

MEMORANDUM

July 14, 1998

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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (B. KEATING) *b/k*

RE: DOCKET NO. 951232-TC - DADE COUNTY CIRCUIT COURT REFERRAL OF CERTAIN ISSUES IN CASE NO. 92-11654 (TRANSCALL AMERICA, INC. D/B/A ATC LONG DISTANCE VS. TELECOMMUNICATIONS SERVICES, INC., AND TELECOMMUNICATIONS SERVICES, INC. VS. TRANSCALL AMERICA, INC. D/B/A ATC LONG DISTANCE) THAT ARE WITHIN THE COMMISSION'S JURISDICTION.

98-0955-PCD-TL

Attached is an ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION FOR ENLARGEMENT OF TIME AND DENYING REQUEST FOR SANCTIONS, to be issued in the above referenced docket. (Number of pages in order - 5)

MUST GO TODAY

KMP/anr
Attachment
cc: Division of Communications
I: 951232oe.bk

see
4/0

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Dade County Circuit Court referral of certain issues in Case No. 92-11654 (Transcall America, Inc. d/b/a ATC Long Distance vs. Telecommunications Services, Inc., and Telecommunications Services, Inc. vs. Transcall America, Inc. d/b/a ATC Long Distance) that are within the Commission's jurisdiction.

DOCKET NO. 951232-TI
ORDER NO. PSC-98-0955-PCO-TI
ISSUED: July 15, 1998

ORDER GRANTING, IN PART, AND DENYING, IN PART,
MOTION FOR ENLARGEMENT OF TIME
AND DENYING REQUEST FOR SANCTIONS

Transcall America, Inc. d/b/a ATC Long Distance (ATC) filed this complaint with the Dade County Circuit Court on May 21, 1992, against Telecommunications Services, Inc. (TSI) for alleged failure to pay for telecommunications services rendered. On July 5, 1994, TSI filed a counterclaim alleging breach of contract and improper billing of services. On February 24, 1995, the Court issued its Order Staying Action and Referring to the Florida Public Service Commission. Therein, the Court referred to this Commission for review all claims within the Commission's exclusive jurisdiction under Chapter 364. On January 29, 1997, TSI filed a Motion for Reconsideration of Order Staying Action and Referring to the Florida Public Service Commission and Motion for Leave to Amend Counterclaim with the Dade County Circuit Court. Transcall served its response to the motion on February 20, 1997, and the Commission served a response on April 18, 1997. On May 27, 1997, the Circuit Court issued its Order Denying Motion for Reconsideration and to Amend. This matter has, therefore, been set for hearing August 19 and 20, 1998.

On January 6, 1998, Transcall served its first set of interrogatories on TSI. On March 20, 1998, Transcall filed a Motion to Compel Answers to Interrogatories. On March 31, 1998, TSI filed an Agreed Motion for Enlargement of Time to Serve Opposition to Transcall's Motion to Compel Answers to Interrogatories. TSI asserted that it had reached an agreement with counsel for Transcall that the response to the Motion to Compel may be served by April 6, 1998. By Order No. PSC-98-0487-PCO-TI, TSI's Motion for Enlargement of Time was granted. On April 7, 1998, TSI filed its Opposition to Transcall's Motion to Compel.

DOCUMENT NUMBER DATE

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FILED IN ORIGINAL REPORTING

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By Order No. PSC-98-0703-PCO-TI, issued May 20, 1998, I granted, in part, and denied, in part, Transcall's Motion to Compel. By that Order, I required TSI to provide its responses to certain compelled interrogatories by June 3, 1998. On June 1, 1998, TSI filed a Motion for Enlargement of Time to Serve Further Answers to Interrogatories, Motion for Continuance of Pretrial Controlling Dates and Hearing, and Request for Expedited Consideration. By its motion, TSI sought a one-month extension of time to provide responses compelled by Order No. PSC-98-0703-PCO-TI. By Order No. PSC-98-0766-PCO-TI, issued June 3, 1998, I allowed TSI to provide the compelled discovery responses by June 17, 1998.

On July 6, 1998, TSI filed a Motion for Enlargement of Time to Supplement Interrogatory Responses. Therein, TSI asks for an additional two weeks to provide the discovery compelled by Order No. PSC-98-0703-PCO-TI. TSI asserts that it needs the additional time due to the massive amount of material that must be gathered and reviewed to provide the responses. TSI also asserts that it has been unable to complete its responses, because it has had to prepare written testimony in this case, and it has had to deal with other "pressing matters." TSI's Motion at p. 1.

On July 8, 1998, Transcall filed an Objection to TSI's Second Motion for Enlargement of Time to Comply with Order Compelling Answers and Motion for Sanctions for Failure to Comply with Discovery Orders. In its response, Transcall states that TSI's motion should not be granted, because it would be the fourth extension of time given to TSI to provide the discovery responses. Transcall argues that the information compelled by Order No. PSC-98-0703-PCO-TI is information that Transcall has sought since the lawsuit was initiated in 1992. Transcall notes that the hearing in this docket is scheduled for August 19 and 20, 1998, and asserts that it has been prejudiced in its ability to prepare for hearing, because it has not been able to access this discovery. Transcall also states that it wants to conduct depositions prior to the hearing and needs the discovery for that purpose.

Transcall also asks that sanctions be imposed upon TSI pursuant to Rule 1.380, Florida Rules of Civil Procedure, because TSI has failed to comply with the order compelling discovery responses. Transcall further argues that it is not necessary to show that TSI has willfully disregarded Order No. PSC-98-0703-PCO-TI, citing Herrold v. Computer Components International, Inc. 252

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So. 2d 576, 580 (Fla. 4th DCA 1971). Transcall states that, pursuant to Rule 1.380, Florida Rules of Civil Procedure, TSI should be prevented from supporting its claims regarding improper billing by Transcall and from opposing Transcall's claim for payment for services rendered. Transcall also argues that TSI should be prohibited from using any documents that were not attached to its prefiled direct testimony. Transcall asserts that even if TSI provides the compelled discovery now, Transcall will still be prejudiced. Transcall asks, therefore, that TSI also be required to pay Transcall's attorneys' fees and costs associated with its efforts to obtain the discovery and with filing its motion seeking sanctions, in accordance with Rule 25-22.034, Florida Administrative Code and Section 120.569, Florida Statutes.

Upon consideration, I hereby grant, in part, and deny, in part, TSI's Motion for Enlargement of Time. TSI shall provide the responses compelled by Order No. PSC-98-0703-PCO-TI on or before July 16, 1998. Further requests by TSI for extensions of time to provide these responses will not be entertained.

I also deny Transcall's Motion for Sanctions against TSI regarding this matter. TSI has properly sought an extension of time in each instance in which I have granted an extension. TSI has not simply refused to comply. I do, however, note the number of extensions that have been sought by TSI regarding these discovery responses. Therefore, I emphasize that Transcall shall not be precluded from seeking appropriate sanctions and costs under Rule 25-22.034, Florida Administrative Code, Rule 1.380, Florida Rules of Civil Procedure, and Section 120.569, Florida Statutes, should TSI fail to provide the compelled discovery responses by July 16, 1998.

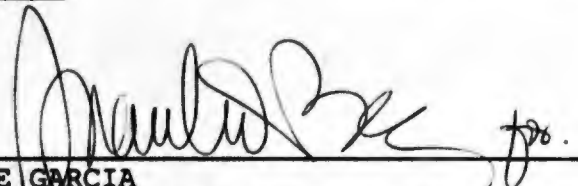
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It is therefore

ORDERED by Commissioner Joe Garcia, as Prehearing Officer, that the Motion for Enlargement of Time to Supplement Interrogatory Responses filed by Telecommunication Services, Inc., is granted, in part, and denied, in part, as set forth in the body of this Order. It is further

ORDERED that the Motion for Sanctions for Failure to Comply with Discovery Orders filed by Transcall America, Inc. d/b/a ATC Long Distance is denied.

By ORDER of Commissioner Joe Garcia, as Prehearing Officer, this 15th Day of July, 1998.



JOE GARCIA
Commissioner and Prehearing Officer

(S E A L)

BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2)

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reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.