

MEMORANDUM

August 17, 1998

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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (B. KEATING) *12*

RE: DOCKET NO. 951232-TI - 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.

92-1101-PCO

Attached is an ORDER ON MOTION FOR EXTENSION OF TIME AND DENYING REASSERTED MOTION FOR SANCTIONS AND REQUEST FOR ATTORNEYS' FEES AND COSTS, to be issued in the above referenced docket. (Number of pages in order - 5)

BK/anr
Attachment
cc: Division of Communications
I: 951232m3.bk

MUST GO TODAY

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all copies made 8/19/98
GM

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 Service, 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-98-1101-PCO-TI
ISSUED: August 18, 1998

ORDER ON MOTION FOR EXTENSION OF TIME
AND DENYING REASSERTED MOTION FOR SANCTIONS AND
REQUEST FOR ATTORNEYS' FEES AND COSTS

Transcall America, Inc., d/b/a Advanced Telecommunications Corp. (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. 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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By Order No. PSC-98-0703-PCO-TI, issued May 20, 1998, Transcall's Motion to Compel was granted, in part, and denied, in part. By that Order, TSI was required 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, TSI was granted an extension 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 asked for an additional two weeks to provide the discovery compelled by Order No. PSC-98-0703-PCO-TI. TSI asserted that it needed the additional time due to the massive amount of material that must be gathered and reviewed to provide the responses. TSI also asserted 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 July 6, 1998, 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. Therein, Transcall objected to the request for another extension of time and argued 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. In addition, Transcall requested that sanctions be imposed upon TSI, and that TSI 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. By Order No. PSC-98-0955-PCO-TI, issued July 15, 1998, TSI's motion was granted, in part. TSI was directed to provide the responses compelled by Order No. PSC-98-0703-PCO-TI by July 16, 1998. In addition, Transcall's request for attorneys' fees and sanctions was denied. The number of extensions that have been sought by TSI regarding this matter was, however, noted.

On July 17, 1998, TSI filed a Motion for Enlargement of Time to Comply with Order Of July 15, 1998. Therein, TSI asks for an additional 14 days to provide the compelled discovery responses. TSI argues that Transcall will not be prejudiced by this extension.

TSI also asserts that it has provided all documents that support its position in the form of its accountant's workpapers. TSI states that it will not be using the further discovery compelled by Order No. PSC-98-0703-PCO-TI at hearing. TSI adds, however, that it has made this information available to Transcall in the form in which it was maintained by TSI.

On July 17, 1998, Transcall filed its response to TSI's Motion. Transcall states that it opposes TSI's request for further enlargement of time. Transcall argues that it will be prejudiced by any further extension of time for providing this discovery. Transcall also reasserts its request for attorneys' fees and sanctions on TSI.

On July 22, 1998, TSI filed a Notice of Compliance with Order No. PSC-98-0703-PCO-TI. On July 28, 1998, TSI filed a Memorandum of Law in Opposition to Transcall's Renewed Motion for Sanctions. In its memorandum of law, TSI states that Transcall's request for sanctions should be denied because 1) Transcall has not demonstrated that it will be prejudiced by the enlargement of time to respond¹; 2) TSI has produced "substantial documentary evidence in support of its claims and allegations²;" and 3) TSI has not disregarded Order No. PSC-98-0703-PCO-TI and has acted in good faith in an effort to comply³. (TSI's July 28, 1998, Memorandum at 1). TSI adds that it was out of compliance from July 17, 1998, to July 20, 1998. TSI argues that Transcall should not be prejudiced by this short delay. TSI emphasizes that it filed a Motion for Enlargement of Time prior to becoming non-compliant with Order No. PSC-98-0955-PCO-TI. In addition, TSI states that if it appears sanctions may be warranted, it should be allowed to present evidence of mitigating circumstances before sanctions are imposed.

¹ Citing Santuoso v. McGrath & Assoc. Inc., 385 So. 2d 112, 113(Fla. 3rd DCA 1980).

² Citing Herold v. Computer Components International, Inc., 252 So. 2d 576, 580 (Fla. 4th DCA 1971).

³ Citing K & K World Enterprises, Inc. V. Union Spo., S.R.O., 692 So. 2d 1000, 1001 (Fla. 3rd DCA 1997); and Aller v. Editorial Planeta S.A., 389 So. 2d 321 (Fla. 3rd DCA 1980).

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Determination

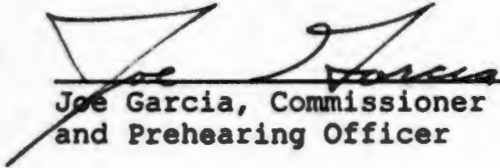
TSI's July 17, 1998, Motion for Enlargement of Time is hereby denied, in part, and granted, in part. TSI's request for enlargement of time of 14 days to comply with Order No. PSC-98-0955-PCO-TI is denied. TSI is granted an extension of time of three days until July 20, 1998. Transcall's renewed Motion for Sanctions and request for attorneys' fees and costs are denied. No decision is made, however, regarding whether to exclude from evidence documents that were the subject of the discovery dispute. Transcall shall not be precluded from renewing its Motion for Sanctions at hearing to the extent that it pertains to documents responsive to the discovery compelled by Order No. PSC-98-0703-PCO-TI.

It is therefore

ORDERED by Commissioner Joe Garcia, as Prehearing Officer, that Telecommunications Services, Inc.'s Motion for Enlargement of Time to Comply with Order of July 15, 1998, is disposed as set forth in the body of this Order. It is further

ORDERED that the request by Transcall America, Inc., d/b/a Advanced Telecommunications Corp. for attorneys' fees and the imposition of sanctions upon Telecommunications Services, Inc. is denied.

By ORDER of Commissioner Joe Garcia, as Prehearing Officer, this 18th day of August, 1998.



Joe Garcia, Commissioner
and Prehearing Officer

(S E A L)

BK

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) 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.