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OPEN MEETING ITEM

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EXECUTIVE SECRETARY

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DATE: December 3, 2002

DOCKET NOS: T-02584A-02-0268 and T-02584A-91-0016

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Philip J. Dion III. The recommendation has been filed in the form of an Opinion and Order on:

EXCEL TELECOMMUNICATIONS, INC.
(CC&N/RESELLER/FACILITIES-BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

DECEMBER 12, 2002

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

DECEMBER 17 AND 18, 2002

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

This document is available in alternative formats by contacting Shelly Hood,
ADA Coordinator, voice phone number 602/542-3931, E-mail shood@cc.state.az.us

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF THE APPLICATION AND PETITION OF EXCEL TELECOMMUNICATIONS, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES.	DOCKET NO. T-02584A-02-0268
IN THE MATTER OF THE APPLICATION OF EXCEL TELECOMMUNICATIONS, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY AS A TELECOMMUNICATIONS RESELLER WITHIN THE STATE OF ARIZONA.	DOCKET NO. T-02584A-91-0016 DECISION NO. _____ **OPINION AND ORDER**

DATE OF HEARING:	November 12, 2002
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Philip J. Dion III
APPEARANCES:	Jeffrey W. Crockett, SNELL & WILMER, LLP, on behalf of Excel Telecommunications, Inc. Timothy J. Sabo, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On January 16, 1991, Excel Telecommunications, Inc. ("Excel" or "Applicant") filed an Application for a Certificate of Convenience and Necessity ("Certificate") in Docket No. T-02584A-91-0016 to provide resold long distance service in the State of Arizona.

2. On April 8, 2002, Excel filed an Application for a Certificate in Docket No. T-02584A-02-0268 to provide facilities-based local exchange service in Arizona.

3. On July 26, 2002, Excel filed an Amendment to the April 8, 2002 Application requesting authority to also provide resold local exchange service in Arizona.

4. On September 12, 2002, Applicant docketed a Notice of Filing of Affidavits of Publication that comply with Commission rules.

5. Excel is a Texas corporation, authorized to do business in Arizona. Excel is a wholly owned subsidiary of VarTec Telecom, Inc. ("VarTec"). VarTec is authorized to do business in Arizona.

6. On August 1, 2002, a Procedural Order was issued setting this matter for hearing on November 12, 2002 and setting various procedural deadlines.

7. On November 6, 2002, the Commission's Utilities Division Staff ("Staff") filed its Staff Report, which recommended approval of the application and included a number of additional recommendations.

8. On November 12, 2002, a full public hearing in this matter was held as scheduled. Applicant appeared telephonically and was represented by counsel. Staff appeared and was represented by counsel. The hearing was conducted before a duly authorized Administrative Law Judge. Evidence was presented and testimony was taken. At the conclusion of the hearing, the Administrative Law Judge took the matter under advisement and informed the parties that a Recommended Opinion and Order would be prepared for the Commissioners' consideration.

9. Applicant has the technical capability to provide the services that are proposed in its application.

10. Currently there are several incumbent providers of local exchange and interexchange services in the service territory requested by Applicant, and numerous other entities have been authorized to provide competitive local and interexchange services in all or portions of that territory.

11. It is appropriate to classify all of Applicant's authorized services as competitive.

12. The Staff Report stated that Applicant has no market power and the reasonableness of its rates would be evaluated in a market with numerous competitors.

13. According to Staff, Excel submitted the audited financial statements of its parent, VarTec for the year ending December 31, 2001. These financial statements list assets of $649.4

million, equity of $78.7 million, and a net loss of $60.4 million.

14. The Application states that Excel collects advances and deposits from its customers.

15. Staff recommends that Excel's applications for a Certificate to provide competitive facilities-based and resold local exchange and resold interexchange telecommunications services be granted subject to the following conditions:

(a) that, unless it provides services solely through the use of its own facilities, Applicant be ordered to procure an Interconnection Agreement, within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, that must remain in effect until further order of the Commission, before being allowed to offer local exchange service;

(b) that Applicant be ordered to file with the Commission, within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, its plan to have its customers' telephone numbers included in the incumbent's Directories and Directory Assistance databases;

(c) that Applicant be ordered to pursue permanent number portability arrangements with other LECs pursuant to Commission rules, federal laws and federal rules;

(d) that Applicant be ordered to abide by and participate in the AUSF mechanism instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-03905A-00-0513E-95-0498);

(e) that Applicant be ordered to abide by the quality of service standards that were approved by the Commission for USWC in Docket No. T-0151B-93-0183;

(f) that in areas where it is the sole provider of local exchange service facilities, Applicant be ordered to provide customers with access to alternative providers of service pursuant to the provisions of Commission rules, federal laws and federal rules;

(g) that Applicant be ordered to certify, through the 911 service provider in the area in which it intends to provide service, that all issues associated with the provision of 911 service have been resolved with the emergency service providers within 365 days of an Order in this matter or 30 days prior to the provision of service, whichever comes first, which certification must remain in effect until further Order of the Commission;

(h) that Applicant be ordered to abide by all the Commission decisions and policies regarding CLASS services;

(i) that Applicant be ordered to provide 2-PIC equal access;

(j) that Applicant be required to notify the Commission immediately upon changes to its address or telephone number;

(k) that Applicant be ordered to comply with all Commission rules, orders, and

other requirements relevant to the provision of intrastate telecommunications service;

(l) that Applicant be ordered to maintain its accounts and records as required by the Commission;

(m) that Applicant be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;

(n) that Applicant be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;

(o) that Applicant be ordered to cooperate with Commission investigations of customer complaints;

(p) Applicant be ordered to participate in and contribute to a universal service fund, as required by the Commission;

(q) Applicant should be subject to the Commission's rules governing interconnection and unbundling and the 1996 Telecommunications Act and the rules promulgated thereunder. In the event that the Applicant provides essential services or facilities that potential competitors need in order to provide their services, the Applicant should be required to offer those facilities or services to these providers on non-discriminatory terms and conditions pursuant to federal laws, federal rules, and state rules; and

(r) if Applicant desires to discontinue service, it should be required to file an application with the Commission pursuant to A.A.C. R14-2-1107. Applicant should be required to notify each of its local exchange customers and the Commission 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107; and any failure to do so should result in forfeiture of the Applicant's performance bond;

16. Staff further recommended that Excel's applications for a Certificate to provide telecommunications services should be granted subject to the following conditions:

(a) Applicant be ordered to file conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever occurs first, and in accordance with the Decision;

(b) In order to protect Applicant's customers:

(1) Applicant should be ordered to procure a performance bond equal to $135,000. The minimum bond amount of $135,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from Applicant's customers. The bond amount should be increased in increments of $67,500 whenever the total amount of the advances, deposits and prepayments is within $13,500 of the bond amount;

(2) Applicant should docket proof of the performance bond within 365 days of the effective date of an Order in this matter or 30 days prior to the

provision of service, whichever comes first, and must remain in effect until further Order of the Commission;

(3) if, at some time in the future, Applicant does not collect from its customers an advance, deposit and/or prepayments, Staff recommends that Applicant be allowed to file a request for cancellation of the resold long distance portion of its established performance bond. Such request should be filed with the Commission for Staff review. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission; and

(c) If any of the above timeframes are not met, that Applicant's Certificate should become null and void without further Order of the Commission and no extensions for compliance should be granted.

17. In its Staff Report, Staff stated that based on information obtained from the Applicant, it has determined that Excel's fair value rate base is zero, and is too small to be useful in setting rates. Staff further stated that in general, rates for competitive services are not set according to rate of return regulation, but are heavily influenced by the market. Staff recommended that the Commission not set rates for Applicant based on the fair value of its rate base.

18. The rates to be ultimately charged by Excel will be heavily influenced by the market. Because of the nature of the competitive market and other factors, a fair value analysis is not necessarily representative of the company's operations.

19. Staff stated that Excel lacks the market power to adversely affect the telecommunications market by either restricting output or raising prices. Also, Staff has recommended that Applicant's services be classified as competitive and thus subject to the flexible pricing authority allowed by the Commission's Competitive Telecommunications Services rules. Staff believes that these two factors, lack of market power and the competitive marketplace for the services Applicant proposes to offer, support the conclusion that a fair value analysis is not necessarily representative of the company's operations, and that the rates charged by Applicant will be reasonable.

20. Staff's recommendations, as set forth herein, are reasonable.

21. Excel's fair value rate base is determined to be zero for purposes of this proceeding.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a Certificate to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its application.

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide competitive facilities-based and resold local exchange and resold interexchange telecommunications services in Arizona as conditioned by Staff's recommendations.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

10. Excel's competitive rates, as set forth in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the applications of Excel Telecommunications, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based and resold local exchange, and resold interexchange telecommunications services in Arizona shall be, and

is hereby, granted, conditioned upon Excel Telecommunications, Inc.'s timely compliance with the following three Ordering Paragraphs.

IT IS FURTHER ORDERED that Excel Telecommunications, Inc. shall file conforming tariffs in accordance with this Decision within 365 days of this Decision or 30 days prior to providing service, whichever occurs first.

IT IS FURTHER ORDERED that Excel Telecommunications, Inc. shall procure a performance bond equal to $135,000 the earlier of 365 days from the effective date of this Order or 30 days prior to the commencement of service. The minimum bond amount of $135,000 shall be increased if, at any time, it would be insufficient to cover prepayments or deposits collected from the Applicant's customers. The bond amount shall be increased in increments of $67,500. This increase shall occur when the total amount of the advances, deposits, and prepayments is within $13,500 of the bond amount.

IT IS FURTHER ORDERED that Excel Telecommunications, Inc. shall comply with all of the Staff recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

IT IS FURTHER ORDERED that if Excel Telecommunications, Inc. fails to meet the timeframes outlined in the Ordering Paragraphs above, the Certificate of Convenience and Necessity conditionally granted herein shall become null and void without further Order of the Commission.

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IT IS FURTHER ORDERED that if Excel Telecommunications, Inc. fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate of Convenience and Necessity, Excel Telecommunications, Inc.'s performance bond shall be forfeited.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2002.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____
PJD:mlj

SERVICE LIST FOR: EXCEL TELECOMMUNICATIONS, INC.

DOCKET NO.: T-02584A-02-0268, et al.

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