



# Public Service Commission

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**DATE:** OCTOBER 22, 1998

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF LEGAL SERVICES (B. KEATING) *meb by [signature]*  
 DIVISION OF AUDITING AND FINANCIAL ANALYSIS (CATER, HACKNEY) *meb*  
 DIVISION OF COMMUNICATIONS (BARRETT, SHELFER, PRUITT) *QAB [signature]*

**RE:** DOCKET NO. 951232-TI - DADE COUNTY CIRCUIT COURT REFERRAL OF CERTAIN ISSUES IN CASE NO. 92-11054 (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.

**AGENDA:** 11/03/98 - REGULAR AGENDA - POST-HEARING DECISION - PARTICIPATION LIMITED TO COMMISSIONERS AND STAFF

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\951232.RCM

### CASE BACKGROUND

Transcall America, Inc., d/b/a Advanced Telecommunications Corp. (Transcall) 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 the 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

DOCUMENT NUMBER-DATE

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PSC-RECORDS/REPORTING

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

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. A hearing was held in this matter on August 19, 1998.

This is staff's recommendation on the issues addressed at hearing. Staff notes that Issue 1 is a legal issue that was addressed through post-hearing briefs. Also, Issues 2 and 3 have six specific points that directly address problems raised in TSI's Counter-Complaint. Due to the facts of the case and the complexity of the allegations to be addressed, staff has presented a separate recommendation statement for each allegation as they relate to Issue 2. Furthermore, staff notes that there are several subparts to Issues 2 and 3. As it pertains to Issue 2, Subpart A is addressed within the recommendation on each of the specifically addressed points. The remaining subparts are addressed separately. Staff did not find this separation necessary for the presentation of Issue 3 and its subparts. For clarity, staff also notes that Telus is referred to in the text of Issues 2 and 3, because it was the original party to the contract with TSI. ATC is also referenced in the testimony of certain witnesses when referring to Transcall. For purposes of this recommendation, staff has chosen to refer primarily to Transcall to reduce confusion.

### **DISCUSSION OF ISSUES**

**ISSUE 1:** Does the Commission have jurisdiction over the dispute arising out of the Telus/TSI contract?

**RECOMMENDATION:** Yes. The Commission has jurisdiction to resolve the billing dispute arising out of the Telus/TSI contract as it pertains to intrastate charges. Once the Commission renders its decision in this case, the Commission should forward the record to the FCC for comments on the interstate analyses and findings in accordance with Section 364.27, Florida Statutes. The Commission should forward its Final Order from this recommendation to the Dade County Circuit Court in accordance with the Court's Order Staying Action and Referring to the Florida Public Service Commission and indicate to the Court that the record of this case has been forwarded to the FCC for comments on the interstate analyses and findings. As for Transcall's assertions that the Commission should issue an order on all issues within its jurisdiction and determine

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

that TSI is estopped from further asserting any claims not pursued in this proceeding before the Commission, staff recommends that this is a matter for the court to decide. (B. Keating)

**POSITIONS OF PARTIES:**

**Transcall**

Yes. Independent of any court referral, this Commission has the exclusive jurisdiction to resolve all matters delegated by Chapter 364. Thus, all issues involving billing and provisioning of services to TSI and TSI's customers can be addressed only by this Commission.

**TSI**

No. For the reasons argued extensively by TSI in the early stages of this proceeding, TSI respectfully submits that the Commission does not have such jurisdiction, or should not exercise such jurisdiction, and should return this proceeding to the Circuit Court of the Eleventh Circuit, in and for Dade County, Florida, where Transcall originally brought this case.

**STAFF'S ANALYSIS:**

**Transcall**

Transcall states that the Dade County Circuit Court referred this matter to the Commission to address the issues within the Commission's jurisdiction. Transcall asserts that the Court did not limit the issues referred to the Commission. Thus, Transcall asserts that the Commission must resolve all issues in this case that are within the Commission's jurisdiction.<sup>1</sup> (Transcall BR 2) Further, Transcall believes that all issues involved in this case fall within the Commission's jurisdiction.

Specifically, Transcall asserts that the Commission has exclusive jurisdiction over intrastate rates, billing, and related provision of service pursuant to Sections 364.03, 364.035, 364.04, 364.05, and 364.08, Florida Statutes. Transcall notes that the United States Supreme Court recently addressed matters regarding billing, provisioning, and rates, and found that common law actions

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<sup>1</sup>Citing Florida Public Service Commission v. Bryson, 569 So. 2d 1253 (Fla. 1990).

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

may not be pursued as they pertain to such matters<sup>2</sup>. (Transcall BR 3) Transcall also asserts that the Commission's jurisdiction in this area extends to both end users and to contracts between telecommunications companies. Transcall emphasizes that Section 364.07, Florida Statutes, states that the Commission is authorized to "adjudicate disputes among telecommunications companies regarding such contracts or the enforcement thereof." Transcall further states that the Commission also has the authority to investigate interstate rates and report its findings to the FCC in accordance with Section 364.27, Florida Statutes. Transcall suggests that the Commission present the record of this case to the FCC at the conclusion of these proceedings so that the FCC can make a response to the Circuit Court. (BR 4, 5)

Regarding TSI's claims of tortious interference with contractual and business relationships, Transcall concedes that the Commission does not have jurisdiction over any tort claims.<sup>3</sup> Transcall argues, however, that there are no tort claims independent of the contract between the parties. Transcall argues that any tort causes of action are, therefore, barred by the limitation of liability language in the contract and the economic loss rule. Thus, Transcall states that the Commission should dismiss Count II of TSI's Counter-Complaint. (BR 6)

Transcall further argues that the Commission has the authority to determine what should have occurred between the contracting parties.<sup>4</sup> Transcall states that the Commission has conducted a full audit of the billing and provisioning relationship between the parties and can fully resolve the claims between the parties through this process. Transcall argues that this is the proper means by which the parties claims should be addressed, rather than through tort actions. (BR 7)

In addition, Transcall argues that the contract between the parties is equivalent to a tariff, because it is a contract contemplated by Section 364.07, Florida Statutes, and Rule 25-

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<sup>2</sup> Citing AT&T v. Central Office Telephone, Inc., 118 S.Ct.1956, 1963; 141 L.Ed. 222 (1998).

<sup>3</sup>Citing Southern Bell Telephone and Telegraph Co. V. Mobile America Corp., Inc., 291 So. 2d 199 (Fl. 1974).

<sup>4</sup>Citing Florida Power Corp. V. Zenith Industries Co., 377 So. 2d 203 (Fla. 2nd DCA 1979); and Richter v. Florida Power Corp., 366 So. 2d 798 (Fla. 2nd DCA 1979).

24.485, Florida Administrative Code, which requires that carriers identify their contract authority in their tariff. Transcall also notes that the parties' tariffs defined the billing for certain types of calls and definition of duration and completion of calls. Because the contract is equivalent to a tariff, Transcall argues that TSI's tort claims are barred by the "filed rate doctrine." Transcall states that the "filed rate doctrine" precludes suits to enforce contracts that are not consistent with the rates and terms in a carrier's tariff. AT&T v. Central Office Telephone, Inc., 118 S.Ct. At 1964-65. Transcall argues that all of the tort claims made by TSI in Count II of the Counter-Complaint are based on billing and the provision of service under the contract. Therefore, Transcall argues that all of TSI's claims must be resolved by the Commission and cannot be maintained as independent tort claims. (BR 8)

Finally, Transcall argues that TSI is barred from pursuing its tort claims by the "economic loss rule," which prevents a party from suing under a contract and in tort for the same conduct.<sup>5</sup> Transcall also claims that TSI is estopped from further pursuing its claims in other forums, because the Commission has the exclusive jurisdiction to resolve the parties' dispute and has been directed to do so by the Dade County Circuit Court. (BR 9)

For these reasons, Transcall asks that the Commission issue a final order resolving all matters at issue between the parties that are within its jurisdiction, and report its findings regarding interstate claims to the FCC. Then, the Commission should forward all findings to the Dade County Circuit Court.

#### TSI

TSI did not present argument regarding this issue in its Post-Hearing Memorandum. Its essential argument is gleaned from portions of TSI's Motion for Reconsideration of Order Staying Action and Referring to the Florida Public Service Commission and Motion for Leave to Amend CounterClaim (Recon), filed with Dade County Circuit Court on January 29, 1997.

In previous pleadings, TSI has argued that this is an action pertaining to a contract between the parties. TSI asserted that this matter does not involve a tariff, and, therefore, it is not appropriate for the Commission to assert its jurisdiction to

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<sup>5</sup>Citing AFM Corp. v. Southern Bell Telephone and Telegraph Co., 515 So. 2d 180 (Fla. 1987).

resolve the parties' dispute. (Recon 7) TSI also argued that this case includes claims in tort and allegations of willful misconduct for which TSI seeks money damages. (Recon 8, 9) TSI noted that the Commission cannot award damages. (Recon 9) For these reasons, TSI argues that the Commission does not have jurisdiction, or should not exercise its jurisdiction over this matter, and should return this case to the Circuit Court of the Eleventh Circuit, in and for Dade County, Florida, where Transcall originally brought this case.

Staff's Analysis and Conclusion

Upon review of the arguments, the case law, and the pertinent statutory provisions, it is clear that the doctrine of Primary Jurisdiction supports the Commission's jurisdiction in this matter as it applies to intrastate service and rates. As set forth in the Commission's Response to Defendant's (TSI's) Motion for Reconsideration of Order Staying Action and Referring to the Florida Public Service Commission (Resp.), the law in Florida is well-settled that the Commission has primary jurisdiction to make determinations regarding rates, charges, and services. (Resp. at 8; citing Richter v. Florida Power Corporation, 366 So. 2d 798 (Fla. 2nd DCA 1979)). The Legislature has authorized the Commission to regulate in this area, and the courts have recognized the Commission's administrative expertise for this purpose. (Resp. at 8; citing Richter, supra; and Florida Power Corp. v. Zenith Industries Co., 377 So. 2d 203 (Fla. 2nd DCA 1979)). The fact that this is a contract dispute between TSI and Transcall does not remove this matter from the Commission's jurisdiction. (Resp. at 8; citing Charlotte County v. General Development Utilities, Inc., 653 So. 2d 1081(Fla. 1st DCA 1995)).

Staff believes that the following statutory provisions are particularly relevant to show that the tariff and contract issues in this case are within the Commission's jurisdiction. By Section 364.01(2), Florida Statutes, the Legislature has given the Commission

. . . exclusive jurisdiction in all matters set forth in this chapter . . . in regulating telecommunications companies, and such preemption shall supersede any local or special act or municipal charter where any conflict of authority may exist. . . .

Section 364.04, Florida Statutes, requires all telecommunications companies to file all rates and charges with the Commission for

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

services provided in the state. Specifically, Section 364.04(1), Florida Statutes, states, in pertinent part, that

Upon order of the commission, every telecommunications company shall file with the Commission . . . schedules showing the rates, tolls, rentals, contracts, and charges of that company for service to be performed within the state.

Section 364.07(2), Florida Statutes, specifically provides that the Commission may ". . . review contracts for joint provision of intrastate interexchange service," ". . . may also require the filing of all necessary reports and information pertinent to joint provision contracts," and ". . . is also authorized to adjudicate disputes among telecommunications companies regarding such contracts."

Section 364.27, Florida Statutes, further supports the Commission's review as it pertains to interstate rates and service. In that statute, the Commission is charged with certain duties regarding the provision of interstate service by telecommunications companies in Florida. Section 364.27, Florida Statutes, provides that

The commission shall investigate all interstate rates, fares, charges, classifications, or rules of practice in relation thereto, for or in relation to the transmission of messages or conversations, where any act relating to the transmission of messages or conversations takes place within this state, and when such rates, fares, charges, classifications, or rules of practice are, in the opinion of the commission, excessive or discriminatory or are levied or laid in violation of the Act of Congress entitled "The Communications Act of 1934," and the acts amendatory thereof and supplementary thereto, or in conflict with the rulings, orders, or regulations of the Federal Communications Commission, the commission shall apply, by petition, to the Federal Communications Commission for relief and may present to the Federal Communications Commission all facts coming to its knowledge as to violation of the ruling, order, or its

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

knowledge as to violation of the rulings, orders, or regulations of that commission or as to violations of the act to regulate commerce or acts amendatory thereof or supplementary thereto.

As for the tort issues raised by TSI, staff acknowledges that the Commission does not have jurisdiction to resolve matters in tort. Southern Bell Telephone and Telegraph Company v. Mobile America Corporation, Inc., 291 So. 2d 199 (Fla. 1974); Florida Power Corporation v. Zenith Industries Company, 377 So. 2d 203 (Fla. 2nd DCA 1979). Staff agrees with Transcall, however, that the allegations in tort arise from the alleged overcharges under the contract between the parties. Thus, the tort claim is not independent of the contract. See AFM Corporation v. Southern Bell Telephone and Telegraph Company, 515 So. 2d 180, 181 (Fla. 1987) ("We conclude that without some conduct resulting in personal injury or property damage, there can be no independent tort flowing from a contractual breach which would justify a tort claim solely for economic losses.") As noted by Transcall, the Supreme Court recently addressed a similar case in which it stated that tort claims are barred when claims arise from alleged failure to perform under a contract. AT&T v. Central Office Telephone, 141 L. Ed. 2d 222; 118 S.Ct. 1956 (1998).

In this case, all of the tort claims alleged by TSI arise from Transcall's alleged breach of the contract between the parties. Breach of the contract, by itself, does not create a cause of action in tort. See AFM Corporation v. Southern Bell Telephone and Telegraph, 515 So. 2d at 181; citing Electronic Security Systems Corp. v. Southern Bell Telephone and Telegraph Co., 482 So. 2d 518 (Fla. 3rd DCA 1986) (stating that a breach alone does not constitute a basis for an action in tort). TSI has alleged no personal injury or property damage independent of the damage allegedly caused by the breach of the contract by Transcall.

As for Transcall's assertions that the Commission should issue an order on all issues within its jurisdiction and determine that TSI is estopped from further asserting any claims not pursued in this proceeding before the Commission, staff recommends that this is a matter for the court to decide.

Based on the foregoing, staff recommends that the Commission does have jurisdiction in this matter over the issues set forth in this recommendation. To the extent the issues address interstate matters, the Commission has the authority pursuant to Section 364.27, Florida Statutes, to review and make findings on these



DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

matters. Once the Commission renders its decision in this case, the Commission should forward the record to the FCC for comments on the interstate analyses and findings in accordance with Section 364.27, Florida Statutes. The Commission should then forward its Final Order from this recommendation to the Dade County Circuit Court in accordance with the Court's Order Staying Action and Referring to the Florida Public Service Commission, and indicate to the Court that the record of this case has been forwarded to the FCC for comments.

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

**ISSUE 2:** Did Telus/Transcall improperly bill TSI in excess of or violation of the contract between the parties, including, but not limited to, the following specific alleged violations:

(Point 1)

IMPROPERLY BILLING FOR CALLS NOT MADE, NOT COMPLETED, THAT WERE BUSY, OR HAD BAD CONNECTIONS

**ISSUE 2A:** If Telus/Transcall improperly billed TSI in excess of or violation of the contract, did the improper billing result in overcharges?

**RECOMMENDATION:** Yes. Staff believes that TSI was improperly billed for calls that were not made, not completed or that were busy or had bad connections, but the number of calls was within the limits allowed in both Transcall's and TSI's tariffs. Based upon the evidence, it appears that TSI received credit for these calls. The improper billing did not, therefore, result in overcharges. There should not be an adjustment for these calls, since any improper billing for these calls was apparently credited to TSI. (CATER)

#### POSITION OF THE PARTIES

**TRANSCALL:** Transcall agrees that there were calls that were billed that were not made, not completed, that were busy, or had bad connections. The amount of these calls were within the tolerance of both Transcall's and TSI's tariffs. Transcall also believes that anytime one of these calls was brought to their attention, TSI received a credit for that call.

**TSI:** TSI believes that they are entitled to payment for calls that were not completed, that were busy, or had bad connections. TSI believes that they have not been compensated for calls of these types.

**STAFF ANALYSIS:** In its brief, TSI argued that it is entitled to a credit of \$150 for disconnected calls as stated in witness Welch's Audit Report as Disclosure No. 13. TSI emphasized that it believes it is entitled to a \$47,557 credit for calls that were busy signals, had long rings, or for calls where there was silence at the receiving end of the call. (TSI BR 10)

TSI Witness Esquenazi argued that TSI was improperly billed for calls that were not made, that were not completed and/or had bad connections. (TR 155) He also asserted that TSI's expert confirmed that there were overbillings for these types of problems. (TR 156)

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

In his testimony, TSI witness Shulman stated that TSI was overbilled \$314,818 for problems including busy signals and other errors. (TR 187) In his sampling of 47,000 calls, using a sample of ten days, he testified that he found many billing errors. (TR 207-208)

Transcall's witness Daurio explained that any billing problems for incomplete or unanswered calls were due to the technology available at that time. (TR 48) She also stated that in order to obtain payments, ". . . Mr. Esquenazi would either unilaterally take credits each month when he made a payment or he would require the issuance of credits before he would make any payment." (TR 46) She also stated that in order to receive payment, she would grant TSI's requests for credit. (TR 46-47)

In response to TSI Witness Esquenazi's testimony, Transcall witness Daurio stated:

I don't doubt that there was billing for incomplete or unanswered calls, but there was nothing improper about this. During the time of the Agreement, there was an industry-wide problem due to the fact that the local exchange companies failed to provide hardware answer supervision on all calls. Consequently, we, like other carriers, used software answer supervision programs in an attempt to address this problem. Both TSI and Transcall had specific tariff provisions to address this situation, and anyone that knew anything about the business understood this. Again, from my standpoint, when Mr. Esquenazi raised these issues, we issued credits to him. The credits we issued were at the higher retail rate charged to his customers instead of at the wholesale rate charged TSI.

(TR 280)

Transcall Witness Metcalf indicated that TSI's margins were increased by the generous credits given to TSI by Transcall. The witness asserted that many credits were given at the retail rate due to the billing errors. He argued, therefore, that there should not be an adjustment for such errors. He also asserted that these errors were within the one to two percent error rate that was allowed in the tariff. (TR 85, 115-117)

In his rebuttal testimony, Transcall witness Metcalf asserted that witness Shulman's calculation of \$314,818 for numerous billing errors, including busy signals, is inaccurate. He agreed with Staff witness Welch's conclusion that the overbilling for all of these errors is within the two percent error rate specified in both TSI's and Transcall's tariffs. (TR 311)

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

In its brief, Transcall agreed that there were instances in which Transcall billed TSI and their customers for calls that were incomplete. In cases where calls were not answered, TSI's tariff states that after 60 seconds, the call is considered completed. When this problem was brought to Transcall's attention, credits were issued to TSI, which ultimately totaled \$74,752. Transcall agreed with staff witness Welch's audit report, which indicated that there were only \$26,409 in errors. (Transcall BR 15-18)

Staff witness Welch testified that in the course of her audit, she checked to see if some calls without an answer qualifier were billed. She indicated that she could not accurately determine the specific criteria that Transcall used to decide whether or not a call was a legitimate call. Her investigation revealed that TSI was billed \$315 for busy calls, \$46,284 for long rings, and \$958 for calls that were silent. (TR 229-230) Concerning calls with long rings, she quoted TSI's tariff, which states that:

When a calling party allows the distant end to ring in excess of 60 seconds or approximately 8 to 10 rings, the call will be considered a completed call. This only applies when hardware answer supervision is absent on the terminating end.

(TR 230)

Concerning an adjustment for calls without an answer qualifier, Staff's witness Welch stated that based on the audit sample:

Since the zero qualifier calls were less than one percent of the billable calls it does not appear to be material and the other answer qualifiers appear to be valid according to the tariff. However, I could not determine the time the software was set to, to be able to determine if it was the same as the 60 seconds in the tariff. (TR 231, EXH 20)

Based upon the evidence presented, staff believes that TSI was billed for calls not made, not completed, that were busy, or had bad connections. It appears, however, that witness Shulman's calculation of \$314,818 for these errors is inaccurate and does not consider the two percent error rate in the parties' tariff. Staff notes that witness Shulman conceded that he is not a telecommunications expert, and that he did not review any material on industry standards for the different types of calls at issue. (TR 190-192) In addition, based upon witness Daurio's testimony and witness Welch's audit report, it appears that TSI received credit for these billing errors. TSI did not present evidence to the contrary. Staff recommends, therefore, that the amount of

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

these errors was within the limits of both tariffs. The evidence supports Transcall's assertions that it issued credits when these problems were brought to the company's attention. Thus, staff believes that no adjustment should be made for these errors.

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

**ISSUE 2:** Did Telus/Transcall improperly bill TSI in excess of or violation of the contract between the parties, including, but not limited to, the following specific alleged violations:

(Point 2)

**OVERCHARGING CALLS, DOUBLE BILLING CALLS, OR BILLING FOR THE SAME CALL ON CONSECUTIVE BILLS**

**ISSUE 2A:** If Telus/Transcall improperly billed TSI in excess of or violation of the contract, did the improper billing result in overcharges?

**RECOMMENDATION:** Yes. Telus/Transcall overbilled TSI for calls due to the nine-second error. This error caused TSI to be overcharged by \$37,715. Any overcharges due to stuck clocks, overlapping of calls or the double billing of calls was offset by credits already given to TSI. There is no evidence in the record of any billing for the same call on consecutive bills. (CATER)

#### **POSITION OF THE PARTIES**

**TRANSCALL:** The only overcharging that Transcall believes occurred is the extra nine-seconds added to the length of the calls; any other overcharging of calls would have been isolated incidents.

**TSI:** TSI takes the position that there were numerous problems with calls being overcharged, including the nine-second error, hung trunk, overlapping calls and the double billing of calls.

**STAFF ANALYSIS:** TSI argued that the staff audit placed the burden of proof on TSI to show that calls were overlapping or stuck clock calls. (TSI BR 8) TSI emphasized that Transcall's witness Metcalf acknowledged that stuck clock calls can occur, but that the witness indicated that a nine hour and forty minute call could, theoretically, be legitimate. (TSI BR 8; citing TR at 95-96)

TSI's witness Esquenazi testified that Transcall breached the contract by:

Overcharging and adding time to calls, double billing for the same phone call and billing for items that had been in a previous months billing and charging twice for calls that were overlapping and appeared on two month's bills.

(TR 155)

TSI's witness Esquenazi recalled that many of his customers complained about extraordinarily long phone calls, which could be

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

considered as calls that had a stuck clock. He could not, however, remember how many customer complaints had been received and provided no additional support regarding these complaints. (TR 165-166)

In the course of his investigation, TSI's witness Shulman determined that TSI was overcharged \$314,318 due to billing of calls over one hour. The witness indicated that he had been instructed that such calls were not legitimate calls, and, therefore, TSI should not have been billed for them. He also asserted that TSI had been overbilled for busy signals, duplicate calls, and other errors. (TR 187) He further concluded that TSI was overcharged \$29,111 due to the nine-second error addressed in Docket No. 951270-TI. (TR 187)

As an example, TSI's witness Shulman described an overlapping call as a second call that starts before the prior call ends. (TR 197) Referring to Exhibit 19, he stated that calls numbered 9027, and 9028 are overlapping calls. He explained that these calls are overlapping because it is unlikely a customer could terminate a call and begin a new call within one minute. (TR 201)

Transcall's witness rejected witness Shulman's analysis. Transcall's witness Metcalf concluded from his own investigation that the only thing that was not billed, according to tariff, was the nine-second overbilling error. (TR 77) Concerning such items as stuck clocks, duplicate calls and the overbilling of calls he indicated:

My conclusion on the claims regarding stuck clock, duplicate, and overbilling, confirmed by the Staff Audit, demonstrate that these errors were within the 14-24 error rate articulated in both the Transcall and TSI tariffs. The types of problems that TSI complained of were typical, but within the standards of the day, due to the limitations of the call recording technology of the era experienced by all carriers. Further, Transcall demonstrated on countless occasions its responsiveness to these technological limitations by crediting any claims of TSI even with the limited documentation substantiating any of these concerns.

(TR 78-79)

Transcall's witness Metcalf further asserted that a stuck clock or a hung port could happen, but that he was unable to find any documentation that one occurred during the 30.5 month relationship between Transcall and TSI. (TR 94-95)

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

In its brief, Transcall questioned the basis behind TSI's allegations of certain calling problems. First, Transcall disputed TSI's contention that every call that is at least one hour in length is a stuck clock. Transcall noted that the customer would be the best person to determine whether or not a call is a stuck clock. Transcall argued that a customer would probably notice a call several hours long, especially if the customer did not remember making a call that length. (Transcall BR 19-20)

Concerning the double billing of calls, Transcall argued that TSI ignored the possibility that a person could terminate one call and start a second call, all within the same minute as recorded by the switch. (Transcall BR 20) Transcall also argued that TSI did not consider that when the LEC returns hardware answer supervision and the call is then immediately terminated, regardless of the reason, that the call is treated by the system as a completed call. (Transcall BR 20) Transcall noted that the issue of double billing calls is addressed in the tariffs of both companies. (Transcall BR 20)

As for overlapping calls, Transcall complained that the methodology used by TSI in the Lopez-Levi report submitted by TSI's witness Shulman is faulty. Transcall asserts that TSI's witness Shulman is under a misconception that it is unlikely that a person could terminate one call and start a second call within the same minute. (Transcall BR 21-22)

Transcall witness Metcalf explained that there is little evidence that TSI's customers complained about these alleged misbillings, or that TSI's customers were ever given credits for these calls. (TR 309) Concerning the nine-second error, Transcall witness Metcalf states that he agrees with staff witness Welch's amount of \$37,715 that Transcall owes TSI. (TR 310)

As for the Lopez-Levi report presented by TSI's witness Shulman, Transcall witness Metcalf stated that witness Shulman:

. . . accepted Mr. Esquenazi's instructions as to how to classify each type of call, and simply added up or extrapolated 30 months results from a very limited sample of selected records. Their analysis does not contain a recognition of industry standards of that period, or of TSI's own tariff language which stated that billing errors occur in up to 2% of all calls.

(TR 308-309)

In Disclosure No. 6 of her Audit Report, staff witness Welch discussed calls over one hour, overlapping calls, short repetitive calls, and duplicate calls. (TR 224) She explained that there were



DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

calls, and duplicate calls. (TR 224) She explained that there were errors in both the numbers and logic used in the adjustment in the Lopez-Levi Report. (TR 224) She indicated that the total errors in billing to TSI amounted to \$26,409, but that TSI received credits for billing errors from Transcall in the amount of \$74,752. (TR 224)

Staff witness Welch in her audit report stated that:

Although depositions have revealed a switch may get hung up and cause calls of long duration to be billed incorrectly, all calls over one hour cannot automatically be considered hung clock calls. . . . If TSI gave credit for one of these calls because a customer complained, TSI was given a corresponding credit in the April 1992 adjustment from ATC.

(EXH 20, KLV-1, p. 18)

In determining if calls were overlapping, Lopez-Levi did not take into account second increments. For example, if the first call started at 10:05 and lasted 5.5 minutes and the next call started at 10:10, Lopez-Levi removed both calls. However, a call could have started at 10:10 and 30 seconds and still be a valid call. Staff recalculated all calls on the Lopez-Levi schedules using seconds. Some did appear to overlap. Staff did not remove both calls, only the one with the longest duration. They also removed overlapping calls for 800 numbers. Since these calls usually go into a PBX system it is not unlikely for them to overlap.

Three way calling and speed dialing could explain the errors that were remaining.

(EXH 20, KLV-1, pp. 18-19)

Staff witness Welch further testified that she did allow for some duplicate calls in her calculation. (TR 258) As for stuck clocks, she stated that she did not give a credit for this problem. She noted that it was not her understanding that the problem was systematic as TSI alleged. (TR 267) In addition, witness Welch concluded that witness Shulman's report assumes that all calls that could potentially be overlapping were, in fact, overlapping. (TR 276)

In Audit Disclosure No. 8, staff witness Welch discussed the nine-second overbilling that was the subject of Docket No. 951270-TI. (TR 225) She stated that the amount that TSI owes Transcall

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

should be reduced by \$37,715 based upon the nine-second overbilling error. (TR 225)

Based upon the evidence in the record, staff believes the amount that TSI owes Transcall should be reduced by \$37,715 to offset the nine-second overbilling error. The evidence supports, however, Transcall's assertions that any overcharges that occurred because of double-billed calls, overlapping of calls, or were stuck clock calls were offset by credits given to TSI. Nothing in the record indicates that the same call was billed on consecutive bills. Staff recommends, therefore, that the only adjustment that should be made to the amount that TSI owes Transcall is \$37,715 for the nine-second overbilling error.

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

**ISSUE 2:** Did Telus/Transcall improperly bill TSI in excess of or violation of the contract between the parties, including, but not limited to, the following specific alleged violations:

(Point 3)

**IMPROPERLY CHARGING FOR 800 CALLS**

**ISSUE 2A:** If Telus/Transcall improperly billed TSI in excess of or violation of the contract, did the improper billing result in overcharges?

**RECOMMENDATION:** An adjustment should not be made for improper charges for 800 calls. Any problems that TSI brought to the attention of Transcall were promptly taken care of, and any improper charges for 800 calls was an underbilling to TSI. (CATER)

**POSITION OF THE PARTIES**

**TRANSCALL:** Transcall does not believe that there was any improper charging for 800 calls to TSI. They also believe that TSI's customers were not charged for 800 numbers they did not have.

**TSI:** TSI believes that they were improperly charged for 800 calls and that its customers were charged for 800 numbers that they did not have.

**STAFF ANALYSIS:** In its brief, TSI argued that it is entitled to the \$3,539 credit for unbilled 800 calls identified as Audit Disclosure No. 11 in Ms. Welch's audit report. (TSI BR 10) TSI's witness Esquenazi explained that improper charges on 800 numbers for calls which were made outside of the marketing area and billed for calls that were not received by the 800 customers was one of the ways that Transcall breached its contract with TSI. (TR 154-155)

Transcall's witness Daurio testified that due to the lack of number portability, concerns were raised within the company as to what to do about TSI's 800 customers after TSI was terminated. (TR 50) Witness Daurio also stated that the only 800 number problems that Mr. Esquenazi raised pertained to the turning up or termination of 800 number service to his customers, which Transcall addressed. (TR 281) Transcall's witness Metcalf also asserted that TSI's accusation that there were improper charges for 800 numbers is unsubstantiated. (TR 316)

In its brief, Transcall stated that there is no evidence of record that there were improper charges on 800 calls for calls made outside the marketing area or billing for calls not received by 800 customers. (Transcall BR 22) Concerning 800 numbers, Transcall

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

argued that neither TSI nor its customers were improperly billed for 800 numbers. Transcall asserted that any problems concerning 800 numbers were addressed in the ordinary course of business. (Transcall BR 28)

In conducting her audit, staff witness Welch did find billing errors related to 800 calls. She testified that on the billing summary the 800 interstate calls were reflected on the summary as interstate calls instead of 800 calls. Therefore, these calls were billed at a lower interstate rate. (TR 228) She estimated the difference caused by this error to be \$3,539. She noted, however, that some of the source data that she had used in developing this amount was inaccurate. Nevertheless, she determined that the markup for interstate calls and 800 calls was almost the same. She asserted that because the markups were nearly identical, the error caused only a negligible difference in TSI's profits. As such, she does not believe that an adjustment should be made. (TR 228)

The evidence supports witness Welch's conclusion that there were some billing errors concerning 800 numbers. These errors were, however, due to Transcall charging TSI for interstate calls instead of 800 calls, and there was not a material difference in TSI's profit margin for these two products. Staff recommends, therefore, that an adjustment should not be made. The record demonstrates that the problems with 800 calls that TSI brought to Transcall's attention were addressed. All other allegations of improprieties regarding 800 numbers are unsubstantiated.

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

**ISSUE 2:** Did Telus/Transcall improperly bill TSI in excess of or violation of the contract between the parties, including, but not limited to, the following specific alleged violations:

(Point 4)

**BILLING IN INCREMENTS THAT WERE IN VIOLATION OF THE CONTRACT**

**ISSUE 2A:** If Telus/Transcall improperly billed TSI in excess of or violation of the contract, did the improper billing result in overcharges?

**RECOMMENDATION:** Yes. The parties agree that Transcall billed TSI in improper increments. The record demonstrates, however, that Transcall gave TSI discounts that more than compensated TSI for this problem. Staff recommends, therefore, that no adjustment be made. (CATER)

**POSITION OF THE PARTIES**

**TRANSCALL:** Transcall agrees that there were billing errors, but asserts that all such billing errors were more than offset by undercharges and credits.

**TSI:** Yes. TSI believes that it is entitled to an adjustment for being billed in the incorrect increments.

**STAFF ANALYSIS:** In its brief, TSI argued that Transcall's attempt to alter the parties' agreement should be rejected, and Transcall should be held to the parties' written agreement. (TSI BR 3) TSI emphasized that the discounts should not substitute for billing in proper increments and that TSI should receive a credit of \$98,100, as calculated by staff's witness Welch. (TSI BR 3-5)

TSI's witness Esquenazi testified that one of the violations of the agreement that Transcall committed was billing in one minute increments instead of 6 or 30 second increments. (TR 155) He also stated that TSI's expert confirmed this violation of the agreement. (TR 156) TSI's witness Shulman testified TSI was overbilled by \$91,578. (TR 187)

In its brief, Transcall argued that there was a verbal modification to the contract, which allowed for a 40 percent discount for international usage and a 15 percent discount for domestic usage. This modification was made because Transcall was not able to bill international calls in six-second increments. Transcall also had difficulty billing in six-second increments for domestic calls that lasted less than 30 seconds. (Transcall BR 23-24) Transcall argued that TSI was not only fully compensated by

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

the discounts given, but that TSI received a windfall of \$546,153 from these discounts. (Transcall BR 25)

Transcall's witness Daurio testified that when she realized that it would be extremely difficult to bill the international calls to TSI in six-second increments, Transcall gave TSI a 31 percent discount, which was later made a retroactive 40 percent discount. (TR 43-44) Witness Daurio stated that Transcall discovered that some of the domestic usage was not being billed in six-second increments, because its billing system was set to record initial billing increments at a 30 second minimum. A 13 percent discount for domestic usage was given to TSI for this problem, which was later adjusted to a retroactive 15 percent discount. (TR 44)

Transcall's witness Daurio further indicated that the switch could record in six-second increments, but that the billing system could not bill in these increments. (TR 57-58) She stated that when she noticed the billing problems she mentioned them to Dennis Sickie, her immediate supervisor. He advised her to implement the percentage discounts to resolve the problem. (TR 59)

Witness Daurio also asserted that TSI received a much greater profit margin than was provided for in the Agreement due to the discounts given to resolve the problem with the billing increments. (TR 281) In addition, Transcall's witness Sickie indicated that:

There were limitations in our ability to bill TSI on 6 second increments. However, to compensate for the limitations in our billing system, we agree to provide TSI with a 40 percent discount on international calls and a 15 percent discounts [sic] for domestic calls. These discounts more than compensated TSI for any loss in margins due to our system's inability to bill in 6 second increments.

(TR 291)

Witness Sickie also recalled a written document concerning these discounts, but he could not support his recollection. (TR 293-297)

Transcall's witness Metcalf testified that it appeared that there had been a verbal modification to the contract that gave TSI discounts as compensation for the billing problems. The witness acknowledged that there is no written documentation concerning these modifications to the contract. (TR 79-80)

Staff witness Welch agreed that TSI was not billed in increments pursuant to the contract. She did, however, determine

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

that the 40 percent international discount and the 15 percent domestic discount were compensation for Transcall's inability to bill in these increments. (TR 224) Witness Welch agreed with the Lopez-Levi report that a proper adjustment for the billing problem would be about \$91,000. (TR 239-240) She also asserted that billing in the proper increment for both domestic and international usage would only result in a 1.5 percent change in the minutes. (TR 242) She acknowledged that in the course of her audit she did not see a written modification to the parties' agreement reflecting the discounts. (TR 243) In her audit report, however, she emphasized that over the life of the contract, the reduction given to TSI was a total of \$143,000 off domestic usage and \$494,730 off international usage. (EXH 20, KLV-1, p. 15)

Based on the evidence, it appears that there was no written modification to the agreement concerning the discounts given as compensation for not being able to bill in the proper increments. There is, however, a preponderance of evidence regarding the 40 percent and 15 percent discounts giving to TSI. There is no evidence explaining these discounts or demonstrating that the discounts were negotiated by the parties for purposes other than those indicated by Transcall. These discounts fully compensated TSI for not being billed in increments according to the contract. Based on the record, staff does not believe that there should be an adjustment to the amount owed for billing in the improper increments.

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

**ISSUE 2:** Did Telus/Transcall improperly bill TSI in excess of or violation of the contract between the parties, including, but not limited to, the following specific alleged violations:

(Point 5)

**IMPROPER BILLING FOR TRAVEL CARDS AND CANCELED ACCOUNTS**

**ISSUE 2A:** If Telus/Transcall improperly billed TSI in excess of or violation of the contract, did the improper billing result in overcharges?

**RECOMMENDATION:** There is no evidence that Transcall improperly billed for travel cards. There were, however, isolated instances of Transcall billing TSI for terminated accounts. The evidence demonstrates that these problems were corrected and credited. (CATER)

**POSITION OF THE PARTIES**

**TRANSCALL:** Due to the authorization methods for travel cards, Transcall could not have billed TSI for travel cards that TSI's customers did not have. While Transcall did, apparently, bill some customers after termination, these were isolated incidents and were corrected.

**TSI:** TSI was improperly billed for travel cards and canceled accounts.

**STAFF ANALYSIS:** TSI witness Esquenazi stated that Transcall breached the agreement by billing for travel cards that customers did not have. He also claimed that Transcall billed on accounts long after the accounts had been canceled by TSI. There was no additional support for this assertion offered. (TR 154-155)

When asked about the length of time it took to add or delete a customer, Transcall witness Daurio explained that Transcall usually processed changes on the same day that they were received. Witness Daurio added that for service terminations, Transcall would often initial and date the fax that TSI sent. (TR 36) Transcall witness Laurio also indicated that travel card rates were reduced around July 1990 when Transcall implemented time-of-day rates, which were lower than the single rate in the Agreement. (TR 44) Transcall's witness Metcalf concurred that the travel card rates had been reduced. (TR 80)



DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

Transcall's witness Daurio further testified that she did not remember Joel Esquenazi mentioning the problem with the travel cards. The witness did not understand how it could occur considering the manner in which the card orders were processed. (TR 281-282)

Transcall's witness Daurio also agreed that Transcall did bill TSI for accounts that had been terminated in a few isolated instances. The witness asserted that this problem was primarily due to incomplete data on the request for termination. (TR 282) Witness Daurio emphasized that Mr. Esquenazi's claim that there was billing on accounts long after the accounts had been canceled by TSI appeared to pertain to instances in which a customer terminated service early in the billing cycle and received the final bill at the end of the billing cycle. (TR 282)

Transcall stated in its brief that travel cards required an authorization code from Transcall to TSI, which TSI subsequently gave its customers. Thus, improper billing simply could not occur. (Transcall BR 26) Transcall also asserted that most TSI customer terminations took place the same day that the request arrived at Transcall.. Transcall stated that if a customer canceled their service early in the billing cycle, it could be several weeks before they would receive their final bill. (Transcall BR 25-26)

Transcall's witness Metcalf asserted that the allegations of improperly billing for travel cards and terminated accounts are unsubstantiated. (TR 316)

Staff witness Welch reviewed records concerning account termination and billing information and determined that the impact was \$150 for billing after termination of service. (TR 228-229)

Staff believes that there is not enough information in the record to show that there was any improper billing for travel cards. As for billing canceled accounts, while there were isolated instances of Transcall billing TSI for terminated accounts, this problem appears to have been corrected when Transcall was notified of the problem by TSI.

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

**ISSUE 2:** Did Telus/Transcall improperly bill TSI in excess of or violation of the contract between the parties, including, but not limited to, the following specific alleged violations:

(Point 6)

**SUPPLYING IMPROPER AND INACCURATE BILLING DETAILS TO TSI**

**ISSUE 2A:** If Telus/Transcall improperly billed TSI in excess of or violation of the contract, did the improper billing result in overcharges?

**RECOMMENDATION:** Staff recommends that there were some material billing errors resulting in extension errors and billing summaries that did not match the source detail records. The bills should be reduced by \$38,109 for the combined variances found in September, November, and December 1991, and increased by \$12,898 for the combined errors found in November and December 1990. (CATER)

**POSITION OF THE PARTIES**

**TRANSCALL:** These statements are not supposed to be identical, because the billing summaries and billing detail showed the calls in different increments.

**TSI:** Over \$300,000 in beginning balance errors along with other problems with their bills, shows a lack of accounting controls on Transcall's billing process.

**STAFF ANALYSIS:** TSI's witness Esquenazi asserted that Transcall violated the contract between the two companies by supplying bills in which the billing details did not match the time and billing summaries. (TR 155) TSI's witness Shulman also testified that extension errors were just some of the many errors that TSI had on its bills. (TR 208-209) He agreed with Transcall's witness Daurio that the numbers on the billing detail and billing summary should be identical. (TR 212)

In its brief, TSI argued that there were over \$300,000 in beginning balance errors which demonstrated the unreliability of the billing system, although the errors did not affect the total balance. (TSI BR 7) TSI also indicated that Transcall had problems with software, hardware, extension errors, and balances being brought forward. (TSI BR 7) TSI further asserted that there were discrepancies between the greenbar summaries and the invoices sent to TSI. (TSI BR 7) In addition, TSI agreed with Staff witness Welch that there was an internal auditing control problem at Transcall. (TSI BR 7)

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

Transcall's witness Metcalf compared the greenbar reports to TSI's invoice. His investigation of the TSI billing practices and review of witness Welch's audit report revealed several billing issue adjustments that he believed were not substantial. (TR 81)

As for staff witness Welch's disclosure concerning Transcall's overbilling of TSI by \$38,109 in September, November and December 1991, witness Metcalf stated:

Staff recomputed the bill to TSI on the basis of other monthly billing summaries it had located. Using these alternative summaries, the staff determined that the bill to TSI was overstated by \$38,109. Based upon my review of the bills that were rendered at the time, I believe that the staff had no basis for utilizing these alternative summaries. I take this position based on the assumption that the Transcall personnel responsible for determining the appropriate bill to send to TSI would have sent the correct invoice. Not finding any letters or telephone log notes objecting to the bill TSI received in this instance, I further conclude that Mr. Esquenazi must have agreed with Transcall's original action.

(TR 82)

Transcall's witness Daurio explained that:

Each month, I would take the greenbar summary and, on a personal computer, retype the data by category, multiply the usage by the applicable rate, compute the total for each line, apply any discounts and credits, subtract any payments, and calculate the total due.

(TR 45)

Witness Daurio stated that the number of calls and the minutes of the greenbar summaries and the invoice should match. (TR 67)

In its brief, Transcall does not dispute that the billing detail does not match the summaries. Transcall asserted that this is because TSI was billed at different increments than TSI's customers. (Transcall BR 27) Transcall also argued the staff witness Welch's audit report failed to account for an excess credit of \$20,778. (Transcall BR 30) Further, Transcall disputed staff witness Welch's Audit Disclosure No. 4, regarding billing errors in September, November, and December 1991. (Transcall BR 30)

In Audit Disclosure No. 2, staff's witness Welch, described the extension errors in the Lopez-Levi report:

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

Typographical errors that were not carried down to the total amount billed. However, in September and October 1990, the extension errors affected the total bill. Page 51 (EXH 20, KLN-1, p. 53) of the audit report reflects the corrected bill amounts for these months as \$40,689 and \$54,564 respectively.

(TR 223)

In Audit Disclosure No. 4, witness Welch explained the adjustments for differences between the bills and the summary reports:

A difference always exists because the bills to TSI customers show international minutes in one minute increments and the summaries show them in six-second increments. The first adjustment is for the months of September, November, and December 1991 when the bills are substantially higher than the summary. I have recalculated the bills of these three months and find that they should be reduced by \$38,109. The second adjustment is for the months November and December 1990 when the minutes billed are substantially lower than those found on the detail billing summaries. My calculation to adjust for this difference results in an increase in the billing from ATC of \$12,898.

(TR 223-224)

Staff believes the evidence supports witness Welch's determination that there were improper and inaccurate billing details sent to TSI. Concerning the extension errors, the evidence demonstrates that the correct bill for September 1990 is \$40,689, and that the correct bill for October 1990 is \$54,564. The evidence also supports witness Welch's determination that TSI was overcharged \$38,109 due to discrepancies between the billing summaries and billing detail in September, November, and December 1991. Apparently, TSI was also undercharged \$12,898 due to discrepancies between the billing summaries and billing detail in November and December 1990.

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

**ISSUE 2B:** If overcharges occurred, what is the amount of such overcharges, including applicable interest?

**RECOMMENDATION:** The amount of the overcharges, after accounting for discounts, credits and undercharges, is \$142,339. Staff believes that the amount of applicable interest should be calculated after determining the total amount TSI owes Transcall. (CATER)

**POSITION OF THE PARTIES**

**TRANSCALL:** Transcall agrees that the nine-second error should be deducted from the amount that TSI owes Transcall. Transcall believes that the discounts and credits given to TSI more than compensate them for any other overcharges that took place.

**TSI:** In addition to the nine-second error, TSI believes that it also has not been compensated for payments that were not credited, billing in the incorrect increments, timing errors, and billings for calls that lasted over an hour, calls that had busy signals, and duplicate billings of calls.

**STAFF ANALYSIS:** TSI's witness Esquenazi testified that he had given his customers \$51,000 in credits. He also argued that many times his customers simply deducted the amounts that they believed they were overcharged from their bills. (TR 163-164) He also claimed that he had \$400,000 in uncollectible that he had written off. He did not, however, provide documentation of these write-offs demonstrating that they were necessitated by customers not paying their bills because of billing errors. (TR 178-180)

TSI's witness Shulman testified that TSI was overcharged by Transcall in the following amounts (TR 187):

Overcharge	Amount
Payments not Credited	\$6,728
Nine-Second Error	\$29,111
Wrong Increment Billing	\$91,578
Calls over one-hour, busy signal, duplicate calls, and other errors	\$314,818
Timing Error	\$26,149
TOTAL	\$468,384

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

In its brief, TSI listed numerous overcharges. First, TSI alleged that there is a \$6,737 overcharge for checks paid by TSI that were not credited by Transcall. TSI also argued that there was a \$91,578 overcharge for billing in incorrect increments. For misbillings such as stuck clock, duplicate billings and calls that overlapped, TSI argued that it was overcharged \$314,817. Due to the change in billing format, TSI also argued that it was overcharged \$8,776. For the nine-second error, TSI complained that it was overbilled \$37,714. Due to the overbilling for time points, the company asserted it was overbilled \$111,521, and it argued that it was overbilled \$3,539 due to problems with 800 calls. Also, TSI argued that disconnected calls caused an overbilling of \$150, while calls that were busy, had long rings, or had silence resulted in an overcharge of \$47,557. (TSI BR 1-2)

Transcall's witness Daurio testified that whenever a billing issue was brought to her attention, TSI received a credit for the problem at the retail rate. The witness asserted that TSI was given all of the credits that it requested, except \$10,000 that was disputed. (TR 280-281)

Transcall's witness Metcalf agreed with staff witness Welch that the 15 percent domestic and 40 percent international discounts more than adequately compensated TSI for Transcall's inability to bill in six-second increments. (TR 310) He also indicated that he could not find any documentation of TSI witness Shulman's claim that Transcall did not credit payments of \$6,728. (TR 309)

In its brief, Transcall argued that the only overcharge that occurred was the \$37,715 overcharge resulting from the nine-second problem. Transcall also argued that over the course of the contract, the net undercharge to TSI, including the nine-second error, was \$178,756. (Transcall BR 32)

Transcall's witness Metcalf stated that he agreed with staff witness Welch's audit report findings that TSI was overcharged \$37,715 for the nine-second error and that the amount should be reduced from any amount that TSI owes Transcall. (TR 84) He also asserted that the large amount of credits given to TSI overcompensated TSI for any billing errors that may have occurred. (TR 85)

Staff witness Welch asserted that she found several instances where TSI was overcharged by Transcall. In Audit Disclosure No. 4, she discussed the discrepancies in minutes of use in Transcall's bills to TSI. While TSI's consultants believed that TSI was overbilled by \$98,242, witness Welch found some errors in the

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

calculation made by TSI's consultants. She determined that for September, November and December 1991, TSI was overcharged by \$38,109. She also found that TSI was undercharged by \$12,898 in November and December 1990. (TR 223-224) In Audit Disclosure No. 5, witness Welch discussed the impact of billing for international calls at one minute increments, instead of the six-second increments required by the contract between the parties. While she indicated that this resulted in overcharges to TSI, she found that these overcharges were more that offset by the 40 percent discount given for international traffic and the 15 percent discount given by Transcall for domestic traffic. (TR 224)

In Audit Disclosure No. 6, witness Welch discussed calls over one hour, overlapping calls, short repetitive calls, and duplicate calls, as analyzed in the report submitted by TSI's consultants. Witness Welch's calculation of overcharges due to these types of calls was \$26,409. She testified, however, that these overcharges were more than offset by \$74,752 in credits given to TSI for these types of problems. (TR 224)

In Audit Disclosure No. 8, staff witness Welch discussed the nine-second overbilling problem. Due to this problem, Ms. Welch determined that TSI was overcharged by \$37,715. Audit Disclosure No. 9 addressed overbilling that resulted from billing according to the amount of time the call is on the switch, which is known as TP1 to TP7, instead billing only for conversation time, which is TP6 to TP7. The witness asserted that TSI was overcharged by \$83,350 due to this problem. (TR 225-227) The witness noted that the Commission approved a settlement offer by Transcall to refund its customers for this problem. See Order PSC-93-1237-AS-TI, issued in Docket No. 910517-TI, on August 25, 1993. TSI's tariff, however, allows its customers to be billed for the time that the customer's call is on the switch. (TR 225, 83-84)

In Audit Disclosure No. 12, staff witness Welch discussed an error that was made in retroactively adjusting the discount for international traffic to 40 percent. This error resulted in TSI receiving an additional \$3,936 for the discount. (TR 228) In Audit Disclosure No. 15, witness Welch addressed incomplete calls. She found that TSI was overcharged \$315 for calls that were busy, \$958 for calls that were silent at the other end, and \$46,284 for calls that had long rings. The witness stated that TSI's tariff allowed for billing if the call rings for longer that one minute. Witness Welch testified that she could not determine the time to which the software was set; therefore, she did not make an adjustment for these errors. (TR 230-231)

The evidence supports witness Welch's determination that TSI was overcharged \$38,109 for discrepancies in minutes of use. Staff

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

also recommends that witness Welch's calculation that TSI was also undercharged \$12,898 for similar billing discrepancies is supported by the record. TSI was also apparently overcharged \$37,715 for the problem with nine-second overbilling. Finally, witness Welch's \$83,350 adjustment for the differences in the billing for switch time versus the billing for conversation time is supported by the evidence in the record.

It also appears that TSI was overcharged by being billed in improper increments. As indicated herein, the discounts that were given more than offset the overcharges caused by billing in improper increments. Staff recommends that the record further supports witness Welch's findings that TSI was overcharged \$26,409 for overlapping calls, duplicate calls, and calls caused by a hung trunk, but TSI was compensated by the \$74,752 that it received. Finally, staff believes that in issuing the retroactive discount for international usage, TSI received an additional \$3,936.

In conclusion, staff recommends that TSI was overcharged \$37,715 for the nine-second error, \$83,350 for the time point billing problem, and \$38,108 for discrepancies in minutes of use. TSI was also undercharged \$12,898 for discrepancies in minutes of use and \$3,936 for the extra credit received in the retroactive adjustment for the 40 percent discount for international usage. The net effect of these overcharges and undercharges is \$142,339. Staff believes that the interest calculation should not be applied to this amount. Instead, interest should only be applied to the total amount that it is determined that TSI owes Transcall.



DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

**ISSUE 2C:** Did TSI make any payments on any amount overcharged under the contract? If so, how much?

**RECOMMENDATION:** Yes. Staff believes that some payments were made by TSI. TSI made payments totaling \$858,000 on the billed amount of \$1,678,561. Staff recommends that Transcall owes TSI \$652,485, prior to any adjustments. (CATER)

**POSITION OF THE PARTIES**

**TRANSCALL:** Transcall does not believe that TSI made any payments on any overcharges.

**TSI:** TSI believes that it made a good faith effort to pay Transcall what TSI felt it owed.

**STAFF ANALYSIS:** TSI's witness Esquenazi stated TSI gave Transcall a check for \$250,000 as a good faith effort to resolve the dispute and pay the amount owed. Mr. Esquenazi voided the check after Transcall refused it. (TR 175-176; EXH 15)

TSI's witness Esquenazi also stated that most of his requests for credits were initiated by his customers. (TR 176) He also said that he had to write-off \$400,000 in uncollectible accounts, and that much of this amount was from customers deducting overcharges from their bills. (TR 178-180)

In its brief, Transcall argued that TSI was billed \$1,665,364, and paid \$858,000 on this amount. (Transcall BR 33)

Specifically, regarding TSI's payment history, Transcall's witness Daurio stated:

Basically in order to obtain payments, Mr. Esquenazi would either unilaterally take credits each month when he made a payment or he would require the issuance of credits before he would make any payments.

(TR 46)

Witness Daurio also testified that, with the exception of \$10,000 that was in dispute, every credit that Mr. Esquenazi requested for TSI was given by Transcall. (TR 46-47) Witness Daurio also asserted that when she left the account in September 1990, TSI was current in its payments, but that TSI did not make any payments during her absence from the account. (TR 48-49)

Transcall's witness Metcalf indicated that he found that the payments made by TSI to Transcall were properly recorded. (TR 85) In his investigation, he found that Transcall gave TSI \$169,753 in

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

credits, although TSI only documented \$51,487 worth of billing improprieties. (TR 85; EXH 13, DSM-1) The witness emphasized that TSI received these credits at the retail rate. (TR 85) He agreed with the findings in staff witness Welch's audit report that TSI had been more than adequately compensated for all of the misbilled calls alleged by TSI. (TR 86)

At hearing, staff witness Welch testified that after reviewing an attachment to Transcall witness Metcalf's direct testimony, she believed her Audit Disclosure No. 7 to be incorrect. This disclosure and the related testimony was stricken. (TR 217) After adjusting the amount of billing to match the calculations made by Transcall's witness Metcalf pertaining to Audit Disclosure 7, the amount that witness Welch determined was billed to TSI is \$1,678,561. (EXH 20, K LW-1, p. 53; EXH 13, DSM-1)

Witness Welch also stated that TSI received \$168,076 in credits and made payments of \$858,000. She determined that, prior to any adjustments, that TSI owes Transcall \$652,485. (EXH 20, K LW-1, p.53, adjusted by staff for stricken testimony)

Based upon the evidence in the record, staff believes that it would be extremely difficult to extract what amounts of payments are directly related to specific overcharges. As for TSI's assertion that it sent a check for \$250,000 to cover what it felt was owed, staff notes that the check was marked "void," but there is no evidence that Transcall ever actually received this check.

Staff believes that the evidence supports the calculations of witnesses Metcalf and Welch. It appears that TSI was billed \$1,678,561, received credits of \$168,076, and made payments of \$858,000. Based on these calculations, staff recommends that TSI owes Transcall \$652,485, prior to any adjustments.

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

**ISSUE 2D:** After accounting for any overbilling, refunds, settlements, or other credits that may be applicable, what amount, if any, does TSI owe Transcall for the services it received?

**RECOMMENDATION:** TSI owes Transcall \$510,145 after accounting for any overbillings, refunds, settlements, or other credits that may be applicable. If the Court determines that interest should be paid, the amount of interest owed on this amount through October 1998 is \$183,433. (CATER, B. KEATING)

**POSITION OF THE PARTIES**

**TRANSCALL:** Transcall believes that it is owed \$659,993 in principle and \$222,046 in interest through May 31, 1998.

**TSI:** TSI believes that it owes Transcall \$54,669.

**STAFF ANALYSIS:** In its brief, TSI argued that \$6,737 should be deducted for checks TSI paid to Transcall that were never properly credited. Because it was not billed in six-second increments, TSI argued that the amount it owes should be reduced by \$91,578. For such items as stuck clocks, duplicate calls, and calls that overlapped, TSI argued that the amount owed should be reduced by \$314,817. Because of billing format problems, TSI further argued that there should be a \$8,776 reduction in the amount it owes. The nine-second error should reduce the amount owed by another \$37,714. TSI also argued that the amount owed should be reduced by \$111,521 due to overbillings because of the time point problem, and reduced by \$3,539 to compensate for Transcall's misbilling of 800 calls. TSI also asserted that the amount owed should be reduced by \$150 for disconnected calls. Finally, TSI argued that the amount it owes should be reduced by \$47,557 for such items as busy signals, long ring, and silent calls. The total amount that TSI asserted that it owes Transcall is \$54,669. (TSI BR 1-2)

Transcall's witness Metcalf described certain issues where Transcall differs from the findings in witness Welch's audit report. First, he disagreed with witness Welch's findings that for September, November and December, 1991, the bills were overstated by \$38,109. He assumed that Transcall's personnel would have sent the correct bill, and emphasized that there is no evidence that TSI complained about the bill. (TR 82) Witness Metcalf also asserted that there were excess credits that totaled \$20,772 in October 1990 and April 1991, but that witness Welch ignored this amount. (TR 82-83; EXH 13, DSM-1) Finally, he determined that the adjustment for the time point differences should be disregarded, because TSI's tariff allowed for TSI's customers to be billed for the entire time that they were connected to the switch. (TR 83)

The witness asserted that the net amount due to Transcall should be increased by \$81,371 from the amount reflected in witness Welch's audit report. This included a \$38,109 reversal of the adjustment that witness Welch made to account for the problem where billing summaries did not match the corresponding bills. He also argued that the amount owed should be reduced by \$37,715 for the nine-second error, and reduced an additional \$38,109 for bills that were materially over the amount of their detail records. Finally, he determined that the amount owed by TSI should be increased by \$3,936 in accordance with witness Welch's Audit Disclosure No. 12, and increased by another \$12,898 as indicated in Audit Disclosure No. 4. Based on his review, witness Metcalf determined that the total amount that TSI owes Transcall is \$659,993, and the interest is \$222,046 through the date the testimony in this Docket was filed. (TR 81-86; EXH 13, DSM-1)

In its brief, Transcall asserted that it agreed on most points in staff witness Welch's audit report, with three exceptions. (Transcall BR 33-34) These three exceptions are the time point billing, a \$20,778 excess credit that it believes was omitted, and a discrepancy in the billing summaries for September, November, and December 1991. (Transcall BR 29-30)

Staff witness Welch also testified that TSI owes Transcall. Witness Welch indicated that the appropriate billing amount is \$1,678,561. (TR 218; EXH 20, K LW-1, p. 53; EXH 13, DSM-1) She asserted that Transcall gave TSI credits of \$168,076. She also found that TSI paid Transcall \$858,000. This resulted in a net amount due of \$652,485 based on her revised figures. (EXH 20, K LW-1, p. 53) The witness found that the amount owed should be reduced by \$83,350 to account for the time point billing problem, reduced by \$37,715 because of the nine-second error, and decreased by \$38,109 due to discrepancies between the bills and the billing summaries. Witness Welch determined that the amount owed should be increased by \$12,898 due to other discrepancies between the bills and the billing summaries. Finally, she asserted that the amount owed should be increased by \$3,935, because of an excess credit arising from retroactively adjusting the discount for international usage. (TR 223-231, EXH 20; K LW-1, p. 53) Based on these adjustments, witness Welch determined that TSI owes Transcall \$510,145. (EXH 20; K LW-1 p. 53) Attachment A to this recommendation is a summary of the parties' and the staff witness's respective positions on the amount owed.

Staff notes that the primary area of disagreement between the parties and witness Welch related to the \$83,350 adjustment for the time point billing problem. As noted by witness Welch, the Commission approved a settlement offer by Transcall to refund to its own customers for billing for the time that the customers were connected to the switch, which is TP1 to TP7, instead of

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

conversation time, which is TP6 to TP7. See Order No. PSC-93-1237-AS-TI, issued in Docket No. 910517-TI, on August 25, 1993. While TSI's tariff does provide for billing its customers for the time that they are on the switch, staff emphasized that there is nothing in the contract between the parties that identifies whether TSI itself was to be billed according to switch time or conversation time. (TR 225-226; EXH 29, MJD-1, pp. 4-5) Staff believes that the fact that Transcall sent a refund check of \$26,170 to TSI is evidence that Transcall believed that TSI was a customer of Transcall, and as such, was due a refund under the settlement agreement. (TR 226, EXH 20; KLV-1 p. 30; KLV-2 pp. 2-3)

Transcall's witness Metcalf did, however, dispute this conclusion. He stated that:

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

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

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

(TR 306-307) (emphasis in original)

Nevertheless, staff believes that while the relationship between Transcall and TSI was governed by the contract, Transcall's tariff should be used to determine how TSI was supposed to be billed. Staff believes this is appropriate because TSI was a customer of Transcall. Without any other guidance from the contract governing the relationship between the parties, Transcall was prohibited from charging rates other than those set forth in its schedule on file with the Commission in accordance with Section 364.08, Florida Statutes. Thus, Transcall was required to charge in accordance

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

with its tariff, as set forth in Florida Statutes. Based on this rationale, staff believes the amount that TSI owes Transcall should be reduced by \$83,350.

Based on the record, staff believes that TSI owes Transcall \$510,145. If the court determines that it is appropriate to apply interest to the amount due to Transcall, staff has calculated the appropriate amount due. It is within the Commission's jurisdiction to make this calculation. See Florida Power Corp. V. Zenith Industries Co., 377 So. 2d 203, 205 (Fla. 2nd DCA 1979) (overcharges and legal interest on overcharge are to be recovered through PSC). Staff notes that there is no evidence in the record supporting TSI's arguments in its brief that the parties' contract did not contemplate interest on any past due amount, that it would be unfair to assess interest on the amount due, and that TSI properly disputed the charges, thereby precluding the accrual of interest. Transcall did not address the issue in its brief, and the issue was not addressed at hearing. If it is determined that interest is owed, the amount of applicable interest pursuant to Rule 25.114(4), Florida Administrative Code, is \$183,433.

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

**ISSUE 3:** Did Telus/Transcall improperly bill TSI's customers in excess of or violation of the applicable tariff for intrastate traffic, including but not limited to, the following specific alleged violations:

(Point 1)  
IMPROPERLY BILLING FOR CALLS NOT MADE, NOT COMPLETED, THAT WERE BUSY, OR HAD BAD CONNECTIONS

(Point 2)  
OVERCHARGING CALLS, DOUBLE BILLING CALLS, OR BILLING FOR THE SAME CALL IN CONSECUTIVE BILLS

(Point 3)  
IMPROPERLY CHARGING OF 800 CALLS AND 800 CUSTOMERS

(Point 4)  
BILLING IN INCREMENTS THAT WERE IN VIOLATION OF THE APPLICABLE TARIFF

(Point 5)  
IMPROPERLY BILLING FOR TRAVEL CARDS AND CANCELED ACCOUNTS

(Point 6)  
SUPPLYING IMPROPER AND INACCURATE BILLING DETAILS TO TSI'S CUSTOMERS

**ISSUE 3A:**

If Telus/Transcall improperly billed TSI's customers in excess of or in violation of the applicable tariff, did the improper billing result in overcharges

**ISSUE 3B:**

If overcharges occurred, what is the amount of such overcharges, including any applicable interest?

**ISSUE 3C:**

Did TSI's customers make any payment on any amount overcharged? If so, how much was paid and to whom were payments made?

**ISSUE 3D:**

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

After accounting for any over billing, refunds, settlements, or other credits that may be applicable, are TSI's customers due any refund amount? If so, who should pay the refund and how should it be implemented?

**RECOMMENDATION:** Based on the evidence presented in this docket, staff is unable to determine if end users were improperly billed. It does appear that Transcall direct-billed TSI's end users only in a few isolated instances. (BARRETT)

**POSITION OF THE PARTIES**

**ISSUE 3:**

**TRANSCALL:**

No. Except for the nine-second error, TSI's customers were billed as instructed by TSI. The Staff Audit indicates that in some cases TSI improperly instructed Transcall on the billing of TSI customers. Any errors in the billing instructions to Transcall are TSI's responsibility.

**TSI:**

TSI takes no position on these matters.

**ISSUE 3A:**

**TRANSCALL:**

No. Except for the nine-second error.

**TSI:**

TSI takes no position on these matters.

**ISSUE 3B:**

**TRANSCALL:**

The value of the nine-second error to TSI is \$ 37,714.59 with interest of \$ 12,688.57. The amount TSI would have to refund to customers would be higher since TSI's customers were billed at a higher rate.



DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

**TSI:**

TSI takes no position on these matters.

**ISSUE 3C:**

**TRANSCALL:**

TSI customers paid TSI directly, so any overcharges would have been collected by TSI and not Transcall. Thus, any required refund would need to be made by TSI to its own customers.

**TSI:**

TSI takes no position on these matters.

**ISSUE 3D:**

**TRANSCALL:**

TSI may owe its customers a refund for the nine-second error, as well as the \$ 169,753.25 in credits it received that should have been passed on to its customers.

**TSI:**

TSI takes no position on these matters.

**STAFF ANALYSIS:** Staff notes that this proceeding involves the business relationship between Telus/Transcall and TSI. Because of this narrow scope, there is very little information in this record specific to the proper or improper billing of end user customers by Telus/Transcall or TSI. While staff witness Welch did find some inconsistencies during her audit that indicated the possibility of misbilling, the specifics of the case emphasized the business relationship between two companies and not billing to end users.

Transcall argued that it billed TSI correctly and according to the specific instructions from TSI and according to TSI's tariff. (Metcalf TR 126) Witness Metcalf stated, therefore, that Transcall did not bill TSI's customers directly. (TR 126) Transcall witness Daurio stated that the rates and billing increments were determined by TSI, not Transcall. (TR 39) Furthermore, witness Daurio stated that the billing reports prepared by Transcall were generated on a monthly basis for TSI and included the call detail along with a summary page for each customer. (EXH 7, p.14) Additionally, the

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

witness stated Transcall received no money from TSI's customers. (EXH 12, p.8) Witness Metcalf testified that the adherence by TSI to their own tariff provisions was not an obligation of Transcall's and they bore no responsibility for any violation(s) therein. (TR 139)

Witness Daurio acknowledged that the software limitation would not allow for the (six-second) incremental billing as provided in TSI's tariff. (TR 58) She maintained that the Transcall switch was capable of recording calls in the appropriate (six-second) increments, but the same equipment was not capable of generating the bill to TSI in that increment. (TR 58, 68) However, witness Metcalf contended that Transcall offered discounts in the amounts of forty (40%) percent on international and fifteen (15%) percent on domestic to compensate for this discrepancy. (EXH 6, p.26)

In its brief, TSI stated that its agreement with Transcall dictated that billing to TSI be in six-second increments, after the first minute. (BR 2) TSI witness Esquenazi stated the parties entered into negotiations to provide compensation for this shortcoming of the Transcall billing system. (TR 167-173) Witness Esquenazi offered a sample of the Transcall bill for a TSI customer that demonstrated that Transcall billed TSI in full minute increments. (EXH 21) TSI witness Esquenazi argued that it was TSI's practice to assemble the information received from Transcall, repackage it and, ultimately, send this statement to its own customers. (EXH 9, p.4) The witness made multiple references to credits requested on behalf of its customers due to the incorrect incremental billing. (TR 175-180) Witness Esquenazi described other situations in which he believed Transcall failed to uphold its agreement with TSI. (TR 154-155)

Staff witness Welch's audit uncovered inconsistencies that indicate the possibility that TSI was in violation of its own tariff by charging end users rates other than those specified by tariff. (EXH 20, p.38) Specifically, the witness questioned the issue of (six-second) billing increments, but no determination could be made as to the net result for end user customers, because the information requested from TSI was never provided. (EXH 20, p.39) Witness Welch concluded by offering that a separate investigation would be necessary in order to determine the amount that TSI over billed its customers. (TR 227)

Staff notes that this proceeding involves the business relationship between Transcall and TSI. Very few specific end-user issues are presented by Transcall or TSI. Staff disagrees, however, with Transcall witness Metcalf's assertion that its

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

billing was in accordance with TSI's tariff. (TR 126) Transcall was not billing TSI in accordance with TSI's tariff. Staff notes that Transcall was apparently billing TSI in increments in accordance with its own tariff. Staff believes that it was appropriate for Transcall to bill in accordance with its tariff, but staff notes that this apparently resulted in misbilling to TSI's end use customers. (See Issue 2D of this recommendation for discussion of time point billing and billing in accordance with the parties' tariffs, pages 36-38) Staff notes that the record does not reflect a quantifiable measure of this impact on TSI's end users. In considering the company-to-company impact, witness Welch's audit allowed no adjustment, basing its determination on the fact that the discounts given more than compensated TSI for the non-tariffed billing. (EXH 20, p.13)

Staff further disagrees with a minor portion of Transcall witness Metcalf's statement that Transcall did not bill the customers of TSI directly. (TR 126) Staff notes another Transcall witness, Mary Jo Daurio, conceded that this did occur, but only under very limited circumstances and that corrective action was implemented which solved the problem. The witness stated that the billing of TSI's customers by Transcall occurred for only a short period of time at the beginning of the companies' relationship and did not occur thereafter. (TR 41)

Staff supports Transcall's assertion that its billing system software had limitations. The present-day billing systems are much more accurate and sophisticated than their predecessors. Staff notes that each company had "error provisions" in their IXC tariffs in the range of one (1%) to two (2%) percent, which, in general terms, were considered the "industry standard."

Witness Welch's audit report indicated the possibility that TSI was not in compliance with its own tariff, primarily because the billing statements received by its customers did not accurately reflect the correct (six-second) billing increments. (EXH 20, p.38) Staff notes that TSI failed to produce all of the documentation as requested supporting the credits claimed on behalf of its customers, as discussed in Issue 2. Here again, no conclusion as to the effect on TSI's end users can be determined.

Staff concludes by noting that this proceeding involves the business relationship between Transcall and TSI. Based on the evidence presented in this docket, staff is unable to determine if end users were improperly billed. It does appear that Transcall direct-billed TSI's end use customers only in a few isolated instances.

DOCKET NO. 951232-TI  
DATE: OCTOBER 22, 1998

**ISSUE 4:** Should this docket be closed?

**RECOMMENDATION:** The docket should be closed after the time for filing an appeal has run.

**STAFF ANALYSIS:** The docket should be closed 32 days after issuance of the order, to allow the time for filing an appeal to run.

Docket No. 951232-TI  
 CALCULATIONS OF AMOUNTS OWED BY TBI TO TRANSCALL

	Transcall	TBI	Staff Witness
Amount Billed (A)	\$1,000,364	Not provided	\$1,000,786
Credits Given to TBI	(148,878)	-	(148,878)
Payments Made By Check or Wire Transfer	(288,000)	-	(288,000)
Amount Due Before Adjustments	563,486	567,546	563,908
<b>ADJUSTMENTS</b>			
Calls not made, not completed, that were busy or had bad connections			
Disconnected Calls	0	(188)	0
Busy Signals, Long Ring, Silence (B)	0	(47,887)	0
	0	(47,887)	0
Overcharging calls, double billing calls, or billing for the same call on two consecutive bills			
3 Second Over Billing (C)	(37,714)	(37,714)	(37,714)
Stuck Clock, Duplicate Calls and Overlapping Calls (D)	0	(14,817)	0
	(37,714)	(52,531)	(37,714)
Improperly Charging for 800 calls			
800 Calls (E)	0	(3,888)	0
	0	(3,888)	0
Billing in increments that were in violation of the contract			
Billing internat. calls in one minute vs. 6 sec. increments (F)	3,888	(31,878)	3,888
	3,888	(31,878)	3,888
Supplying improper and inaccurate billing details			
Errors due to summaries not matching bills (G)	0	0	(28,108)
Underbilling for Nov. and Dec. 1988	12,888	0	12,888
	(12,888)	0	(28,111)
Time-Point Overbilling (H)	0	(111,821)	(88,888)
Checks paid but not credited (I)	0	(8,737)	0
Change in billing rates for March-May '82 (J)	8,738	(8,738)	8,778
	(8,738)	(127,554)	(127,574)
Total Billing Errors	788	(222,388)	(133,884)
Miscellaneous Adjustments (Inventory)	836	0	0
Total Amount Due (K)	564,224	564,224	564,144

Footnotes:

- (A) The amount shown in the Staff Recommendation column is the amount shown on Exhibit 28. Due to staff witness Welch changing her testimony, the amount originally billed should be increased by \$8,778 to reflect changes in billing rates shown in footnote J, which for the purpose of consistency was placed on that line. The corrected amount billed is \$1,000,364.
- (B) TBI incorrectly stated in their brief (BR 16), that Staff witness Welch found this credit appropriate for crediting these types of calls. Welch stated in Audit Disclosure No. 18 that inadequate information was available to conclude that this credit was appropriate.
- (C) In Order No. PSC-87-0726-AS-TI, Transcall was ordered to refund \$5.6 million to its customers for adding nine seconds to all their calls for the period which included the time that TBI was a customer.
- (D) Staff Audit concluded that any overcharges relating to overlapping and duplicate calls were more than offset by credits given. TBI defined stuck stuck calls as all calls over one hour. Staff's audit determined that most of these calls were legitimate.
- (E) Staff witness Welch concluded that due to inconsistency of reports, no adjustment could be made.
- (F) After agreement was signed, Transcall notified that they could not bill international calls in six second increments. To offset any overcharges due to this, beginning in November 1988 TBI was given a 5% discount off international. In July 1989 this percentage was changed to 40%. Staff's Audit concluded that this discount more than offset any overcharges by Transcall, so no adjustment should be made, with the exception of April 1989 in which the same credit was given.
- (G) Transcall witness Metcalf stated that contract invoices were sent by Transcall and accepted by TBI without comment; therefore, Staff adjustment is arbitrary. Staff disagrees with this argument.
- (H) Commission Order PSC 88-1237-1 required a refund for a settlement based on charging switch time instead of conversation time. Transcall believes that because TBI's tariff allows for switch time, then the billing to TBI should not be for just conversation time, so no adjustment should be made. TBI adjustment is for the entire time of the contract, which is not correct. Staff's Adjustment is for the time required in the Order.
- (I) Staff witness Welch did not make this adjustment due to the unavailability of more detailed payment records.
- (J) Transcall witness Metcalf states that due to an agreement signed by TBI to pay the higher switchless revenue rates starting in March 1982, the original March to May 1982 invoices sent to TBI were recited. The recited invoice for April was not made available to Staff; therefore, an amount for April is not included in Staff's adjustment.
- (K) This is the correct amount due. The amount due that was shown on TBI's Brief was \$54,888, which is incorrect.

Sources:

- Staff - Witness Welch's Schedule (Attaching Exhibit 28, KLM-1, p.88)  
 TBI - Posthearing Brief p 1-3  
 Transcall - Witness Metcalf's Schedule (Attaching Exhibit 13, DDM-1 Revised)