

MEMORANDUM

July 13, 1998

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (B. KEATING)

RE: DOCKET NO. 951232-TI - 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.

98-0954-PCD-TI

Attached is an ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION TO COMPEL, to be issued in the above referenced docket. (Number of pages in order - 5)

MUST GO TODAY

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

See 1

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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-98-0954-PCO-TI
ISSUED: July 15, 1998

ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION TO COMPEL

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 June 15, 1998, TSI filed a Motion to Compel Production of Raw Call Detail Records. By its Motion, TSI seeks an order compelling Transcall to produce all raw call detail records from the switch handling TSI's traffic. TSI asserts that it has previously requested this information through its First, Second and Third Requests for Production of Documents. On June 17, 1998, Transcall filed its Response to TSI's Motion to Compel. In its response, Transcall argues that the information that TSI seeks is confidential information, the disclosure of which is prohibited by Section 364.24, Florida Statutes.

DOCUMENT NUMBER DATE

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PSC-RECORDS/REPORTING

Specifically, in its Motion, TSI asserts that Transcall has located magnetic tapes of raw call detail records (CDR tapes). TSI asserts that Transcall has provided this information to Commission staff, but not to TSI. TSI further asserts that data from the tapes has been used by the Commission staff in compiling the audit report that is now an exhibit to staff witness Welch's testimony, and is located on the audit workpapers 57, 57.4, 57.5, 57.6, and 57.7. TSI states that the Commission staff has also refused to disclose this information to TSI.

TSI asks that the tapes and the staff audit workpapers be produced, because they contain information that is relevant to TSI's case. TSI notes that it has alleged that Transcall has overbilled TSI and that the CDR tapes contain information on the timing of calls, as well as codes indicating various actions and activities regarding calls. TSI argues, therefore, that the CDR tapes are necessary to make a determination regarding TSI's allegations.

In addition, TSI asserts that it has entered into a confidentiality agreement with Transcall that should adequately address Transcall's confidentiality concerns. TSI states, however, that it has been unable to obtain these records from Transcall or from Commission staff. TSI asks, therefore, that Transcall be compelled to produce the CDR tapes and that Commission staff be compelled to produce the audit workpapers that contain this information.

In its response, Transcall argues that the tapes that TSI seeks contain information regarding non-TSI customers. Thus, Transcall argues that it is obligated to maintain the confidentiality of the information on the tapes.

Transcall also asserts that it offered to produce these tapes to TSI's counsel or to its experts so that information regarding TSI customers could be segregated from the tapes. Transcall asserts, however, that TSI did not alleviate Transcall's concerns that Mr. Joel Esquenazi, or any other company principals and employees of TSI, would not have access to the tapes. Transcall argues that while Mr. Esquenazi may have access to the information regarding TSI customers after it has been gleaned from the tapes, he should not have access to the rest of the information on the tapes.

Transcall also argues that the confidentiality agreement between Transcall and TSI is not adequate to protect the information regarding non-TSI customers. Transcall adds that TSI is its competitor; thus, Transcall argues that it should not be required to share confidential information regarding customers and programming models with TSI.

Finally, Transcall asserts that it has produced to TSI the information regarding TSI customers that was taken from the CDR tapes and used in the Commission staff audit workpapers. Transcall asserts that it believes that this is what TSI seeks by its motion, and therefore, TSI's motion should be considered moot.

I agree that, in accordance with Section 364.24, Florida Statutes, a telecommunications company is prohibited from disclosing customer account records. The information on the CDR tapes includes customers' phone numbers and information regarding the phone numbers being called, the time of day of the call, and the duration of the call made by the customer. Viewed together, this is personal, customer account information. If this information were made public, it would be possible for someone to access additional information regarding the customers' account from other sources. As such, it appears that the information on these tapes should be treated by the Commission and the parties as confidential in accordance with Section 364.24, Florida Statutes, and with the protective agreement between the parties. I note that the CDR tapes are now in Commission staff's possession and that Florida law presumes that documents submitted to governmental agencies shall be public records. The CDR tapes are, however, exempt from the public records presumption by Section 119.07(3)(r), Florida Statutes.

While I agree that the information on the CDR tapes should be treated as proprietary, confidential information, the information on the tapes regarding TSI's customers is relevant to the issues in this proceeding. It is, therefore, subject to discovery and must be produced. There is, however, information on the tapes regarding other customers. Such information is not relevant to this proceeding, nor is it likely to lead to the discovery of relevant, admissible evidence. Therefore, I shall not require that the entire CDR tapes be produced. The information regarding TSI's customers has, however, been extracted from the CDR tapes by Commission staff. I shall require only that this information pertaining to TSI's customers be produced to TSI.

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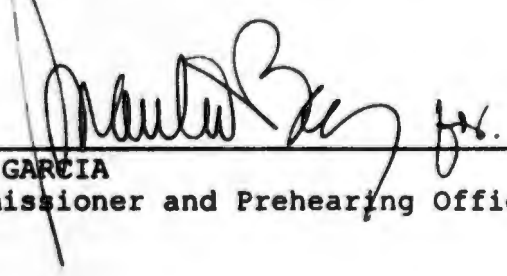
As TSI's motion pertains to the Commission staff's audit workpapers, I note that our staff used the CDR tapes to create audit workpapers 57, 57.4, 57.5, 57.6, and 57.7, and properly treated the tapes and the resulting documentation as confidential during the audit process, in accordance with Rule 25-22.006(2), Florida Administrative Code. Since the audit exit conference, Transcall has filed a request to maintain this information as confidential in accordance with Rules 25-22.006(2) and 25-22.006(5), Florida Administrative Code, and Sections 119.07(3)(r) and 364.183(1), Florida Statutes. The information in the workpapers does, however, pertain to TSI customers; thus, the information is relevant and subject to discovery. As such, I shall require Commission staff to produce audit workpapers 57, 57.4, 57.5, 57.6, and 57.7.

Based on the foregoing, it is therefore

ORDERED by Commissioner Joe Garcia, as Prehearing Officer, that the Motion to Compel Production of Raw Call Detail Records filed by Telecommunication Services, Inc., is granted, in part, and denied, in part, as set forth in the body of this Order. It is further

ORDERED that the production of information required herein shall be provided within 5 days of the issuance of this Order.

By ORDER of Commissioner Joe Garcia, as Prehearing Officer, this 15th Day of July, 1998.



JOE GARCIA
Commissioner and Prehearing Officer

(S E A L)

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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.