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MEMORANDUM

June 3, 1998

TO: DIVISION OF RECORDS AND REPORTING

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

RE: DOCKET NO. 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.

98-0766-PCD-TI

Attached is an ORDER ON MOTION FOR ENLARGEMENT OF TIME TO SERVE FURTHER ANSWERS TO INTERROGATORIES, MOTION FOR CONTINUANCE OF PRETRIAL CONTROLLING DATES AND HEARING, AND REQUEST FOR EXPEDITED CONSIDERATION, to be issued in the above referenced docket. (Number of pages in order - 5)

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

**MUST GO TODAY**

*Approved  
by [unclear] - 4/0.*

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-98-0766-PCO-TI  
ISSUED: June 3, 1998

ORDER ON MOTION FOR ENLARGEMENT OF TIME TO SERVE FURTHER ANSWERS TO INTERROGATORIES, MOTION FOR CONTINUANCE OF PRETRIAL CONTROLLING DATES AND HEARING, AND REQUEST FOR EXPEDITED CONSIDERATION

Transcall America, Inc., d/b/a ATC Long Distance (ATC) filed this complaint with the Dade County Circuit Court on May 21, 1992, against Telecommunications Services, Inc. (TSI) for alleged failure to pay for telecommunications services rendered. On July 5, 1994, TSI filed a counterclaim alleging breach of contract and improper billing of services. On February 24, 1995, the Court issued its Order Staying Action and Referring to the Florida Public Service Commission. Therein, the Court referred to this Commission for review all claims within the Commission's exclusive jurisdiction under Chapter 364. On January 29, 1997, TSI filed a Motion for Reconsideration of Order Staying Action and Referring to the Florida Public Service Commission and Motion for Leave to Amend Counterclaim with the Dade County Circuit Court. Transcall served its response to the motion on February 20, 1997, and the Commission served a response on April 18, 1997. On May 27, 1997, the Circuit Court issued its Order Denying Motion for Reconsideration and to Amend. This matter has, therefore, been set for hearing August 19 and 20, 1998.

On January 6, 1998, Transcall served its first set of interrogatories on TSI. On March 20, 1998, Transcall filed a Motion to Compel Answers to Interrogatories. On March 31, 1998, TSI filed an Agreed Motion for Enlargement of Time to Serve

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Opposition to Transcall's Motion to Compel Answers to Interrogatories. TSI asserted that it had reached an agreement with counsel for Transcall that the response to the Motion to Compel may be served by April 6, 1998. Thus, by Order No. PSC-98-0487-PCO-TP, filed April 7, 1998, TSI's Motion for Enlargement of Time was granted. On April 7, 1998, TSI filed its Opposition to Transcall's Motion to Compel.

By Order No. PSC-98-0703-PCO-TI, issued May 20, 1998, I granted, in part, and denied, in part, Transcall's Motion to Compel. By that Order, I required TSI to provide its responses to certain compelled interrogatories by June 3, 1998. On June 1, 1998, TSI filed a Motion for Enlargement of Time to Serve Further Answers to Interrogatories, Motion for Continuance of Pretrial Controlling Dates and Hearing, and Request for Expedited Consideration. On June 2, 1998, Transcall filed its Response in Opposition to TSI's Motion.

In its Motion, TSI seeks a one-month extension of time to provide responses compelled by Order No. PSC-98-0703-PCO-TI. TSI asserts that it has been attempting to gather the information necessary to provide the interrogatory responses, but has been unable to gather the information within the required time frame. TSI adds that the interrogatories are too extensive and that it needs a month in order to provide adequate responses.

TSI also asks that the procedural and hearing schedule for this docket be extended by three months. TSI asserts that its legal counsel is involved in a large lawsuit that has been set for trial beginning July 6, 1998, in the U.S. District Court for the Southern District of Florida. TSI states that its legal counsel will be defending the lawsuit along with one other attorney from counsel's firm. TSI states that the trial and pretrial deadlines established in that case will impair TSI's counsel's ability to comply with the controlling dates in this Commission proceeding.

TSI also asserts that it will have difficulty preparing direct testimony and responses to 104 interrogatories by the required dates because "TSI, a small business, does not have the resources in-house to absorb these two tracks simultaneously." Motion at p. 2.

Finally, TSI asserts that there are other witnesses in this case that it wishes to depose, but that it has had difficulty obtaining personal service. TSI argues that under the current

schedule, it will be unable to obtain necessary discovery information from these witnesses. TSI proposes, therefore, that the procedural schedule for this docket be modified as follows:

- |   |                      |
|---|----------------------|
| 1. Direct Testimony and Exhibits of<br>Petitioner, Respondents, and Staff   | September 15, 1998   |
| 2. Rebuttal Testimony and Exhibits of<br>Petitioner, Respondents, and Staff | October 16, 1998     |
| 3. Prehearing Statements  | October 27, 1998     |
| 4. Prehearing Conference  | November 9, 1998     |
| 5. Hearing  | December 2 - 3, 1998 |
| 6. Briefs   | January 8, 1999      |

In its Response, Transcall asserts that it opposes TSI's request for additional time to serve answers to interrogatories. Transcall argues this case was initiated in 1992 when Transcall sought to collect \$700,000 from TSI for services rendered. Transcall states that TSI responded with assertions that Transcall engaged in improper billing practices. Transcall argues that TSI has failed to support its allegations in the six years since TSI first made these allegations. Transcall states that the discovery that has been compelled pertains to TSI's allegations. As such, Transcall asserts that it is necessary for Transcall to access the information in time for it to prepare its defense. Transcall further argues that if it does not receive the compelled discovery soon, Transcall's ability to prepare for the hearing in this docket will be impaired.

As for TSI's request for continuance of the prehearing dates and the hearing, Transcall states that it also opposes this request. Transcall states that the Issue Identification meeting in this Docket was conducted on December 17, 1997. At that time, states Transcall, the procedural dates for this docket were discussed. Transcall notes that it stated its own concerns that the time periods discussed might not be sufficient at that meeting. Transcall asserts, however, that TSI's position was that the dates were adequate. Transcall further asserts that it has attempted to meet all of its obligations under the currently set procedural dates. Nevertheless, Transcall states that it would have no objection to a 7-day or 10-day extension of the testimony filing dates and the prehearing statement filing date.

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Upon consideration, I hereby grant TSI additional time to provide the discovery responses required by Order No. PSC-98-0703-PCO-TI. The number of interrogatories to which TSI must respond is substantial and it appears that granting some extension of time is appropriate. In view of the August 19 - 20, 1998, hearing date, however, I shall only extend the date to provide these discovery responses to June 17, 1998.

As for TSI's request to modify the current procedural and hearing schedule, I shall extend the dates for filing prefiled testimony and exhibits and prehearing statements in order to allow TSI additional time to prepare its filings so that TSI may seek to avoid conflicts with the court dates that it has cited. The hearing shall not, however, be continued. I do not believe that the fact that counsel for TSI has been scheduled for a hearing to begin July 6, 1998, is good cause to continue this Commission hearing, which has been formally set for its current date, August 19 - 20, 1998, since January 21, 1998. The dates for filing testimony and exhibits and prehearing statements shall be extended as follows:

- |   |               |
|---|---------------|
| 1. Direct Testimony and Exhibits of<br>Petitioner, Respondents, and Staff   | June 26, 1998 |
| 2. Rebuttal Testimony and Exhibits of<br>Petitioner, Respondents, and Staff | July 24, 1998 |
| 3. Prehearing Statements  | July 28, 1998 |

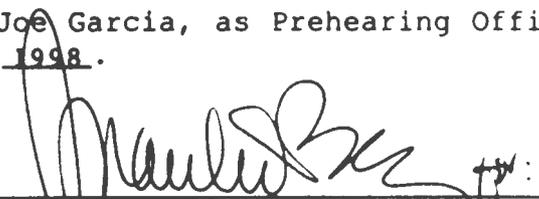
The remaining procedural dates set forth in Order No. PSC-98-0117-PCO-TI, issued January 21, 1998, shall remain unchanged.

Based on the foregoing, it is therefore

ORDERED by Commissioner Joe Garcia, as Prehearing Officer, that the Motion for Enlargement of Time to Serve Further Answers to Interrogatories, Motion for Continuance of Pretrial Controlling Dates and Hearing, and Request for Expedited Consideration is granted, in part, and denied, in part, as set forth in the body of this Order.

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By ORDER of Commissioner Joe Garcia, as Prehearing Officer,  
this 3rd Day of June, 1998.

  
\_\_\_\_\_  
JOE GARCIA  
Commissioner and Prehearing Officer

( S E A L )

BK

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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.