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RECORDS AND
REPORTING

July 1, 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 Motion to Strike the Proposed Prefiled Direct Testimony
of Jerry Bir, Mary Jo Daurio, Joseph Holop, Rudy Mcglashan, David
Resposo, Dennis Sickle, Joseph Signorelli and Brian Sulmonetti

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

ACK Thank you for your assistance in this matter.

AFA _____

APP _____

CAF _____

CMU Hand

CTR _____

EAG ATG:dle

LEG Enclosures

LIN 5 Beth Keating, Esq.

OPC _____ Wesley Parsons, Esq.

RCH _____

SEC 1

WAS _____

OTH _____

Sincerely,

Albert T. Gimbel

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FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/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
Filed: July 1, 1998

**MOTION TO STRIKE THE PROPOSED PREFILED DIRECT TESTIMONY OF
JERRY BIR, MARY JO DAURIO, JOSEPH HOLOP, RUDY MCGLASHAN, DAVID
RESPOSO, DENNIS SICKLE, JOSEPH SIGNORELLI AND BRIAN SULMONETTI**

Transcall America, Inc. d/b/a ATC Long Distance (Transcall), pursuant to Rules 1.140(f) and 1.150, Florida Rules of Civil Procedure, and Rule 25-22.035(3), Florida Administrative Code, hereby files this Motion to Strike Proposed Prefiled Direct Testimony filed by TSI, on the basis that such testimony is in violation of this Commission's prior rulings, as well as the Florida Rules of Civil Procedure in that the proposed testimony is redundant, immaterial, impertinent and unauthorized in its form. In support thereof Transcall states:

1. Telecommunications Services, Inc. (TSI) has attempted to utilize prior deposition testimony as direct prefiled "written" testimony for the following witnesses: Jerry Bir, Mary Jo Daurio, Joseph Holop, Ruddy McGlashan, David Resposso, Dennis Sickle, Joseph Signorelli, and Brian Sulmonetti.

2. The Order Establishing Procedure, dated January 21, 1998, governing this proceeding, discusses Prefiled Testimony and Exhibits. Said Order provides, on page 2, that "each party shall prefile, in writing, all testimony that it intends to sponsor." (Emphasis added.)

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FPSC RECORDS/REPORTING

3. Deposition transcripts are not prefiled testimony. TSI's attempt to photocopy prior deposition transcripts, some taken as much as five years earlier, and in proceedings other than this one, is in direct violation of the Order Establishing Procedure, and should not be permitted. To submit deposition transcripts of these individuals without their consent, as if it were their very own prefiled direct "written" testimony, is misleading and unfair to those individuals. This proposed use of deposition transcripts is also unfair to Transcall, because Transcall will be unable to benefit from cross-examining these individuals before the Commission.

4. Additionally, in lieu of providing direct prefiled "written" testimony of these individuals, TSI has attached hundreds of pages of deposition testimony which contain discussions that are wholly redundant, irrelevant, immaterial and impertinent to the issues in this proceeding. Furthermore, since the proposed testimony is improper and in violation of this Commission's own Orders, it cannot be considered and will have no bearing or influence on the decision. *Pentecostal Holiness Church, Inc. v. Mauney*, 270 So.2d 762 (Fla.4th DCA 1972).

5. TSI has made no effort to identify specific portions of the deposition transcripts for the purpose of seeking a stipulation as to those matters it considers relevant to the issues in this case.

6. Moreover, many of these witnesses are current WorldCom employees who could be compelled to attend the hearing and give testimony upon notice and without subpoena.

7. Finally, the Commission has consistently ruled that a deposition transcript may not be used as a substitute for the direct prefiled "written" testimony of a witness. Unless otherwise permitted by the Commission, each witness should appear in person and offer the proposed "written" testimony and be subject to full cross-examination. See, Status Conference transcript dated February 21, 1997, *S.H. Dohan & Company, P.A. vs. Transcall American, Inc. d/b/a ATC Long Distance*, Docket No. 951270-TI.

8. Transcall believes that each of these individuals reside in the State of Florida and are subject to the subpoena powers of the Commission and should be required to attend the final hearing and present their "written" testimony in person. TSI has not demonstrated or even alleged that any of these witnesses are unable to appear and provide testimony at the final hearing.

9. Unfortunately, TSI has decided to take the "pasta approach" to the presentation of its case. They have taken any and all information they could possibly locate, and now seek to have it admitted into the record of this proceeding, whether proper or not, for the sole purpose of throwing everything on the wall in the hope that something will stick. This is procedurally improper. It is unauthorized and contrary to prior rulings of this Commission in this and other cases, as well as inconsistent with the Florida Rules of Civil Procedure and established Florida case law.

WHEREFORE, the proposed direct prefiled testimony, consisting of deposition transcripts in lieu of actual direct "written" testimony of Jerry Bir, Mary Jo Daurio, Joseph Holop, Ruddy McGlashan, David Resposo, Dennis Sickle, Joseph Signorelli, and Brian Sulmonetti filed by TSI should be stricken from the record as violative of this Commission's Order Establishing Procedure and because it is redundant, irrelevant, immaterial, impertinent, and unauthorized by this Commission and the Florida Rules of Civil Procedure.

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 1st day of June, 1998.



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