?

12 WITNESS WELCH: Actual disconnection, no. I
13 know that the equipment wasn't as sophisticated then
14 and there were a lot more problems with the equipment;
15 but actual disconnection, no.

16 COMMISSIONER CLARK: I'll allow the previous
17 question and answer to stand with that explanation.

18 MR. PARSONS: I have no further questions.

19 COMMISSIONER CLARK: Mr. Self?

20 MR. SELF: I just have a couple of
21 questions.

22 CROSS EXAMINATION

23 BY MR. SELF:

24 Q Good afternoon, Ms. Welch.

25 A Good afternoon.

1 Q I'd like to first look at what has been
2 identified as Exhibit 21, which is the three pages,
3 and if we could look at the first one, which is Page
4 2. Would you agree with me that this page reflects
5 eight -- that this -- excuse me.

6 Would you agree with me that this page
7 reflects incoming 800 calls to this particular
8 customer, and that in this case the column that says
9 number called is actually where the calls are coming
10 from?

11 A Yes. And I think I told Mr. Parsons that
12 when he asked.

13 Q So if this customer had multiple phone
14 lines, it would be perfectly possible and reasonable
15 to expect that they would receive multiple incoming
16 calls at the same time; is that correct?

17 A That's what I was told, and Mr. Parsons
18 agreed with me.

19 Q Would you characterize your audits and the
20 work that you've done as an attempt to come to a
21 complete accounting of the relationship between the
22 parties?

23 A Yes.

24 Q And if we're going to have a complete
25 accounting between the parties, we should address all

1 of the payments, credits, overpayments, underpayments,
2 credits, overcredits, et cetera, that occurred between
3 the parties?

4 A That seems reasonable.

5 Q So with respect to the testimony that
6 Mr. Metcalf has filed with respect to one of the
7 adjustments that he made for the two months where you
8 found that TSI had, in fact, been overcredited, would
9 you agree that it would be appropriate for purposes of
10 a complete accounting to include those overcredits?

11 A I believe I have a reason in my disclosure
12 why I did not put them in. (Pause) Can you tell me
13 which page you're looking at where you're looking at
14 the credits?

15 Q I think it's Audit Disclosure 4 on Page 2,
16 Item B, Page 2 of Disclosure 4.

17 A Well, the reason I mention here was because
18 we didn't have the actual detail that was given to
19 Joel to give to his customers. But in addition to
20 that, there were credits given for many different
21 things, and this might have been a combination of two
22 different credits. And I don't know the reason the
23 rest of the credit might have been given, so that is
24 why I did not take it out.

25 Q Okay. I'd like to also talk about this

1 question of the 6-second increments and the 40% and
2 15% discounts, which I believe relates to Audit
3 Disclosure No. 5.

4 And the question I have is, in your reading
5 of the agreement -- and, again, I'm not asking for a
6 legal conclusion -- but as you read it, I believe
7 you've testified that you did not see a 40% and 15%
8 discount in the agreement itself, correct?

9 A No, I did not.

10 Q So would it be correct to say that with
11 regard to your testimony, that you are -- you didn't
12 really take a position either way on the issue, are we
13 in the position that -- and let's just assume
14 Lopez-Levi numbers of 91,000 is correct -- are we in
15 the position of really saying that if we're going to
16 go by the contract and the 6 seconds, make the
17 Lopez-Levi adjustment of 91,000, but at the same time
18 remove the 143,000 and the 949,000 that is the
19 cumulative effect of that 15 and 40% discount?

20 A If you followed the contract exactly, they
21 would not have gotten the 40% or the 15% discounts.
22 In addition, there was also a change due to travel
23 rates where they got a differ travel rate. So if you
24 followed the contract exactly, those would not have
25 been given. That I'll agree with you.

1 Q So what would be the net effect of that? In
2 other words, who owes whom how much?

3 A The net effect of the difference between --
4 I have it in Audit Disclosure 12, Page 47 of Exhibit
5 KL-1. But in that number I had the old Lopez-Levi
6 number, and I think right now they've got a number of
7 like 91,000 in there. So the difference would have
8 been about \$403,000.

9 Q So assuming we --

10 A That's not including the travel or the
11 domestic. This is only the international. I haven't
12 calculated what it would be if they followed the
13 contract exactly.

14 Q Okay. So looking just at the international
15 and the net effect of that, assuming everything else
16 about your audit report was unchanged, the amount due
17 from TSI to Transcall would not have been \$501,000, it
18 would be more in the neighborhood of \$900,000,
19 correct?

20 A If you followed the contract exactly.

21 MR. SELF: I have no further questions.

22 COMMISSIONER CLARK: Staff? Commissioners?
23 Staff.

24 MS. KEATING: Just a couple questions.

25

REDIRECT EXAMINATION

1

2 **BY MS. KEATING:**

3 **Q** Ms. Welch, you've been asked a lot about the
4 assumptions that you made in your audit.

5 **A** Yes.

6 **Q** You've done a number of audits of
7 telecommunications companies, haven't you?

8 **A** Yes, very many. I've done not only earnings
9 reviews in rate cases at Southern Bell, but I've also
10 done a problem where there was a payphone commission
11 problem and it had to do with the switch.

12 I've been participating in the NARUC audits
13 and the Bellcore audits, which were multistate audits
14 where we had to interview all the technical people
15 about research and developments to determine if they
16 were reg and nonreg.

17 I've done an audit on billing at Metromedia.
18 I've done several RAF audits, regulatory assessment
19 fee audits, of payphone companies. I've done a lot of
20 work at Indiantown Telephone. We've done a lot of
21 work lately on determining the cost of the loop and
22 the port at Southern Bell. We've done work on
23 collocation. So over the years, many.

24 **Q** So it would be fair to characterize the
25 assumptions you used in your audit as standard?

1 A I think so.

2 Q Now, Ms. Welch not to beat a dead horse, but
3 regarding the issue of whether calls were overlapping
4 or sequential, you indicated that you assumed that
5 calls that were not obviously overlapping were
6 sequential; correct?

7 A Yes.

8 Q And you reviewed Mr. Shulman's report,
9 didn't you?

10 A Yes.

11 Q And Mr. Shulman, his report contained
12 assumptions, too, didn't it?

13 A Yes.

14 Q In fact, didn't Mr. Shulman's report assume
15 that all calls that could potentially be overlapping
16 were, in fact, overlapping?

17 A Yes.

18 MS. KEATING: Thank you, Ms. Welch.

19 COMMISSIONER CLARK: Exhibits?

20 MR. PARSONS: I would move into evidence
21 Exhibit 17 and Exhibit 21.

22 MS. KEATING: Staff moves 20.

23 COMMISSIONER CLARK: Are we okay with
24 Exhibit 17, Mr. Self?

25 MR. SELF: We haven't seen it yet.

1 **COMMISSIONER CLARK:** We're just going to
2 leave it pending then.

3 **MR. SELF:** Give us just a minute to look at
4 it during the next witness.

5 **COMMISSIONER CLARK:** Exhibit 20 is entered
6 in the record without objection.

7 (Exhibit 20 received in evidence.)

8 **MR. PARSONS:** And the billing excerpts were
9 yours, Mr. Parsons. So you move them into the record,
10 and they're admitted in the record without objection.

11 (Exhibit 21 received in evidence.)

12 **COMMISSIONER CLARK:** Thank you, Ms. Welch.

13 (Witness Welch excused.)

14 - - - - -

15 **MR. SELF:** We would call Mary Jo Daurio for
16 rebuttal.

17 **MS. KEATING:** Commissioner, while Ms. Daurio
18 is coming to the stand --

19 **COMMISSIONER CLARK:** Do you need a break?

20 **MS. KEATING:** No. I just wanted to make
21 sure. Was 21 moved into the record?

22 **COMMISSIONER CLARK:** Yes.

23

24

25

1 **MARY JO DAURIO**
2 was called as a rebuttal witness on behalf of
3 Transcall America, Inc. and, having been duly sworn,
4 testified as follows:

5 **DIRECT EXAMINATION**

6 **BY MR. SELF:**

7 **Q** Good afternoon again, Ms. Daurio. Can you
8 please state your name for the record?

9 **A** Mary Jo Daurio.

10 **Q** And you're the same Mary Jo Daurio who
11 caused to be prefiled six pages of rebuttal testimony?

12 **A** Yes.

13 **Q** Do you have any changes or corrections to
14 that testimony?

15 **A** No, I do not.

16 **Q** If I were to ask you the same questions
17 today, would your answers be the same?

18 **A** Absolutely.

19 **MR. SELF:** We would move that Ms. Daurio's
20 rebuttal testimony be inserted in the record as though
21 read.

22 **COMMISSIONER CLARK:** It will be inserted in
23 the record as though read.

24

25

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A. I am Mary Jo Daurio. My business address is 1515 South Federal Highway,**
3 **Boca Raton, Florida.**

4 **Q. ARE YOU THE SAME MARY JO DAURIO WHO EARLIER FILED**
5 **DIRECT TESTIMONY ON BEHALF OF TRANSCALL IN THIS**
6 **PROCEEDING?**

7 **A. Yes, I am.**

8 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

9 **A. I am appearing to respond to the direct testimony of Joel Esquenazi of**
10 **Telecommunications Services, Inc. (TSI) regarding his assertions that**
11 **Transcall failed to comply with the Agreement.**

12 **Q. WHAT IS YOUR RESPONSE TO MR. ESQUENAZI'S TESTIMONY**
13 **AT PAGE 4, LINES 22 TO 24 REGARDING DIRECT BILLING?**

14 **A. As I discussed in my direct testimony, there was a problem with direct billing**
15 **that occurred during the first year due to a computer problem. However,**
16 **contrary to Mr. Esquenazi's belief, this was not done with any intent to steal**
17 **his customers – it was a computer problem and nothing more. Once the**
18 **computer change was put into effect, the direct billing stopped.**

19 **Q. DO YOU HAVE ANY RESPONSE TO MR. ESQUENAZI'S**
20 **TESTIMONY AT PAGE 4, BEGINNING AT LINE 25, REGARDING**
21 **THE SOLICITATION OF TSI'S CUSTOMERS?**

22 **A. He is wrong to claim that we advertised to and solicited TSI's customers**
23 **contrary to a course of dealing with the intent to steal customers. First, the**
24 **Agreement does not prohibit one party from soliciting the customers of the**

1 other. In truth, he actively solicited our customers – otherwise we would not
2 have had the direct billing problem. But the fact is, as he acknowledged at
3 page 2, this is a competitive business, and the or'y way you get customers is
4 to convince them to change from their existing carrier. Of course we ran
5 advertising that may have been received by his customers. That's what you
6 are supposed to do in a competitive business. The key is, there was no
7 "understanding" prohibiting such competitive activities, and we never used
8 information obtained from him to target his customers.

9 **Q. WHAT IS YOUR RESPONSE TO MR. ESQUENAZI'S TESTIMONY**
10 **AT PAGE 5, LINES 3 TO 4, REGARDING BILLING FOR**
11 **UNANSWERED CALLS?**

12 **A.** I don't doubt that there was billing for incomplete or unanswered calls, but
13 there was nothing improper about this. During the time of the Agreement,
14 there was an industry-wide problem due to the fact that the local exchange
15 companies failed to provide hardware answer supervision on all calls.
16 Consequently, we, like other carriers, used software answer supervision
17 programs in an attempt to address this problem. Both TSI and Transcall had
18 specific tariff provisions to address this situation, and anyone that knew
19 anything about the business understood this. Again, from my standpoint,
20 when Mr. Esquenazi raised these issues, we issued credits to him. The credits
21 we issued were at the higher retail rate charged his customers instead of at the
22 wholesale rate charged TSI.

1 Q. DO YOU HAVE ANY RESPONSE TO MR. ESQUENAZI'S
2 TESTIMONY AT PAGE 5, LINES 5 THROUGH 8, REGARDING THE
3 VARIOUS OVERCHARGES HE IDENTIFIED?

4 A. Over time, in requesting credits from me, Mr. Esquenazi raised these claims.
5 My procedure was always the same. While I asked him to document any
6 errors that he had, I ultimately granted any credits that he requested except
7 for the disputed \$10,000 that I discussed in my direct testimony.

8 Q. DO YOU HAVE ANY REPLY TO MR. ESQUENAZI'S TESTIMONY
9 REGARDING 800 NUMBER PROBLEMS?

10 A. At page 5, lines 9 through 11, and at page 5 lines 19 through 20, Mr.
11 Esquenazi discusses two 800 number issues. The only 800 number problems
12 that Mr. Esquenazi raised pertained to the turning up or termination of 800
13 number service to his customers, which we took care of.

14 Q. WHAT IS YOUR RESPONSE TO MR. ESQUENAZI'S TESTIMONY
15 AT PAGE 5, LINES 12 AND 13 REGARDING BILLING IN ONE
16 MINUTE INCREMENTS?

17 A. As I discussed in my direct testimony, TSI received a 40 percent discount on
18 international calls and a 15 percent discount on domestic calls to compensate
19 for the limitations in our billing system. These discounts provided TSI with
20 a much greater margin than that provided for in the Agreement.

21 Q. DO YOU HAVE ANY RESPONSE TO MR. ESQUENAZI'S
22 TESTIMONY AT PAGE 5, LINE 14, REGARDING THE BILLING OF
23 TRAVEL CARDS THAT CUSTOMERS DID NOT HAVE?

1 **A.** I do not ever recall Mr. Esquenazi raising this issue with me. Since we had
2 to issue an authorization code to TSI .or TSI to then give to its customers, I
3 do not see how the problem he complains of could occur.

4 **Q.** **WHAT IS YOUR REPLY TO MR. ESQUENAZI'S STATEMENT AT**
5 **PAGE 5, LINES 15 TO 16, THAT TRANSCALL CONTINUED TO**
6 **BILL TSI FOR ACCOUNTS AFTER THEIR TERMINATION?**

7 **A.** There were a few isolated incidents where we may not have immediately
8 removed a customer from our switch, but there was no ongoing problem in
9 this area. As I said in my direct testimony, we usually removed a customer
10 from our switch on the same day that we received the fax request from TSI.

11 To the extent that there was a problem in removing customers from
12 our switch, it occurred only when TSI did not provide us with the telephone
13 numbers for the customer on the termination request. When that happened,
14 we would have to hunt through our records for the telephone numbers, and
15 there would have been some delay associated with this effort especially if the
16 customer had multiple numbers, travel cards, 800 number service, or multiple
17 locations. While this made our work more difficult, the fact of the matter is
18 the termination of customers generally occurred promptly upon TSI's request.

19 Mr. Esquenazi's claim that there was billing on accounts "long after
20 the accounts had been canceled by TSI," can relate only to a customer
21 terminating early in the billing cycle. Depending upon when a customer
22 requested termination, that customer may not receive a final bill until six or
23 seven weeks after service was actually terminated since the billing cycle was
24 a calendar month. So for example, if you terminated on the fifth day of the

1 month, you would not receive a final bill until the middle of the following
2 month, depending on how quickly TSI could send out the bills. There may
3 have been a few isolated complaints due to the issuance of final bills, but I
4 just don't remember this being an issue.

5 **Q. HOW DO YOU RESPOND TO MR. ESQUENAZI'S TESTIMONY AT**
6 **PAGE 5, LINES 17 AND 18, THAT TRANSCALL SUPPLIED BILLS**
7 **WHERE THE BILLING DETAIL DID NOT MATCH THE BILLING**
8 **ON THE SUMMARIES?**

9 **A.** I do not recall TSI ever raising this as an issue.

10 **Q. DO YOU HAVE ANY OTHER RESPONSES TO MR. ESQUENAZI'S**
11 **TESTIMONY?**

12 **A.** The last comment I would make is in response to his question at page 7, lines
13 3 through 6, that we never responded to the billing errors he raised with us.
14 As I've already testified, many of the billing issues that he raised affected
15 everyone in the industry, and so there was nothing that we could do to
16 remedy the problem except give credits when this was brought to our
17 attention. The remaining issues that he raised with us either led to computer
18 changes or they were routine day-to-day service ordering and provisioning
19 issues that we promptly dealt with.

20 **Q. DID THE COMPANY DO EVERYTHING IT COULD TO**
21 **SUCCESSFULLY IMPLEMENT THE TSI AGREEMENT?**

22 **A.** Absolutely, yes. TSI received credits at the rates it charged its customers
23 instead of its resellers rate. We gave the 40 percent and 15 percent discounts
24 for international and domestic usage. When we tracked down the problem

1 with direct billing, we not only put in the computer fix, but in doing so we
2 fully credited TSI for the lost revenues plus we took the customer out of our
3 system so we could not bill them ourselves even if the customer also was
4 ours. We went out of our way to make this work, and all he did was ask for
5 more credits and, ultimately, not pay what he owed us.

6 **Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?**

7 **A. Yes.**

1 Q (By Mr. Self) And d' d you have any
2 exhibits to this rebuttal?

3 A No, sir.

4 Q Do you have a brief summary of your
5 rebuttal?

6 A Yes, I do.

7 Q Can you please give that?

8 A My rebuttal testimony discusses how several
9 matters raised by Mr. Esquenazi are incorrect. First,
10 the direct billing issue was due to a computer
11 problem, which we fixed.

12 Second, there was never any improper or
13 unauthorized solicitation of TSI's customers.

14 Third, incomplete or unanswered calls were
15 not improper because of the industry-wide problem with
16 the lack of hardware answer supervision, and we
17 properly gave credits for these calls.

18 Fourth, there was no billing increment
19 problem because TSI received a 40% discount for
20 international calls and a 15% discount for domestic
21 calls.

22 Finally, regarding the other items he
23 identified, either these were never raised by TSI or
24 they were only day-to-day implementation problems that
25 we took care of in the regular course of business.

1 **MR. SELF:** The witness is available for
2 cross-examination.

3 **COMMISSIONER CLARK:** Mr. Parsons?

4 **MR. PARSONS:** No cross.

5 **COMMISSIONER CLARK:** Staff?

6 **MS. KEATING:** I've really just got one
7 question, and it relates actually to the Exhibits 18
8 and 19 that were presented by Transcall.

9 **MR. SELF:** She'll bring you a copy.

10 **CROSS EXAMINATION**

11 **BY MS. KEATING:**

12 **Q** Would you like a minute to glance at those
13 to familiarize yourself?

14 **A** Okay.

15 **Q** Based on your understanding of how Transcall
16 billed, do you know what increments those calls listed
17 on those exhibits were billed in?

18 **A** It appears that they were in second
19 increments, because they're not all one -- you know,
20 full minute calls.

21 **MS. KEATING:** Thank you, Ms. Daurio.

22 **COMMISSIONER CLARK:** Is that it? Redirect?

23 **MR. SELF:** Just one redirect about this.

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REDIRECT EXAMINATION1
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25**BY MR. SELF:**

Q Can you tell from looking at this, is this a bill to TSI, or is it a bill to one of TSI's customers?

A This is a bill to TSI.

MR. SELF: That's all I have.

COMMISSIONER CLARK: Thank you, Ms. Daurio. You're excused.

(Witness Daurio excused.)

- - - - -

COMMISSIONER CLARK: Is it Mr. Metcalf that's next, or are we going to go with Mr. Sickle?

MR. SELF: Can we have Mr. Sickle next, please?

COMMISSIONER CLARK: That's fine.

MR. SELF: We call Mr. Sickle to the stand, and when he gets here, Commissioner Clark, he has not been sworn.

DENNIS SICKLE

1
2 was called as a rebuttal witness on behalf of
3 Transcall America, Inc. and, having been duly sworn,
4 testified as follows:

DIRECT EXAMINATION

5
6 **BY MR. SELF:**

7 Q Mr. Sickle, can you please state your full
8 name and business address for the record?

9 A Dennis Sickle, 1515 South Federal Highway,
10 Boca Raton, Florida.

11 Q And whom are you employed with and in what
12 capacity?

13 A I'm the senior vice-president of human
14 resources for WorldCom.

15 Q And did you cause to be prepared and filed
16 three pages of rebuttal testimony?

17 A I did.

18 Q Do you have any changes or corrections to
19 that testimony?

20 A No, sir.

21 Q If I were to ask you those same questions
22 today, would your answers be the same?

23 A Yes, sir.

24 **MR. SELF:** Commissioner Clark, we'd move
25 that the rebuttal testimony of Dennis Sickle be moved

1 in the record as though read.

2 **COMMISSIONER CLARK:** It will be inserted in
3 the record as though read.

4 **MR. SELF:** And this witness had no exhibits.

5 **COMMISSIONER CLARK:** Okay.

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- 1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**
- 2 **A. My name is Dennis Sickle. My business address is 1515 South Federal**
3 **Highway, Boca Raton, Florida.**
- 4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**
- 5 **A. I am the Vice President of Human Resources for WorldCom, Inc.**
- 6 **Q. ON WHO'S BEHALF ARE YOU APPEARING IN THIS**
7 **PROCEEDING?**
- 8 **A. I am testifying on behalf of Transcall America, Inc. d/b/a ATC Long Distance**
9 **("Transcall").**
- 10 **Q. DID YOU FILE DIRECT TESTIMONY IN THIS PROCEEDING?**
- 11 **A. No, I did not.**
- 12 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**
- 13 **A. I am appearing for the purpose of responding to the direct testimony of Mr.**
14 **Joel Esquenazi of Telecommunications Services, Inc. (TSI) regarding his**
15 **allegation of billing in one minute increments instead of 6 or 30 second**
16 **increments.**
- 17 **Q. HOW IS IT THAT YOU ARE FAMILIAR WITH TSI AND MR.**
18 **ESQUENAZI?**
- 19 **A. As I testified in my deposition, I was the individual that originally brought**
20 **Mr. Esquenazi and TSI to the company. I was also Mary Jo Daurio's**
21 **supervisor. Since Mary Jo was the primary customer contact with regard to**
22 **TSI, from time to time she and I would discuss the TSI account. For the most**
23 **part, these conversations involved Mr. Esquenazi's requests for credits and**
24 **our efforts to get him to make payments on the account.**

1 **Q. WHAT DOES MR. ESQUENAZI CLAIM WITH RESPECT TO**
2 **IMPROPER BILLING INCREMENTS?**

3 **A. Beginning at page 4, line 20, Mr. Esquenazi identifies what he claims are the**
4 **different ways that Transcall breached its agreement with TSI. On page 5,**
5 **at lines 12 and 13, he states that Transcall improperly billed TSI in one**
6 **minute increments instead of 6 second or 30 second increments.**

7 **Q. WHAT IS YOUR RESPONSE TO THIS TESTIMONY BY MR.**
8 **ESQUENAZI?**

9 **A. His characterization is wrong. There were limitations in our ability to bill**
10 **TSI in 6 second increments. However, to compensate for the limitations in**
11 **our billing system, we agreed to provide TSI with a 40 percent discount on**
12 **international calls and a 15 percent discounts for domestic calls. These**
13 **discounts more than compensated TSI for any loss in margins due to our**
14 **system's inability to bill in 6 second increments.**

15 **Q. WHAT WAS THE BASIS FOR THE 40 PERCENT DISCOUNT FOR**
16 **INTERNATIONAL CALLS?**

17 **A. Early in our implementation of the TSI Agreement, I recall Mary Jo Daurio**
18 **coming to me and explaining how it would be virtually impossible to**
19 **separately rate each international call and bill it to TSI in 6 second increments**
20 **as provided in the Agreement. At some point, Mr. Esquenazi and I discussed**
21 **the problem and we agreed to implement a 40 percent discount in lieu of the**
22 **6 second billing increments to compensate for this change.**

23 **Q. WHAT ABOUT THE 15 PERCENT DISCOUNT FOR DOMESTIC**
24 **USAGE?**

1 A. The basis for the 15 percent discount for domestic usage was essentially the
2 same as that for international call. Again, due to the limitation in our billing
3 system, Mr. Esquenazi and I agreed that TSI would receive a 15 percent
4 discount off all domestic usage.

5 **Q. WHAT WAS THE NET EFFECT OF THESE TWO DISCOUNTS?**

6 A. Either of these discounts standing alone were a good deal for TSI. Together,
7 especially 40 percent discount for international calls, they created a much
8 larger margin for TSI than that provided for in the Agreement and provided
9 TSI with a strong incentive to grow its business.

10 **Q. DO YOU HAVE ANY OTHER REBUTTAL COMMENTS**
11 **REGARDING MR. ESQUENAZI'S TESTIMONY?**

12 A. I know that Mary Jo Daurio, Clara Reynardus, and everyone else that worked
13 on the TSI account went out of their way to meet TSI's business requirements
14 and to make the relationship a success. For Mr. Esquenazi to ignore the
15 adjustments, credits, discounts and other actions that we took to fulfill the
16 Agreement, and to assert that we failed in our obligations while he failed to
17 pay for over \$600 thousand in billings, is wrong.

18 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

19 A. Yes.

1 Q (By Mr. Self) Mr. Sickle do you have a
2 brief summary of your rebuttal testimony?

3 A I do.

4 Q Can you please give that to us?

5 A The purpose of my testimony is to discuss
6 the 40% discount for international calls and the 15%
7 discount for domestic calls.

8 Contrary to Mr. Esquenazi's testimony, these
9 discounts were agreed to after the contract was signed
10 and after we'd begun service to TSI and its customers.
11 These discounts were implemented because of certain
12 limitations in our billing system that prevented us
13 from billing TSI as stated in the contract.

14 Our company went out of the way to give TSI
15 every opportunity to be successful. For TSI to ignore
16 these adjustments, credits, discounts, and other
17 actions we took while running up an unpaid bill of
18 over \$600,000 is wrong.

19 MR. SELF: Thank you, Mr. Sickle. The
20 witness is available for cross.

21 COMMISSIONER CLARK: Mr. Parsons?

22 CROSS EXAMINATION

23 BY MR. PARSONS:

24 Q Mr. Sickle, is it your testimony that there
25 was an amendment to the contract between TSI and

1 Transcall?

2 A That's correct.

3 Q Is that amendment in writing?

4 A I believe so, yes.

5 Q Is that writing signed by TSI and by

6 Transcall?

7 A I don't recall. I don't have it in front of
8 me, so I'm really not certain.

9 Q What are you referring to?

10 A I'm referring to -- explain that question
11 please, Mr. Parsons.

12 Q What is this writing, this amendment, that
13 you're referring to?

14 A I seem to recall some written agreement
15 between Joel and Mr. Esquenazi and ATC regarding these
16 adjustments. I'm not very clear as to what that is,
17 though. I don't recall whether it's a signed or
18 unsigned document.

19 Q Do you agree with me that's an awfully
20 important piece of paper in this lawsuit?

21 A Yeah, I would agree that would be important,
22 sure.

23 Q Do you have it with you?

24 A No, I do not.

25 Q Well, do you know where it is?

1 A I do not.

2 Q Well, when is the last time you saw it?

3 A I would say probably four or five months
4 ago.

5 Q Where was that?

6 A It was shown to me after my deposition with
7 you.

8 Q Who showed you that?

9 A I don't recall where I saw it.

10 Q You say you don't have it, sir. Does
11 anybody in this room have it?

12 A I do not know. I don't know that.

13 Q Did one of your lawyers show it to you?

14 A I don't recall who showed it to me.

15 Q Well, didn't you think it was pretty
16 important at the time it was shown to you?

17 A Sure. I guess so, yes. I'm not sure.

18 Q Well, did you say, I would like a copy of
19 that; that's going to prove that I'm right and
20 somebody else is wrong?

21 A No.

22 Q Well, did you tell the person showing it to
23 you to preserve a copy of it?

24 A No.

25 Q Do you know where we could get a copy of it

1 this afternoon?

2 A I do not know.

3 MR. SELF: Mr. Parsons, if I may interrupt
4 for a moment.

5 MR. PARSONS: I'd like to finish my
6 cross-examination if I could.

7 Q (By Mr. Parsons) Mr. Sickle, what you're
8 telling the Commission is that there is a writing
9 reflecting this amendment you apparently made to the
10 contract? You've seen it, you don't have it, you
11 don't know where it is, but it's someplace?

12 A What I'm telling you is that this was a long
13 time ago. There was an amendment to the original
14 agreement contract between TSI and ATC.

15 I seem to recall seeing a written document
16 about this several months back. Having not been
17 involved in this case for many, many years, it seems
18 to me, as I recall best I could today, that there was
19 some type of a written document. That's all I recall.

20 Q I think you testified, sir, that you weren't
21 sure if it were signed or not. Let me ask you, do you
22 know whether ATC had signed it when you saw it?

23 A I do not.

24 Q Do you know whether TSI had signed it when
25 you saw it?

1 A I do not. I don't recall specifically even
2 the document. It seems to me there was something in
3 writing. Maybe it was instructions to Mary Jo. I saw
4 something in writing.

5 **COMMISSIONER GARCIA:** Mr. Parsons, since
6 it's late, you know, the crucifixion is pretty much
7 over, and maybe Mr. Self can add something to it so
8 that we can move on from there.

9 **MR. PARSONS:** Yes, sir. I'm sorry,
10 Mr. Self; if you'd like to say something.

11 **MR. SELF:** I would be willing to stipulate
12 that there is no written agreement. I believe
13 Mr. Sickle is mistaken about what he --

14 **WITNESS SICKLE:** I could be. It seems like
15 I saw something. It could have been my instructions,
16 too.

17 **MR. SELF:** If there's a written agreement,
18 it's news to us.

19 **WITNESS SICKLE:** Okay. I don't think I said
20 agreement. I think I said a document.

21 **MR. SELF:** If there's a written document,
22 it's news to us.

23 **WITNESS SICKLE:** Okay. I thought I saw
24 something in writing.

25 **Q (By Mr. Parsons)** The amendment, whether

1 it was oral or it was written, the essence was that
2 Mr. Esquenazi, instead of getting the advantage in
3 getting billed in 6-second increments, was going to
4 get a 40% discount on international traffic and 15% on
5 domestic. Was that it?

6 A Could you repeat that?

7 Q Sure. Were the terms of the amendment that
8 since Transcall couldn't bill TSI in 6-second
9 increments, instead of trying to do that, Transcall
10 would give TSI a 40% discount on international traffic
11 and 15% discount on domestic traffic?

12 A Correct.

13 Q And you, sir, are the person who made that
14 deal on behalf of Transcall?

15 A Yes.

16 Q Your original connection to TSI, Mr. Sickie,
17 is that you brought the client in the door, didn't
18 you?

19 A Yes, that's correct.

20 Q There was a personal connection, and your
21 wife worked where Mr. Esquenazi used to --

22 A Correct.

23 Q -- work? You need to say yes or no.

24 A Correct. Yes.

25 Q And then after you brought the client in the

1 door, you had very little to do with the account,
2 didn't you?

3 A Only when matters that needed to be referred
4 to me, that Mary Jo Daurio felt needed a decision from
5 me, that it would be referred to me then, correct.

6 Q Well, for example you didn't sign the
7 contract, did you?

8 A No.

9 Q You weren't involved in the implementation
10 of the billing system, were you?

11 A Pardon?

12 Q You weren't involved in the implementation
13 of the whole billing system, were you?

14 A No.

15 Q But your testimony is that even though you
16 didn't sign the contract, even though you weren't
17 involved in this implementation, you were the person
18 who had the authority to agree to the 40% discount and
19 the 15% discount?

20 A That would be correct.

21 MR. PARSONS: That's all I have, sir.

22 COMMISSIONER GARCIA: Let me ask you, if you
23 were the person that they went to to get this
24 agreement, how did you come to these numbers?

25 WITNESS SICKLE: These numbers came about in

1 a discussion with Mr. Esquenazi long time ago. I wish
2 I remembered the specifics of it. I don't recall us
3 sitting there with calculators or anything, but the
4 timing, the billing increments were to be
5 Mr. Esquenazi's basically profit in the calls.

6 When we were unable to do that type of
7 billing, that was the numbers that Mr. Esquenazi and I
8 agreed upon. I don't recall how we got there, though.
9 It seemed to me that they're generous at the very
10 least.

11 **COMMISSIONER GARCIA:** Well, let's assume
12 that they're generous. Clearly in your capacity, you
13 know, your job wasn't to be generous. Your job, as
14 anyone else's job, is to make a profit. So you
15 certainly weren't giving Mr. Esquenazi more profit
16 that he deserved, and when you came up with this
17 figure, there must have been somewhere that you drew
18 it from. I doubt that this is something you pulled
19 out of your pocket, well, I make 50 percent, I'll take
20 the -- instead of making 50¢, I'll make 10¢ and I'll
21 give Mr. Esquenazi 40¢.

22 I doubt it was that simple. I mean, there
23 must have been some rationale behind your decision. I
24 mean, we're talking about a lot of money, and
25 potentially a lot more money if Mr. Esquenazi did very

1 well.

2 **WITNESS SICKLE:** If there was a formula that
3 we used, Mr. Garcia, I don't know what -- I don't
4 recall what it was.

5 **COMMISSIONER CLARK:** Staff?

6 **CROSS EXAMINATION**

7 **BY MS. KEATING:**

8 **Q** Good afternoon, Mr. Sickle. I just have a
9 few questions.

10 Whose final decision was it to discontinue
11 service to TSI?

12 **A** I don't know. I was not involved at that
13 point.

14 **Q** So you don't have any idea of what that
15 decision was based upon?

16 **A** No, I don't. I was many years out of that
17 part of the business.

18 **Q** Well, Ms. Daurio has referred to a certain
19 policy or course of dealing between Transcall and TSI
20 whereby Transcall gave credits to TSI.

21 **A** Uh-huh.

22 **Q** Who approved that credit policy?

23 **A** At the time that I was involved --
24 understand I was not involved, I believe, past 1992
25 or -- '92. At that time the credit policy -- as far

1 as who had authority to approve the credits? Is that
2 your question?

3 Q Yes, that's one of the --

4 A It would have been approved by the president
5 of the company.

6 Q I'm sorry. I didn't quite catch that.

7 A The policy -- let me make sure I understand.

8 Are you referring to who has authority to basically
9 approve certain amounts of credits?

10 Q Right, and how those credits were given.

11 A Okay. As far as the amounts, there was a
12 credit policy that defined what authority each level
13 of person had. The second part I don't think I
14 understand.

15 Q Well, perhaps I can clarify it. Regarding
16 the amount of documentation that Transcall required
17 before it would give credits to TSI, who approved
18 that?

19 A That would have been a subjective decision
20 based on the person who had the authority. They would
21 have reviewed the documentation to see if the credit
22 made sense.

23 Q And who would have had that authority?

24 A It varied depending on how much the credit
25 was. Most credits I had the authority to approve.

1 There were very few cases that it would go above me.

2 COMMISSIONER GARCIA: Who approved the
3 40/15? That was just you?

4 WITNESS SICKLE: I'm sorry?

5 COMMISSIONER GARCIA: The 40% and 15%.

6 WITNESS SICKLE: Yes.

7 COMMISSIONER GARCIA: That was just you?

8 WITNESS SICKLE: Yes.

9 MS. KEATING: Thank you, Mr. Sickle. We
10 have no further questions.

11 COMMISSIONER CLARK: Commissioners?
12 Redirect?

13 MR. SELF: No.

14 COMMISSIONER CLARK: Thank you, Mr. Sickle.
15 You're excused.

16 (Witness Sickle excused.)

17 COMMISSIONER CLARK: Mr. Metcalf?

18

19 DOUGLAS METCALF

20 was called as a rebuttal witness on behalf of
21 Transcall America, Inc. and, having been duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. SELF:

25 Q Can you please state your name for the

1 record?

2 A Doug Metcalf.

3 Q And you're the same Doug Metcalf that caused
4 to be filed 13 pages of rebuttal testimony?

5 A Yes, sir.

6 Q Do you have any changes or corrections to
7 that testimony?

8 A Nothing.

9 Q If I were to ask you those same questions
10 today, would your answers be the same?

11 A Yes, sir.

12 MR. SELF: Commissioner Clark, we'd ask that
13 Mr. Metcalf's rebuttal testimony be moved in the
14 record as though read.

15 COMMISSIONER CLARK: His rebuttal testimony
16 will be inserted in the record as though read.

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I. INTRODUCTION

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Q. PLEASE STATE YOUR NAME, BUSINESS AFFILIATION, ADDRESS, AND ON WHOSE BEHALF YOU ARE TESTIFYING?

A. My name is Douglas S. Metcalf, and I am President of Communications Consultants, Inc., 400 N. New York Avenue, Suite 213, Winter Park, Florida 32790-1148.

Q. ARE YOU THE SAME DOUGLAS S. METCALF WHO EARLIER FILED DIRECT TESTIMONY ON BEHALF OF TRANSCALL IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I wish to reply to some of the direct testimony of Mr. Joel Esquenazi of Telecommunications Services, Inc. (TSI), Mr. William Shulman of Lopez Levi Associates (LLA), and Ms. Kathy Welch, Staff Auditor for the Florida Public Service Commission. I will also comment on the Final Report of LLA, which is different than the draft report which was circulated earlier, and which drew some comments in my Direct Testimony.

II. MS. WELCH'S TESTIMONY

Q. WILL YOU PLEASE SUMMARIZE YOUR OPINION OF STAFF WITNESS WELCH'S TESTIMONY AND REPORT?

A. Yes. Overall, I respect the depth of her investigation and the quality of her analysis on all of the issues with which she dealt. Ms. Welch reviewed the available documentation and reached independent conclusions based on her own analysis and on her educated interpretations of the central issues before

1 the Commission in this case. I agree with her conclusions on all of her
2 disclosures except Disclosures 4, 7, and 9. I will comment on those three
3 disclosures in that order.

4 **Q. WHAT ARE YOUR COMMENTS REGARDING DISCLOSURE 4?**

5 **A.** The need to account for certain excess credits that Ms. Welch chose to
6 exclude are fully addressed in my Direct Testimony beginning at Page 9. I
7 would note, however, that Schedule 5 in the draft Lopez Levi Report, upon
8 which Ms. Welch's based her adjustments, was not included in LLA's Direct
9 Testimony of Mr. Shulman. Therefore, her offsets of certain amounts, and
10 my reinstatements of those same amounts, are no longer relevant.

11 **Q. WHAT ARE YOUR COMMENTS REGARDING DISCLOSURE 7?**

12 **A.** TSI's agreement to the reseller rates beginning in March 1992 and my
13 disagreement with Ms. Welch's recalculation of the March to May 1992 bills
14 are fully addressed in my Direct Testimony at Page 8.

15 **Q. WHAT ARE YOUR COMMENTS REGARDING DISCLOSURE 9?**

16 **A.** In her Direct Testimony, Ms. Welch appears to modify somewhat the
17 assertions she made in her original Audit Report regarding Transcall billing
18 TSI's customers for TP1 to TP6. Her change in tone more closely reflects
19 Transcall's view of this issue which is as follows:

20 The Commission, in Order No. PSC-93-1237-AS-TI, concluded that
21 Transcall's December 1990 tariff change was ambiguous. As a result,
22 Transcall voluntarily agreed to refund to its own tariff customers the
23 difference between TP1 and TP6 so as to bill only for conversation time (TP6
24 to TP7).

1 TSI clearly stated in its tariff the it billed its customer calls on a TP1
2 to TP7 basis. Because the relationship between Transcall and TSI called for
3 rates based on a contract rather than a tariff, Transcall did not have the
4 authority or the obligation to unilaterally change the tariff of TSI, nor did the
5 Commission Order require it to do so.

6 For the particular act of billing, Transcall was only a functionary of
7 TSI itself, with no latitude to make changes to TSI's tariff or billing
8 procedures, unless specifically directed by TSI. I would again remind the
9 Commission that TSI's tariff to this day charges TP1 to TP7 for the use of
10 access facilities, and Transcall was appropriately complying with its contract
11 when it billed TSI customers as directed by TSI.

12 **Q. DO YOU HAVE ANY OTHER REBUTTAL COMMENTS**
13 **REGARDING MS. WELCH'S TESTIMONY?**

14 **A. No.**

15 **III. MR. SHULMAN'S TESTIMONY**

16 **Q. MR. SHULMAN AND HIS FIRM, LOPEZ LEVI & ASSOCIATES**
17 **(LLA), FILED A REPORT AND DIRECT TESTIMONY. HAVING**
18 **REVIEWED THAT REPORT AND TESTIMONY, DO YOU HAVE AN**
19 **INITIAL IMPRESSION OF THEIR ANALYSIS?**

20 **A. Yes. LLA was engaged by TSI and directed by Mr. Esquenazi to sum up**
21 **those calls that Mr. Esquenazi defined as improperly billed calls and to look**
22 **for computational or mathematical errors. Mr. Esquenazi's list of alleged**
23 **improperly billed calls included those he defined as stuck clock, duplicate,**
24 **overlapping, and incomplete calls.**

1 Based upon the information and input LLA was provided by Mr.
2 Esquenazi, they were able to find minor errors in Transcall's invoices. LLA
3 did not, therefore, conduct any type of independent analysis or review of
4 TSI's alleged billing irregularities.

5 As I stated in my Direct Testimony at Page 5 regarding billing errors,
6 the technology of billing systems in the late-80's did not permit the accuracy
7 that we routinely expect today. All answer supervision and call tracking is
8 now done by hardware or extremely sophisticated software. Advanced
9 reseller billing system's are now widely used, and are extremely accurate.
10 Business relationships between carriers and resellers are now routine, and
11 procedures to assure timeliness and accuracy of billing, and customer
12 initiations and terminations are well tested, for the most part automated, and
13 commonly used.

14 Commission witness Welch discusses and refutes most of the findings
15 of LLA and, except for the few issues already discussed in my Direct
16 Testimony or the rebuttal discussion above, I have reached similar
17 conclusions.

18 **Q. WHAT IS YOUR OPINION OF THE LLA REPORT?**

19 **A. LLA produced the document requested by Mr. Esquenazi. The report does**
20 **not appear to include an independent analysis of the veracity of the claims**
21 **made by TSI, particularly the overlapping, duplicate, busy and unanswered,**
22 **and hung call issues. It seems that LLA accepted Mr. Esquenazi's**
23 **instructions as to how to classify each type of call, and simply added up or**
24 **extrapolated 30 months results from a very limited sample of selected**

1 records. Their analysis does not contain a recognition of industry standards
2 of that period, or of TSI's own tariff language which stated that billing errors
3 could occur in up to 2% of all calls

4 The LLA report also appears to rely on the assumption that all calls
5 that Mr. Esquenazi says are misbilled calls were, in fact, misbilled calls.
6 There appears to be no way to determine whether the customer ever requested
7 the credit, or that the customer ever received the benefit of all of the credits
8 issued by Transcall during the relationship.

9 Further, a substantial portion of the documentation that I have seen,
10 and for which TSI was given credit, were calls about which Mr. Esquenazi
11 complained, and for which TSI alone sought credit. There is little solid
12 evidence that TSI's customers complained about these alleged misbillings, or
13 that TSI's customers were ever given credits for these calls. In fact, the only
14 evidence we have of the actual problems experienced by TSI's customers, the
15 three boxes that TSI produced to Transcall in February 1992, indicate that
16 customers requested at most \$51,486.96 in credits over a 30+ month period,
17 not the \$170,000 actually given by Transcall, and certainly not the
18 \$314,817.92 that LLA has calculated from Mr. Esquenazi's wish list.

19 **Q. WHAT ABOUT MR. SHULMAN'S ASSERTION THAT TRANSCALL**
20 **FAILED TO CREDIT PAYMENTS OF \$6,727.62 (Pg 4, Ln 6)?**

21 **A. Mr. Shulman's assertion is inaccurate. I could find no documentation to**
22 **support his claim. In my analysis, I found cancelled checks or electronic**
23 **funds transfers for a total of \$857,999.83. Ms. Welch's analysis verified that**
24 **same amount in her Exhibit 1.**

1 **Q. WHAT ABOUT MR. SHULMAN'S ASSERTION REGARDING THE**
2 **9-SECOND ADDITION (Pg 4, Ln 7)?**

3 **A. Ms. Welch determined that the adjustment for the 9-second error for the total**
4 **period of the TSI/Transcall relationship amounts to \$37,714.59. LLA**
5 **calculates the overcharge at \$29,118.28. Transcall accepts Ms. Welch's**
6 **higher number as an adjustment to the amount owed by TSI.**

7 **Q. WHAT ABOUT MR. SHULMAN'S ASSERTION REGARDING THE**
8 **INCREMENTS USED FOR BILLING (Pg 4, Ln 8)?**

9 **A. The Agreement between Transcall and TSI provides for wholesale billing in**
10 **six second rather than one minute increments. Almost immediately,**
11 **Transcall determined that it could not separately rate each call and bill in six**
12 **second increments. To compensate TSI for that situation, the 40% discount**
13 **on international calls and 15% discount on domestic calls was alternatively**
14 **instituted.**

15 **Mr. Shulman asserts that the 26 second per call difference amounts**
16 **to overcharges totaling \$91,578.42. Ms. Welch has calculated that TSI**
17 **received a total benefit of \$637,731.27 to offset the increment issue. I believe**
18 **the 15% domestic and 40% international discounts more than adequately**
19 **compensated TSI for the inability to bill six second increments. If TSI really**
20 **wants to accept Mr. Shulman's position, then TSI owes Transcall an**
21 **additional \$546,152.85.**

22 **Mr. Esquenazi's claim, alluded to in Ms. Welch's Report at page 13,**
23 **that the 40% and 15% discounts were part of the original agreement but not**
24 **included in the contract, is not credible, is contrary to the express terms of the**

1 Agreement, and it is contrary to the Rebuttal Testimony of Mr. Sickle
2 beginning at Page 2, and the Direct Testimony of Ms. Daurio beginning at
3 Page 14.

4 **Q. WHAT ABOUT MR. SHULMAN'S ASSERTION REGARDING THE**
5 **\$314,817.92 FOR ALLEGED STUCK CALLS, BUSY SIGNALS,**
6 **DUPLICATE CALLS, ETC. (Pg 4, Ln 10)?**

7 **A. I disagree completely with LLA's calculation. LLA's methodology was**
8 **defective because they misinterpreted the data they reviewed, since they**
9 **simply accepted Mr. Esquenazi's erroneous instructions that the calls he**
10 **identified were misbilled. They magnify their mistake by extrapolating this**
11 **faulty premise to the full 30+ months of the relationship, which severely**
12 **overstates the value of this claim.**

13 Ms. Welch and the Commission staff reviewed actual billing tapes,
14 and arrived at completely different conclusions. She independently reviewed
15 the duplicate and stuck clock claims, and found that the total possible error
16 for all these categories amounted to \$26,409.49, and that the errors, which
17 again are attributable to the technology of billing systems at that time, was
18 within the 2% error rate specified in both TSI's and Transcall's tariffs.

19 I have extensively reviewed the Staff's output report from the call
20 detail record (CDR) tapes on this specific issue. Using these documents, I
21 was able to compare the time points for the calls on those four days, and I
22 have been unable to find any instances where overlapping or duplicate calls
23 were in fact billed.

1 Q. WHAT ABOUT MR. SHULMAN'S ASSERTION THAT TRANSCALL
2 OWES TSI \$26,149.00 [sic] FOR THE TP1 TO TP6 TIMING
3 PARAMETER (Pg 4, Ln 13)?

4 A. I believe, and Transcall states, that it erroneously sent the \$26,170.49 check
5 to TSI. The Settlement Agreement contained in that Order specifically states:

6 4. The term "customers" as used in this Settlement
7 Agreement shall mean those persons *who were billed for*
8 *services from ATC subject to ... the Applicable Tariffs.*
9 (emphasis added)

10 TSI's customers were receiving service from TSI according to TSI's tariff,
11 and TSI was receiving service from Transcall pursuant to the Agreement, and
12 not ATC's tariff. Therefore, the Agreement between TSI and Transcall
13 controlled the rates, and TSI's tariff governed the time point parameters
14 which were to be used to bill TSI and its customers. I disagree with Ms.
15 Welch's \$83,350.43 adjustment on this issue in her Disclosure 9.

16 Q. DO YOU HAVE OTHER COMMENTS ON THE TESTIMONY OF
17 MR. SHULMAN OR ON THE LLA REPORT?

18 A. No, I do not.

19 IV. MR. ESQUENAZI'S TESTIMONY

20 Q. MR. ESQUENAZI STATES THAT THE GREENBAR DETAIL WAS
21 SUPPOSED TO BE CONSISTENT WITH THE CUSTOMER
22 INVOICES? (PAGE 4, LINE 17) DO YOU AGREE?

23 A. No, Mr. Esquenazi is wrong. In support of his claim, he attaches exhibits as
24 part of JE-2 which purport to show a discrepancy in the billed minutes

1 between the Resellers' Traffic Summary for TSI, and the greenbar detail used
2 to prepare the customer's invoice.

3 Of course these are different! The greenbar detail shows the total
4 retail minutes used by TSI's customers, and the resellers' summary reflects
5 the same usage with different rounding.

6 Alternatively, after rereading Mr. Esquenazi's testimony several
7 times, it may be possible that he does not know how to read the reports. The
8 minutes and calls in the category "international calls" do not agree between
9 the two reports because there are some calls within the North American
10 Numbering Plan Area (NPA), such as to the Caribbean, that are properly
11 billed as international calls, but which show up on the greenbar detail (and
12 on the customers' bills) under the appropriate NPA, such as 809.
13 Consequently, as Ms. Welch demonstrated in her audit, if you add together
14 the "011" calls and the international NPA calls on the detail, it properly adds
15 up to the international calls on the reseller's report. I should add that in
16 performing this calculation, you cannot simply add all of the 809 NPA calls
17 to the "011" calls, because some of the 809 calls are properly domestic, and
18 were in fact billed as such.

19 **Q. MR. ESQUENAZI STATES THAT THE AGREEMENT BETWEEN**
20 **TSI AND ATC WAS NOT SUCCESSFUL, AND THAT ATC**
21 **BREACHED THE AGREEMENT (PAGE 4, LINE 19). DO YOU**
22 **AGREE?**

1 A. No. This Agreement should have been extremely lucrative and very
2 successful for Mr. Esquenazi. Over the 30+ months of the relationship, Mr
3 Esquenazi billed his customers in excess of \$2,575,000.

4 He should have collected about \$2,525,000 (the \$2,575,000 less
5 \$51,486.96 in validated credits) from his customers. He paid Transcall only
6 \$857,999.83, and was given additional credits of \$118,266.29 (\$169,753.25
7 total credits minus \$51,486.96 previously noted) at retail rates. The
8 remaining \$1,545,000 he stood to collect would have made this a very
9 profitable business, even if he had paid Transcall the \$659,992.88 that he still
10 owed Transcall in May of 1992. In other words, he would have made over
11 \$985,000 in profit during this relationship. Those numbers clearly indicate
12 that he had a very beneficial business arrangement with Transcall.

13 Further, Transcall did not breach the agreement. In fact,
14 modifications almost from the very beginning gave TSI an even better
15 arrangement than the Agreement originally contemplated.

16 **Q. MR. ESQUENAZI SAYS SOME TSI CUSTOMERS RECEIVED A DE**
17 **FACTO CREDIT BECAUSE THEY NEVER PAID THEIR BILLS.**
18 **(PAGE 6, LN 20) DO YOU AGREE?**

19 A. No. Mr. Esquenazi's assertion that some customers didn't pay their bills may
20 be true. Had he provided proof to Transcall that the failure to pay was the
21 result of a Transcall billing error, experience indicates that he would have
22 received immediate credit. Otherwise, the invoice was valid and the payment
23 to TSI by his customers was due. TSI appears to be blaming an inadequate
24 collection process on Transcall. Bad debt is a part of any business. But

1 whatever his actual experience was, he has not offered any evidence to
2 support his claim of de facto credits, nor has he offered any evidence
3 supporting his claim that any of that bad debt was due to billing problems by
4 Transcall.

5 **Q. DO YOU HAVE ANY SUMMARY THOUGHTS ON TSI'S**
6 **COMMITMENT TO ITS BUSINESS RELATIONSHIP WITH**
7 **TRANSCALL?**

8 **A. I do not believe that TSI was candid and fair in its business dealings with**
9 **Transcall. While carrying a \$700,000 delinquency to Transcall, and while**
10 **stringing Transcall along regarding its efforts to work out an acceptable**
11 **payment of the outstanding bills, TSI was duplicitously working to move its**
12 **customer base off the Transcall network and onto the National**
13 **Telecommunications Corporation network. It appears relatively clear from**
14 **the decrease in traffic in the weeks immediately before Transcall finally**
15 **terminated TSI, that TSI was planning to leave. My theory was recently**
16 **substantiated by Mr. Esquenazi's deposition statements under oath in other**
17 **litigation, wherein he admitted that he had signed a contract to move his**
18 **business to National in December, 1991.**

19 **Together, these documents, billing records, and Mr. Esquenazi's own**
20 **words evidence an intent to avoid TSI's outstanding debts to Transcall by**
21 **continuing to communicate with Transcall regarding a resolution to the**
22 **outstanding balances and the terms of a new contract, even as TSI began to**
23 **move its traffic to his new carrier. Further, the fact that TSI owed Transcall**
24 **over \$700,000 through early 1992, and even submitted a check with the**

1 notation that it was for "full payment through Feb. 1992," leads me to
2 conclude that TSI was hoping for the ultimate unilateral credit, while moving
3 its business to a Transcall competitor.

4 **Q. DO YOU HAVE ANY CONCLUDING REMARKS ABOUT MR.**
5 **ESQUENAZI'S DIRECT TESTIMONY?**

6 **A. Yes. It appears that the general point of his testimony is to make accusations,**
7 **loosely document a couple of them, and then to refer to the LLA Report to**
8 **validate the worth of his wish list of alleged problems.**

9 **Indeed, Mr. Esquenazi makes four unsupported accusations at page**
10 **5 of his Direct Testimony. These four matters are:**

- 11 - 5. **Improper charges on 800 numbers**
- 12 - 7. **Billing for travel cards TSI customers did not have**
- 13 - 8. **Billing TSI for accounts long after termination**
- 14 - 10. **Billing for 800 use where the customer had no 800 service**

15 **Ms. Daurio has responded to each of these issues in her Rebuttal Testimony.**
16 **The lack of support, discussion, or documentation on these matters in the**
17 **testimony of LLA or Mr. Esquenazi leads me to conclude that they cannot be**
18 **substantiated.**

19 **Q. BASED UPON YOUR REVIEW OF THE DIRECT TESTIMONY,**
20 **WHAT IS YOUR MODIFIED RECOMMENDATION TO THE**
21 **COMMISSION?**

22 **A. The Commission should in large part accept the Staff Audit Report that**
23 **Transcall billed TSI and TSI's customers correctly, or at least well within the**
24 **2% error rate specified in the tariffs and Agreement of the parties. Further,**

1 the Commission should find that the credits issued by Transcall to TSI
2 exceeded the total amount of TSI's documented credits, plus any other billing
3 errors that have been identified. On the basis of this record, the Commission
4 should direct that a total of \$882,038.73 referred to in my Direct, plus further
5 accrued interest, is due from TSI to Transcall. With these actions, contrary
6 to Mr. Esquenazi's assertion at Page 5, Lines 24 and 25, I believe that the
7 Commission has fully resolved all of the claims raised by TSI. In returning
8 this case to the court for final disposition, the Commission should advise the
9 court that, based upon this Commission's exclusive jurisdiction, all of the
10 claims by TSI have been resolved.

11 **Q. DOES THE ABOVE REPRESENT YOUR FINAL CONCLUSIONS ON**
12 **THE PENDING ISSUES IN THIS PROCEEDING?**

13 **A.** No. We are still waiting for discovery and document production on several
14 pending issues. When that information is finally produced, I may request the
15 opportunity to comment further. Finally, each month that TSI has failed to
16 pay its balance due to Transcall adds another month of interest to the account,
17 currently about \$4,000 more per month.

18 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

19 **A.** Yes.

1 Q (By Mr. Self) And I believe, Mr. Metcalf,
2 you had no exhibits, correct?

3 A Yes, sir.

4 Q Do you have a very brief summary?

5 A Very brief. First of all, Staff Auditor
6 Welch's report is on point, though I disagree with her
7 on issues that did amount to \$158,000 before she
8 pulled out one portion of hers.

9 I compliment her on the depth of her
10 research and her analysis, and as noted in both her
11 Exhibit 1 and my Exhibit 1, we agree on most of the
12 invoices, on all of the credits, and on all of the
13 payments.

14 In looking at Mr. Shulman's final report, it
15 is different than the draft, but still had problems,
16 in my mind. It's clear that the basis for LLA's
17 report are unfounded assertions regarding stuck clock
18 billing and misinterpretations of overlapping calls.
19 Those two items, the stuck clock billing and the
20 overlapping calls, amount to 91% of the discrepancies
21 that they found.

22 I believe that PBX customers could cause
23 several of those, and while I have admitted that there
24 was a certain amount of duplicate billing, it was very
25 limited.

1 Regarding the 6-second billing, I have
2 accepted and utilized the 40¢ and 15¢ as surrogates
3 for the 6-second billing, but for most of the
4 afternoon, Mr. Parsons has been stating that domestic
5 was billed in 1-minute increments, and that is
6 incorrect.

7 Only one of the four domestic plans offered
8 by Mr. Esquenazi was a 1-minute billing issue, and
9 that one was billed in 1-minutes. The other three,
10 based on the documents that I've seen even today and
11 certainly as it relates to the Exhibit 1 which they
12 put in and purported into Mr. Esquenazi's testimony
13 and purported to represent as an example, does not
14 represent that.

15 If the 15¢ and the 40¢ were not surrogates
16 for the \$91,000 in 6-second billing, I have calculated
17 the net adjustment as \$546,152.85, which would be the
18 offset to that.

19 Further, regarding Mr. Esquenazi's
20 testimony, I would only mention that there were
21 several assertions that he made in his testimony that
22 were totally unsupported in any -- by any
23 documentation supplied in the case or in any rebuttal.
24 Those related to the improper charges on the 800
25 calls, assertions regarding travel cards that were not

1 issued but were used, billing for accounts long after
2 service was terminated -- Ms. Welch did a very good
3 analysis of that and came up with that as being less
4 than \$200 -- and 800 use where there was no service.
5 I never saw that, and it was never documented in
6 anything I looked at. That summarizes my --.

7 **MR. SELF:** Thank you. The witness is
8 available for cross-examination.

9 **COMMISSIONER CLARK:** Mr. Parsons?

10 **MR. PARSONS:** One moment, please.

11 **COMMISSIONER CLARK:** Mr. Self, while he's
12 conferring, have you looked at Exhibit 17?

13 **MR. SELF:** We may have a problem. (Pause)

14 **MR. PARSONS:** No cross.

15 **COMMISSIONER CLARK:** Staff?

16 **CROSS EXAMINATION**

17 **BY MS. KEATING:**

18 **Q** Just a couple of questions. There was
19 discussion earlier with Mr. Esquenazi and also with
20 Mr. Shulman regarding when a customer of TSI asked for
21 a credit, that TSI gave the credit and then asked for
22 the credit from Transcall.

23 In conducting your review, were you able to
24 determine if TSI asked for the identical credit that
25 it had in turn given to its customer?

1 A No, ma'am. I do know that when we added up
2 the boxes that totaled up to 51,000, those represented
3 documentation that we saw of customer bills that had
4 been highlighted. Whether highlighted by the customer
5 or by someone on Mr. Esquenazi's Staff, they actually
6 documented \$51,000.

7 Beyond that, everything we got from
8 Mr. Esquenazi was almost verbal traffic and was agreed
9 to by Ms. Daurio and, in a couple of cases later on
10 when it exceeded \$20,000, by Mr. Sickle.

11 I do not know how those credits that were
12 authorized and granted by Transcall were passed
13 through to any of Mr. Esquenazi's customers or whether
14 they were.

15 Q Okay. So just to be clear, you didn't find
16 any documentation to --

17 A No, ma'am.

18 Q -- verify that the same credits which were
19 given were also the ones requested?

20 A No, ma'am.

21 Q Okay. Earlier there was also a lengthy
22 discussion about calls within a 1-minute time frame
23 and whether those calls could be sequential and
24 whether they were, in fact, duplicate calls. And I
25 believe that you yourself referenced calls from a PBX

1 as an example?

2 A Yes, ma'am.

3 Q Are you familiar with the use of pagers?

4 A With the use of pagers?

5 Q Yes.

6 A Yes, ma'am.

7 Q Just as an example, would it be possible to
8 dial a pager number several times within a 1-minute
9 increment and reflect calls to the same number within
10 that 1-minute time frame?

11 A Yes, ma'am.

12 Q And those would be sequential calls and not
13 duplicate calls?

14 A Would be what, ma'am?

15 Q Sequential calls rather than duplicate.

16 A They would be sequential. If you were to
17 look at the call data records that you and your Staff,
18 Ms. Welch, called up, you noted the time points on
19 there. Any time point that was after another time
20 point would obviously be sequential. Any time points
21 that overlapped or were for exactly the same would be
22 duplicate.

23 My comment about PBXs is that you have one
24 trunk going out -- one number going out, and you could
25 have half a dozen extensions making calls at the same

1 time within a corporation.

2 MS. KEATING: Thank you, Mr. Metcalf, that's
3 all Staff has.

4 COMMISSIONER CLARK: Commissioners?

5 COMMISSIONER JACOBS: I keep coming back to
6 this point. It seems like what a fundamental -- I
7 guess it depends on which side you look at it. It may
8 be not be on absence, but in my mind it is, where
9 somebody tabulated the calls that were either
10 duplicative or overlapping and determined what credits
11 were due and whether or not to credit -- all those
12 needed credits had been rendered. Are you familiar
13 that that has absolutely been done?

14 Because I think what I'm hearing is that
15 there's a war as to what credits were due and,
16 therefore, what credits were paid. Are you familiar
17 with anyone having done that work?

18 WITNESS SICKLE: Sir, Ms. --

19 COMMISSIONER JACOBS: Outside of Staff. I'm
20 sorry. Staff did do that.

21 WITNESS SICKLE: Okay. The total credits
22 that were granted by Transcall to TSI over the 30
23 months amounted to almost 170, 169 and change;
24 \$170,000. The documentation that was provided from
25 them was only 51.

1 The rest of it was granted based on
2 Mr. Esquenazi's assertions that he had documentation
3 for it. We do not know what happened to the 170 when
4 it was subtracted from the Transcall bill to TSI.

5 **COMMISSIONER JACOBS:** Okay. That's what I
6 wanted. Thank you.

7 **WITNESS SICKLE:** We hope he passed it to his
8 customers.

9 **COMMISSIONER CLARK:** Redirect?

10 **MR. SELF:** No redirect.

11 **COMMISSIONER CLARK:** No exhibits. What
12 about Exhibit 17?

13 You're excused Mr. Metcalf. Thank you very
14 much.

15 (Witness Metcalf excused.)

16 - - - - -

17 **MR. SELF:** We have no objection to
18 Exhibit 17. The only thing I would ask with respect
19 to it is if -- it's color coded, and if somebody -- I
20 don't care if it's Mr. Parsons or one of his
21 witnesses -- can just identify what each color tab
22 goes to.

23 **MR. PARSONS:** I believe there's an legend on
24 a sheet of paper on the very top.

25 **COMMISSIONER CLARK:** So we will admit as

1 Exhibit 17, the work papers with the legend attached
2 to it, and that will be given to the court reporter.

3 (Exhibit 17 received in evidence.)

4 COMMISSIONER CLARK: Ms. Keating, does that
5 conclude the witnesses?

6 MS. KEATING: I believe it does.

7 MR. SELF: Commissioner Clark, one point of
8 clarification that I'd like to volunteer.
9 Mr. Sickle's testimony about a document that he saw --
10 and I can appreciate Mr. Parsons being concerned if,
11 in fact, it was what Mr. Sickle said may have been a
12 written amendment -- I can certainly appreciate
13 Mr. Parsons' concern about that.

14 What I would like the opportunity to do is
15 to submit a late-filed exhibit that would be the
16 document that he looked at. I think I know what
17 document it is. It's not a written amendment. It's
18 not anything that's signed by anybody. I believe it's
19 one of Ms. Daurio's work papers, and I would be happy
20 to do that, and he could then object to it or let it
21 go, whatever his choice --

22 COMMISSIONER GARCIA: Well, what -- but,
23 Mr. Self, what does that add to anything here? I
24 mean, whatever documents Mr. Sickle was looking at, I
25 think it's understood you've already stipulated to the

1 fact that the document doesn't exist. So, I mean,
2 what is added by doing it?

3 MR. SELF: I was just offering it in case --

4 COMMISSIONER GARCIA: Maybe Mr. Parsons --

5 MR. SELF: -- there was a question --

6 COMMISSIONER GARCIA: Maybe Mr. Parsons
7 wants it --

8 MR. SELF: -- that the record was
9 incomplete.

10 COMMISSIONER GARCIA: I'm sorry,
11 Mr. Parsons. I just --

12 MR. PARSONS: I agree. The stipulation
13 suffices for me, so we'll decline the offer.

14 MR. SELF: That's fine, then.

15 MR. PARSONS: I appreciate it, though.

16 COMMISSIONER CLARK: Is there anything else
17 we have to take up at this time?

18 MS. KEATING: I just wanted to point out
19 that briefs are due September 17th.

20 COMMISSIONER CLARK: All right. With that,
21 this hearing is adjourned. Thank you ver; much for
22 moving it along.

23 MR. SELF: Thank you.

24 MR. PARSONS: Thank you, Commissioners.

25 (Thereupon, the hearing concluded

1 at 4:30 p.m.)

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1 STATE OF FLORIDA)

2 COUNTY OF LEON)

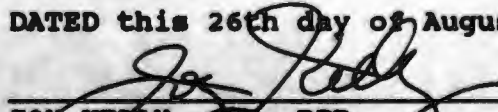
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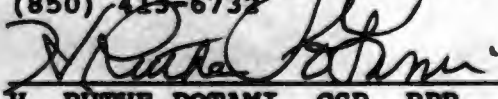
3 We, JOY KELLY, CSR, RPR, Chief, Bureau of
4 Reporting, and H. RUTHE POTAMI, CSR, RPR, Official
5 Commission Reporters,

6 DO HEREBY CERTIFY that the Hearing in Docket
7 No. 951232-TI was heard by the Florida Public Service
8 Commission at the time and place herein stated; it is
9 further

10 CERTIFIED that we stenographically reported
11 the said proceedings; that the same has been
12 transcribed under our direct supervision; and that
13 this transcript, consisting of 282 pages, constitutes
14 a true transcription of our notes of said proceedings
15 and the insertion of the prescribed prefiled testimony
16 of the witness.

17 DATED this 26th day of August, 1998.

18 
19 _____
20 JOY KELLY, CSR, RPR
21 Chief, Bureau of Reporting
22 (850) 413-6732

23 
24 _____
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