

ORIGINAL
LAW OFFICES
MESSER, CAPARELLO & SELF
A PROFESSIONAL ASSOCIATION

218 SOUTH MONROE STREET, SUITE 701
POST OFFICE BOX 1876
TALLAHASSEE, FLORIDA 32302-1876
TELEPHONE: (850) 222-0720
TELECOPIERS: (850) 224-4359; (850) 422-1842

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RECORDS AND
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July 8, 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 Objection to TSI's Second Motion for Enlargement of
Time to Comply with Order Compelling Answers and Transcall's
Motion for Sanctions for Failure to Comply with Discovery Orders

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.

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[Signature]
FPSC BUREAU OF RECORDS

Sincerely,

[Signature]
Albert T. Gimbel

- ACK _____
- AFA 5 _____
- APP _____
- CAF _____
- CMU 5 _____
- CTR _____
- EAG _____
- LEG 1 _____
- LIN 3 _____
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- RCH _____
- SEC 1 _____
- WAS _____
- OTH _____

ATG:dle
Enclosures

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

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DOCUMENT NUMBER DATE
07171 JUL -8 88
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
Filed: July 8, 1998

TRANSCALL'S OBJECTION TO TSI'S SECOND MOTION FOR ENLARGEMENT OF TIME TO COMPLY WITH ORDER COMPELLING ANSWERS AND TRANSCALL'S MOTION FOR SANCTIONS FOR FAILURE TO COMPLY WITH DISCOVERY ORDERS

Transcall America, Inc. d/b/a ATC Long Distance (Transcall) pursuant to Rule 1.380(b)(2), Florida Rules of Civil Procedure, and Rule 25-22.034, Florida Administrative Code, files this objection to enlargement of time and motion for sanctions, seeking entry of an order imposing sanctions against Telecommunication Services, Inc. (TSI) for its failure to comply with previous discovery orders, and as grounds therefor states:

1. On January 6, 1998, Transcall served its First Set of Fact Interrogatories and its First Request for Production of Documents on TSI. Counsel for TSI initially requested an extension of time beyond the original 30-day time limit provided for in the rules, to provide answers to the initial round of discovery. Transcall agreed to the extension as a professional courtesy, without the need to file motions. This was the first extension.
2. On March 20, 1998, after receiving TSI's non-answers, Transcall filed a motion to compel answers to interrogatories and other pending discovery.
3. On May 20, 1998, the Prehearing Officer entered PSC Order No. 98-0703 which, in large part, granted Transcall's motion to compel and required TSI to provide appropriate discovery responses by June 3, 1998. This was the second extension.

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FILED - COMMUNICATIONS DIVISION

4. On June 2, 1998, TSI filed a Motion for Enlargement of Time and requested a one month extension to provide the discovery answers ordered by the Prehearing Officer in his order dated May 20, 1998.

5. On June 3, 1998 the Prehearing Officer issued PSC Order No. 98-0766 and granted TSI an additional time of two weeks to provide discovery responses up to and including June 17, 1998. This was the third extension.

6. On July 1, 1998, TSI again filed a Motion for Enlargement of Time to supplement discovery responses, requesting an additional two weeks to serve its responses, up to and including July 15, 1998. If granted, this will be the fourth extension.

7. All the while, Transcall has not received proper responses to its legally propounded discovery. Since the inception of this lawsuit in 1992, TSI has told Transcall that answers and documents would be forthcoming. Transcall has propounded appropriate discovery requests to TSI in the context of this proceeding, again seeking answers to its questions and seeking documentation in support of the allegations made by TSI over the last six years. So far, TSI has failed and refused to produce documentary evidence in support of its claims and allegations.

8. The final hearing in this matter is set for August 19 and 20, 1998. Transcall has been severely prejudiced by TSI's failure to respond to this discovery. For example, Transcall needs to depose TSI's accountants as well as its principal, Joel Esquenazi, prior to final hearing. Counsel for TSI fully understands that Transcall needs to have access to these materials prior to the taking of these depositions. TSI's failure to respond to Transcall's discovery reflects TSI's continued efforts to delay this proceeding one way or another. These efforts are further revealed in their prior motion seeking to continue this hearing until early December 1998. Any delay in this case better serves the interests of TSI than Transcall because it puts off the day when TSI must pay its debt to Transcall.

9. The imposition of sanctions for failure to comply with discovery matters, including prior orders of the court, is well established and proper under the facts of this case. Rule 1.380, Florida Rules of Civil Procedure, sets forth those circumstances that a party may suffer for refusal to make discovery. If any party refuses to obey an order compelling an answer, the court may enter an order imposing sanctions consistent with the rule.

Where interrogatories are propounded and a party refuses to answer (or obey a court order resulting therefrom) such refusal will subject the party to those consequences set forth in Rule 1.380(b). An evasive or incomplete answer may, in certain circumstances, be tantamount to a refusal to answer. . . . In the case where a party refuses to answer, a mere failure to comply with an order of the court compelling an answer may result in sanctions under Rule 1.380 and *no willful disregard or deliberate intent to disobey is required to be shown.*

Herrold v. Computer Components International, Inc., 252 So.2d 576, 580 (Fla. 4th DCA 1971). As an alternative to striking pleadings or dismissal, the court may limit plaintiff's introduction of evidence with respect to any of the matters embraced by the answers to the propounded interrogatories. *Herrold*, 252 So.2d at 581.

10. Rule 1.380(b)(2), Florida Rules of Civil Procedure, provides in pertinent part, that if a party fails to obey an order to provide or permit discovery, the court in which the action is pending may make any of the following orders:

(A) An order that the matters regarding which the questions were asked or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting that party from introducing designated matters into evidence.

(C) An order striking out pleadings or parts of them or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part of it, or rendering a judgment by default against the disobedient party.

11. Consistent with subparagraph (2)(B) of this rule, Transcall requests that TSI be prohibited from supporting its claims of improper billings, from opposing Transcall's claim of monies due for services rendered to TSI and prohibiting them from utilizing for any purpose any documents not attached to their direct testimony filed on or before June 26, 1998.

12. Moreover, if a party fails to properly serve answers or objections to interrogatories, the trial court may enter an order compelling discovery. If a party does not comply with the order, the court may then impose sanctions, one of which can be dismissal of the action. The imposition of sanctions for failure to comply with discovery matters including prior orders of the court, is well established. Sanctions imposed by the court for failure to comply with prior discovery orders are subject to reversal only upon an abuse of discretion. *Johnson v. Allstate Insurance Co.*, 410 So.2d 978 (Fla. 5th DCA 1982). "A party may not ignore a valid order of court except at its peril." *Johnson*, 410 So. 2d at 980.

13. Rather than dismissal of the proceedings, Transcall requests that the Prehearing Officer enter an order prohibiting TSI from supporting its claims of improper billings, from opposing Transcall's claims of monies owed for services rendered to TSI, and prohibiting them from utilizing for any purpose any documents not attached to their direct testimony filed on or before June 26, 1998.

14. Even if TSI attempts to comply at this late date, Transcall should not be further prejudiced by having to contend with TSI's late production.

15. Transcall submits that it is entitled to attorneys' fees and costs for its efforts in obtaining proper answers to its legally propounded discovery requests, including attorneys' fees and costs associated with the filing of this motion for sanctions as such is authorized by Rule 25-22.034, Florida Administrative Code, and Section 120.569(2)(d), Florida Statutes (1997).

WHEREFORE, Transcall seeks entry of an order imposing the sanctions provided for in Rule 1.380(b), Florida Rules of Civil Procedure, specifically an order refusing to allow TSI to support its

claim of improper billings, prohibiting TSI from opposing Transcall's claim for monies due for services rendered to TSI, prohibiting them from utilizing for any purpose any documents not attached to their direct testimony filed on or before June 26, 1998, and awarding to Transcall attorneys' fees and costs associated with these efforts.

I HEREBY CERTIFY that a true and correct copy hereof was furnished by regular U.S. mail to: Wesley R. Parsons, Esq., 2601 S. Bayshore Drive, Coconut Grove, Florida, 33133-5419; and Beth Keating, Esq., Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0850, this 8th day of July, 1998.



FLOYD R. SELF
ALBERT T. GIMBEL
MESSER, CAPARELLO & SELF, P.A.
P. O. Box 1876
Tallahassee, FL 32302-1876
(850) 222-0720

ATTORNEYS FOR TRANSCALL