

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. )

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Docket No. 951232-TI

REBUTTAL TESTIMONY

of

DOUGLAS S. METCALF

ON BEHALF OF

TRANSCALL AMERICA, INC. d/b/a ATC LONG DISTANCE

JULY 24, 1998

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## I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, BUSINESS AFFILIATION, ADDRESS, AND ON WHOSE BEHALF YOU ARE TESTIFYING?

A. My name is Douglas S. Metcalf, and I am President of Communications Consultants, Inc., 400 N. New York Avenue, Suite 213, Winter Park, Florida 32790-1148.

Q. ARE YOU THE SAME DOUGLAS S. METCALF WHO EARLIER FILED DIRECT TESTIMONY ON BEHALF OF TRANSCALL IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I wish to reply to some of the direct testimony of Mr. Joel Esquenazi of Telecommunications Services, Inc. (TSI), Mr. William Shulman of Lopez Levi Associates (LLA), and Ms. Kathy Welch, Staff Auditor for the Florida Public Service Commission. I will also comment on the Final Report of LLA, which is different than the draft report which was circulated earlier, and which drew some comments in my Direct Testimony.

## II. MS. WELCH'S TESTIMONY

Q. WILL YOU PLEASE SUMMARIZE YOUR OPINION OF STAFF WITNESS WELCH'S TESTIMONY AND REPORT?

A. Yes. Overall, I respect the depth of her investigation and the quality of her analysis on all of the issues with which she dealt. Ms. Welch reviewed the available documentation and reached independent conclusions based on her own analysis and on her educated interpretations of the central issues before

1 the Commission in this case. I agree with her conclusions on all of her  
2 disclosures except Disclosures 4, 7, and 9. I will comment on those three  
3 disclosures in that order.

4 **Q. WHAT ARE YOUR COMMENTS REGARDING DISCLOSURE 4?**

5 **A.** The need to account for certain excess credits that Ms. Welch chose to  
6 exclude are fully addressed in my Direct Testimony beginning at Page 9. I  
7 would note, however, that Schedule 5 in the draft Lopez Levi Report, upon  
8 which Ms. Welch's based her adjustments, was not included in LLA's Direct  
9 Testimony of Mr. Shulman. Therefore, her offsets of certain amounts, and  
10 my reinstatements of those same amounts, are no longer relevant.

11 **Q. WHAT ARE YOUR COMMENTS REGARDING DISCLOSURE 7?**

12 **A.** TSI's agreement to the reseller rates beginning in March 1992 and my  
13 disagreement with Ms. Welch's recalculation of the March to May 1992 bills  
14 are fully addressed in my Direct Testimony at Page 8.

15 **Q. WHAT ARE YOUR COMMENTS REGARDING DISCLOSURE 9?**

16 **A.** In her Direct Testimony, Ms. Welch appears to modify somewhat the  
17 assertions she made in her original Audit Report regarding Transcall billing  
18 TSI's customers for TP1 to TP6. Her change in tone more closely reflects  
19 Transcall's view of this issue which is as follows:

20 The Commission, in Order No. PSC-93-1237-AS-TI, concluded that  
21 Transcall's December 1990 tariff change was ambiguous. As a result,  
22 Transcall voluntarily agreed to refund to its own tariff customers the  
23 difference between TP1 and TP6 so as to bill only for conversation time (TP6  
24 to TP7).

1 TSI clearly stated in its tariff that it billed its customer calls on a TP1  
2 to TP7 basis. Because the relationship between Transcall and TSI called for  
3 rates based on a contract rather than a tariff, Transcall did not have the  
4 authority or the obligation to unilaterally change the tariff of TSI, nor did the  
5 Commission Order require it to do so.

6 For the particular act of billing, Transcall was only a functionary of  
7 TSI itself, with no latitude to make changes to TSI's tariff or billing  
8 procedures, unless specifically directed by TSI. I would again remind the  
9 Commission that TSI's tariff to this day charges TP1 to TP7 for the use of  
10 access facilities, and Transcall was appropriately complying with its contract  
11 when it billed TSI customers as directed by TSI.

12 **Q. DO YOU HAVE ANY OTHER REBUTTAL COMMENTS**  
13 **REGARDING MS. WELCH'S TESTIMONY?**

14 **A. No.**

### 15 **III. MR. SHULMAN'S TESTIMONY**

16 **Q. MR. SHULMAN AND HIS FIRM, LOPEZ LEVI & ASSOCIATES**  
17 **(LLA), FILED A REPORT AND DIRECT TESTIMONY. HAVING**  
18 **REVIEWED THAT REPORT AND TESTIMONY, DO YOU HAVE AN**  
19 **INITIAL IMPRESSION OF THEIR ANALYSIS?**

20 **A. Yes. LLA was engaged by TSI and directed by Mr. Esquenazi to sum up**  
21 **those calls that Mr. Esquenazi defined as improperly billed calls and to look**  
22 **for computational or mathematical errors. Mr. Esquenazi's list of alleged**  
23 **improperly billed calls included those he defined as stuck clock, duplicate,**  
24 **overlapping, and incomplete calls.**

1           Based upon the information and input LLA was provided by Mr.  
2           Esquenazi, they were able to find minor errors in Transcall's invoices. LLA  
3           did not, therefore, conduct any type of independent analysis or review of  
4           TSI's alleged billing irregularities.

5           As I stated in my Direct Testimony at Page 5 regarding billing errors,  
6           the technology of billing systems in the late-80's did not permit the accuracy  
7           that we routinely expect today. All answer supervision and call tracking is  
8           now done by hardware or extremely sophisticated software. Advanced  
9           reseller billing system's are now widely used, and are extremely accurate.  
10          Business relationships between carriers and resellers are now routine, and  
11          procedures to assure timeliness and accuracy of billing, and customer  
12          initiations and terminations are well tested, for the most part automated, and  
13          commonly used.

14          Commission witness Welch discusses and refutes most of the findings  
15          of LLA and, except for the few issues already discussed in my Direct  
16          Testimony or the rebuttal discussion above, I have reached similar  
17          conclusions.

18          **Q.   WHAT IS YOUR OPINION OF THE LLA REPORT?**

19          **A.   LLA produced the document requested by Mr. Esquenazi. The report does**  
20          **not appear to include an independent analysis of the veracity of the claims**  
21          **made by TSI, particularly the overlapping, duplicate, busy and unanswered,**  
22          **and hung call issues. It seems that LLA accepted Mr. Esquenazi's**  
23          **instructions as to how to classify each type of call, and simply added up or**  
24          **extrapolated 30 months results from a very limited sample of selected**

1 records. Their analysis does not contain a recognition of industry standards  
2 of that period, or of TSI's own tariff language which stated that billing errors  
3 could occur in up to 2% of all calls.

4 The LLA report also appears to rely on the assumption that all calls  
5 that Mr. Esquenazi says are misbilled calls were, in fact, misbilled calls.  
6 There appears to be no way to determine whether the customer ever requested  
7 the credit, or that the customer ever received the benefit of all of the credits  
8 issued by Transcall during the relationship.

9 Further, a substantial portion of the documentation that I have seen,  
10 and for which TSI was given credit, were calls about which Mr. Esquenazi  
11 complained, and for which TSI alone sought credit. There is little solid  
12 evidence that TSI's customers complained about these alleged misbillings, or  
13 that TSI's customers were ever given credits for these calls. In fact, the only  
14 evidence we have of the actual problems experienced by TSI's customers, the  
15 three boxes that TSI produced to Transcall in February 1992, indicate that  
16 customers requested at most \$51,486.96 in credits over a 30+ month period,  
17 not the \$170,000 actually given by Transcall, and certainly not the  
18 \$314,817.92 that LLA has calculated from Mr. Esquenazi's wish list.

19 **Q. WHAT ABOUT MR. SHULMAN'S ASSERTION THAT TRANSCALL**  
20 **FAILED TO CREDIT PAYMENTS OF \$6,727.62 (Pg 4, Ln 6)?**

21 **A.** Mr. Shulman's assertion is inaccurate. I could find no documentation to  
22 support his claim. In my analysis, I found cancelled checks or electronic  
23 funds transfers for a total of \$857,999.83. Ms. Welch's analysis verified that  
24 same amount in her Exhibit 1.

1       **Q.    WHAT ABOUT MR. SHULMAN'S ASSERTION REGARDING THE**  
2       **9-SECOND ADDITION (Pg 4, Ln 7)?**

3       **A.    Ms. Welch determined that the adjustment for the 9-second error for the total**  
4       **period of the TSI/Transcall relationship amounts to \$37,714.59. LLA**  
5       **calculates the overcharge at \$29,118.28. Transcall accepts Ms. Welch's**  
6       **higher number as an adjustment to the amount owed by TSI.**

7       **Q.    WHAT ABOUT MR. SHULMAN'S ASSERTION REGARDING THE**  
8       **INCREMENTS USED FOR BILLING (Pg 4, Ln 8)?**

9       **A.    The Agreement between Transcall and TSI provided for wholesale billing in**  
10       **six second rather than one minute increments. Almost immediately,**  
11       **Transcall determined that it could not separately rate each call and bill in six**  
12       **second increments. To compensate TSI for that situation, the 40% discount**  
13       **on international calls and 15% discount on domestic calls was alternatively**  
14       **instituted.**

15               **Mr. Shulman asserts that the 26 second per call difference amounts**  
16       **to overcharges totaling \$91,578.42. Ms. Welch has calculated that TSI**  
17       **received a total benefit of \$637,731.27 to offset the increment issue. I believe**  
18       **the 15% domestic and 40% international discounts more than adequately**  
19       **compensated TSI for the inability to bill six second increments. If TSI really**  
20       **wants to accept Mr. Shulman's position, then TSI owes Transcall an**  
21       **additional \$546,152.85.**

22               **Mr. Esquenazi's claim, alluded to in Ms. Welch's Report at page 13.**  
23       **that the 40% and 15% discounts were part of the original agreement but not**  
24       **included in the contract, is not credible, is contrary to the express terms of the**

1 Agreement, and it is contrary to the Rebuttal Testimony of Mr. Sickie  
2 beginning at Page 2, and the Direct Testimony of Ms. Daurio beginning at  
3 Page 14.

4 **Q. WHAT ABOUT MR. SHULMAN'S ASSERTION REGARDING THE**  
5 **\$314,817.92 FOR ALLEGED STUCK CALLS, BUSY SIGNALS,**  
6 **DUPLICATE CALLS, ETC. (Pg 4, Ln 10)?**

7 **A. I disagree completely with LLA's calculation. LLA's methodology was**  
8 **defective because they misinterpreted the data they reviewed, since they**  
9 **simply accepted Mr. Esquenazi's erroneous instructions that the calls he**  
10 **identified were misbilled. They magnify their mistake by extrapolating this**  
11 **faulty premise to the full 30+ months of the relationship, which severely**  
12 **overstates the value of this claim.**

13 Ms. Welch and the Commission staff reviewed actual billing tapes,  
14 and arrived at completely different conclusions. She independently reviewed  
15 the duplicate and stuck clock claims, and found that the total possible error  
16 for all these categories amounted to \$26,409.49, and that the errors, which  
17 again are attributable to the technology of billing systems at that time, was  
18 within the 2% error rate specified in both TSI's and Transcall's tariffs.

19 I have extensively reviewed the Staff's output report from the call  
20 detail record (CDR) tapes on this specific issue. Using these documents, I  
21 was able to compare the time points for the calls on those four days, and I  
22 have been unable to find any instances where overlapping or duplicate calls  
23 were in fact billed.



1 Q. WHAT ABOUT MR. SHULMAN'S ASSERTION THAT TRANSCALL  
2 OWES TSI \$26,149.00 [sic] FOR THE TP1 TO TP6 TIMING  
3 PARAMETER (Pg 4, Ln 13)?

4 A. I believe, and Transcall states, that it erroneously sent the \$26,170.49 check  
5 to TSI. The Settlement Agreement contained in that Order specifically states:

6 4. The term "customers" as used in this Settlement  
7 Agreement shall mean those persons *who were billed for*  
8 *services from ATC subject to ... the Applicable Tariffs.*  
9 (emphasis added)

10 TSI's customers were receiving service from TSI according to TSI's tariff,  
11 and TSI was receiving service from Transcall pursuant to the Agreement, and  
12 not ATC's tariff. Therefore, the Agreement between TSI and Transcall  
13 controlled the rates, and TSI's tariff governed the time point parameters  
14 which were to be used to bill TSI and its customers. I disagree with Ms.  
15 Welch's \$83,350.43 adjustment on this issue in her Disclosure 9.

16 Q. DO YOU HAVE OTHER COMMENTS ON THE TESTIMONY OF  
17 MR. SHULMAN OR ON THE LLA REPORT?

18 A. No, I do not.

19 IV. MR. ESQUENAZI'S TESTIMONY

20 Q. MR. ESQUENAZI STATES THAT THE GREENBAR DETAIL WAS  
21 SUPPOSED TO BE CONSISTENT WITH THE CUSTOMER  
22 INVOICES? (PAGE 4, LINE 17) DO YOU AGREE?

23 A. No, Mr. Esquenzi is wrong. In support of his claim, he attaches exhibits as  
24 part of JE-2 which purport to show a discrepancy in the billed minutes

1           between the Resellers' Traffic Summary for TSI, and the greenbar detail used  
2           to prepare the customer's invoice.

3           Of course these are different! The greenbar detail shows the total  
4           retail minutes used by TSI's customers, and the resellers' summary reflects  
5           the same usage with different rounding.

6           Alternatively, after rereading Mr. Esquenazi's testimony several  
7           times, it may be possible that he does not know how to read the reports. The  
8           minutes and calls in the category "international calls" do not agree between  
9           the two reports because there are some calls within the North American  
10          Numbering Plan Area (NPA), such as to the Caribbean, that are properly  
11          billed as international calls, but which show up on the greenbar detail (and  
12          on the customers' bills) under the appropriate NPA, such as 809.  
13          Consequently, as Ms. Welch demonstrated in her audit, if you add together  
14          the "011" calls and the international NPA calls on the detail, it properly adds  
15          up to the international calls on the reseller's report. I should add that in  
16          performing this calculation, you cannot simply add all of the 809 NPA calls  
17          to the "011" calls, because some of the 809 calls are properly domestic, and  
18          were in fact billed as such.

19       **Q. MR. ESQUENAZI STATES THAT THE AGREEMENT BETWEEN**  
20       **TSI AND ATC WAS NOT SUCCESSFUL, AND THAT ATC**  
21       **BREACHED THE AGREEMENT (PAGE 4, LINE 19). DO YOU**  
22       **AGREE?**

1       **A.**    **No. This Agreement should have been extremely lucrative and very**  
2                   **successful for Mr. Esquenazi. Over the 30+ months of the relationship, Mr**  
3                   **Esquenazi billed his customers in excess of \$2,575,000.**

4                    He should have collected about \$2,525,000 (the \$2,575,000 less  
5                    \$51,486.96 in validated credits) from his customers. He paid Transcall only  
6                    \$857,999.83, and was given additional credits of \$118,266.29 (\$169,753.25  
7                    total credits minus \$51,486.96 previously noted) at retail rates. The  
8                    remaining \$1,545,000 he stood to collect would have made this a very  
9                    profitable business, even if he had paid Transcall the \$659,992.88 that he still  
10                   owed Transcall in May of 1992. In other words, he would have made over  
11                   \$985,000 in profit during this relationship. Those numbers clearly indicate  
12                   that he had a very beneficial business arrangement with Transcall.

13                   Further, Transcall did not breach the agreement. In fact,  
14                   modifications almost from the very beginning gave TSI an even better  
15                   arrangement than the Agreement originally contemplated.

16       **Q.    MR. ESQUENAZI SAYS SOME TSI CUSTOMERS RECEIVED A DE**  
17                   **FACTO CREDIT BECAUSE THEY NEVER PAID THEIR BILLS.**  
18                   **(PAGE 6, LN 20) DO YOU AGREE?**

19       **A.**    **No. Mr. Esquenazi's assertion that some customers didn't pay their bills may**  
20                   **be true. Had he provided proof to Transcall that the failure to pay was the**  
21                   **result of a Transcall billing error, experience indicates that he would have**  
22                   **received immediate credit. Otherwise, the invoice was valid and the payment**  
23                   **to TSI by his customers was due. TSI appears to be blaming an inadequate**  
24                   **collection process on Transcall. Bad debt is a part of any business. But**

1           whatever his actual experience was, he has not offered any evidence to  
2           support his claim of de facto credits, nor has he offered any evidence  
3           supporting his claim that any of that bad debt was due to billing problems by  
4           Transcall.

5           **Q. DO YOU HAVE ANY SUMMARY THOUGHTS ON TSI'S**  
6           **COMMITMENT TO ITS BUSINESS RELATIONSHIP WITH**  
7           **TRANSCALL?**

8           **A. I do not believe that TSI was candid and fair in its business dealings with**  
9           **Transcall. While carrying a \$700,000 delinquency to Transcall, and while**  
10           **stringing Transcall along regarding its efforts to work out an acceptable**  
11           **payment of the outstanding bills, TSI was duplicitously working to move its**  
12           **customer base off the Transcall network and onto the National**  
13           **Telecommunications Corporation network. It appears relatively clear from**  
14           **the decrease in traffic in the weeks immediately before Transcall finally**  
15           **terminated TSI, that TSI was planning to leave. My theory was recently**  
16           **substantiated by Mr. Esquenazi's deposition statements under oath in other**  
17           **litigation, wherein he admitted that he had signed a contract to move his**  
18           **business to National in December, 1991.**

19                       Together, these documents, billing records, and Mr. Esquenazi's own  
20           words evidence an intent to avoid TSI's outstanding debts to Transcall by  
21           continuing to communicate with Transcall regarding a resolution to the  
22           outstanding balances and the terms of a new contract, even as TSI began to  
23           move its traffic to his new carrier. Further, the fact that TSI owed Transcall  
24           over \$700,000 through early 1992, and even submitted a check with the

1 notation that it was for "full payment through Feb. 1992," leads me to  
2 conclude that TSI was hoping for the ultimate unilateral credit, while moving  
3 its business to a Transcall competitor.

4 **Q. DO YOU HAVE ANY CONCLUDING REMARKS ABOUT MR.**  
5 **ESQUENAZI'S DIRECT TESTIMONY?**

6 **A. Yes. It appears that the general point of his testimony is to make accusations,**  
7 **loosely document a couple of them, and then to refer to the LLA Report to**  
8 **validate the worth of his wish list of alleged problems.**

9 **Indeed, Mr. Esquenazi makes four unsupported accusations at page**  
10 **5 of his Direct Testimony. These four matters are:**

- 11 - **5. Improper charges on 800 numbers**
- 12 - **7. Billing for travel cards TSI customers did not have**
- 13 - **8. Billing TSI for accounts long after termination**
- 14 - **10. Billing for 800 use where the customer had no 800 service**

15 **Ms. Daurio has responded to each of these issues in her Rebuttal Testimony.**  
16 **The lack of support, discussion, or documentation on these matters in the**  
17 **testimony of LLA or Mr. Esquenazi leads me to conclude that they cannot be**  
18 **substantiated.**

19 **Q. BASED UPON YOUR REVIEW OF THE DIRECT TESTIMONY,**  
20 **WHAT IS YOUR MODIFIED RECOMMENDATION TO THE**  
21 **COMMISSION?**

22 **A. The Commission should in large part accept the Staff Audit Report that**  
23 **Transcall billed TSI and TSI's customers correctly, or at least well within the**  
24 **2% error rate specified in the tariffs and Agreement of the parties. Further,**

1 the Commission should find that the credits issued by Transcall to TSI  
2 exceeded the total amount of TSI's documented credits, plus any other billing  
3 errors that have been identified. On the basis of this record, the Commission  
4 should direct that a total of \$882,038.73 referred to in my Direct, plus further  
5 accrued interest, is due from TSI to Transcall. With these actions, contrary  
6 to Mr. Esquenazi's assertion at Page 5, Lines 24 and 25, I believe that the  
7 Commission has fully resolved all of the claims raised by TSI. In returning  
8 this case to the court for final disposition, the Commission should advise the  
9 court that, based upon this Commission's exclusive jurisdiction, all of the  
10 claims by TSI have been resolved.

11 **Q. DOES THE ABOVE REPRESENT YOUR FINAL CONCLUSIONS ON**  
12 **THE PENDING ISSUES IN THIS PROCEEDING?**

13 **A.** No. We are still waiting for discovery and document production on several  
14 pending issues. When that information is finally produced, I may request the  
15 opportunity to comment further. Finally, each month that TSI has failed to  
16 pay its balance due to Transcall adds another month of interest to the account,  
17 currently about \$4,000 more per month.

18 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

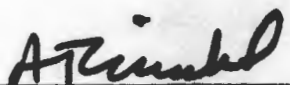
19 **A.** Yes.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Rebuttal Testimony of Douglas S. Metcalf on behalf of Transcall America Inc. d/b/a ATC Long Distance in Docket No. 951232-TI has been furnished by Hand Delivery (\*) and/or U.S. Mail to the following parties of record this 24th day of July, 1998:

Beth Keating, Esq.\*  
Division of Legal Services  
Room 370, Gunter Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Mr. Jon W. Zeder  
Mr. Wesley R. Parsons  
2601 South Bayshore Drive, Suite 1600  
Miami, FL 33133

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Albert T. Gimbel

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