

ORIGINAL

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WESLEY R. PARSONS

WRITER'S DIRECT NO
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June 1, 1998

Via Federal Express

Ms. Blanca Bayó, Director
Public Service Commission
Division of Records and Reporting
Room 110, Easley Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

ATC v. TSI
Docket No.: 951232-TI

Dear Ms. Bayó:

Enclosed for filing with the Public Service Commission are an original and fifteen copies of Notice of Taking Deposition of Joseph Ambersley, and TSI's Response to Transcall's Motion for Protective Order.

Also enclosed is an additional copy of the filing, and a self-addressed stamped envelope. Please file-stamp and return the copy in the envelope.

Sincerely,

Wesley R. Parsons
Wesley R. Parsons

- ACK _____
- AFA 3 _____
- APP _____
- CAF _____
- CMU _____
- CTR WRP/crm _____
- EAG Enclosures _____
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- LIN 3 _____
- OPC _____
- RCH _____
- SEC 1 _____
- WAS _____
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DOCUMENT NUMBER-DATE

05027 JUN-28

FPSC-RECORDS/REPORTING

ORIGINAL

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 v.)
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

TSI'S RESPONSE TO TRANSCALL'S MOTION FOR PROTECTIVE ORDER

Telecommunications Services, Inc. ("TSI"), pursuant to Rule 1.280(b), Florida Rules of Civil Procedure, and Rules 22.034 and 22.037, of the Public Service Commission, Code, hereby files its response to the motion of Transcall America d/b/a ATC Long Distance ("Transcall") seeking a protective order preventing TSI from taking the deposition of attorney Floyd R. Self. The motion should be denied because:

1. On May 4, 1998, TSI served its notice of taking the deposition of Floyd R. Self of the law firm of Messer, Caparello & Self, for June 1, 1998.
2. Mr. Self is Transcall's outside counsel in these proceedings, and his participation in this case, according to Transcall, has been limited to activities undertaken in that capacity. (See motion at 1, ¶ 2 and 2, ¶ 4.)
3. Transcall objects to TSI's taking the deposition of Mr. Self on the grounds that "TSI's stated purpose for taking the deposition, i.e., to discover his knowledge of an internal investigation conducted by the company, would necessarily require that Mr. Self disclose information that is protected by the work-product doctrine and the attorney-client privilege." (Motion at 1, ¶ 3.)
4. The information sought by TSI through the deposition of Mr. Self is relevant

DOCUMENT NUMBER-DATE

05927 JUN-28

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PPS - RECORDS REPORTING

to and, indeed, is at the heart of, the allegations asserted in TSI's counterclaim. This information cannot be obtained by any other means or from any other source and is not of the type which falls under any applicable privilege. Moreover, the information sought from Mr. Self is necessary to the fair factual development and preparation of TSI's case and, as such, outweighs any possible prejudice to Transcall in submitting Mr. Self for deposition.

5. Finally, Transcall's motion on the grounds of attorney-client and work-product doctrine privileges is premature. These objections are more appropriately raised at the time of the deposition, should TSI counsel seek to obtain objectionable information.

6. For these reasons, Transcall's motion for protective order, preventing the deposition of Mr. Self, must be denied.

MEMORANDUM OF LAW

Florida Rule of Civil Procedure 1.280(b)(1) provides for the discovery of any matter, not privileged, that is relevant to the subject matter of the action, "including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter." Rule 1.280(b)(3) permits the discovery of attorney fact work-product, if the materials are otherwise discoverable under subdivision (b)(1), and "upon a showing that the party seeking discovery has need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means." The rationale behind the work product doctrine is that "one party is not entitled to prepare his case through the investigative work product of his adversary where the same or similar information is available through ordinary investigative techniques and discovery procedures." Southern Bell Telephone and Telegraph Co. v. Deason, 632

So.2d 1377, 1384 (Fla. 1994), *citing* Dodson v. Percell, 390 So.2d 704, 708 (Fla. 1980) (emphasis added). This rationale must be harmonized with the overall purpose of discovery, which the procedural rules were designed to effectuate. *See, i.e., In re Hillsborough Holdings Corp. v. Celotex Corp.*, 132 B.R. 478, 480 (Bankr. M.D.Fla. 1991) (“[E]videntiary privileges are not favored by law because they limit disclosure of information that may be relevant to the issues to be resolved in the lawsuit. Privilege does not enlighten but obscures the truth and for this reason it should be construed as narrowly as possible.”). Thus, as the Dodson court noted, discovery:

is a tool intended (1) to identify at early stages of a proceeding the real issues to be resolved; (2) to provide each party with all available sources of proof as early as possible to facilitate trial preparation; and (3) to abolish the tactical element of surprise in our adversarial trial process.

Id. at 706; *see also, FDIC v. Cherry, Bekaert & Holland*, 131 F.R.D. 202, 204 (M.D. Fla.1990) (“The aim of the liberal discovery rules is to make trial less a game of blind man’s bluff and more a fair contest.”); Surf Drugs, Inc. v. Vermette, 236 So.2d 108 (Fla. 1970) (the primary purpose of the procedural rules is to prevent the use of surprise, trickery, bluff and legal gymnastics). Even the United States Supreme Court in Hickman v. Taylor recognized that not all work product of an attorney is automatically shielded from discovery:

We do not mean to say that all written materials obtained or prepared by an adversary’s counsel with an eye toward litigation are necessarily free from discovery in all cases. Where relevant and non-privileged facts remain hidden in an attorney’s file and where production of those facts is essential to the preparation of one’s case, discovery may properly be had. Such written statements and documents might, under certain circumstances, be admissible in evidence or give clues as to the existence or location of relevant facts. Or they might be useful for purposes of impeachment or corroboration. And production might be justified where the witnesses are no longer available or can be reached only with difficulty.

Hickman, 329 U.S. 495 (1947).

Accordingly, Rule 1.280(b) allows for the discovery of attorney work product where a party makes a showing of "need" and "undue hardship". This showing may be made by establishing any of the following: (1) that the underlying evidence has been damaged, disassembled, changed, or is inaccessible to the same examination by the party seeking the material; (2) that the withholding of the information contained in the documents sought would defeat the interests of justice; or (3) that the information is not as readily available to the party seeking its production as to the party seeking to shield it from production. The Travelers Indemnity Co. v. Fields, 262 So.2d 222, 223-24 (Fla. 1st DCA 1972). Clearly, the facts of this case establish that TSI meets this showing of "need" and "undue hardship" and should be permitted to take Mr. Self's deposition.

As Transcall/WorldCom's counsel before this Commission one of the activities undertaken by Mr. Self has been to conduct an internal investigation of Transcall/ATC's overbilling practices. TSI is aware of no other investigation by Transcall/WorldCom into this matter. Facts concerning Transcall/ATC/WorldCom's billing practices were sought directly from WorldCom employees who were produced by Transcall and who were to have possessed the most knowledge about the issues relevant to the claims and counterclaims made in this litigation. These witnesses -- WorldCom's current Vice President of Information Services/International Chief Information Officer (Joseph Holop), WorldCom's Senior Vice President of Human Resources (Dennis Sickle), and WorldCom's Director of Regulatory Affairs (Brian Sulmonetti) -- however, either could not remember information concerning WorldCom's billing practices, could only point TSI in the direction of Transcall's legal counsel, or were not testifying truthfully or completely. These witnesses were directly asked by TSI counsel about WorldCom's billing practices and/or were asked

whether any investigation of WorldCom's overbilling practices had been conducted and, if so, whether this investigation had been conducted by any person other than Trancall's in-house and outside counsel. Other than Floyd Self, no witness could identify any person involved in such investigation. (See Composite Exhibit A consisting of excerpts from the depositions of Holop, Sickle, and Sulmonetti.)

On May 4, 1998, in an effort to avoid taking the deposition of Mr. Self, the undersigned requested, from Trancall counsel Albert T. Gimbel, also of the firm of Messer, Caparello & Self, the identity of alternate persons with knowledge of this investigation. A second request for an alternate deponent was made on May 14, 1998. (See Exhibits B and C at 2, hereto). Mr. Gimbel's only suggestion to date has been: "other than Dan Merritt, I know of no individual for you to question." (See Exhibit D hereto.) TSI, however, has previously attempted to take the deposition of Dan Merritt, but has been unsuccessful in doing so. On April 4, 1998, TSI served its notice of taking Mr. Merritt's deposition on April 28, 1998. Mr. Merritt evaded service of the deposition subpoena.

The Commission needs a record to determine whether privileges exist in regard to Mr. Self's testimony. Trancall may indeed, for example, be entitled to preserve the allegedly privileged nature of Mr. Self's selection of documents for review in conducting his investigation, and the substance of statements made to Mr. Self by Trancall employees for purposes of gathering information for his investigation. On the other hand, TSI is entitled to discover the facts uncovered by Mr. Self in his investigation of the allegations made in TSI's counterclaim, as well as the identity of persons having knowledge of those facts and other non-privileged information. As Trancall and its counsel have failed to provide TSI with any alternative witness from whom this relevant and

discoverable information can be obtained, TSI has been forced to proceed with scheduling Mr. Self for deposition.

Case law supports TSI's position. In Fireman's Fund Insurance Co. v. Superior Court, 140 Cal.Rptr. 677, 72 Cal. App.3d 786 (1977), a case cited in Shelton v. American Motors Corp., 805 F.2d 1323 (8th Cir. 1986), the court permitted the deposition of the plaintiff's counsel where there was no one else who could provide the substance of his testimony. In Fireman's Fund, an insurance action where the plaintiff was claiming bad faith, plaintiff's attorney had been the sole negotiator for plaintiff in his demands for payment and undertook to provide some of the information which the insurance company deemed necessary for resolving the claim. The insurance company sought information from the attorney as to whether an examining physician had been furnished with certain medical reports prior to rendering his results. A notice of taking the deposition of plaintiff's counsel was served and, although no motion for protective order was filed, plaintiff's counsel informed defendant that he would not attend the deposition and, in fact, did not attend. Defendant then filed a motion to compel. In granting the motion, the court found that the attorney was the only percipient witness to the facts, other than Fireman's Fund's employees, who could support or refute the allegations. 140 Cal.Rptr. at 679, 72 Cal.App.3d at 790. Although Mr. Self may not, as Transcall asserts, be a so-called "fact witness" in this case, he is undoubtedly and at this point, the *only* witness who can provide TSI with the facts relevant to its counterclaim. TSI must be allowed to depose him as to his knowledge of these facts. Fireman's Fund, *supra*; see also, McCall v. Overseas Tankship Corporation, 16 F.R.D. 467 (S.D.N.Y. 1954) (where plaintiff, wife of plane crash victim, sought to depose attorney for third party in action for purpose of having attorney identify certain documents and to state the names of witnesses, which was preparatory to plaintiff's

propounding request for production of documents or seeking to examine those portions of the attorney's "work product" which were not privileged, and where no other witnesses were available, court held that attorney may be deposed on these issues and has obligation to answer any question as to matters not privileged.)

Clearly, TSI has no other avenue of obtaining access to this information. Its effort at taking the deposition of Dan Merritt, the only other witness identified as *possibly* having some knowledge of the facts of this investigation, has been blocked by Mr. Merritt's evasion of service of the deposition subpoena. No other discovery tool or witness is available to TSI to obtain these facts. As Mr. Self was the only person designated by Transcall to conduct an investigation of overbilling practices and as he remains the sole person in possession of such information, TSI is without any other remedy than to depose Mr. Self himself. Colonial Penn Insurance Co. v. Blair, 380 So.2d 1305 (Fla. 5th DCA 1980) (where plaintiff had the unique and sole transcript of court proceeding, where defendant could not obtain transcript in any other manner, where defendant needed transcript to prepare his defense, and where the memories of witnesses were poor and possibly fallible substitute for the transcript, exception to work-product privilege under Rule 1.280(b) was established and transcript ordered produced). Transcall should not be permitted to appoint its legal counsel as the sole person to investigate relevant and material facts and then be able to shield these facts from rightful discovery under a claim of privilege. Hickman, *supra*.

Moreover, the fact that Mr. Self's investigation may contain mixed fact and opinion work product does not preclude his being deposed with regard to the factual information contained therein. In Wheaton v. Marshall, 631 So.2d 323 (Fla. 4th DCA 1994), where plaintiff, *inter alia*, sought the production of an internal memorandum prepared by the defendant's law firm which the

court found was protected by the work product privilege, it stated:

Where, as here, the material in question contains mixed fact and opinion work product, the opposing party may be able to obtain access to those portions which contain factual information, while being denied access to the rest. *State v. Rabin*, 495 So.2d 257, 263 (Fla. 3d DCA 1986).

Id. at 325. See Landrum v. Tallahassee Memorial Regional Medical Center, Inc., 525 So.2d 994 (Fla. 1st DCA 1988) (Rule 1.280(b)(2) does not completely immunize from discovery the information contained in witness statements to attorney or the identities of persons having knowledge of those facts); In re Hillsborough Holdings Corp., *supra* (questions presented to attorneys during deposition which related to the hiring of "corporate consultants" were allowed inasmuch as they requested factual information; questions relating to non-privileged documents inasmuch as they related to what information was received, what underlying facts were considered and what documents were requested were allowed so long as request was for precise factual information and not for eliciting opinion or legal advice given by deponents).

Although in Wheaton production of the memorandum was denied because plaintiffs failed to demonstrate that they met the need and hardship exception to Rule 1.280(b)(3), that is not the case in the instant action. As demonstrated above, TSI has substantial need for facts relating to its counterclaim and it has no other access to this information other than through Mr. Self. Transcall's reliance on Upjohn Company v. United States, 449 U.S. 383 (1981), in this regard is misplaced, as the IRS in that case clearly sought to obtain what was Upjohn's general counsel's protected opinion work product. Moreover, as was noted by the Upjohn Court, a preliminary report of counsel's investigation was voluntarily given by Upjohn to both the SEC and the IRS. Here, Transcall not only has denied TSI access to any report of Mr. Self's investigation, but has refused

to permit TSI to attempt to obtain any knowledge whatsoever about the underlying facts contained in the report and from where they were obtained. "The privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney..." Upjohn, 449 U.S. at 385.

The taking of an attorney's deposition, even if he or she represents a party to the litigation in issue, is recognized as a means for discovery. See West Peninsular Title Co. v. Palm Beach County, 132 F.R.D. 301 (S.D.Fla. 1990); Young, Stern & Tannenbaum, P.A. v. Smith, 416 So.2d 4 (Fla. 3d DCA 1982); S.J. Spector v. Alter, 138 So.2d 517 (Fla. 3d DCA 1962); see also Rule 1.310(a), Fla.R.Civ.P. (any party may take the testimony of any person, including a party, by deposition upon oral examination.) Where the party seeking to depose the attorney can show the propriety and need for this discovery -- i.e., that the deposition is the only practical means available of obtaining the information, that the information sought will not invade the realm of the attorney's work product, or any attorney-client privilege, and that the information is relevant and its need outweighs the dangers of deposing the other party's attorney, the deposition should be allowed. West Peninsular, 132 F.R.D. at 302-03; see also, Shelton, supra, 805 F.2d at 1327 (circumstances in which court should order the taking of deposition of opposing counsel are where (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case.) The facts set forth above plainly meet these factors and demonstrate TSI's need to depose Mr. Self.

Finally, Transcall's motion, which seeks to prevent Mr. Self from being deposed on any matter, is entirely premature. Such a sweeping protective order would be akin to prior restraint. As Mr. Self may be able to provide information on matters that are not privileged, and because

Transcall cannot know exactly what questions will be put to Mr. Self until such time as he is deposed, the proper place for Transcall to assert any attorney-client or work-product doctrine objections is at the deposition itself. See Young, Stern & Tannenbaum, P.A., supra; S.J. Spector v. Alter, 138 So.2d 517 (Fla. 3d DCA 1962); see also Marco Island Partners v. Oak Development Corp., 117 F.R.D. 418, 419 (N.D. Ill. 1987), citing to Hunt International Resources Corp. v. Binstein, 98 F.R.D. 689, 690 (N.D. Ill. 1983) ("it would be premature to quash a deposition of an attorney based on an assertion of privilege: 'The more appropriate method is to allow the deposition to be taken and permit the attorney to claim privilege in the face of certain questions, if necessary.'"). As an attorney, Mr. Self is amply able to assert these privileges at his deposition when, and if, it becomes necessary.

For all of the above reasons, Transcall's motion for protective order should be denied.

ADORNO & ZEDER, P.A.



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Florida Bar No. 539414
2601 South Bayshore Drive
Suite 1600
Miami, Florida 33133
Telephone: (305) 858-5555
Facsimile: (305) 858-4777

Attorneys for TSI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via telefax and

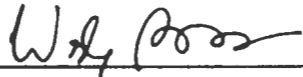
U.S. Mail this 13th day of ^{June}~~May~~, 1998 to:

Albert T. Gimbel
Messer, Caparello & Self, P.A.
215 South Monroe Street, Suite 701
Tallahassee, Florida 32302-1878

Beth Keating
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32301

Kathy L. Welch, CPA
Regulatory Analyst Supervisor
Florida Public Service Commission
3625 N.W. 82nd Avenue, Suite 400
Miami, Florida 33166-7602

159119



BEFORE THE STAFF OF THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 951232-TI

COPY

In Re: Dade County Circuit Court referral
of certain issues in Case No. 92-11654 CA 11
(Transcall America, Inc., vs. Telecommunications
Services, Inc., and Telecommunications Services,
Inc., vs. Transcall America, Inc. and Advanced
Telecommunications Corp.) That are within the
Commission's jurisdiction,

- - - - - x

1515 So. Federal Hwy
Boca Raton, Florida
March 26, 1998
10:00 a.m.- 3:10 p.m.

DEPOSITION OF BRIAN SULMONETTI

Taken before ROBERT WOLINSKY, CM,
Registered Professional Reporter and Notary Public
for the State of Florida at Large, pursuant to
Notice of Taking Deposition filed in the above
cause.

— EXHIBIT "A" —

1 region. That brings you up to today.

2 Q. Are you familiar with the proceeding
3 that's currently before the commission, sir,
4 Transcall versus Telecommunications Services,
5 Inc.?

6 A. Yes.

7 Q. How did you become familiar with the
8 case?

9 A. Since I was regulatory manager back --
10 I can't remember the date, T.S.I. filed a
11 regulatory complaint against us, so that went to
12 me.

13 Q. Have you been the person on this case
14 at WorldCom and its predecessors since then?

15 A. Yes.

16 Q. What do you understand this case to be
17 about?

18 A. A simple matter of collection. T.S.I.
19 owes us money.

20 Q. Have you seen the counterclaim --

21 A. Yes.

22 Q. Any of the counterclaims filed by
23 T.S.I.?

24 A. Uh-huh.

25 Q. Have you done an evaluation of the

1 counterclaims?

2 A. No. Personally, I have not.

3 Q. Are you concerned at all about any
4 liability on the part of WorldCom for the
5 allegations of the counterclaim?

6 MR. GIMBEL: To the extent the witness
7 is not a lawyer, and that requires an analysis
8 of legal defenses as well as legal claims --
9 again, it's a deposition, so he can -- I'm not
10 instructing him not to answer, but --

11 THE WITNESS: What was your question
12 again? I am sorry.

13 BY MR. PARSONS:

14 Q. The question was, are you concerned
15 about the allegations in T.S.I.'s counterclaim?

16 A. As with any complaint, we're always
17 concerned with allegations made by anybody.

18 Q. Although you have not evaluated the
19 allegations, has anyone at WorldCom evaluated the
20 allegations?

21 A. Yes. Our legal counsel.

22 Q. Anyone other than legal counsel?

23 A. Probably our in-house legal counsel,
24 too.

25 Q. Anyone else?

1 A. No.

2 Q. Has any investigation of the
3 allegations been done, other than in-house and
4 outside legal counsel?

5 A. Not that I know.

6 MR. GIMBEL: If you know.

7 THE WITNESS: Not that I'm aware of.

8 BY MR. PARSONS:

9 Q. Were you involved in the investigation
10 of the Dohan case of the nine-second problem?

11 A. I was involved in the case, yes.

12 Q. Who headed that investigation?

13 A. Our outside counsel.

14 Q. Did you have corporate persons
15 responsible for the investigation?

16 A. I guess I don't understand. I mean, I
17 dealt with getting any information that legal
18 counsel needed for Dohan, you know. I guess I
19 don't understand your question.

20 Q. Was there a gentleman named Dan Merritt
21 you were familiar with?

22 A. Yes.

23 Q. Did he produce a report on the
24 nine-second problem?

25 A. Yes, he did.

1 Q. Did Dan Merritt investigate any charges
2 of overbilling other than the nine-second
3 increment, to your knowledge?

4 A. I'm not aware of any.

5 Q. Has anyone other than legal counsel for
6 WorldCom investigated allegations of overbilling by
7 my client, T.S.I.?

8 A. Not that I'm aware.

9 Q. Have you read the counterclaim filed by
10 T.S.I. in this case, sir?

11 A. Probably. A while back.

12 Q. Do you recall seeing a list of about a
13 dozen difficulties that T.S.I. had with its billing
14 and business relationships with Transcall and ATC?

15 A. Vaguely. I mean, if you could show it
16 to me, maybe.

17 Q. In vaguely recalling that, do you have
18 any recollection whether any steps were taken by
19 WorldCom to determine whether any of the
20 overbilling claimed in those allegations had taken
21 place?

22 MR. GIMBEL: I'm sorry. Can you read
23 that back?

24 (The question referred to was read by
25 the reporter as above recorded.)

1 THE WITNESS: I think legal counsel
2 looked into it. ---

3 BY MR. PARSONS:

4 Q. Anyone else, sir?

5 A. Not that I'm aware of. I mean, legal
6 counsel may have had someone look.

7 Q. Why didn't WorldCom, itself, not its
8 legal counsel, investigate charges of overbilling
9 by T.S.I.?

10 A. Because it was filed as a litigation
11 matter, so we just take a strategy that this is a
12 case, and we have to take very careful steps in the
13 matter.

14 Q. Nevertheless, in Dohan there was an
15 investigation outside of legal counsel. So with
16 that in mind, why wasn't this case treated
17 similarly to Dohan?

18 MR. GIMBEL: Well, I'm going to object
19 to the form of the question, because you're
20 making subjective descriptions and calls on
21 what was or wasn't done, so I object to the
22 form of the question.

23 If you can answer that, Brian, you're
24 free to answer.

25 BY MR. PARSONS:

21
Q. It's a simple why question. I would like to restate it if I could.

Why wasn't there a corporate investigation of T.S.I.'s claims, as there apparently was a corporate investigation in Dohan?

A. I think the Dohan investigation was directed by legal counsel. I mean, I don't -- so, I guess I don't understand your corporate direction. I mean, legal counsel doing it means the corporate is investigating itself, so I just don't understand your question.

Q. Was there an investigation directed by counsel, of T.S.I.'s allegation, that nevertheless involved non-lawyers within WorldCom?

A. I don't recall right now.

Q. You don't recall whether there was or there wasn't?

A. Yes.

Q. Who would know, other than legal counsel, whether there was such an investigation?

A. Just legal counsel.

Q. If there were such an investigation, would you as a person responsible within WorldCom for this lawsuit, know about it?

A. No, not... because I was responsible

1 for the regulatory aspects of this. But this is a
2 litigation matter, because you had collections and
3 all these other issues into it, so...

4 Q. So you're only responsible for this
5 case insofar as it involves regulatory matters?

6 A. Yes; working with the PSC.

7 Q. Is there someone out at WorldCom that
8 has some other sort of responsibility,
9 non-regulatory, for this case?

10 A. I mean our general counsel, but, I
11 mean, he has responsibility for all litigation.

12 Q. Any non-lawyer person?

13 A. Not that I'm aware of.

14 Q. Who within WorldCom, other than general
15 counsel, would know who has responsibility for this
16 matter within WorldCom?

17 A. No, I don't know.

18 Q. Have you been deposed before, sir?

19 A. Yes.

20 Q. How many times?

21 A. Two or three -- four.

22 Q. Were one of those matters the Dohan
23 proceeding?

24 A. Yes.

25 Q. What were the others?

ADORNO & ZEDER
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WESLEY R PARSONS

May 4, 1998

Albert Gimbel
Messer, Capovella & Self
215 South Monroe Street, Suite 701
Tallahassee, Florida 32302-1878

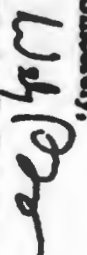
Advanced Telecommunications Corp. v. Telecommunications Services, Inc.
Docket No.: 981232-JT

Dear Tico:

As I proposed to you on my letter of April 13, 1998, I need to take the deposition of Floyd Self. It appears that he is the only person knowledgeable about Trammell/ATC/Worldecom's investigation into the billing irregularities that are at issue in this case. If there is another person, who is not a lawyer, who is knowledgeable about this matter, please identify him or her and I will consider deposing this person instead of Floyd, or at least prior to Floyd.

I take this step with some misgivings, since I am not anxious to depose another counsel. It appears to me, however, that Worldecom mandated this course of action when it chose counsel to conduct its investigation. I have picked a pro-forma date of June 1, 1998, for the deposition, at your office in Tallahassee, to allow sufficient time for you to file a motion for protective order and for us to brief it.

A notice of deposition for Floyd and some non-party witnesses is attached.

Sincerely,

Wesley R. Parsons

WRP/crm
Enclosure ✓
cc: Beth Keating
Kathy Welch
WRP1107.000154173

MAY 6 1998
FBI
LEGAL DIVISION

EXHIBIT "B"

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**DOCKET NO. 951232-TI
FILED: October 17, 1995**

In Re: Dade County Circuit Court referral of)
certain issues in Case No. 92-11654 CA 11)
(Transcall America, Inc. vs. Telecommunications)
Services, Inc. and Telecommunications Services,)
Inc. vs. Transcall America, Inc. and Advanced)
Telecommunications Corp.) that are within the)
Commission's jurisdiction.)
_____)

**NOTICE OF TAKING
DEPOSITIONS**

**TO: Albert T. Gimbel
Messer, Capareello & Self, P.A.
215 South Monroe Street, Suite 701
Tallahassee, Florida 32302-1878**

**Beth Keating
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32301**

**Kathy L. Welch, CPA
Regulatory Analyst Supervisor
Florida Public Service Commission
3625 N.W. 82nd Avenue, Suite 400
Miami, Florida 33166-7602**

**PLEASE TAKE NOTICE that the undersigned attorney will take the deposition of
the following individuals:**

DOCKET NO. 951232-TT
FILED: October 17, 1995

<u>NAME</u>	<u>DATE AND TIME</u>	<u>LOCATION</u>
Rudolph McGlashan	May 19, 1998 10:00 a.m.	Adorno & Zeder, P.A. 888 S.E. 3rd Avenue Suite 500 Ft. Lauderdale, FL 33316
Joseph Signorelli	May 19, 1998 2:00 p.m.	Adorno & Zeder, P.A. 888 S.E. 3rd Avenue Suite 500 Ft. Lauderdale, FL 33316
David Resposo	May 20, 1998 4:00 p.m.	Adorno & Zeder, P.A. 2601 S. Bayshore Drive Suite 1600 Miami, Florida 33133
Floyd Self	June 1, 1998 12:30 p.m.	Messer, Caparello & Self, P.A. 215 South Monroe Street Suite 701 Tallahassee, Florida 32302-1878

-2-

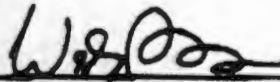
ADORNO & ZEDER, P.A.

2601 SOUTH BAYSHORE DRIVE • SUITE 1600 • MIAMI, FLORIDA 33133 • TELEPHONE (305) 658-8888 • TELEFAX 658-4777

DOCKET NO. 951232-TI
FILED: October 17, 1995

upon oral examination before an officer authorized by law to take depositions in the particular jurisdiction. The oral examinations will continue from day to day until completed. The deposition is being taken for the purpose of discovery, or for such other purposes as are permitted under the rules of Court, including the applicable Florida Rules of Civil Procedure.

ADORNO & ZEDER, P.A.



Wesley R. Parsons
Florida Bar No.: 539414
2601 South Bayshore Drive, Suite 1600
Miami, Florida 33133
Telephone: (305) 858-5555
Facsimile: (305) 858-4777

Attorneys for Defendant

DOCKET NO. 951232-TT
FILED: October 17, 1995

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
U.S. Mail this 4 day of May, 1998 on the addressee.

W. G. [Signature]

cc: Allen Benowitz

11677.004/134000

ADORNO & ZEDER, P.A.

2801 SOUTH BAYSHORE DRIVE • SUITE 1600 • MIAMI, FLORIDA 33133 • TELEPHONE (305) 555-8888 • TELEFAX 888-4777

ADORNO & ZEDER

A PROFESSIONAL ASSOCIATION

2801 SOUTH BAYSHORE DRIVE
SUITE 1600

MIAMI, FLORIDA 33133

TELEPHONE (305) 858-5555

FACSIMILE (305) 858-4777

WORLD WIDE WEB <http://www.adorno.com>

WESLEY R. PARSONS

WRITER'S DIRECT NO
(305) 860-7065

May 14, 1998

Via Telefax

Albert Gimbel

Messer, Caparello & Self

215 South Monroe Street, Suite 701

P.O. Box 1876

Tallahassee, Florida 32302-1876

Advanced Telecommunications Corp. v. Telecommunications Services, Inc.

Docket No.: 951232-TI

Dear Tico:

I received your telefax letters of yesterday and today about your delayed receipt of mail. I also am concerned that you did not receive the April 4 correspondence in a timely fashion. My suggestion upon reading your first letter was to ask you to save the envelope with the postmark on it when my April 4 letter arrived. Since you've done this, please send the envelope to me so that I can investigate within my office. Please be assured that there is no systematic problem with late mailings at Adorno & Zeder. As you know, this office (Miami) of Adorno & Zeder consists of fifty lawyer with a dedicated office services staff. Mail goes out on time. Correspondence and pleadings are postmarked the same day as the date of the correspondence or the service date of the pleading.

In the last few years, I can only recall one similar complaint about non-delivery or late delivery of mail, and that came from a pro se litigant whose credibility is problematic.

I apologize for the apparent late mailing of the April 4 correspondence and, as I said, I will investigate if you send me the envelope. No harm seems to have been done since we had discussed the contents of the notice over the telephone beforehand. However, if you are implying in your letters that there is something sinister going on because of the late delivery of this mail, I resent and deny the implication.

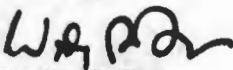
In any event, to dispose of this problem, I will try to remember to telefax to you time-sensitive correspondence or pleadings in the future, and you can do the same for me. Attached in this regard is a response that went out the day before yesterday.

— EXHIBIT "C" —

**Albert Gimbel
Messer, Caparello & Self
May 14, 1998
Page 2**

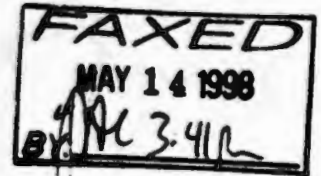
In regard to Floyd Self's deposition, while I understand your position, I do not agree with it. Do you have an alternative deponent to propose? Someone who is not a lawyer who can testify about WorldCom's investigation?

Sincerely,


Wesley R. Parsons

**WRP/crm
Attachment
cc: Beth Keating (via telefax)
Kathv Welch (via telefax)**

ADORNO & ZEDER, P.A.
2601 South Bayshore Drive
Suite 1600
Miami, Florida 33133



(305) 858-5555

Facsimile (305) 858-4777

May 14, 1998

Please deliver the following page(s) to:

NAME: Albert Gimbel
ADDRESS: Messer, Caparello & Self
TELECOPIER #: 850-224-4359
CONFIRMATION #: 850-222-0720
FROM: Wesley R. Parsons

COMMENTS:

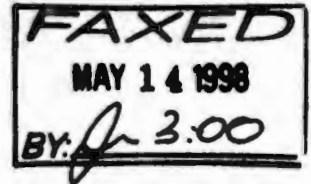
Total number of pages including cover letter: 8

A&Z Reference: 11677.004

NOTICE TO RECIPIENT

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ADORNO & ZEDER, P.A.
2601 South Bayshore Drive
Suite 1600
Miami, Florida 33133



(305) 858-5555

Facsimile (305) 858-4777

May 14, 1998

Please deliver the following page(s) to:

NAME: Joel Esquenazi
Carlos Rodriguez

TELECOPIER #: 577-9774

CONFIRMATION #: 577-9700

FROM: Wesley R. Parsons

COMMENTS: For your information

Total number of pages including cover letter: 7

A&Z Reference: 11677.004

NOTICE TO RECIPIENT

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ADORNO & ZEDER

A PROFESSIONAL ASSOCIATION

2801 SOUTH BAYSHORE DRIVE

SUITE 1800

MIAMI, FLORIDA 33133

TELEPHONE (305) 858-8855

FACSIMILE (305) 858-4777

WORLD WIDE WEB <http://www.adorno.com>

WESLEY R. PARSONS

WRITER'S DIRECT NO
(305) 860-7065

May 14, 1998

Via Telefax

Albert Gimbel

Messer, Caparello & Self

215 South Monroe Street, Suite 701

P.O. Box 1876

Tallahassee, Florida 32302-1876

**Advanced Telecommunications Corp. v. Telecommunications Services, Inc.
Docket No.: 951232-TT**

Dear Tico:

I received your telefax letters of yesterday and today about your delayed receipt of mail. I also am concerned that you did not receive the April 4 correspondence in a timely fashion. My suggestion upon reading your first letter was to ask you to save the envelope with the postmark on it when my April 4 letter arrived. Since you've done this, please send the envelope to me so that I can investigate within my office. Please be assured that there is no systematic problem with late mailings at Adorno & Zeder. As you know, this office (Miami) of Adorno & Zeder consists of fifty lawyer with a dedicated office services staff. Mail goes out on time. Correspondence and pleadings are postmarked the same day as the date of the correspondence or the service date of the pleading.

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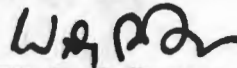
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**Albert Gimbel
Messer, Caparello & Self
May 14, 1998
Page 2**

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Sincerely,



Wesley R. Parsons

**WRP/crm
Attachment
cc: Beth Keating (via telefax)
Kathy Welch (via telefax)**

bcc: Carlos Rodriguez ✓
Joel Esquenazi ✓

WED/L. LITICOV/156639/11677.004

ADORNO & ZEDER
A PROFESSIONAL ASSOCIATION

LAW OFFICES
MESSER, CAPARELLO & SELF
A PROFESSIONAL ASSOCIATION

208 SOUTH MONROE STREET, SUITE 701
POST OFFICE BOX 1078
TALLAHASSEE, FLORIDA 32302-1078
TELEPHONE (904) 222-0720
TELECOPIERS (904) 224-4388, (904) 428-1842

May 14, 1998

VIA TELEFAX

Wesley R. Parsons, Esq.
Adorno & Zeder, P.A.
2601 South Bayshore Dr., Ste. 1600
Miami, FL 33133

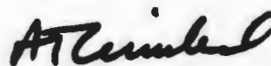
Re: *Advanced Telecommunications Corp. v. Telecommunications Services, Inc.*,
Docket No. 951232-TI

Dear Wes:

I acknowledge receipt of your letter dated May 14, 1998 in response to my letter concerning delayed mailings. I deny making any implications of any kind. I was simply notifying you of a matter that I thought needed to be brought to your attention.

As to the taking of Floyd Self's deposition, other than Dan Merritt, I know of no individual for you to question.

Sincerely,



Albert T. Gimbel

ATG:dle

cc: Beth Keating
Kathy Welch

H:\USERS\DEB\TS\1998\PARSONS\B.E14