

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

OPEN MEETING ITEM



ARIZONA CORPORATION COMMISSION

ORIGINAL



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DATE: March 8, 2002
DOCKET NOS: T-03401A-01-0952 et al.
TO ALL PARTIES:

AZ CORP COMMISSION
DOCUMENT CONTROL

Enclosed please find the recommendation of Administrative Law Judge Teena Wolfe. The recommendation has been filed in the form of an Order on:

VARTEC TELECOM, INC. ET AL.
(EXEMPTION/WAIVER)

Applicants have waived their ten days for exceptions. 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 12:00 noon on or before:

MARCH 15, 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:

3/14/02

~~MARCH 19 AND 20, 2002~~

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

Arizona Corporation Commission

DOCKETED

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DOCKETED BY	
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BRIAN C. McNEIL
EXECUTIVE SECRETARY

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER-
MARC SPITZER
COMMISSIONER

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. _____

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. In the
12 application, Excel's application for a CC&N authorizing it to provide competitive intrastate
13 interexchange telecommunications services except local exchange services in Arizona is currently
14 pending in 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).

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, Staff recommended the
6 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.

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

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

27 21. Although the competitive nature of the telecommunications market may reduce the
28 need for Commission oversight over Applicants' affiliate relationships to the extent contemplated by

1 the Rules, it is not reasonable for the Commission to grant the Applicants a complete waiver of the
2 Rules at this time.

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

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

8 CONCLUSIONS OF LAW

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

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

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

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

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

21 ORDER

22 IT IS THEREFORE ORDERED that VarTec Telecom, Inc., Excel Telecommunications, Inc.,
23 eMeritus Communications, Inc., Long Distance Wholesale Club, Inc., and their affiliates are hereby
24 granted partial waivers of the Commission's Affiliated Interests Rules as recommended by Staff in
25 Findings of Fact No. 18 above, retroactive to the date on which their Arizona jurisdictional revenues
26 caused them to become classified as Class A Utilities under Commission Rules.

27 IT IS FURTHER ORDERED that the applications of VarTec Telecom, Inc., Excel
28 Telecommunications, Inc., eMeritus Communications, Inc., and Long Distance Wholesale Club, Inc.

1 for permanent complete waivers of the Commission's Affiliated Interests Rules are hereby denied.

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

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

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

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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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 _____
TW:dap

1 SERVICE LIST FOR:

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

3 DOCKET NO.:

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

5 James U. Troup
MCGUIRE WOODS LLP
6 Washington Square
1050 Connecticut Ave., NW., Suite 1200
7 Washington, DC 20036-5317
Attorneys for Vartec Telecom, Inc.,
8 Excel Telecommunications, Inc.,
Emeritus Communications, Inc. and
9 Long Distance Wholesale Club, Inc.

10 Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
Phoenix, Arizona 85007

13 Ernest G. Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
Phoenix, Arizona 85007

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