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RECORDS AND
REPORTING

July 15, 1998

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

BY HAND DELIVERY

Re: Docket No. 951232-TI

Dear Ms. Bayo:

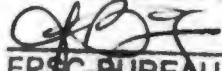
Enclosed are an original and fifteen (15) copies of:

Transcall's Response to TSI's Request for Attorneys' Fees on
Transcall's Motion to Strike


for filing in the referenced docket. Please indicate receipt by stamping the enclosed extra copy of
this letter.

Thank you for your assistance in this matter.

RECEIVED & FILED


FPSC-BUREAU OF RECORDS

Sincerely,


Albert T. Gimbel

- ACK ✓
- AFA 3
- APP _____
- CAF _____
- CMU 1
- CTR _____
- EAG _____
- LEG 1
- LIN 3
- OPC _____
- RCH _____
- SEC 1
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- OTH _____

ATG:dle
Enclosures

cc: Beth Keating, Esq.
Wesley Parsons, Esq.

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DOCUMENT NUMBER-DATE

07452 JUL 15 98

FPSC-RECORDS AND REPORTING

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

TRANSCALL'S RESPONSE TO TSI'S REQUEST FOR ATTORNEYS' FEES ON TRANSCALL'S MOTION TO STRIKE

Transcall America, Inc., d/b/a ATC Long Distance (Transcall) files this response to TSI's request for attorneys' fees on Transcall's previously filed Motion to Strike, and as grounds therefor states:

1. In its Response to Transcall's Motion to Strike Prefiled Testimony and in support of its claim for attorneys' fees, TSI asserts that Transcall's motion is "frivolous" because it has "no basis in law and in fact." This assertion is clearly unfounded.
2. Transcall essentially has formally objected to TSI's characterization that the "prefiled direct testimony" is that of the individuals listed. It is not the direct testimony of these individuals, it was not prepared by them, nor was it approved by them. Under these circumstances, it is entirely appropriate to move to strike—or if you prefer, object to—the testimony. Transcall's motion is not frivolous.
3. Outside of Commission practice, the procedure allowing prefiled direct testimony is not generally followed, thus the rules of procedure and cases do not specifically address the practice. Transcall acknowledges that it cited rules of procedure which more appropriately address pleadings.

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FLORIDA PUBLIC SERVICE REPORTING

However, Transcall makes it clear in their motion that they are not moving to strike “pleadings.” In fact, nowhere in Transcall’s motion do they request that pleadings be stricken. TSI fully comprehends the nature of the Motion to Strike and such understanding is reflected in their response. For example, in paragraph 1, TSI states that “Transcall seeks to strike the prefiled testimony on the purported grounds that such prefiled testimony is redundant, immaterial, impertinent and unauthorized in its form.” (Emphasis added.) All other arguments raised by TSI in their response are extraneous and designed to cloud the issues. Suggesting that the lack of verification of the motion to strike renders the motion defective is one such example since Transcall is not moving to strike “pleadings”.

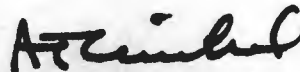
4. When we turn our attention to the merits of Transcall’s motion to strike, we see that TSI has submitted deposition transcripts as the “direct written testimony” of individuals when that is not the case. To represent the depositions as “direct written testimony” of these individuals rightfully elicited a motion to strike from Transcall as being unauthorized in its form. That the motion to strike could also be termed an “objection” does not detract from the merits of the motion, nor does it warrant fees and costs.

5. Further, TSI has the burden to establish the admissibility of these transcripts however used. Transcall has the right to object to their form and their use, and certainly can object to their characterization as “direct written testimony”. Other objections to these depositions are appropriate and will be raised at the appropriate time.

6. Therefore, Transcall’s motion is not frivolous and it does have a basis in law (the deposition testimony is irrelevant and unauthorized in form) and in fact (characterizing it as the actual “direct written testimony” of the individuals is a mischaracterization). Accordingly, TSI’s

request for attorneys' fees is unwarranted and the Commission should reject TSI's request for such fees.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by regular U.S. mail to: Wesley R. Parsons, Esq., Adorno & Zeder, P.A., 2601 South Bayshore Dr., Ste. 1600, Miami, Florida, 33133, and Beth Keating, Esq., Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0850, this 15th day of July, 1998.



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