

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint by Telcom) DOCKET NO. 910517-TI
Recovery Corp. against TRANSCALL) ORDER NO. PSC-93-1237-AS-TI
AMERICA, INC. d/b/a ATC LONG) ISSUED: 08/25/93
DISTANCE regarding billing)
discrepancy.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER APPROVING SETTLEMENT OFFER

BY THE COMMISSION:

I. BACKGROUND

On April 15, 1991, Telcom Recovery Corp. (Telcom) filed a complaint against Transcall America, Inc. d/b/a ATC Long Distance (ATC) alleging that ATC was consistently mistiming calls and billing customers for longer periods than the actual duration of the call. The Office of Public Counsel (OPC) intervened on June 18, 1991. A Prehearing Conference was held on July 15, 1991. A hearing was held on July 18 and 19, 1991. Subsequent to the hearing, Telcom and ATC settled their differences between themselves. Telcom and ATC filed a joint brief August 7, 1991. OPC filed its brief August 7, 1991. The Attorney General of the State of Florida (AG) filed an Amicus Curiae Brief on August 7, 1991.

On August 26, 1991, Telcom filed a Motion for Voluntary Dismissal. Subsequently, on September 3, 1991, OPC filed a response to Telcom's Motion for Voluntary Dismissal. On August 26, 1992, Telcom filed a subsequent Notice of Voluntary Dismissal with Prejudice. OPC filed a Motion to Strike this second notice of dismissal on August 27, 1992.

On July 18, 1991, the Department of Legal Affairs (DLA) initiated an independent investigation of ATC's alleged overcharging of customers. At the request of ATC and with the agreement of OPC, the Commission's consideration of the issues in

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this case has been deferred pending attempts to resolve the issues raised in DLA's investigation.

On July 8, 1993, ATC, DLA and OPC executed a Settlement Agreement resolving the DLA's investigation. On July 16, 1993, ATC filed an Offer of Settlement seeking to settle the issues pending in this docket. On July 29, 1993, in conjunction with the DLA settlement, OPC filed a Notice of Voluntary Withdrawal of Intervention and Withdrawal of Motion to Strike.

The hearing in this case was held on July 18 and 19, 1991, before a panel consisting of Commissioners Deason and Easley. During the pendency of this case Commissioner Easley left the Commission. In the absence of Commissioner Easley and in view of the offer of settlement, it was deemed that the most efficient means to resolve this proceeding was to reassign this case to the remaining panel member acting as a Hearing Officer. The Hearing Officer's recommended order recommending that ATC's Offer of Settlement be approved subject to clarification of paragraph 3 of the Offer was entered August 4, 1993. After consideration of the recommended order, we now enter our order. The substantive text of the recommended order is set forth below.

II. ATC's Settlement Offer

The Offer of Settlement contains numerous provisions. The essential basis of the offer is that, since the refunds to be made pursuant to the DLA settlement are in excess of any that the Commission could require within the scope of this proceeding for any potential overcharges, the appropriate result has been achieved and there is no more to be accomplished by this proceeding. Upon review of the Offer of Settlement, it appears to be an appropriate resolution to this proceeding. However, paragraph 3 requires some clarification. Paragraph 3 states, "ATC was billing within the call timing parameters of the investigated tariffs." It should be noted, however, that because of the ambiguity in the December 5, 1990 Transcall tariff, it may be read to provide for two alternative billing methodologies. Even though there was no change at that time in Telus' billing methodology, if anything, as a result of the refund the affected customers have benefited from any ambiguity in this tariff.

Upon review and consideration of the record in this proceeding, we find that the Recommended Order should be adopted in

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its entirety. A copy of ATC's Offer of Settlement and the DLA Settlement Agreement are attached to this Order as Attachment A and are incorporated by reference.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Offer of Settlement filed by Transcall America, Inc. d/b/a ATC Long Distance is approved as set forth in the body of this Order. It is further

ORDERED that the Notice of Voluntary Withdrawal of Intervention and Withdrawal of Motion to Strike filed by the Office of Public Counsel be acknowledged. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission this 25th day of August, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

TH

by: Kary Henson
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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

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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 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 or sewer 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by TELCOM
RECOVERY CORP. against TRANSCALL
AMERICA, INC. d/b/a ATC LONG DISTANCE
regarding billing discrepancy. } Docket No. 910517-TI

OFFER OF SETTLEMENT

WHEREAS, this docket was commenced upon the complaint of Telcom Recovery ("Telcom") alleging that Transcall America, Inc. d/b/a ATC Long Distance ("ATC") "may be billing for more call duration" than its tariff indicated; and

WHEREAS, the Office of the Public Counsel ("OPC") intervened in the docket and participated as a party in this case; and

WHEREAS, to resolve this complaint, the Commission has examined the call timing language of the following operating company tariffs: Microtel, 1st Revised Sheet 16, effective 8-30-88; Telus, 2nd Revised Sheet 29, effective 2-9-89; Transcall, 1st Revised Sheet 19, effective 1-30-89; Transcall, 2nd Revised Sheet 19, effective 3-26-90; Transcall, 3rd Revised Sheet 19, effective 12-5-90; and Transcall, 4th Revised Sheet 19, effective 7-24-91 ("the investigated tariffs"); and

WHEREAS, Telcom and ATC subsequently resolved their differences and filed a joint posthearing brief on August 7, 1991 which stated that "ATC has not billed customers in excess of that authorized by its Commission-authorized tariffs"; and

WHEREAS, the Florida Department of Legal Affairs ("DLA") initiated an independent investigation concerning ATC's timing of calls and certain billing practices; and

WHEREAS, at ATC's request, the Commission has deferred taking

final action to permit the affected parties an opportunity to settle the outstanding issues; and

WHEREAS, Telcom and OPC have each filed voluntary dismissals with prejudice with the Commission and ATC has settled the DLA investigation and agreed to make refunds to certain customers.

NOW, THEREFORE, in order to facilitate the resolution of various issues in this proceeding, and to avoid further litigation and expense and the uncertainties related thereto, ATC hereby makes the following offer of settlement to resolve and conclude the above-captioned docket upon the entry of a final order of the Commission containing the following terms:

1. Telcom Recovery Corp.'s Notice of Voluntary Dismissal with Prejudice is acknowledged and the complaint is deemed dismissed with prejudice.

2. The Office of the Public Counsel's Notice of Voluntary Withdrawal with Prejudice of its intervention is acknowledged and OPC's intervention is deemed dismissed with prejudice.

3. ATC was billing within the call timing parameters of the investigated tariffs.

4. In June 1991, ATC changed its billing practices and later revised its tariff to provide for billing of conversation time only for the Transcall and Telus customers. There is no issue with respect to, nor any dispute regarding, ATC's billing practices since these changes.

5. The amounts paid to customers under the attached DLA Settlement Agreement are in excess of refunds that could be authorized by the Commission and as such they are full, fair, and complete satisfaction for any overcharges relating to: (a)

Transcall customers and ATC's changed billing practices during the period June 1, 1990 through May 31, 1991 and (b) Telus customers during the period December 5, 1990 through May 31, 1991 who became subject to the December 5, 1990 Transcall tariff. Accordingly, no penalty by this Commission is warranted.

6. All claims connected with Docket No. 910517-TI have been fully compromised and settled, with the Commission's order approving this Offer of Settlement being final agency action disposing of all issues before it in this docket and all requests for further proceedings. This order shall dispose of all claims or actions subject to the jurisdiction of the Commission that have been or could be asserted against ATC based upon or arising out of ATC's billing practices under the investigated tariffs and ATC's compliance with applicable Commission rules that are within the scope of or subject to this docket.

In making the above proposal, ATC's Offer of Settlement is subject to the following conditions:

a. The terms and conditions of this Offer of Settlement are made in an effort to settle this docket and claims associated with ATC's billing practices and tariffs during the period June 1, 1990 through May 31, 1991. Thus, ATC reserves all rights if this Offer of Settlement is not approved by the Commission and incorporated into the final order in accordance with its terms.

b. This Offer of Settlement shall be valid and binding upon ATC only to the extent it is adopted in its entirety as presented to the Commission.


c. If this Offer of Settlement is accepted by the Commission, ATC shall not request reconsideration or appeal of the

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ATTACHMENT A

order of the Commission approving this Offer of Settlement in
accordance with its terms.

Offered this 15th day of June, 1993 by



Transcall America Inc. d/b/a
ATC Long Distance

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Settlement Agreement") is entered into on this 5th day of July, 1993, between Transcall America, Inc., d/b/a ATC Long Distance, Inc. (hereinafter "ATC,") which term whenever used herein shall mean Transcall America, Inc. d/b/a ATC Long Distance, Inc. and its affiliates (including without limitation, Microtel, Inc. (Microtel)), its predecessor or merged entities (including without limitation, Telus Communications, Inc. (Telus)), its subsidiaries and parent companies including all officers, directors, employees, agents and attorneys thereof and their heirs, successors and assigns, the Department of Legal Affairs (the "Department") on behalf of the State of Florida and its departments, agencies, instrumentalities and political subdivisions, receiving payments under this Settlement Agreement, and the Office of Public Counsel (the "Office");

W I T N E S S E T H :

WHEREAS, the Department commenced an investigation of ATC concerning its timing of calls and certain billing practices as defined in paragraph 1;

WHEREAS, ATC, the Department, and the Office desire to conclude the aforementioned investigation and to settle and compromise all claims arising out of such investigation that were asserted or maintained, could have been asserted or maintained, or which in the future, could be asserted or maintained by the Department and the Office against ATC;

NOW, THEREFORE, in consideration of the premises and the mutual promises, agreements and covenants contained herein, including, but not limited to, the payment of the Settlement Sum as described in paragraph 11 below, and for other

good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto stipulate and agree as follows:

1. As used herein, the term "Investigation" shall mean the Department of Legal Affairs investigative case number 91-H-70-92, which was opened and assigned for investigation on July 18, 1991. The Investigation is limited to ATC's alleged overcharging of customers for intrastate, interstate, and international calls by adding seconds to billed calls, alleged misrepresentation of billing practices to customers and alleged overcharging of customers by rounding up of any fractional cent, all occurring between June 1, 1990, and May 31, 1991 (collectively referred to as the "Matters Investigated").

2. The term "Parties" as used in this Settlement Agreement shall collectively refer to ATC, the Department, and the Office.

3. The term "Applicable Tariffs" as used in this Settlement Agreement shall mean the following telecommunications tariffs filed with the Florida Public Service Commission: Microtel's first revised sheet 16, effective August 30, 1988; Telus' second revised sheet 29, effective February 9, 1989; Transcall's first revised sheet 19, effective January 30, 1989; ATC's second revised sheet 19, effective March 26, 1990; ATC's third revised sheet 19, effective December 5, 1990; and ATC's original sheet 30.1, effective November 11, 1990.

4. The term "customers" as used in this Settlement Agreement shall mean those persons who were billed for services from ATC subject to and during the effective periods of the Applicable Tariffs.

5. The term "Telus Customers" as used in this Settlement Agreement shall mean those ATC customers, who, at all times material to matters subject to this Settlement Agreement, received bills produced by a billing system operated on equipment resident in Miami, Florida.

6. The term "Transcall Customers" as used in this Settlement Agreement shall mean those ATC customers who, at all times material to matters subject to this Settlement Agreement, received bills produced by either of those billing systems operated on equipment resident in Boca Raton, Florida and designated by ATC as the "MTS" or "ISIS" systems.

7. It is expressly understood and agreed between the parties that this Settlement Agreement is made in compromise of disputed claims. This Settlement Agreement, and the payments and releases provided hereunder, are not and shall not be construed to be an admission of liability or any acknowledgement of the validity of any of the claims which were or which could have been asserted by the Department against ATC arising out of the Investigation, which liability or validity is hereby expressly denied by ATC.

8. ATC agrees to pay the amount of One Million Eight Hundred Eighty-Four Thousand Dollars (\$1,884,000.00) to Telus Customers for those intrastate billings occurring during the period December 5, 1990 to May 31, 1991. Payment to such Telus Customers shall be made by check (Exhibit 2 "ATC Customer Check") pursuant to the payment process described in paragraph 12 and the Payment Procedures attached as Exhibit 1. ATC Customer Checks will be delivered by First Class Mail or

by hand-delivery. Each ATC Customer Check will be accompanied by a written communication from the Florida Attorney General in the form attached hereto as Exhibit 3, and a written communication from ATC in the form attached hereto as Exhibit 4.

9. ATC agrees to pay the amount of Four Million Three Hundred Sixteen Thousand Dollars (\$4,316,000.00), subject to any adjustments under paragraph 12, to Transcall Customers for those intrastate, interstate, and international billings occurring during the period June 1, 1990 through May 31, 1991. Payment to such Transcall Customers shall be made by mailing a check (Exhibit 2 "ATC Customer Check") pursuant to the payment process described in paragraph 12 and the Payment Procedures attached as Exhibit 1. ATC Customer Checks will be delivered by First Class Mail or by hand-delivery. ATC Customer Checks will be accompanied by a written communication from ATC in the form attached hereto as Exhibit 4, and a written communication from the Florida Attorney General in the form attached hereto as Exhibit 3.

10. ATC shall pay the amount of One Million Dollars (\$1,000,000.00) to the Department in full payment of the fees, costs, and other expenses incurred by the Department in connection with the investigation. Payment of such sum shall be made pursuant to the payment process described in paragraph 12.

11. Within ten (10) days of the execution of this Settlement Agreement by the Parties, ATC shall pay into a separate interest bearing account the amount of seven

million two hundred thousand dollars (\$7,200,000) (Settlement Fund) to be disbursed pursuant to the payment process described in paragraph 12.

12. Thirty (30) days after the execution of this Agreement by the Parties, ATC shall pay to the Legal Affairs Revolving Trust Fund the sum of One Million Dollars (\$1,000,000.00) as directed by the Department. Within (90) days of the execution of this Agreement by the Parties, or when ATC receives permission for class communication under Rule 23.1, S.D.Fla.LR, from the United States District Court for the Southern District of Florida, as that Rule may apply to the pending case of Dohan and Company, P.A. v. Transcall American, Inc., No. 92-1775-IV-KMM, whichever is later, ATC shall pay to Telus Customers the sum of One Million Eight Hundred Eighty-Four Thousand Dollars (\$1,884,000.00) and to Transcall Customers the sum of Four Million Three Hundred Sixteen Thousand Dollars (\$4,316,000.00). ATC agrees that upon execution of this Settlement Agreement it will forthwith file appropriate motions and/or pleadings and diligently pursue compliance with Rule 23.1.

The amount to be paid to the Telus Customers and Transcall Customers subject to this Settlement Agreement shall be calculated on the basis of paid intrastate billings by Telus Customers for the period December 5, 1990 through May 31, 1991, and paid intrastate, interstate, and international billings by Transcall Customers for the period June 1, 1990 through May 31, 1991, in payment for any interest and damages and in lieu of any penalty. Said calculations shall be in accordance with Exhibit 1 (ATC Customer Refund Procedures) which is fully incorporated herein as a term of this Settlement Agreement.

Payments refused by Telus or Transcall customers, because of pending or contemplated legal action, may be used by ATC to pay for settlements or judgments obtained by those customers against ATC for the Matters Investigated up to the amount tendered to the customer under this agreement. In no event shall these moneys revert to ATC.

Transcall Customers who requested and previously received credits from ATC for the purpose of resolving complaints made to ATC associated with call timing and billing practices shall be excluded from any payments under this Settlement Agreement unless such payment was less than the amount they would have been entitled to under this Settlement Agreement. Such Transcall Customers shall be entitled to payment of the difference between what they have received and what they are entitled to under this Settlement Agreement. Those Transcall Customers are identified in Exhibit 5 attached to this Settlement Agreement. The Parties agree that the Four Million Three Hundred Sixteen Thousand Dollars (\$4,316,000.00) sum for Transcall Customers may be reduced by no more than One Hundred Fifty-Eight Thousand Dollars (\$158,000.00) in recognition that this is the maximum amount of the Transcall Customers' exclusion subject to this provision.

13. Any payments made by ATC pursuant to this Settlement Agreement, including the payments described in paragraphs 8, 9 and 10 above, include any and all taxes that ATC may be required to pay to the recipients of such payments, to any governmental entity or to any other person. This provision shall not reduce any of the payments which ATC is required to make pursuant to this Settlement Agreement and

ATC agrees not to seek a refund or credit from any local, state, or federal taxing authority for any tax including but not limited to any gross receipts tax, state tax, collected or paid by ATC related directly or indirectly to services for which customers may receive a refund pursuant to this Settlement Agreement.

14. The Parties acknowledge that to identify the customers who should receive payments and to calculate and remit such individual customer checks will take considerable time, effort, and expense by ATC. ATC shall update the Department at least once each thirty (30) days upon the execution of this Settlement Agreement of its progress in identifying, calculating, and remitting payments to the affected customers.

15. Any moneys remaining in the Settlement Fund after two (2) years from the date of execution of this Settlement Agreement may be disbursed as an additional payment to Transcall and Telus Customers. In no event shall those moneys remaining in the Settlement Fund, except those provided for in paragraph 12, revert to ATC.

16. The Department, all agencies, instrumentalities, and political subdivisions of the State of Florida, accepting a distribution of the funds provided for in paragraphs 8, 9, and 10 of this Settlement Agreement, and any person, accepting a distribution of the funds provided for in paragraphs 8 and 9 of this Settlement Agreement, hereby release, acquit, and forever discharge ATC from any and all actions, causes of action, obligations, liabilities, claims, or demands for compensatory, special, punitive, exemplary, or treble damages, claims for relief, or demand whatsoever in law or in equity, civil, or administrative, which were asserted or maintained, could have been

asserted or maintained, or which could in the future be asserted or maintained against ATC in any civil, or administrative action, or proceeding, based upon, arising out of, related to, or connected with, directly or indirectly, any of the Matters Investigated. The cashing of an ATC Customer Check shall constitute acceptance for the purposes of this paragraph.

17. The Parties agree that the payments made pursuant to this Settlement Agreement constitute a complete resolution and settlement of all issues and matters relating to or the subject of the Matters Investigated. Upon execution of this Settlement Agreement and payment of the sum provided for in paragraph 11, the Investigation, as defined in paragraph 1, shall be concluded. It is agreed that the Department will not reopen the Investigation and will not institute, commence, or conduct a further investigation of ATC nor take any other action with respect to the Matters Investigated provided that ATC performs the contractual obligations imposed upon it by this Agreement. The Department shall not oppose the concluding of Docket No. 910517-TI pending before the Public Service Commission in a manner consistent with this Settlement Agreement.

18. Upon execution of the Settlement Agreement Public Counsel shall voluntarily withdraw his Intervention in Docket No. 910517-TI pending before the Public Service Commission and shall take no further action with respect to the Matters Investigated.

19. The Settlement Agreement shall be binding upon and inure to the benefit of the Parties.

20. This Settlement Agreement and the exhibits attached hereto constitute the entire agreement between the Parties with regard to the subject matter contained herein and all prior negotiations and understandings between the Parties shall be deemed merged into this Settlement Agreement.

21. No representations, warranties or inducements have been made to the Parties concerning this Settlement Agreement other than those representations, warranties, and covenants contained in this Settlement Agreement.

22. No waiver, modification or amendment of the terms of this Settlement Agreement shall be valid or binding unless in writing, signed by the Party to be charged and then only to the extent set forth in such written waiver, modification, or amendment.

23. Any failure by any Party to the Settlement Agreement to insist upon the strict performance by any other Party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions of this Settlement Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement Agreement.

24. This Settlement Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Florida, without regard to its conflict of law principles.

25. By entering into this Settlement Agreement, ATC does not agree or concede that the claims or allegations which were or could have been asserted by the

Parties have merit. The Parties acknowledge that there has been no finding of liability of any kind, and that this Settlement Agreement is being entered into to avoid the expense and length of further legal proceedings, taking into account the uncertainty and risk inherent in any litigation, especially in complex matters such as the Investigation.

26. This Settlement Agreement, any exhibit or document referenced herein, any action taken to reach, effectuate or further this Settlement Agreement, and the terms set forth herein, shall not be construed as or used as an admission by or against any of the Parties of any fault, wrongdoing, or liability whatsoever, or as a waiver or limitation of any defenses otherwise available to any of the Parties. Entering into or carrying out this Settlement Agreement, or any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession by any of the Parties, or to be a waiver of any applicable defense. However, nothing in this Settlement Agreement, including this paragraph, shall be construed to limit or to restrict ATC's right to utilize this Settlement Agreement, or payments made hereunder, to assert and maintain the defenses of res judicata, collateral estoppel, payment, compromise and settlement, accord and satisfaction, or any other legal or equitable defenses in any pending or future legal or administrative action or proceeding.

27. If any clause, provision, or section of this Settlement Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or

unenforceability shall not affect any other clause, provision, or section of this Settlement Agreement, and this Settlement Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

28. This Settlement Agreement, including its exhibits, were executed after arm's length negotiations between the Parties and reflects the conclusion of the Parties that this Settlement Agreement is in the best interests of all the Parties.

29. Each of the Parties participated jointly in the drafting of this Settlement Agreement, and therefore the terms of this Settlement Agreement are not intended to be construed against any of the Parties by virtue of draftsmanship.

30. This Settlement Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

THE DEPARTMENT OF LEGAL AFFAIRS


A handwritten signature in black ink, appearing to read "Robert A. Butterworth", is written over a horizontal line. The signature is stylized and cursive.

By: Robert A. Butterworth
Attorney General for the
State of Florida

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ATTACHMENT A

OFFICE OF THE PUBLIC COUNSEL

By: 
Jack Shreve
Public Counsel

TRANSCALL AMERICA, INC. d/b/a
ATC LONG DISTANCE


By: 
Bernard J. Ebbers
President

EXHIBIT 1

ATC CUSTOMER REFUND PROCEDURES

1. ATC will compile computer tapes of affected customer bases to create an initial computer file of affected customers and the number of months that each customer is subject to receive a refund. The three data bases constituting this tape will be:

a. Telus Miami. ATC has computer tapes of all customers converted to the new billing system and those who were not converted to the new billing system. Since Telus never purged its customer files, these two tapes contain customer information for all persons and businesses who were customers at any time. ATC will run these tapes against a computer program that will sort and generate a new computer tape that will identify the following information for anyone who was a Telus customer at any time during the period December 1990 through May 1991: customer name, service address, billing address, telephone number, old account number, new account number, months a customer during the period December 1990 through May 1991.

b. Transcall Boca ISIS. ATC has computer tapes of all customers converted to the new billing system and those who were not converted to the new billing system. ATC did not purge its customer file after May 1990, so these two tapes should contain customer information for all persons and businesses who were customers during the affected period. ATC will run these tapes

against a computer program that will sort and generate a new computer tape that will identify the following information for anyone who was a Boca ISIS customer at any time during the period June 1990 through May 1991: customer name, service address, billing address, telephone number, old account number, new account number, months a customer during the period June 1990 through May 1991.

c. Transcall Boca MTS. ATC has computer tapes of only those customers converted to the new billing system. Thus, for purposes of the refund, there will be customers who terminated service prior to the conversion to the new billing system who were customers for some period of time during the affected period of time that are not on this post-conversion tape. For those who were converted to the new billing system, ATC will produce a new tape containing the same information as the Boca ISIS customer base. The customers who were not converted to the new billing system but are entitled to a refund shall be identified during the data entry process that will be the basis for the calculation of the specific customer refunds.

2. The initial computer file of affected customers will be manually updated by an outside vendor selected by ATC who will use ATC microfiche billing records. This vendor will enter individual customer billing information for three months (billings corresponding to July 1990, January 1991, and May 1991) for Boca ISIS and Boca MTS customers and two months (billing corresponding to January 1991 and May 1991) for Miami Telus customers. Any

customer identified on the microfiche as excluded from the initial computer file of affected customers will be added to the database along with corresponding usage and billing data.

3. Upon return of the updated computer database of affected customers containing the billing data, ATC will calculate the individual customer refunds. The monthly usage information for each customer will be averaged and applied against the number of months the computer records indicate that the customer was a customer during the affected period. For Transcall Boca ISIS and MTS customers not appearing on the initial computer file of affected customers but who were updated manually by the outside vendor, ATC will calculate refunds as follows: if billing for only one month is identified, the customer's refund will be projected as 4 months; if 2 months of billing is identified, 8 months; and if all 3 months of billing is updated, then the refund will be calculated based upon being a customer 12 months. For Telus Miami customers not appearing on the initial computer file of affected customers but who were updated manually, ATC will calculate refunds as follows: if billing for only one month is identified, the customer's refund will be projected as 3 months; if 2 months of billing is identified, 6 months. These parameters will be employed for the customers not originally identified by the ATC tapes since ATC does not have computer records indicating the number of months these customers were customers during the affected period. The second stage of the calculation process will involve taking the billing information manually updated and determining the total

customer billings for each customer base. For Telus Miami, the gross updated billings will be compared to the Telus Refund of \$1,884,000, with the resulting percentage to be applied to each customer's individual usage to determine the amount for each refund check. The Transcall Boca ISIS and MTS gross updated billings total will be combined and compared to the Transcall Refund amount of \$4,316,000 less any adjustment to which ATC is entitled to under paragraph 12 of the Settlement Agreement, with the resulting percentage to be applied to each customer's individual usage to determine the amount for each refund check. If the resulting amount of a customer-specific refund is \$1.00 or less (including zero refund amounts), the refund check will be for \$1.00. The master database will be further updated to reflect check numbers and refund amounts, and produce a computer tape for generation of customer refund checks.

4. ATC will use a second outside vendor to actually print, distribute, and process checks. This vendor will mail the completed refund checks to customers on the basis of the following schedule: first, any updated address requested in writing by a customer; second, an updated address supplied by the National Change of Address database; or third, the last known billing address. The back of each check in the endorsement block will contain the release language approved by the Attorney General. Checks will be sent to the U.S. Postal Service, first class postage prepaid, or by hand delivery, and accompanied by a letter from ATC approved by the Attorney General and a separate letter from the

Attorney General.

5. Endorsed checks will be processed and paid by ATC's bank when cashed by customers. The relevant information will be supplied on tape by the bank to ATC for updating of the computer database to reflect payment information. Canceled checks will be microfilmed and retained until conclusion of the refund program.

6. Checks returned as undeliverable will be microfilmed in the envelope by the check vendor, with the database being updated to reflect undeliverable. ATC will in good faith attempt to locate the customer and forward the check, with the database being updated to reflect new addresses, resent check status, etc. If the customer cannot be located, the check will be canceled and the database updated. All undeliverable checks will be retained until the conclusion of the refund program.

7. Approximately 30 days after the refund checks are mailed, ATC will employ a public notice program to advise customers and former customers (expected to be only former customers) that have not received checks to contact the company to determine if the customer is entitled to a check and to issue the necessary check. For customers who did not receive a check, ATC will research its records to determine if the customer is entitled to a refund, which will be issued based upon information supplied by the customer and/or ATC's records.


8. ATC will respond to current and former customers who claim they are entitled to additional money. These customers may be requested to supply information to support the claim of entitlement

to a greater refund amount. This will involve obtaining from the customer the original check, canceling it, and issuing a new check for the increased amount. For customers receiving greater refund, ATC will pay the additional amounts from the \$158,000 set aside in Paragraph 12 of the Settlement Agreement. If this fund is depleted and additional sums are required for payment, ATC shall draw upon its own funds to make such payments.

9. In the event of a second payment pursuant to paragraph 15 of the Settlement Agreement, such payment shall be made as an additional payment to Transcall Customers and Telus Customers who received and accepted those payments described in paragraphs 8 and 9 of the Settlement Agreement. The payment amount for Miami Telus customers shall be determined by dividing the applicable number of Miami Telus customers into those moneys remaining in the Telus Refund provided for in paragraph 3 of the Refund Procedures. The payment amount for Boca ISIS and MTS customers shall be determined by dividing the applicable number of Boca ISIS & MTS customers into those moneys remaining in the Transcall Refund provided for in paragraph 3 of the Refund Procedures. For customers receiving a second refund, such payments shall be made to former customers by check and may be made to present customers by either a credit on their bill or by separate check.

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EXHIBIT ATTACHMENT A

 1515 S. FEDERAL HWY., SUITE 400 BOCA RATON, FL 33432-7404		First Union Federal Bank of Florida Boca Raton Office Boca Raton, FL 33432		03/7/88 8:11
PAY TO THE ORDER OF		DATE	AMOUNT	EXPLANIS

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ATTACHMENT A

For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the payee of this check, by acceptance and endorsement hereof, hereby releases and forever discharges Transcend America, Inc. (via ATC Long Distance and its affiliates, predecessor or merged entities) (including without exception Telex Communications, Inc.), subsidiaries, parent companies, including all officers, directors, employees, agents, attorneys thereof and their heirs, successors and assigns, collectively, "AT" from any claims, demands, debts, liabilities, contracts, obligations, cause of action or claims for relief of whatever kind or nature, directly or indirectly related to AT's call timing and billing practices that are the subject of AT Settlement Agreement with the Florida Attorney General and the Ohio Public Counsel.

X



ROBERT A. BUTTERWORTH
Attorney General
State of Florida

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

EXHIBIT 3

May 27, 1993

Dear ATC Customer:

The Office of the Attorney General and the Office of Public Counsel are pleased to advise you of a Settlement Agreement reached with ATC Long Distance, Inc., as a result of an investigation begun in July 1991. The settlement with ATC was obtained after more than a year of reviewing thousands of documents and conducting numerous interviews concerning allegations that ATC overcharged Florida's customers for intrastate, interstate and international calls by adding time to billed calls.

ATC has denied any overbilling but has entered into a Settlement Agreement with the Office of the Attorney General and the Office of the Public Counsel with respect to this matter. The enclosed check is being sent to you pursuant to this Settlement Agreement and includes an extra amount which is being paid to you to assure that you are compensated fully for any overcharges which may have been billed to you. In addition, ATC will be paying other amounts to reimburse the State for the cost of the investigation. Under the terms of the Agreement ATC will pay a total of \$7.2 million.

According to the terms of the Settlement Agreement, acceptance of this check, by you, constitutes a waiver of any legal claim or cause of action you may have regarding the matters investigated by the Office of the Attorney General and the Office of the Public Counsel.

Sincerely,

Robert A. Butterworth
Attorney General

Jack Shreve
Public Counsel

RAB/x/FC

EXHIBIT 4

Dear Valued Customer:

ATC Long Distance has settled a dispute with the Florida Attorney General and the Office of the Public Counsel concerning certain billing practices affecting ATC customers served by our Florida Transcall and Telus billing systems.

An inquiry into this matter has been ongoing for approximately two years, during which time ATC fully cooperated with these State of Florida agencies in a detailed and thorough examination back to 1989, with a focus on the period June 1990 through May 1991. There has been no dispute regarding our billing practices since June 1991, when ATC changed its billing and tariff to bill only for conversation time (which includes answers by facsimile machines, answering machines, voice mail, and other types of equipment).

As a result of the settlement agreement, you are receiving the enclosed check. These State of Florida agencies, as well as the Florida Public Service Commission, have approved this amount as fair and adequate compensation for the difference in conversation time billing and connection time billing for Florida customers served by the Transcall billing system during the period June 1, 1990 through May 31, 1991, and those served by the Telus billing system during the period December 5, 1990 through May 31, 1991. When you cash this check you agree to release ATC from any claims relating to the subject of the settlement agreement.

We have always operated in good faith and in accordance with our tariff and have conducted our business according to the highest standards of responsibility. While by entering into this settlement agreement there has been no finding or admission of any liability or improper conduct, our resolution of this specific issue has been developed with the same good faith.

ATC Long Distance recently became a part of LDDS Communications, a company committed to the highest regard for customers and a continuing mission to improve systems and offer programs that benefit our customers. We look forward to serving you with the highest quality, most reliable long distance service available today with the personalized customer service that is the hallmark of our new company. If you have any questions or copies of your bills from this period that you would like to review with us, please call us toll free 1-800-780-2588.

Sincerely,

Judith Cohen
Vice President, Customer Support

Enclosure

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ATTACHMENT A

EXHIBIT 5

3,857.00
790.68
1,604.00
1,110.94
4,142.52
14,800.00
4,943.29
4,100.00
893.77
125.00
13.94
3,826.00
3,248.60
538.78
9,119.40
586.35
764.82
376.00
39,725.00
4,038.48
10,377.86
1,618.85
795.46
1,627.83
1,269.50
1,852.47
374.19
3,292.81
3,126.96
107.39
907.39
199.78
3,561.99
6,773.55
8,547.97
507.40
2,551.73
4,000.00
1,064.95
14,000.00
3,418.60
823.45
1,099.92
763.28
1,055.60
273.53
1,000.00
1,222.00
9,834.52
4,789.74
1,913.25
588.60