

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by TELCOM RECOVERY )  
 CORP. against TRANSCALL AMERICA, )  
 INC. d/b/a ATC LONG DISTANCE )  
 regarding billing discrepancy. )

DOCKET NO. 910517-TI  
 ORDER NO. 24828  
 ISSUED: 07/17/91

Pursuant to Notice, a Prehearing Conference was held on July 15, 1991, in Tallahassee, Florida, before Commissioner J. TERRY DEASON, as Prehearing Officer.

## APPEARANCES:

ERIC C. BOTT, Telcom Recovery Corp., 5909 Rosman Court,  
 West Palm Beach, FL 33413  
On behalf of Telcom Recovery Corp.

FLOYD R. SELF, Esquire, Messer, Vickers, Caparello,  
 Madsen & Lewis, P.A., Post Office Box 1876, Tallahassee,  
 FL 32302-1876  
On behalf of Transcall America, Inc. d/b/a ATC Long  
 Distance

HAROLD McLEAN, Office of Public Counsel, c/o The Florida  
 Legislature, 111 West Madison Street, Room 812,  
 Tallahassee, FL 32399-1400  
On behalf of the Citizens of the State of Florida

JOHN K. ADAMS, Esquire, and TRACY HATCH, Esquire, Florida  
 Public Service Commission, 101 E. Gaines Street,  
 Tallahassee, Florida 32399-0863  
On behalf of the Commission Staff

PRENTICE P. PRUITT, Esquire, Florida Public Service  
 Commission, 101 E. Gaines Street, Tallahassee, Florida  
 32399-0862  
On behalf of the Commissioners.

PREHEARING ORDERI. BACKGROUND

Transcall America, Inc. d/b/a ATC Long Distance (ATC) is a certificated interexchange carrier providing intrastate long distance service in the state of Florida. As a certificated telecommunications company, ATC is subject to the jurisdiction of the Florida Public Service Commission. ATC is required to file clearly written tariffs explaining the billing of its services and

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the rates charged. ATC is required to bill according to its tariffs and to do so in a consistent and impartial manner.

On April 15, 1991, Telcom Recovery Corp. (Telcom) filed a complaint against ATC alleging that ATC's billing was inconsistent with its tariff. Telcom alleged that ATC was consistently mistiming calls and billing clients for longer periods than the actual duration of the call.

## II. TESTIMONY AND EXHIBITS

Upon insertion of a witness's testimony, exhibits appended thereto may be marked for identification. After opportunity for opposing parties to object and cross-examine, the document may be moved into the record. All other exhibits will be similarly identified and entered at the appropriate time during hearing. Exhibits shall be moved into the record by exhibit number at the conclusion of a witness's testimony.

Witnesses are reminded that on cross-examination, responses to questions calling for a yes or no answer shall be answered yes or no first, after which the witness may explain the answer.

## III. ORDER OF WITNESSES

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>DATE</u>	<u>ISSUES</u>
<u>Direct</u>			
Eric Bott	Telcom	7/18	All
Jim Holt	Telcom	7/18	1,4
Deanna Weber (Stipulated)	Telcom	7/18	1,2,4
Helene Demetrious (Stipulated)	Telcom	7/18	1,2,4
Jerry Bir	Telcom	7/18	1,2,4
Frances Martens	ATC	7/18	1-3
Robert Finch	ATC	7/18	1-2

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<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>DATE</u>	<u>ISSUES</u>
Norman Klugman (Potentially Available)	ATC	7/18	All
Edward Fuchs	Staff	7/18	1-3
<u>Rebuttal</u>			
Eric Bott	Telcom	7/18	All
Sheila Ackerman	ATC	7/18	1,4
Jim Baumhart	ATC	7/18	1,4
Robert Finch	ATC	7/18	1,2

#### IV. BASIC POSITIONS

TELCOM'S BASIC POSITION: It is my position that when I signed up for service in late 1989, ATC's tariff dated January 1989 was the tariff in effect when I started service. I believe that the January 1989 tariff is not clear on when calling timing begins and ends. Additionally, ATC's March 1990 and December 1990 tariff say to me that ATC only bills for conversation time. Based on my test calls performed on January 3, 1991, ATC is clearly billing for more than conversation and therefore, is not billing in accordance with their tariffs on file at the Public Service Commission.

ATC'S BASIC POSITION: At the time of Mr. Bott's call timing tests in early 1991, Section 3.1 of ATC's December 5, 1990 effective tariff governed the timing of all company products. This tariff as well as ATC's March 26, 1990 effective tariff and the predecessor Microtel, Transcall, and Telus tariffs have consistently permitted the company to bill customers for connection and not conversation time. Accordingly, the company correctly billed Mr. Bott for connection as required by ATC's tariff.

OPC'S BASIC POSITION: No position at this time.

STAFF'S BASIC POSITION: ATC's use of the word "connection" is contrary to the usual meaning of the word in the telecommunications industry. Because of this peculiar usage, and without more detailed explanation, ATC's tariff is ambiguous and misleading.

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V. ISSUES AND POSITIONS:

ISSUE 1: What do ATC's tariffs provide with respect to the timing of calls (for the purpose of this issue, ATC's tariffs shall be defined as Microtel's August 30, 1988 first revised Sheet No. 16, ATC's Tariff Section 3.1 revised January 30, 1989, March 26, 1990, December 5, 1990, and ATC's Tariff revision dated October 12, 1990 revising ATC 800 services)?

TELCOM'S POSITION: My position is that the term "CONNECTION ESTABLISHED" in ATC's tariffs is the exact same as "CONVERSATION TIME" in terms of billable time. The fact that the phone is ringing does not justify a billable connection to the consumer. The billable connection is established when the called party/station answers the phone and the terminating LEC provides a hardware signal to ATC upon this event.

ATC'S POSITION: Section 3.1 of ATC's December 5, 1990 effective tariff (Exhibit FM-1) governing the disposition of Mr. Bott's complaint. This tariff provides:

Chargeable time begins when the connection is established between the access line and the calling or called station, and ends when the calling station 'hangs up.' If the called station or access line 'hangs up' but the calling station or access line does not, chargeable time ends when the network connection is released by automatic timing equipment in the telecommunications network.

This language provides ATC with two timing options which have been applied on the basis of the individual billing system or service product involved. Based upon accepted industry standards, connection time between the access line and calling station occurs when there is incoming seizure of ATC's switched trunk. Connection between an access line and the called station occurs when the LEC at the terminating end of the call signals back to ATC's switch and ringing commences. As is clear from this tariff language, call timing is not based upon conversation time, which occurs later in the call beginning when the call is answered. The ability to charge for connection time under this tariff is consistent with the ability to charge for connection under ATC's March 26, 1990 effective tariff (Exhibit FM-5) and the predecessor Microtel (Exhibit FM-4), Transcall (Exhibit FM-3), and Telus (Exhibit FM-6) tariffs.

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With respect to ATC's 800 service, Section 3.1 also governs chargeable time for 800 customers. In addition, Section 3.8.3.G. of ATC's November 11, 1990 effective tariff (Exhibit FM-2) provides additional requirements that prevents customers who utilize line-side connections from programming their CPE to delay an answer-back signal and thus avoid proper call charges.

OPC'S POSITION: No position at this time.

STAFF'S POSITION: ATC's tariff provides that timing begins upon connection of the call. Staff interprets the term "connection" to indicate that timing will be for the elapsed time equivalent to conversation time and therefore does not include any call set-up or ringing time.

ISSUE 2: Is ATC billing in compliance with its tariff?

TELCOM'S POSITION: No. At the time of my signing up for service and throughout my use of ATC, I feel that ATC was billing me for more than just conversation time (based on my January 3, 1990 test calls) and therefore was in violation of their numerous tariffs throughout 1989, 1990, and early 1991. ATC has made public statements as to the contrary to myself and many of their own customers that they only bill for "CONVERSATION TIME" however, all test calls performed by myself reveal that ATC in fact bills for more than "CONVERSATION TIME".

ATC'S POSITION: Yes. At the time of Mr. Bott's timing tests, pursuant to ATC's FPSC approved tariff, ATC properly billed Mr. Bott connection time and not conversation time. ATC has always charged pursuant to its effective tariffs.

OPC'S POSITION: No position at this time.

STAFF'S POSITION: No. As of the date of Staff's last service evaluation, ATC was not billing in compliance with its tariff. Staff believes connected time is equivalent to conversation time.

ISSUE 3: If ATC is not billing in compliance with its tariff, what action should be taken?

TELCOM'S POSITION: I believe that ATC intentionally intended to overcharge myself for more time than their tariffs allowed and that they deliberately misled me into signing up for service under a false misrepresentation of their services, rates and savings

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proposed. Contrary to published reports that ATC had no technical control over this problem, I know that it was possible for ATCD to only bill their customers for "CONVERSATION TIME" if they had wanted to in the past. This is a simply programming change that can be done with any billing program. Based on this information, I feel that I should receive a proper and immediate credit for any overcharges incurred and that the Commission should immediately order a widespread investigation into the size and scope of this problem. If ATC is in fact overbilling beyond the scope of their tariff, I also feel the Commission should investigate the possibility of canceling ATC's tariff until this issue has been settled for all parties involved.

ATC'S POSITION: ATC has not in any manner intended to overcharge or bill Mr. Bott in excess of that authorized by the tariff. ATC has worked diligently to merge its constituent companies into a single full-service telecommunications provider, and to this end ATC has recently completed major revisions to its billing systems to bill company-wide for conversation time and filed a new tariff to reflect this fact. If further clarification of the tariff is necessary then ATC should be advised or ordered to clarify its tariff.

OPC'S POSITION: No position at this time.

STAFF'S POSITION: ATC should refund the amount overbilled as a result of the call timing ambiguity. For the purposes of this docket, this refund should be limited to Telcom Recovery Corp.

ISSUE 4: [LEGAL ISSUE] If ATC applies its tariff correctly, but an employee represents something different to the complainant and the complainant relied on this information to his detriment, what relief, if any, can the Commission order?

TELCOM'S POSITION: My position is ATC misled me, intentional or not, into signing up for service with them by telling me that they only billed for conversation time. This was reinforced by their employees throughout my use of their service and it was because of this information that I signed and continued to use the service. It was also from their statements that I feel I was harmed financially for paying more than I should have.

It is my contention that even if ATC was billing in accordance with their tariff, the misleading statements made to me caused me

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financial harm and is not allowed pursuant to Section 25-24.486(1)(e).

ATC'S POSITION: Florida law does not grant the Commission the authority to order any customer relief except where a utility has not charged a customer pursuant to its tariff.

OPC'S POSITION: The Commission should order a refund and issue a cease and desist order.

STAFF'S POSITION: No position at this time.

VI. EXHIBIT LIST

<u>WITNESS</u>	<u>PROFERRING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Eric Bott	Telcom	EB-1	ATC letter to customers from Raville (May 23, 1991)
Eric Bott	Telcom	EB-2	ATC memo from Klugman to Employees (May 23, 1991)
Eric Bott	Telcom	EB-3	ATC memo from Klugman to Senior VP's
Eric Bott	Telcom	EB-4	ATC memo from Klugman to Fran Martens
Eric Bott	Telcom	EB-5	ATC letter to Bott (re: no call records)
Eric Bott	Telcom	EB-6	Taylor (PSC) letter to Bott (re: tariff interpretation)
Eric Bott	Telcom	EB-7	ATC tariff Section 3.1 (Effect: Dec. 5, 1990)

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<u>WITNESS</u>	<u>PROFERRING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Eric Bott	Telcom	EB-8	ATC tariff Section 3.1.1 (Effect: Mar. 26, 1990)
Eric Bott	Telcom	EB-9	ATC tariff Section 3.1.1 (Effect: Jan. 30, 1990)
Eric Bott	Telcom	EB-10	Microtel tariff Section 3.1.1 (Effect: Aug. 1988)
Eric Bott	Telcom	EB-11	ATC letter to PSC (re: Live Oak test/Mar. 21, 1991)
Eric Bott	Telcom	EB-12	PSC letter to ATC (re: response to ATC Marc. 21 letter)
Eric Bott	Telcom	EB-13	PSC test evaluations performed: Apr. 23-June 8, 1990
Eric Bott	Telcom	EB-14	PSC test evaluations performed: Nov. 12-Dec. 22, 1989
Eric Bott	Telcom	EB-15	PSC test evaluations performed: Feb. 5- Apr. 13, 1990
Eric Bott	Telcom	EB-16	Eric Bott test calls
Eric Bott	Telcom	EB-17	Eric Bott spreadsheet

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<u>WITNESS</u>	<u>PROFERRING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Eric Bott	Telcom	EB-22	All test calls performed on other carriers
Eric Bott	Telcom	EB-23	Sun-Sentinel Article
Eric Bott	Telcom	EB-24	South Florida Business Journal
Eric Bott	Telcom	EB-25	ATC Q & A for Boca and Miami Call-ins
Helene Demetrious	Telcom	HD-1	Airscan test calls
Helene Demetrious	Telcom	HD-2	Airscan spreadsheet
Deanna Weber	Telcom	DW-1	Glasgow test calls
Deanna Weber	Telcom	DW-2	Glasgow spreadsheet
Frances Martens	ATC	FM-1	December 5, 1990 ATC Tariff Section 3.1
Frances Martens	ATC	FM-2	November 11, 1990 ATC Tariff Section 3.8.3.G
Frances Martens	ATC	FM-3	January 30, 1989 Transcall America, Inc. Tariff Section 3.1
Frances Martens	ATC	FM-4	August 30, 1988 Microtel, Inc. Tariff Section 3.1
Frances Martens	ATC	FM-5	March 26, 1990 ATC Tariff Section 3.1
Frances Martens	ATC	FM-6	February 9, 1989 Telus Tariff Section 3.3.5

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<u>WITNESS</u>	<u>PROFERRING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Frances Martens	ATC	FM-7	November 1, 1990, Klugman Memoranda
Frances Martens	ATC	FM-8	June 14, 1991 ATC Tariff Section 3.1 filing
Frances Martens	ATC	FM-9	July 15, 1990 MCI Telecommunications Corporation FCC Tariff No. 1, 28th Revised Page No. 19.9.2
Frances Martens	ATC	FM-10	December 5, 1990 ATC Tariff Section 1.1
Robert Finch	ATC	RF-1	ATC Transmission Facilities map
Robert Finch	ATC	RF-2	Average Call Set Up Time diagram
Edward Fuchs	Staff	EF-1	ATC Tariff Section 3.1, Timing of Calls
Edward Fuchs	Staff	EF-2	Letter to Charles J. Gardella dated February 19, 1991
Edward Fuchs	Staff	EF-3	Letter to Brian Sulmonetti dated October 3, 1990
Edward Fuchs	Staff	EF-4	Tariff of American Telecommunications Corp.
Edward Fuchs	Staff	EF-5	Letter to Charles J. Gardella dated February 19, 1991

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<u>WITNESS</u>	<u>PROFERRING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Edward Fuchs	Staff	EF-6	Response from ATC to Alan Taylor regarding February 19, 1991 quality of service letter
Edward Fuchs	Staff	EF-7	Letter to Brian Sulmonetti dated April 5, 1991
Sheila Ackerman	ATC	SA-1	November 1 Klugman Memo to Directors

VII. STIPULATIONS:

The parties stipulated to entering the prefiled direct testimony of Helen Demetrious and Deanna Weber, combined with selected portions of their respective depositions for purposes of cross-examination. The parties further agreed that Jim Holt would be presented at the hearing and made available for cross-examination. The testimonies of Robert Bertrand and Edward Glynn were withdrawn.

VIII. PENDING MOTIONS:

ATC's Motion to Strike remains pending with regard to the testimony of Eric Bott. This motion shall be considered by the full panel.

IX. RULINGS:

A. The portion of Order No. 24811, Order Granting in Part and Denying in Part Telcom Recovery Corp.'s Motion to Compel, granting the Motion to Compel is hereby rescinded. Telcom Recovery Corp.'s June 29, 1991 Motion to Expedite is hereby denied with leave to renew if the evidence presented during the proceeding further necessitates the availability of the information sought. This denial is limited to Telcom's request for raw billing records. With regard to Telcom's request for documents related to periodic

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changes in ATC's billing system, ATC maintains that all such documents have been produced, and that witnesses produced at the hearing will address such matters. ATC is directed to continue searching for related documentation with all due diligence.

B. Transcall America, Inc. d/b/a ATC Long Distance moved for a bench ruling. Mr. Bott expressed reservations regarding a bench ruling. The remaining parties took no position.

ATC's motion for a bench ruling was deferred pending presentation of all evidence. Nevertheless, all parties are placed on notice that a bench ruling may be considered upon consideration by the full panel.

C. ATC's Motion to Strike was subsequently withdrawn with respect to the testimonies of Robert Bertrand, Helene Demetrious, James Holt, Edward L. Glynn, and Deanna Weber pursuant to the stipulation described above. That portion of the motion directed to Mr. Bott's testimony will be addressed at the appropriate time during the hearing.

X. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION:

In the event it becomes necessary to handle confidential information, the following procedure will be followed:

1. The Party utilizing the confidential material during cross examination shall provide copies to the Commissioners and the Court Reporter in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material shall be provided a copy in the same fashion as provided to the Commissioners subject to execution of any appropriate protective agreement with the owner of the material.
2. Counsel and witnesses should state when a question or answer contains confidential information.
3. Counsel and witnesses should make a reasonable attempt to avoid verbalizing confidential information and, if possible, should make only indirect reference to the confidential information.

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4. Confidential information should be presented by written exhibit when reasonably convenient to do so.
5. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the owner of the information. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

If it is necessary to discuss confidential information during the hearing the following procedure shall be utilized.

After a ruling has been made assigning confidential status to material to be used or admitted into evidence, it is suggested that the presiding Commissioner read into the record a statement such as the following:

The testimony and evidence we are about to receive is proprietary confidential business information and shall be kept confidential pursuant to Section 364.183, Florida Statutes. The testimony and evidence shall be received by the Commissioners in executive session with only the following persons present:

- a) The Commissioners
- b) The Counsel for the Commissioners
- c) The Public Service Commission staff and staff counsel
- d) Representatives from the office of public counsel and the court reporter
- e) Counsel for the parties
- f) The necessary witnesses for the parties
- g) Counsel for all intervenors and all necessary witnesses for the intervenors.

All other persons must leave the hearing room at this time. I will be cutting off the telephone ties to the testimony presented in this room. The doors to this chamber are to be locked to the outside. No one is to enter or leave this room without the consent of the chairman.

The transcript of this portion of the hearing and the discussion related thereto shall be prepared and filed under seal, to be opened only by order of this Commission. The

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transcript is and shall be non-public record exempt from Section 119.07(1), Florida Statutes. Only the attorneys for the participating parties, Public Counsel, the Commission staff and the Commissioners shall receive a copy of the sealed transcript.

(AFTER THE ROOM HAS BEEN CLOSED)

Everyone remaining in this room is instructed that the testimony and evidence that is about to be received is proprietary confidential business information, which shall be kept confidential. No one is to reveal the contents or substance of this testimony or evidence to anyone not present in this room at this time. The court reporter shall now record the names and affiliations of all persons present in the hearing room at this time.

It is therefore,

ORDERED by Commissioner J. TERRY DEASON, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. TERRY DEASON, as Prehearing Officer, this 17th day of JULY, 1991.

  
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J. TERRY DEASON, Commissioner  
and Prehearing Officer

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