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Arizona Corporation Commission  
**BEFORE THE ARIZONA CORPORATION COMMISSION**  
**DOCKETED**

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WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

MAR 14 2002

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF  
VARTEC TELECOM, INC., EXCEL  
TELECOMMUNICATIONS, INC., EMERITUS  
COMMUNICATIONS, INC., AND LONG  
DISTANCE WHOLESALE CLUB, INC., FOR AN  
EXEMPTION FROM A.R.S. § 40-285 AND  
WAIVER OF THE PUBLIC UTILITY HOLDING  
COMPANIES AND AFFILIATED INTERESTS  
RULES.

DOCKET NO. T-03401A-01-0952  
DOCKET NO. T-02584A-01-0952  
DOCKET NO. T-03188A-01-0952  
DOCKET NO. T-03164A-01-0952

DECISION NO. 64628

**ORDER**

Open Meeting  
March 19 and 20, 2002  
Phoenix, Arizona

**BY THE COMMISSION:**

On December 4, 2001, VarTec Telecom, Inc., Excel Telecommunications, Inc., eMeritus Communications, Inc., and Long Distance Wholesale Club, Inc. (collectively "Applicants") filed with the Arizona Corporation Commission ("Commission") the above-captioned application for a permanent exemption from A.R.S. § 40-285 and a permanent general waiver of the Commission's Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R14-2-801 et seq. ("Rules"). The Applicants filed a joint application because VarTec Telecom, Inc. is in the process of directly or indirectly acquiring all the capital stock of the other Applicants, all of which are Arizona public service corporations.

On February 25, 2002, the Commission's Utilities Division Staff ("Staff") filed a Staff Report in the above-captioned dockets recommending that the Commission grant VarTec authority under A.R.S. § 40-285 to directly or indirectly acquire all the capital stock of the other Applicants, and recommending that the Commission grant Applicants a limited waiver of the Rules. Staff recommended that a hearing not be held.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the

1 Commission finds, concludes, and orders that:

2 FINDINGS OF FACT

3 1. VarTec Telecom, Inc. ("VarTec") is a Texas corporation and an Arizona public  
4 service corporation authorized to provide competitive interLATA/intraLATA resold  
5 telecommunications services except local exchange services in Arizona. The Commission granted  
6 VarTec a Certificate of Convenience and Necessity ("CC&N") to provide those services in Decision  
7 No. 62238 (January 12, 2000). VarTec also has pending with the Commission, in Docket No. T-  
8 03401A-01-0674, an application for authority to provide all forms of facilities-based and resold local  
9 exchange and exchange access telecommunications service in Arizona.

10 2. Excel Telecommunications, Inc. ("Excel") is a Texas corporation and an Arizona  
11 public service corporation providing resold telecommunications services in Arizona. Excel's  
12 application for a CC&N authorizing it to provide competitive intrastate interexchange  
13 telecommunications services except local exchange services in Arizona is currently pending in  
14 Docket No. T-02548A-91-0016.

15 3. eMeritus Communications, Inc. ("eMeritus") is a Delaware corporation and an  
16 Arizona public service corporation providing resold telecommunications services in Arizona.  
17 EMeritus' application for a CC&N authorizing it to provide competitive intrastate interexchange  
18 telecommunications services except local exchange services in Arizona is currently pending in  
19 Docket No. T-03188A-96-0302.

20 4. Long Distance Wholesale Club, Inc. ("LDWC") is a Delaware corporation and an  
21 Arizona public service corporation authorized to provide competitive interLATA/intraLATA resold  
22 telecommunications services except local exchange services in Arizona. The Commission granted  
23 LDWC a CC&N to provide those services in Decision No. 60286 (July 2, 1997).

24 5. Excel Communications, Inc., a Delaware corporation, controls 100 percent of the  
25 equity of Excel, eMeritus, and LDWC.

26 6. On December 4, 2001, Applicants filed a joint application for a permanent general  
27 waiver of the Rules, and for a permanent exemption from A.R.S. § 40-285 pursuant to A.R.S. § 40-  
28 202(M).

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1           7.     On December 28, 2001, the Commission issued Decision No. 64285, which suspended  
2 the application until May 1, 2002.

3           8.     On February 25, 2002, Staff filed a Staff Report in this docket.

4           9.     On March 7, 2002, the Applicants filed an amendment to their application. The  
5 amendment provided updated docket numbers that appeared in the original application, but made no  
6 substantive changes to the application. The amendment stated that Excel and eMeritus are currently  
7 providing service in the State of Arizona.

8           10.    Also on March 7, 2002, the Applicants filed an Application for Waiver of A.A.C.  
9 R14-3-110(B). This will be considered as Applicants' waiver of their right to have ten days in which  
10 to file exceptions to the Proposed Order prior to its consideration at an Open Meeting.

11          11.    VarTec Telecom Holding Company ("VarTec Holding"), which will be formed as a  
12 wholly-owned subsidiary of VarTec, proposes to acquire control of Excel, eMeritus, and LDWC  
13 through the acquisition of all of the capital stock of their parent company, Excel Communications,  
14 Inc.

15          12.    After the proposed transaction, Excel, eMeritus, and LDWC will become indirect  
16 wholly owned subsidiaries of VarTec Holding and VarTec.

17          13.    In order to consummate the proposed transaction, VarTec Holding plans to issue  
18 promissory notes to finance the stock acquisition.

19          14.    VarTec proposes to guarantee the promissory notes VarTec Holding must issue in  
20 order to consummate the proposed transaction.

21          15.    In support of its application for exemption from A.R.S. § 40-285, Applicants state that  
22 VarTec and its parent, Teleglobe Inc. have determined that VarTec, Excel, eMeritus and LDWC can  
23 realize significant economic and marketing efficiencies, and, ultimately, strengthen their respective  
24 businesses by establishing Excel, eMeritus and LDWC as wholly-owned subsidiaries of VarTec  
25 Holding.

26          16.    In support of their application for a waiver of the Rules, Applicants assert that because  
27 of market forces in effect in Arizona, they have no incentive or ability to charge unduly high or  
28 above-market prices that could be used to fund or subsidize unregulated affiliates, or to co-mingle

1 utility and non-utility funds in a manner that is harmful to Arizona customers.

2 17. The Applicants request that the Commission's order be issued *nunc pro tunc* if  
3 necessary, retroactive to the date on which they fell under the Commission's classification as Class A  
4 Utilities, and the Rules consequently became applicable to them.

5 18. In the Staff Report filed in this docket on February 25, 2002, and at the Open Meeting  
6 Staff recommended the following:

- 7 a. The Commission should grant VarTec the authority, pursuant to A.R.S. § 40-  
8 285(D), to directly or indirectly acquire the capital stock of Excel  
9 Telecommunications, Inc., eMeritus Communications, Inc. and Long Distance  
10 Wholesale Club, Inc.;
- 11 b. The Commission should grant the Applicants a waiver from A.A.C. R14-2-803  
12 unless organization or reorganization could directly or indirectly result in or  
13 cause an increase in their maximum rates on file with the Commission for any  
14 competitive service;
- 15 c. The Commission should grant the Applicants a waiver from A.A.C. R14-2-  
16 804(B), (C), and (D) except for transactions that could directly or indirectly  
17 result in or cause an increase in their maximum rates on file with the  
18 Commission for any competitive service;
- 19 d. The Commission should grant the Applicants a waiver from A.A.C. R14-2-805  
20 unless diversification plans could directly or indirectly result in or cause an  
21 increase in their maximum rates on file with the Commission for any  
22 competitive service; and
- 23 e. The recommended waiver of the Affiliated Interests Rules should be granted  
24 subject to the condition that Applicants notify the Commission, and file in  
25 advance for approval of, any proposed organization or reorganization,  
26 transaction, or diversification plan that could directly or indirectly result in or  
27 cause an increase in their maximum rates on file with the Commission for any  
28 competitive service.

1 19. Staff does not recommend a hearing in this docket.

2 20. As competitive telecommunications carriers in Arizona, Applicants compete directly  
3 with numerous other competitive interexchange carriers, and Applicants' customers are free to obtain  
4 telecommunications services from other carriers that provide the same services.

5 21. Although the competitive nature of the telecommunications market may reduce the  
6 need for Commission oversight over Applicants' affiliate relationships to the extent contemplated by  
7 the Rules, it is not reasonable for the Commission to grant the Applicants a complete waiver of the  
8 Rules at this time.

9 22. Staff's recommendations for a partial waiver of the Rules as set forth in Findings of  
10 Fact No. 18 above are reasonable.

11 23. Staff's recommendation that the Commission grant VarTec the authority, pursuant to  
12 A.R.S. § 40-285(D), to directly or indirectly acquire the capital stock of Excel, eMeritus, and LDWC  
13 is reasonable.

14 **CONCLUSIONS OF LAW**

15 1. Applicants are public service corporations within the meaning of Article 15 of the  
16 Arizona Constitution and Title 40 of the Arizona Revised Statutes.

17 2. Absent a waiver of A.A.C. R14-2-803, Applicants would be required to provide notice  
18 to the Commission for every internal reorganization they undertake.

19 3. The Commission has jurisdiction over this matter and has authority to issue this Order  
20 pursuant to A.A.C. R14-2-801 *et seq.* and A.R.S. § 40-285.

21 4. Applicants should be granted a limited waiver of the Rules in accordance with Staff's  
22 recommendations as set forth in *Findings of Fact No. 18* above.

23 5. VarTec should be granted authority, pursuant to A.R.S. § 40-285(D), to guarantee  
24 promissory notes of VarTec Holding as necessary to directly or indirectly acquire the capital stock of  
25 Excel Telecommunications, Inc., eMeritus Communications, Inc. and Long Distance Wholesale  
26 Club, Inc., and to complete the acquisition.

27 **ORDER**

28 IT IS THEREFORE ORDERED that VarTec Telecom, Inc., Excel Telecommunications, Inc.,

1 eMeritus Communications, Inc., Long Distance Wholesale Club, Inc., and their affiliates are hereby  
2 granted partial waivers of the Commission's Affiliated Interests Rules as recommended by Staff in  
3 Findings of Fact No. 18 above, retroactive to the date on which their Arizona jurisdictional revenues  
4 caused them to become classified as Class A Utilities under Commission Rules.

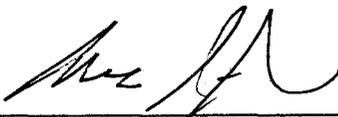
5 IT IS FURTHER ORDERED that the applications of VarTec Telecom, Inc., Excel  
6 Telecommunications, Inc., eMeritus Communications, Inc., and Long Distance Wholesale Club, Inc.  
7 for permanent complete waivers of the Commission's Affiliated Interests Rules are hereby denied.

8 IT IS FURTHER ORDERED that VarTec Telecom, Inc. is hereby granted authority to  
9 guarantee promissory notes of VarTec Holding as necessary to directly or indirectly acquire the  
10 capital stock of Excel Telecommunications, Inc., eMeritus Communications, Inc. and Long Distance  
11 Wholesale Club, Inc., and to complete the acquisition.

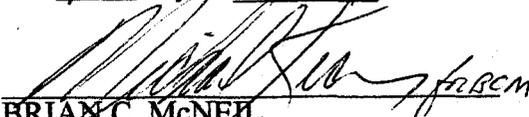
12 IT IS FURTHER ORDERED that VarTec Telecom, Inc.'s application for a permanent  
13 exemption from A.R.S. § 40-285 is hereby denied.

14 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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18 CHAIRMAN COMMISSIONER COMMISSIONER

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20 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
21 Secretary of the Arizona Corporation Commission, have  
22 hereunto set my hand and caused the official seal of the  
23 Commission to be affixed at the Capitol, in the City of Phoenix,  
24 this 17<sup>th</sup> day of March, 2002.

25   
26 BRIAN C. McNEIL  
27 EXECUTIVE SECRETARY

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26 DISSENT \_\_\_\_\_  
27 TW:dap

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SERVICE LIST FOR:

VARTEC TELECOM, INC., EXCELL  
TELECOMMUNICATIONS, INC., EMERITUS  
COMMUNICATIONS, INC. and LONG DISTANCE  
WHOLESALE CLUB, INC.

DOCKET NO.:

T-03401A-01-0952, T-02584A-01-0952 and T-03188A-  
01-0952

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