

MEMORANDUM

November 20, 1998

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TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (B. KEATING) *BK/NLB*

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.

98-1556-FOF-TI

Attached is a FINAL ORDER ON ISSUES REFERRED TO THE COMMISSION BY THE DADE COUNTY CIRCUIT COURT, to be issued in the above-referenced docket. (Number of pages in order - 35)

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

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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-98-1556-FOF-TI
ISSUED: November 23, 1998

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

APPEARANCES:

Floyd R. Self, Esquire, Albert T. Gimbel, Esquire, and James E. Messer, Esquire, Messer, Caparello & Self, P.A., P.O. Box 1876, Tallahassee, FL 32302-1876.
On behalf of Transcall America, Inc., d/b/a ATC Long Distance.

Wesley R. Parsons, Esquire, 2601 South Bayshore Drive, Suite 1600, Miami, Florida 33133.
On behalf of Telecommunication Services, Inc.

Beth Keating, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.
On behalf of Commission Staff.

ORDER NO. PSC-98-1556-FOF-TI
DOCKET NO. 951232-TI
PAGE 2

**FINAL ORDER ON ISSUES REFERRED TO THE COMMISSION
BY THE DADE COUNTY CIRCUIT COURT**

BY THE COMMISSION:

TABLE OF CONTENTS

I. CASE BACKGROUND	- 3 -
II. COMMISSION'S JURISDICTION TO RESOLVE DISPUTE.	- 4 -
III. TRANSCALL'S BILLING OF TSI	- 10 -
IV. AMOUNT OF OVERCHARGES	- 23 -
V. PAYMENTS MADE BY TSI	- 26 -
VI. AMOUNT OWED BY TSI TO TRANSCALL	- 27 -
VII. BILLING OF TSI'S CUSTOMERS BY TRANSCALL	- 30 -
VIII. CONCLUSION.	- 32 -

I. Case Background

Transcall America, Inc., d/b/a Advanced Telecommunications Corp. (Transcall), a long distance service provider, filed a complaint with the Dade County Circuit Court on May 21, 1992, against Telecommunications Services, Inc. (TSI), a reseller of long distance services purchased from Transcall, 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.

Specifically, TSI alleged that Transcall had violated the contract between the parties by: 1. billing TSI in excess of the charges set forth in the contract between the parties; 2. by improperly billing for calls that had not been made, that were not completed, had busy signals, or bad connections; 3. by double billing, overcharging and adding time to calls, billing for the same call in consecutive billings, and charging for overlapping calls; 4. improperly charging 800 accounts; 5. billing in improper increments; 6. billing for travel cards TSI's customers did not have; 7. billing on canceled accounts; 8. supplying bills that did not match the billing details and billing summaries; and 9. billing for 800 use when the TSI customer did not have an 800 number. Subsequently, Transcall moved to dismiss TSI's counterclaims, or, in the alternative, have the Circuit Court proceedings stayed, and the billing dispute referred to this Commission for further proceedings. Transcall argued that TSI's claims raised issues with in our exclusive jurisdiction.

On February 24, 1995, the Court issued its Order Staying Action and Referring to the Florida Public Service Commission. Therein, the Court referred to us for review all claims in this billing dispute within our exclusive jurisdiction under Chapter 364, Florida Statutes. 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. TSI argued that we were without jurisdiction to resolve the dispute between the parties. Transcall served its response to the motion on February 20, 1997, and we served a response on April 18, 1997. On May 27, 1997, the Circuit Court issued its Order Denying Motion for Reconsideration and to Amend. We conducted an administrative hearing in this matter on August 19, 1998.

Our determination on the issues addressed at hearing is set forth herein. We note that a jurisdictional issue was presented to us by the parties and was addressed through post-hearing briefs. The arguments regarding this issue were nearly identical to those considered by the Circuit Court in rendering its Order Denying Motion for Reconsideration and to Amend.

Also, prior to hearing, the specific issues to be addressed were identified and framed by the parties. As part of this process, the problems raised in TSI's Counter-Complaint were focused into six points, which were applicable to the issues regarding Transcall's billing to TSI and Transcall's billing to TSI's end-user customers. Due to the facts of the case and the complexity of the allegations to be addressed, we have addressed these six points separately as they relate to Transcall's billing of TSI, because the relationship between these two companies is the core of this case. Our discussion of these six points may be found in Section III of this Order. We did not find this separation necessary as applied to Transcall's billing of TSI's end-user customers, which is addressed in Section VII of this Order.

Furthermore, we note that Telus was the original party to the contract with TSI. ATC was also referenced in the testimony of certain witnesses when referring to Transcall. In view of the mergers and acquisitions involving Telus, ATC, and Transcall, we have chosen to refer only to Transcall in an effort to reduce confusion.

II. Commission's Jurisdiction to Resolve Dispute

In its brief, Transcall stated that the Dade County Circuit Court referred this matter to us to address the issues within our jurisdiction. Transcall asserted that the Court did not limit the issues referred to us. Thus, Transcall asserted that we must resolve all issues in this case that are within our jurisdiction.¹ Further, Transcall believed that all issues involved in this case fall within our jurisdiction.

Specifically, Transcall asserted that we have exclusive jurisdiction over intrastate rates, billing, and related provision of service pursuant to Sections 364.03, 364.035, 364.04, 364.05,

¹Citing Florida Public Service Commission v. Bryson, 569 So. 2d 1253 (Fla. 1990).

and 364.08, Florida Statutes. Transcall noted that the United States Supreme Court recently addressed matters regarding billing, provisioning, and rates, and found that common law actions may not be pursued as they pertain to such matters². Transcall also asserted that our jurisdiction in this area extends to end users and to contracts between telecommunications companies. Transcall emphasized that Section 364.07, Florida Statutes, states that we are authorized to "adjudicate disputes among telecommunications companies regarding such contracts or the enforcement thereof." Transcall further stated that we also have the authority to investigate interstate rates and report our findings to the FCC in accordance with Section 364.27, Florida Statutes. Transcall suggested that we present the record of this case to the FCC at the conclusion of these proceedings so that the FCC can make a response to the Circuit Court.

Regarding TSI's claims of tortious interference with contractual and business relationships, Transcall conceded that we do not have jurisdiction over any tort claims.³ Transcall argued, however, that there are no tort claims independent of the contract between the parties. Transcall argued that any tort causes of action are, therefore, barred by the limitation of liability language in the contract and the economic loss rule. Thus, Transcall stated that we should dismiss Count II of TSI's Counter-Complaint.

Transcall further argued that we have the authority to determine what should have occurred between the contracting parties.⁴ Transcall stated that we have conducted a full audit of the billing and provisioning relationship between the parties and can fully resolve the claims between the parties through this process. Transcall argued that this is the proper means by which the parties' claims should be addressed, rather than through tort actions.

² Citing AT&T v. Central Office Telephone, Inc., 118 S.Ct.1956, 1963; 141 L.Ed. 222 (1998).

³Citing Southern Bell Telephone and Telegraph Co. V. Mobile America Corp., Inc., 291 So. 2d 199 (Fl. 1974).

⁴Citing Florida Power Corp. V. Zenith Industries Co., 377 So. 2d 203 (Fla. 2nd DCA 1979); and Richter v. Florida Power Corp., 366 So. 2d 798 (Fla. 2nd DCA 1979).

In addition, Transcall argued that the contract between the parties is equivalent to a tariff, because it is a contract contemplated by Section 364.07, Florida Statutes, and Rule 25-24.485, Florida Administrative Code, which requires that carriers identify their contract authority in their tariff. Transcall also noted that the parties' tariffs defined the billing for certain types of calls and definition of duration and completion of calls. Because the contract is equivalent to a tariff, Transcall argued that TSI's tort claims are barred by the "filed rate doctrine." Transcall stated that the "filed rate doctrine" precludes suits to enforce contracts that are not consistent with the rates and terms in a carrier's tariff. AT&T v. Central Office Telephone, Inc., 118 S.Ct. At 1964-65. Transcall argued that all of the tort claims made by TSI in Count II of the Counter-Complaint are based on billing and the provision of service under the contract. Therefore, Transcall argued that all of TSI's claims must be resolved by us and cannot be maintained as independent tort claims.

Finally, Transcall argued that TSI is barred from pursuing its tort claims by the "economic loss rule," which prevents a party from suing under a contract and in tort for the same conduct.⁵ Transcall also claimed that TSI is estopped from further pursuing its claims in other forums, because we have the exclusive jurisdiction to resolve the parties' dispute and have been directed to do so by the Dade County Circuit Court.

For these reasons, Transcall asked that we issue a final order resolving all matters at issue between the parties that are within our jurisdiction, and report our findings regarding interstate claims to the FCC. Transcall stated that we should then forward all findings to the Dade County Circuit Court.

TSI did not present argument regarding this issue in its Post-Hearing Memorandum. Nevertheless, we briefly revisited the arguments made by TSI in its Motion for Reconsideration of Order Staying Action and Referring to the Florida Public Service Commission and Motion for Leave to Amend CounterClaim (Recon), filed with Dade County Circuit Court on January 29, 1997.

In those previous pleadings, TSI argued that this is an action pertaining to a contract between the parties. TSI asserted that

⁵Citing AFM Corp. v. Southern Bell Telephone and Telegraph Co., 515 So. 2d 180 (Fla. 1987).

this matter does not involve a tariff, and, therefore, it is not appropriate for us to assert our jurisdiction to resolve the parties' dispute. TSI also argued that this case includes claims in tort and allegations of willful misconduct for which TSI seeks money damages. TSI noted that we cannot award damages. For these reasons, TSI argued that we do not have jurisdiction, or should not exercise our jurisdiction over this matter, and should return this case to the Dade County Circuit Court where Transcall originally brought this case.

DETERMINATION

Upon review of the arguments, the case law, and the pertinent statutory provisions, it is clear that the doctrine of Primary Jurisdiction supports our jurisdiction in this matter as it applies to intrastate service and rates. As set forth in our Response to Defendant's (TSI's) Motion for Reconsideration of Order Staying Action and Referring to the Florida Public Service Commission (Resp.), the law in Florida is well-settled that we have exclusive jurisdiction to make determinations regarding rates, charges, and services. See Richter v. Florida Power Corporation, 366 So. 2d 798 (Fla. 2nd DCA 1979). The Legislature has authorized us to regulate in this area, and the courts have recognized our administrative expertise for this purpose. See Richter, supra; and Florida Power Corp. v. Zenith Industries Co. 377 So. 2d 203 (Fla. 2nd DCA 1979). The fact that this is a contract dispute between TSI and Transcall does not remove this matter from our jurisdiction. See Charlotte County v. General Development Utilities, Inc., 653 So. 2d 1081 (Fla. 1st DCA 1995).

The following statutory provisions are particularly relevant to show that the tariff and contract issues in this case are within our jurisdiction. By Section 364.01(2), Florida Statutes, the Legislature has given us

. . . exclusive jurisdiction in all matters set forth in this chapter . . . in regulating telecommunications companies, and such preemption shall supersede any local or special act or municipal charter where any conflict of authority may exist. . . .

Section 364.04, Florida Statutes, requires all telecommunications companies to file all rates and charges with us for services

provided in the state. Specifically, Section 364.04(1), Florida Statutes, states, in pertinent part, that

Upon order of the commission, every telecommunications company shall file with the Commission . . . schedules showing the rates, tolls, rentals, contracts, and charges of that company for service to be performed within the state.

Section 364.07(2), Florida Statutes, specifically provides that we may ". . . review contracts for joint provision of intrastate interexchange service," ". . . may also require the filing of all necessary reports and information pertinent to joint provision contracts," and ". . . is also authorized to adjudicate disputes among telecommunications companies regarding such contracts."

Section 364.27, Florida Statutes, further supports our review as it pertains to interstate rates and service. That statute charges us with certain duties regarding the provision of interstate service by telecommunications companies in Florida. Section 364.27, Florida Statutes, provides that

The commission shall investigate all interstate rates, fares, charges, classifications, or rules of practice in relation thereto, for or in relation to the transmission of messages or conversations, where any act relating to the transmission of messages or conversations takes place within this state, and when such rates, fares, charges, classifications, or rules of practice are, in the opinion of the commission, excessive or discriminatory or are levied or laid in violation of the Act of Congress entitled "The Communications Act of 1934," and the acts amendatory thereof and supplementary thereto, or in conflict with the rulings, orders, or regulations of the Federal Communications Commission, the commission shall apply, by petition, to the Federal Communications Commission for relief and may present to the Federal Communications Commission all facts coming to its knowledge as to violation of the ruling, order, or its

knowledge as to violation of the rulings, orders, or regulations of that commission or as to violations of the act to regulate commerce or acts amendatory thereof or supplementary thereto.

As for the tort issues raised by TSI, we acknowledge that we are without jurisdiction to resolve matters in tort. Southern Bell Telephone and Telegraph Company v. Mobile America Corporation, Inc., 291 So. 2d 199 (Fla. 1974); Florida Power Corporation v. Zenith Industries Company, 377 So. 2d 203 (Fla. 2nd DCA 1979). We agree with Transcall, however, that the allegations in tort arise from the alleged overcharges under the contract between the parties. Thus, the tort claim is not independent of the contract. See AFM Corporation v. Southern Bell Telephone and Telegraph Company, 515 So. 2d 180, 181 (Fla. 1987) ("We conclude that without some conduct resulting in personal injury or property damage, there can be no independent tort flowing from a contractual breach which would justify a tort claim solely for economic losses.") As noted by Transcall, the Supreme Court recently addressed a similar case in which it stated that tort claims are barred when claims arise from alleged failure to perform under a contract. AT&T v. Central Office Telephone, 141 L. Ed. 2d 222; 118 S.Ct. 1956 (1998).

In this case, all of the tort claims alleged by TSI arise from Transcall's alleged breach of the contract between the parties. Breach of the contract, by itself, does not create a cause of action in tort. AFM Corporation v. Southern Bell Telephone and Telegraph, 515 So. 2d at 181; citing Electronic Security Systems Corp. v. Southern Bell Telephone and Telegraph Co., 482 So. 2d 518 (Fla. 3rd DCA 1986) (stating that a breach alone does not constitute a basis for an action in tort). TSI has alleged no personal injury or property damage independent of the damage allegedly caused by the breach of the contract by Transcall.

As for Transcall's assertions that we should issue an order on all issues within our jurisdiction and determine that TSI is estopped from further asserting any claims not pursued in this proceeding before us, we find that this is a matter for the Court to decide.

Based on the foregoing, our jurisdiction in this matter is clear. To the extent the issues address interstate matters, we have the authority pursuant to Section 364.27, Florida Statutes, to review and make findings on these matters. Upon issuance of this

Order, we will forward the record to the FCC for comments on the interstate analyses and findings in accordance with Section 364.27, Florida Statutes. We will then forward our Final Order on this matter to the Dade County Circuit Court in accordance with the Court's Order Staying Action and Referring to the Florida Public Service Commission, and indicate to the Court that the record of this case has been forwarded to the FCC for comments.

III. Transcall's Billing of TSI

A. IMPROPER BILLING FOR CALLS NOT MADE, NOT COMPLETED, THAT WERE BUSY, OR HAD BAD CONNECTIONS

TSI's witness Esquenazi asserted that TSI was improperly billed for calls that were not made, that were not completed, and for calls that had bad connections. He also asserted that TSI's expert confirmed that there were overbillings for these types of problems.

In his testimony, TSI's expert witness Shulman stated that TSI was overbilled \$314,818 for problems including busy signals and other errors. He testified that he found many billing errors in his sampling of 47,000 calls, which covered a ten-day period.

In its brief, TSI further argued that it is entitled to a credit of \$150 for disconnected calls as stated in witness Welch's Audit Report as Disclosure No. 13. TSI emphasized that it believes it is entitled to a \$47,557 credit for calls that were busy signals, had long rings, or for calls where there was silence at the receiving end of the call.

Transcall's witness Daurio explained that any billing problems for incomplete or unanswered calls were due to the technology available at that time. She also stated that in order to obtain payments, ". . . Mr. Esquenazi would either unilaterally take credits each month when he made a payment or he would require the issuance of credits before he would make any payment." See Transcript at p. 46. She also stated that in order to receive payment, she simply gave TSI the credits it requested.

In response to TSI Witness Esquenazi's testimony, Transcall witness Daurio stated:

During the time of the Agreement, there was an industry-wide problem due to the fact that the local exchange

companies failed to provide hardware answer supervision on all calls. Consequently, we, like other carriers, used software answer supervision programs in an attempt to address this problem. Both TSI and Transcall had specific tariff provisions to address this situation, and anyone that knew anything about the business understood this.

Transcript at p. 280. She also stated that when Mr. Esquenazi complained, Transcall issued credits to him at the higher retail rate charged to his customers, instead of at the wholesale rate charged TSI.

Transcall's witness Metcalf indicated that TSI's margins were increased by the generous credits given to TSI by Transcall. The witness asserted that many credits were given at the retail rate due to the billing errors. He argued, therefore, that there should not be an adjustment for such errors. He also asserted that these errors were within the one to two percent error rate that was allowed in the tariff. In his rebuttal testimony, witness Metcalf further asserted that witness Shulman's calculation of \$314,818 for numerous billing errors, including busy signals, was inaccurate. He agreed with staff witness Welch's conclusion that the overbilling for all of these errors was within the two percent error rate specified in both TSI's and Transcall's tariffs.

In its brief, Transcall agreed that there were instances in which Transcall billed TSI and their customers for calls that were incomplete. In cases where calls were not answered, TSI's tariff states that after 60 seconds, the call is considered completed. When this problem was brought to Transcall's attention, Transcall argued that credits were issued to TSI, which ultimately totaled \$74,752. Transcall agreed with staff witness Welch's audit report, which indicated that there were only \$26,409 in errors.

Staff witness Welch testified that in the course of her audit, she checked to see if calls without an answer qualifier were billed. She indicated that she could not accurately determine the specific criteria that Transcall used to decide whether or not a call was a legitimate call. Her investigation revealed that TSI was billed \$315 for busy calls, \$46,284 for long rings, and \$958 for calls that were silent. As for calls with long rings, she quoted TSI's tariff, which states that:

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

Transcript at p. 230.

Concerning an adjustment for calls without an answer qualifier, staff witness Welch stated that based on the audit sample:

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

Transcript at p. 231 and Exhibit 20.

DETERMINATION

Upon consideration of the evidence presented, we find that TSI was billed for calls not made, not completed, that were busy, or had bad connections. It appears, however, that witness Shulman's calculation of \$314,818 for these errors is inaccurate and does not consider the two percent error rate in the parties' tariff. We note that witness Shulman conceded that he is not a telecommunications expert, and that he did not review any material on industry standards for the different types of calls at issue. In addition, based upon witness Daurio's testimony and witness Welch's audit report, it appears that TSI received credit for these billing errors. TSI did not present evidence to the contrary. We find, therefore, that the amount of these errors was within the limits of both tariffs. The evidence supports Transcall's assertions that it issued credits when these problems were brought to the company's attention. Thus, no adjustment shall be made for these errors.

B. OVERCHARGING CALLS, DOUBLE BILLING CALLS, OR BILLING FOR THE SAME CALL ON CONSECUTIVE BILLS

TSI's witness Esquenazi testified that Transcall breached the contract by overcharging and adding time to calls, double billing

for the same phone call and billing for items that had been in a previous months billing, and charging twice for calls that were overlapping and appeared on two month's bills. TSI's witness Esquenazi recalled that many of his customers complained about extraordinarily long phone calls, which could be considered as calls that had a stuck clock. He could not, however, remember how many customer complaints had been received and provided no additional support regarding these complaints. TSI argued in its brief that the staff audit placed the burden of proof on TSI to show that calls were overlapping or stuck clock calls, and also emphasized that Transcall's witness Metcalf acknowledged that stuck clock calls can occur.

In the course of his investigation, TSI's witness Shulman determined that TSI was overcharged \$314,818 due to billing of calls over one hour. The witness indicated that he had been instructed that such calls were not legitimate calls, and, therefore, TSI should not have been billed for them. He also asserted that TSI had been overbilled for busy signals, duplicate calls, and other errors. He further concluded that TSI was overcharged \$29,111, because of the nine-second error addressed in Docket No. 951270-TI. To illustrate, TSI's witness Shulman described an overlapping call as a second call that starts before the prior call ends. Referring to Hearing Exhibit 19, he asserted that calls numbered 9027, and 9028 were overlapping calls. He explained that these calls are overlapping, because it is unlikely a customer could terminate a call and begin a new call within one minute.

Transcall's witness Metcalf, however, rejected witness Shulman's analysis. Witness Metcalf concluded from his own investigation that the only thing that was not billed, according to tariff, was the nine-second overbilling error. Concerning alleged problems such as stuck clocks, duplicate calls, and the overbilling of calls he indicated:

My conclusion on the claims regarding stuck clock, duplicate, and overbilling, confirmed by the Staff Audit, demonstrate that these errors were within the 1%-2% error rate articulated in both the Transcall and TSI tariffs. The types of problems that TSI complained of were typical, but within the standards of the day, due to the limitations of the call recording technology of the era experienced by all carriers. Further, Transcall demonstrated on countless occasions its responsiveness to

these technological limitations by crediting any claims of TSI even with the limited documentation substantiating any of these concerns.

Transcript at p. 78-79. Transcall's witness Metcalf further asserted that a stuck clock or a hung port could happen, but that he was unable to find any documentation that one occurred during the 30 $\frac{1}{2}$ -month relationship between Transcall and TSI.

In its brief, Transcall questioned the basis for TSI's allegations of certain calling problems. First, Transcall disputed TSI's contention that every call that is at least one hour in length is a stuck clock. Transcall noted that the customer would be the best person to determine whether or not a call is a stuck clock. Transcall argued that a customer would probably notice a call several hours long, especially if the customer did not remember making a call that length.

Concerning the double billing of calls, Transcall argued in its brief that TSI ignored the possibility that a person could terminate one call and start a second call, all within the same minute as recorded by the switch. Transcall also argued that TSI did not consider that when the LEC returns hardware answer supervision and the call is then immediately terminated, regardless of the reason, that the call is treated by the system as a completed call. Transcall added that the issue of double billing calls is addressed in the tariffs of both companies.

As for overlapping calls, Transcall complained that the methodology used by TSI in the Lopez-Levi report submitted by TSI's witness Shulman is faulty. Transcall asserts that TSI's witness Shulman is under a misconception that it is unlikely that a person could terminate one call and start a second call within the same minute.

Transcall's witness Metcalf explained that there is little evidence that TSI's customers complained about these alleged misbillings, or that TSI's customers were ever given credits for these calls. Concerning the nine-second error, witness Metcalf stated that he agrees with staff witness Welch's amount of \$37,715 that Transcall owes TSI. As for the Lopez-Levi report presented by TSI's witness Shulman, Transcall witness Metcalf stated that witness Shulman:

. . . accepted Mr. Esquenazi's instructions as to how to classify each type of call, and simply added up or extrapolated 30 months results from a very limited sample of selected records. Their analysis does not contain a recognition of industry standards of that period, or of TSI's own tariff language which stated that billing errors occur in up to 2% of all calls.

Transcript at p. 308-309.

In Disclosure No. 6 of her Audit Report, staff witness Welch discussed calls that lasted over one hour, overlapping calls, short repetitive calls, and duplicate calls. She explained that there were errors in both the numbers and logic used in the Lopez-Levi Report. She indicated that the total errors in billing to TSI amounted to \$26,409, but that TSI received credits for billing errors from Transcall in the amount of \$74,752. In her audit report, Staff witness Welch stated that:

Although depositions have revealed a switch may get hung up and cause calls of long duration to be billed incorrectly, all calls over one hour cannot automatically be considered hung clock calls. . . . If TSI gave credit for one of these calls because a customer complained, TSI was given a corresponding credit in the April 1992 adjustment from ATC.

Transcript at p. 18; Hearing Exhibit 20.

Witness Welch further asserted that Lopez-Levi did not take into account second increments in determining if calls were overlapping. As an example, witness Welch explained that if the first call started at 10:05 and lasted 5.5 minutes and the next call started at 10:10, Lopez-Levi removed both calls. She emphasized, however, that a call could have started at 10:10 and 30 seconds and still be a valid call. Witness Welch stated that she recalculated all calls on the Lopez-Levi schedules using seconds. She found that some calls did appear to overlap. She did not, however, remove both calls. Only the call with the longest duration was eliminated. The witness also stated that overlapping calls for 800 numbers were removed. She explained that it is not unlikely for 800 number calls to overlap, because these calls usually go into a FBX system. In addition, the witness determined that three-way calling and speed dialing could explain the errors that were remaining.

Staff witness Welch further testified that she did allow for some duplicate calls in her calculation. As for stuck clocks, she stated that she did not give a credit for this problem. She noted that she did not understand the problem to be systematic as TSI alleged. In addition, witness Welch concluded that witness Shulman's report assumed that all calls that could potentially be overlapping were, in fact, overlapping.

In Audit Disclosure No. 8, staff witness Welch discussed the nine-second overbilling that was the subject of Docket No. 951270-TI. She stated that the amount that TSI owes Transcall should be reduced by \$37,715 based upon the nine-second overbilling error.

DETERMINATION

Based upon the evidence in the record, we find that the amount that TSI owes Transcall should be reduced by \$37,715 to offset the nine-second overbilling error. The evidence does, however, support Transcall's assertions that any overcharges that occurred because of double-billed calls, overlapping of calls, or stuck clock calls were offset by credits given to TSI. We find nothing in the record indicating that the same call was billed on consecutive bills. We determine, therefore, that the only adjustment that shall be made to the amount that TSI owes Transcall is an adjustment of \$37,715 for the nine-second overbilling error.

C. IMPROPERLY CHARGING FOR 800 CALLS

In its brief, TSI argued that it is entitled to the \$3,539 credit for unbilled 800 calls identified as Audit Disclosure No. 11 in staff witness Welch's audit report. TSI's witness Esquenazi explained that Transcall breached its contract with TSI by improperly charging 800 numbers for calls that were made outside of the marketing area. He also asserted that Transcall billed for calls that were not received by the 800 customers.

Transcall's witness Daurio testified that due to the lack of number portability, concerns were raised within the company as to what to do about TSI's 800 customers after TSI was terminated from Transcall's system. Witness Daurio also stated that the only 800 number problems that Mr. Esquenazi raised pertained to the turning up or termination of 800 number service to his customers. She claimed that Transcall addressed these concerns. Transcall's witness Metcalf added that TSI's assertions that it was improperly charged for 800 numbers was not supported by any evidence.

In its brief, Transcall further argued that there is no evidence in the record that there were improper charges on 800 calls for calls made outside the marketing area or billing for calls not received by 800 customers. Concerning 800 numbers, Transcall argued that neither TSI nor its customers were improperly billed for 800 numbers. Transcall asserted that any problems concerning 800 numbers were addressed in the ordinary course of business.

In conducting her audit, staff witness Welch did find billing errors related to 800 calls. She testified that on the billing summary the 800 interstate calls were reflected as interstate calls, instead of 800 calls. Therefore, these calls were billed at a lower interstate rate. She estimated the difference caused by this error to be \$3,539. She noted, however, that some of the source data that she had used in developing this amount was inaccurate. Nevertheless, she was able to determine that the markup for interstate calls and 800 calls was almost the same. She asserted that because the markups were nearly identical, the error caused only a negligible difference in TSI's profits. As such, she asserted that an adjustment should be made.

DETERMINATION

Upon consideration, we find that the evidence in this record supports witness Welch's conclusion that there were some billing errors concerning 800 numbers. The demonstrates that these errors were due to Transcall charging TSI for interstate calls instead of 800 calls. The evidence also supports witness Welch's conclusion that there was not a material difference in TSI's profit margin for these two products. Therefore, we shall not make an adjustment for this problem. The record demonstrates that the problems with 800 calls that TSI brought to Transcall's attention were addressed. All other allegations of improprieties regarding 800 numbers are unsubstantiated.

D. BILLING IN INCREMENTS THAT WERE IN VIOLATION OF THE CONTRACT

In its brief, TSI argued that Transcall's attempt to alter the parties' agreement should be rejected. TSI emphasized that the discounts should not substitute for billing in proper increments and that TSI should receive a credit of \$98,100, as calculated by staff witness Welch.

TSI's witness Esquenazi testified that Transcall violated the parties' agreement by billing in one minute increments, instead of billing in 6 or 30 second increments. He also stated that TSI's expert confirmed this violation of the agreement. TSI's witness Shulman also testified TSI was overbilled by \$91,578 for this problem.

Transcall's witness Daurio testified that when she realized that it would be extremely difficult to bill the international calls to TSI in six-second increments, Transcall gave TSI a 31 percent discount, which was later made a retroactive 40 percent discount. Witness Daurio stated that Transcall discovered that some of the domestic usage was not being billed in six-second increments, because its billing system was set to record initial billing increments at a 30 second minimum. The witness stated that a 13 percent discount for domestic usage was given to TSI for this problem, which was later adjusted to a retroactive 15 percent discount. Transcall's witness Daurio further indicated that the switch could record in six-second increments, but that the billing system could not bill in these increments. She stated that when she noticed the billing problems, she mentioned them to Dennis Sickle, her immediate supervisor. She stated that he advised her to implement the percentage discounts to resolve the problem.

In its brief, Transcall argued that there was a verbal modification to the contract, which allowed for a 40 percent discount for international usage and a 15 percent discount for domestic usage. Transcall asserted that this modification was made because Transcall was not able to bill international calls in six-second increments. Transcall also had difficulty billing in six-second increments for domestic calls that lasted less than 30 seconds. Transcall argued that TSI was not only fully compensated by the discounts given, but that TSI also received a windfall of \$546,153 from these discounts.

Witness Daurio also asserted that TSI received a much greater profit margin than was provided for in the Agreement due to the discounts given to resolve the problem with the billing increments. Transcall's witness Sickle also indicated that the discounts more than compensated TSI for any loss in margins due to Transcall's inability to bill in six-second increments. Witness Sickle recalled that there had been a written document concerning these discounts, but he could not support his recollection. Transcall's witness Metcalf also testified that it appeared that there had been a verbal modification to the contract, which resulted in discounts

to TSI as compensation for the billing problems. The witness acknowledged that there is no written documentation concerning these modifications to the contract.

Staff witness Welch agreed that TSI was not billed in increments pursuant to the contract. She did, however, determine that the 40 percent international discount and the 15 percent domestic discount were compensation for Transcall's inability to bill in these increments. Witness Welch agreed with the Lopez-Levi report that a proper adjustment for the billing problem would be about \$91,000. She also asserted that billing in the proper increment for both domestic and international usage would only result in a 1.5 percent change in the minutes. She acknowledged that in the course of her audit she did not see a written modification to the parties' agreement reflecting the discounts. In her audit report, however, she determined that over the life of the contract, the discounts given to TSI resulted in a total reduction of \$143,000 from domestic usage and a \$494,730 reduction from international usage.

DETERMINATION

The record demonstrates that there was no written modification to the agreement concerning the discounts given as compensation for not being able to bill in the proper increments. There is, however, a preponderance of evidence regarding the 40 percent and 15 percent discounts giving to TSI. There is no evidence explaining these discounts or demonstrating that the discounts were negotiated by the parties for purposes other than those indicated by Transcall. These discounts fully compensated TSI for not being billed in increments according to the contract. Thus, we shall not make an adjustment to the amount owed for billing in the improper increments.

E. IMPROPER BILLING FOR TRAVEL CARDS AND CANCELED ACCOUNTS

TSI's witness Esquenazi stated that Transcall breached the agreement by billing for travel cards that customers did not have. He also claimed that Transcall billed on accounts long after the accounts had been canceled by TSI. He offered no additional support for this assertion.

Transcall witness Daurio explained that Transcall usually processed changes to customer accounts on the same day that they were received. Witness Daurio added that for service terminations,

Transcall would often initial and date the fax that TSI sent. Witness Daurio also indicated that travel card rates were reduced sometime in July 1990 when Transcall implemented time-of-day rates. She noted that these rates were lower than the single rate in the Agreement. Transcall's witness Metcalf concurred that the travel card rates had been reduced.

Transcall's witness Daurio further testified that she did not remember Mr. Esquenazi mentioning the problem with the travel cards. The witness claimed that she could not understand how such a problem could occur, because of the manner in which the card orders were processed. Transcall's witness Daurio also agreed that Transcall did bill TSI for accounts that had been terminated in a few isolated instances. The witness asserted that this problem was primarily due to incomplete data on the request for termination submitted by TSI. Witness Daurio emphasized that Mr. Esquenazi's claim that there was billing on accounts long after the accounts had been canceled by TSI appeared to relate to instances in which a customer terminated service early in the billing cycle and received the final bill at the end of the billing cycle.

Transcall stated in its brief that travel cards required an authorization code from Transcall to TSI, which TSI subsequently gave its customers. Thus, improper billing simply could not occur, argued Transcall. Transcall also asserted that most TSI customer terminations took place the same day that the request arrived at Transcall. Transcall stated that if a customer canceled their service early in the billing cycle, it could be several weeks before they would receive their final bill.

Staff witness Welch testified that she reviewed records concerning account termination and billing information. Based on this review, she determined that Transcall improperly charged TSI \$150 by billing after termination of service.

DETERMINATION

Upon consideration and review of the record, we find that there is not enough information to show that there was any improper billing for travel cards. As for billing on canceled accounts, we find that there were isolated instances in which Transcall billed TSI for terminated accounts. The evidence demonstrates, however, that this problem was corrected when Transcall was notified of the problem by TSI.

F. SUPPLYING IMPROPER AND INACCURATE BILLING DETAILS TO TSI

TSI's witness Esquenazi asserted that Transcall violated the contract between the two companies by supplying bills in which the billing details did not match the time and billing summaries. TSI's witness Shulman also testified that extension errors were among the many errors that TSI had on its bills. He agreed with Transcall's witness Daurio that the numbers on the billing detail and billing summary should be identical.

In its brief, TSI argued that there were over \$300,000 in beginning balance errors, which demonstrated the unreliability of the billing system, although the errors did not affect the total balance. TSI also indicated that Transcall had problems with software, hardware, extension errors, and balances being brought forward. TSI further asserted that there were discrepancies between the greenbar summaries and the invoices sent to TSI. In addition, TSI agreed with staff witness Welch that there was an internal auditing control problem at Transcall.

Transcall's witness Metcalf compared the greenbar reports to TSI's invoice. His investigation of the TSI billing practices and review of witness Welch's audit report revealed several billing adjustments that he believed were not substantial. As for staff witness Welch's disclosure concerning Transcall's overbilling of TSI by \$38,109 in September, November, and December 1991, witness Metcalf stated:

Staff recomputed the bill to TSI on the basis of other monthly billing summaries it had located. Using these alternative summaries, the staff determined that the bill to TSI was overstated by \$38,109. Based upon my review of the bills that were rendered at the time, I believe that the staff had no basis for utilizing these alternative summaries. I take this position based on the assumption that the Transcall personnel responsible for determining the appropriate bill to send to TSI would have sent the correct invoice. Not finding any letters or telephone log notes objecting to the bill TSI received in this instance, I further conclude that Mr. Esquenazi must have agreed with Transcall's original action.

Transcript at p. 82. Transcall's witness Daurio further explained that each month, she would take the greenbar summary, retype the data by category, multiply the usage by the applicable rate,

compute the total for each line, apply any discounts and credits, subtract any payments, and then calculate the total amount due. Witness Daurio stated that the number of calls and the minutes of the greenb r summaries and the invoice should, therefore, match.

In its brief, Transcall does not dispute that the billing detail does not match the summaries. Transcall asserted that this is because TSI was billed at different increments than TSI's customers. Transcall also argued the staff witness Welch's audit report failed to account for an excess credit of \$20,778. Further, In addition, Transcall disputed staff witness Welch's Audit Disclosure No. 4, regarding billing errors in September, November, and December 1991.

In Audit Disclosure No. 2, staff witness Welch, described the extension errors in the Lopez-Levi report:

I found that most of these errors were typographical errors that were not carried down to the total amount billed. However, in September and October 1990, the extension errors affected the total bill. Page 51 of the audit report reflects the corrected bill amounts for these months as \$40,689.13 and \$54,563.60 respectively.

Transcript at p. 223.

In Audit Disclosure No. 4, witness Welch explained the adjustments for differences between the bills and the summary reports. She stated that there was always a difference in the bills and the summaries, because the bills to TSI customers show international minutes in one minute increments and the summaries show them in six-second increments. She indicated that the first adjustment is for the months of September, November, and December 1991, when the bills were substantially higher than the summary. The witness testified that she recalculated the bills of these three months and found that the billed amount should be reduced by \$38,109. Witness Welch further explained that the second adjustment was for the months November and December, 1990, when she determined that the minutes billed were substantially lower than those found on the detail billing summaries. According to witness Welch's calculations, the adjustment for this difference results in an increase in the billed amount of \$12,898.

DETERMINATION

Upon consideration, we find that the evidence supports witness Welch's determination that there were improper and inaccurate billing details sent to TSI. Concerning the extension errors, the evidence demonstrates that the correct bill for September 1990 is \$40,689, and that the correct bill for October 1990 is \$54,564. The evidence also supports witness Welch's determination that TSI was overcharged \$38,109 due to discrepancies between the billing summaries and billing detail in September, November, and December 1991. In addition, we find that TSI was undercharged \$12,898 due to discrepancies between the billing summaries and billing detail in November and December, 1990.

IV. Amount of Overcharges

TSI's witness Esquenazi testified that he had given his customers \$51,000 in credits. He also argued that many times his customers simply deducted the amounts that they believed they were overcharged from their bills. He also claimed that he had \$400,000 in uncollectibles that he had to absorb. He did not, however, provide documentation of these "write-offs" demonstrating that they were necessitated by customers not paying their bills because of billing errors.

In its brief, TSI listed numerous overcharges. First, TSI alleged that there is a \$6,737 overcharge for checks paid by TSI that were not credited by Transcall. TSI also argued that there was a \$91,578 overcharge for billing in incorrect increments. For misbillings such as stuck clock, duplicate billings, and calls that overlapped, TSI argued that it was overcharged \$314,817. Due to the change in billing format, TSI also argued that it was overcharged \$8,776. For the nine-second error, TSI complained that it was overbilled \$37,714. Due to the overbilling for time points, the company asserted it was overbilled \$111,521, and it argued that it was overbilled \$3,539 due to problems with 800 calls. Also, TSI argued that disconnected calls caused an overbilling of \$150, while calls that were busy, had long rings, or had silence resulted in an overcharge of \$47,557.

Transcall's witness Daurio testified that whenever a billing issue was brought to her attention, TSI received a credit for the problem at the retail rate. The witness asserted that TSI was given all of the credits that it requested, except for a \$10,000 credit that TSI requested, but which remained in dispute.

Transcall's witness Metcalf agreed with staff witness Welch that the 15 percent domestic and 40 percent international discounts more than adequately compensated TSI for Transcall's inability to bill in six-second increments. He also indicated that he could not find any documentation of TSI witness Shulman's claim that Transcall did not credit payments of \$6,728.

In its brief, Transcall argued that the only overcharge that occurred was the \$37,715 overcharge resulting from the nine-second problem. Transcall's witness Metcalf also indicated that he agreed with staff witness Welch's audit report findings that TSI was overcharged \$37,715 for the nine-second error and that the amount should be reduced from any amount that TSI owes Transcall. Transcall argued in its brief that over the course of the contract, the net undercharge to TSI, including the nine-second error, was \$178,756. Witness Metcalf agreed.

Staff witness Welch asserted that she found several instances where TSI was overcharged by Transcall. In Audit Disclosure No. 4, she discussed the discrepancies in minutes of use in Transcall's bills to TSI. While TSI's consultants believed that TSI was overbilled by \$98,242, witness Welch found some errors in the calculation made by TSI's consultants. She determined that for September, November, and December 1991, TSI was overcharged by \$38,109. She also found that TSI was undercharged by \$12,898 in November and December, 1990. In Audit Disclosure No. 5, witness Welch discussed the impact of billing for international calls at one-minute increments, instead of the six-second increments required by the contract between the parties. While she indicated that this resulted in overcharges to TSI, she found that these overcharges were more than offset by the 40 percent discount given for international traffic and the 15 percent discount given by Transcall for domestic traffic.

In Audit Disclosure No. 6, witness Welch discussed calls that lasted over one hour, overlapping calls, short repetitive calls, and duplicate calls, as analyzed in the report submitted by TSI's consultants. Witness Welch calculated that \$26,409 was overcharged as a result of these types of calls. She testified, however, that these overcharges were more than offset by the \$74,752 in credits given to TSI for these types of problems.

In Audit Disclosure No. 8, staff witness Welch discussed the nine-second overbilling problem. Due to this problem, the witness determined that TSI was overcharged by \$37,715. Audit Disclosure

No. 9 addressed overbilling that resulted from billing according to the amount of time the call is on the switch, which is known as TP1 to TP7, instead billing only for conversation time, which is TP6 to TP7. The witness asserted that TSI was overcharged by \$83,350 due to this problem. The witness noted that the Commission approved a settlement offer by Transcall to refund its customers for this problem. See Order PSC-93-1237-AS-TI, issued in Docket No. 910517-TI, on August 25, 1993. TSI's tariff, however, allows its customers to be billed for the time that the customer's call is on the switch.

In Audit Disclosure No. 12, staff witness Welch discussed an error that was made in retroactively adjusting the discount for international traffic to 40 percent. This error resulted in TSI receiving an additional \$3,936 for the discount. In Audit Disclosure No. 15, witness Welch addressed incomplete calls. She found that TSI was overcharged \$315 for calls that were busy, \$958 for calls that were silent at the other end, and \$46,284 for calls that had long rings. The witness stated that TSI's tariff allowed for billing if the call rings for longer than one minute. Witness Welch testified that she could not determine the time to which the software was set; therefore, she did not make an adjustment for these errors.

DETERMINATION

Upon consideration, we find that the evidence supports witness Welch's determination that TSI was overcharged \$38,109 for discrepancies in minutes of use. Witness Welch's calculation that TSI was also undercharged \$12,898 for similar billing discrepancies is also clearly supported by the record. TSI was also apparently overcharged \$37,715 for the problem with nine-second overbilling. Finally, we find that witness Welch's \$83,350 adjustment for the differences in the billing for switch time versus the billing for conversation time is supported by the evidence in the record.

The evidence demonstrates that TSI was overcharged by being billed in improper increments. As indicated herein, the discounts that were given more than offset the overcharges caused by billing in improper increments. The record further supports witness Welch's findings that TSI was overcharged \$26,409 for overlapping calls, duplicate calls, and calls caused by a hung trunk, but TSI was over-compensated by the \$74,752 that it received. Furthermore, TSI received an additional \$3,936, because Transcall issued the retroactive discount for international usage. Based upon these

findings, the net amount of overcharges to TSI is \$142,339. We note that we have not applied interest to this amount. Instead, we have applied an interest calculation only to the total amount that we have determined that TSI owes Transcall.

v. Payments Made by TSI

TSI's witness Esquenazi stated that TSI gave Transcall a check for \$250,000 as a good faith offer to resolve the dispute and pay the amount owed. Mr. Esquenazi explained that he voided the check after Transcall refused it. As previously indicated herein, TSI's witness Esquenazi also stated that most of his requests for credits were initiated by complaints from his customers. He also said that he had to "write-off" \$400,000 in uncollectible accounts. He claimed that much of this amount was the result of customers deducting overcharges from their bills.

In its brief, Transcall argued that TSI was billed \$1,665,364, and paid \$858,000 on this amount.

Specifically, regarding TSI's payment history, Transcall's witness Daurio testified that, with the exception of \$10,000 that was in dispute, every credit that Mr. Esquenazi requested for TSI was given by Transcall. Witness Daurio also asserted that when she left the account in September 1990, TSI was current in its payments, but that TSI did not make any payments during her absence from the account.

Transcall's witness Metcalf indicated that his investigation revealed that the payments made by TSI to Transcall were properly recorded. In his investigation, he found that Transcall gave TSI \$169,753 in credits, although TSI only documented \$51,487 worth of billing improprieties. The witness emphasized that TSI received these credits at the retail rate. He agreed with the findings in staff witness Welch's audit report that TSI had been over-compensated for all of the misbilled calls that TSI alleged.

At hearing, staff witness Welch testified that after reviewing an attachment to Transcall witness Metcalf's direct testimony, she determined that her Audit Disclosure No. 7 was incorrect. The witness asked that her testimony and exhibits reflect an amendment to delete Audit Disclosure No. 7. After adjusting the amount of billing to match the calculations made by Transcall's witness Metcalf pertaining to Audit Disclosure 7, the amount that witness Welch determined was billed to TSI is \$1,678,561.

Witness Welch also stated that TSI received \$168,076 in credits and made payments of \$858,000. She determined that, prior to any adjustments, the outstanding balance owed by TSI was \$652,485.

DETERMINATION

Based upon the evidence in the record, we have determined that there is insufficient evidence in the record to extract what amounts of payments are directly related to specific overcharges. The evidence does, however, support the calculations of witnesses Metcalf and Welch. We find that TSI was billed \$1,678,561, received credits of \$168,076, and made payments of \$858,000. As for TSI's assertion that it sent a check for \$250,000 to cover what it felt was owed, we note that the check was marked "void," but there is no evidence that Transcall ever actually received this check. Based on these calculations, we have determined that the outstanding balance is \$652,485, prior to any adjustments.

VI. Amount Owed by TSI to Transcall

In its brief, TSI argued that \$6,737 should be deducted for checks TSI paid to Transcall that were never properly credited. Because TSI was not billed in six-second increments, TSI argued that the amount it owes should be reduced by \$91,578. For such items as stuck clocks, duplicate calls, and calls that overlapped, TSI argued that the amount owed should also be reduced by \$314,817. Because of billing format problems, TSI further argued that there should be a \$8,776 reduction in the amount that it owes. As for the nine-second error, TSI argued that this should reduce the amount owed to Transcall by another \$37,714. TSI also argued that the amount owed should be reduced by \$111,521 due to overbillings because of the time point problem, and reduced by another \$3,539 to compensate for Transcall's misbilling of 800 calls. TSI also asserted that the amount owed should be reduced by \$150 for disconnected calls. Finally, TSI argued that the amount it owes should be reduced by \$47,557 for such items as busy signals, long ring, and silent calls. The total amount that TSI asserted that it owes Transcall after these reductions is \$54,669.

Transcall's witness Metcalf disagreed with witness Welch's determination that the September, November and December, 1991, were overstated by \$38,109. He indicated that he assumed that Transcall's personnel would have sent the correct bill, and emphasized that there is no evidence that TSI complained about the

bill. Witness Metcalf also asserted that there were excess credits that totaled \$20,772 in October 1990, and April 1991, but that witness Welch ignored this amount. Finally, he determined that the adjustment for the time point differences should be disregarded, because TSI's tariff allowed TSI's customers to be billed for the entire time that they were connected to the switch.

The witness asserted that the net amount due to Transcall should be increased by \$81,371 from the amount reflected in witness Welch's audit report. Witness Metcalf's amount included a \$38,109 reversal of the adjustment that witness Welch made to account for the problem where billing summaries did not match the corresponding bills. He also argued that the amount owed should be reduced by \$37,715 for the nine-second error, and reduced an additional \$38,109 for bills that materially exceeded the amount of their detail records. Finally, he determined that the amount owed by TSI should be increased by \$3,936 in accordance with witness Welch's Audit Disclosure No. 12, and increased by another \$12,898 as indicated in Audit Disclosure No. 4. Based on his review, witness Metcalf determined that the total amount that TSI owes Transcall is \$659,993, with an additional \$222,046 in interest through the date the testimony in this Docket was filed.

In its brief, Transcall also indicated that it agreed on most points in staff witness Welch's audit report, with three exceptions. These three exceptions are the time point billing, a \$20,778 excess credit that Transcall believes was omitted, and a discrepancy in the billing summaries for September, November, and December 1991.

Staff witness Welch testified that TSI owes Transcall. Witness Welch indicated that the appropriate billing amount is \$1,678,561. She asserted that Transcall gave TSI credits of \$168,076. She also found that TSI paid Transcall \$858,000. This resulted in a net amount due of \$652,485 based on her revised figures. The witness found that the amount owed should be reduced by \$83,350 to account for the time point billing problem, reduced by \$37,715 because of the nine-second error, and decreased by \$38,109 due to discrepancies between the bills and the billing summaries. Witness Welch determined that the amount owed should be increased by \$12,898 due to other discrepancies between the bills and the billing summaries. In addition, she asserted that the amount owed should be increased by \$3,935, because of an excess credit arising from retroactively adjusting the discount for

international usage. Based on these adjustments, witness Welch determined that TSI owes Transcall \$510,145.

We note that the primary area of disagreement between the parties and witness Welch related to the \$83,350 adjustment for the time point billing problem. As noted by witness Welch, we approved a settlement offer by Transcall to refund to its own customers for billing for the time that the customers were connected to the switch, which is TP1 to TP7, instead of conversation time, which is TP6 to TP7. See Order No. PSC-93-1237-AS-TI, issued in Docket No. 910517-TI, on August 25, 1993. While TSI's tariff does provide for billing its customers for the time that they are on the switch, there is nothing in the contract between the parties that identifies whether TSI itself was to be billed according to switch time or conversation time. Witness Welch viewed the fact that Transcall sent a refund check of \$26,170 to TSI to be evidence that Transcall believed that TSI was a customer of Transcall, and as such, was due a refund under the settlement agreement.

Transcall's witness Metcalf did, however, dispute this conclusion. He stated that:

The Commission, in Order No. PSC-93-1237-AS-TI, concluded that Transcall's December 1990 tariff change was ambiguous. As a result, Transcall voluntarily agreed to refund to its own tariff customers the difference between TP1 and TP6 so as to bill only for conversation time (TP6 to TP7).

TSI clearly stated in its tariff the [sic] it billed its customer calls on a TP1 to TP7 basis. Because the relationship between Transcall and TSI called for rates based on a contract rather than a tariff, Transcall did not have the authority or the obligation to unilaterally change the tariff of TSI, nor did the Commission Order require it to do so.

For the particular act of billing, Transcall was only a functionary of TSI itself, with no latitude to make changes to TSI's tariff or billing procedures, unless specifically directed by TSI. I would again remind the Commission that TSI's tariff to this day charges TP1 to TP7 for the use of access facilities, and Transcall was appropriately complying with its contract when it billed TSI customers as directed by TSI.

Transcript at p. 306-307; emphasis in original. We agree, however, with witness Welch. While the relationship between Transcall and TSI was governed by the contract, Transcall's tariff must be used to determine how TSI was supposed to be billed. This is appropriate because TSI was a customer of Transcall. Without any other guidance from the contract governing the relationship between the parties, Transcall was prohibited from charging rates other than those set forth in its schedule on file with us in accordance with Section 364.08, Florida Statutes. Thus, Transcall was required to charge in accordance with its tariff, as set forth in Florida Statutes. Based on this rationale, we find that the amount that TSI owes Transcall shall be reduced by \$83,350.

DETERMINATION

Upon consideration, we find that TSI owes Transcall \$510,145. If the court determines that it is appropriate to apply interest to the amount due to Transcall, we have calculated the appropriate amount due. It is within the Commission's jurisdiction to make this calculation. See Florida Power Corp. v. Zenith Industries Co., 377 So. 2d 203, 205 (Fla. 2nd DCA 1979) (overcharges and legal interest on overcharge are to be recovered through PSC). We note that there is no evidence in the record supporting TSI's arguments in its brief that the parties' contract did not contemplate interest on any past due amount, that it would be unfair to assess interest on the amount due, and that TSI properly disputed the charges, thereby precluding the accrual of interest. Transcall did not address the issue in its brief, and the issue was not addressed at hearing. If the Court determines that interest is owed, the amount of applicable interest pursuant to Rule 25.114(4), Florida Administrative Code, is \$183,433.

VII. Billing of TSI's Customers by Transcall

We find it appropriate to again emphasize that this proceeding involves the business relationship between Telus/Transcall and TSI. Because of this narrow scope, the parties entered very little information in this record specific to the proper or improper billing of end users by Telus/Transcall or TSI. While staff witness Welch did find some inconsistencies during her audit that indicated the possibility of misbilling, the specifics of the case emphasized the business relationship between the two companies and not billing to end users.

Transcall's witness Metcalf testified that Transcall billed TSI correctly, according to the specific instructions from TSI, and according to TSI's tariff. Witness Metcalf asserted that Transcall did not bill TSI's customers directly. Transcall witness Daurio stated that the rates and billing increments were determined by TSI, not Transcall. Furthermore, witness Daurio stated that the billing reports prepared by Transcall were generated on a monthly basis for TSI and included the call detail along with a summary page for each customer. The witness added that Transcall received no money from TSI's customers. Witness Metcalf testified that Transcall was not obliged to be concerned whether TSI was adhering to TSI's own tariff provisions. The witness argued, therefore, that Transcall should bear no responsibility for any violation(s) therein by TSI.

TSI's witness Esquenazi offered a sample of the Transcall bill for a TSI customer demonstrating that Transcall improperly billed TSI in full minute increments. TSI witness Esquenazi argued that it was TSI's practice to assemble the information received from Transcall, repackage it, and, ultimately, send this statement to its own customers. He referred to several instances in which TSI's customers called to request credits for incorrect billing.

Staff witness Welch's audit uncovered inconsistencies that indicate the possibility that TSI was in violation of its own tariff by charging end users rates other than those specified by tariff. Specifically, the witness questioned the issue of six-second billing increments, but she could not determine the net result for end users, because the information requested from TSI was never provided. Witness Welch suggested that a separate investigation might be necessary in order to determine the amount, if any, that TSI over-billed its customers.

DETERMINATION

Based on the evidence presented, we do not agree with Transcall witness Metcalf's assertion that Transcall's billing was in accordance with TSI's tariff. Transcall was not billing TSI in accordance with TSI's tariff. Transcall was apparently billing TSI in increments in accordance with its own tariff, which we believe was appropriate. Nevertheless, the evidence does suggest that this resulted in misbilling to TSI's end users. There is, however, insufficient evidence in the record to determine the impact on TSI's end users.

In addition, we note that the evidence contradicts Transcall witness Metcalf's statement that Transcall did not bill the customers of TSI directly. Transcall witness Daurio conceded that Transcall did bill some of TSI's end users directly, but only under very limited circumstances. She asserted that corrective action was implemented when the problem was discovered, and that this action solved the problem. The witness emphasized that the billing of TSI's customers by Transcall occurred for only a short period of time at the beginning of the companies' relationship. She added that once the problem was corrected, it did not recur.

Witness Welch's audit report indicated the possibility that TSI was not in compliance with its own tariff, primarily because the billing statements received by its customers did not accurately reflect the correct six-second billing increments. TSI failed to produce all of the documentation requested to support its claim that it issued credits on behalf of its customers. Here again, there is insufficient evidence to measure the impact on TSI's end users.

DETERMINATION

Based on the evidence presented in this docket, we are unable to determine if TSI's end users were improperly billed. The evidence does, however, indicate that Transcall billed TSI's end users directly. It appears that this occurred only in a few isolated instances, and that corrective action was taken once the problem was identified.

VIII. Conclusion

Based upon the evidence in the record, it appears that TSI owes Transcall \$510,145. If the Court determines that it is appropriate to apply interest on this amount, interest through October 1998 is an additional \$183,433. We have been unable to determine the extent to which TSI's end users may have been misbilled. It does appear that Transcall improperly billed some of TSI's end users directly. This problem does, however, appear to have occurred only in a few isolated instances and was rectified upon discovery of the problem.

Our conclusions set forth herein are based upon the evidence in the record. We have jurisdiction to resolve this dispute as it pertains to intrastate charges, pursuant to Chapter 364, Florida Statutes. In accordance with Section 364.27, Florida Statutes, we

ORDER NO. PSC-98-1556-FOF-TI
DOCKET NO. 951232-TI
PAGE 33

have also investigated the interstate charges and shall forward the record of this case to the Federal Communications Commission for review of our findings. This Order shall be forwarded to the Circuit Court of the Eleventh Circuit, in and for Dade County, Florida, in accordance with the Court's Order Staying Action and Referring to the Florida Public Service Commission.

Based on the foregoing, it is therefore


ORDERED by the Florida Public Service Commission that the issues referred to us by the Circuit Court of the Eleventh Circuit, in and for Dade County, Florida, 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 our jurisdiction have been resolved as set forth in the body of this Order. It is further

ORDERED that the record of this matter shall be forwarded to the Federal Communications Commission for review of our findings regarding interstate charges and services. It is further

ORDERED that this Order shall be forwarded to the Circuit Court of the Eleventh Circuit, in and for Dade County, Florida, in accordance with the Court's Order Staying Action and Referring to the Florida Public Service Commission. It is further

ORDERED that this Docket shall be closed after the time for filing an appeal has run.

By ORDER of the Florida Public Service Commission this 23rd day of November, 1998.



KAY FLYNN, Chief
Bureau of Records

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ORDER NO. PSC-98-1556-FOF-TI
DOCKET NO. 951232-TI
PAGE 34

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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.