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Arizona Corporation Commission

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Office of General Counsel

VIA OVERNIGHT COURIER

November 29, 1995

U-2584-9-016

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Dear Sir or Madam:

Enclosed for filing please find an original and 10 copies of the application of Excel Telecommunications, Inc. ("Excel") for authority to provide telecommunications services in Arizona. Excel furnishes One Plus, Travel Card, 1-800 services to small business and residential customers. With this application, the company requests authority to provide intraLATA and interLATA long distance services throughout the entire State of Arizona. Further, the company requests that it be classified as a competitive service provider.

All questions and correspondence regarding this application should be referred to Ms. Diane Harbaugh at the company's address. She can be reached by telephone at (214) 705-5806.

Respectfully submitted,

Christopher Dance
pd

Christopher Dance
Vice President - Legal Affairs

Legal and Regulatory Department

ARIZONA CORPORATION COMMISSION

Application for Certificate of Convenience and Necessity to Provide
Competitive Intrastate Telecommunications Services as a Reseller

Mail original plus 10 copies of completed application to:

For Docket Control Only:
(Place Stamp Here)

Docket Control Center
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

If you have current applications pending in Arizona for provision of reseller, AOS, or other telecommunication services, please identify:

Type of Service: Reseller
Docket No.: U-2584-91-016 Date: 1/18/91

Type of Service: _____
Docket No.: _____ Date: _____

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AZ CORP COMMISSION
DEC 1 1 39 PM '91
DOCUMENT CONTROL

Docket No. U-2584-91-016

Date Docketed _____

A. Company and Telecommunications Service Information

(A-1) The name, address, and telephone number of the applicant (company):

Excel Telecommunications, Inc.
9330 LBJ Freeway
Suite 1200
Dallas, TX 75243
(214) 705-5500

(A-2) If doing business (dba) under a name other than the applicant (company) name listed above, specify:

Not Applicable

(A-3) The name, address, telephone number, and facsimile number of the management contact:

Chris Dance
Vice President, Legal Affairs
Excel Telecommunications, Inc.
9330 LBJ Freeway
Suite 1200
Dallas, TX 75243
Phone: (214) 470-3932
Fax: (214) 705-5802

Application for Competitive Reseller CC&N

(A-4) ✓ The name, address, and telephone of the attorney, if any, representing the applicant:

None

(A-5) ✓ What type of legal entity is the applicant?

Sole proprietorship

Partnership: ___ limited, ___ general, ___ Arizona, ___ Foreign

Limited liability company

Corporation: ___ "S", ___ "C", ___ non-profit, ___ Arizona, X Foreign

Other, specify:

(A-6) ✓ Include "Attachment A." Attachment A must list names of all owners, partners, limited liability company managers, or corporation officers and directors (specify), and indicate percentages of ownership.

(A-7) ✓ 1. Is your company currently providing telecommunication service in Arizona? Yes

2. If "yes", identify the types of telecommunications services provided; whether operator services are provided and whether they are provided to traffic aggregators (as defined in A.A.C. R14-2-1001(3)); the number of customers in Arizona for each type of service; and the total number of intrastate minutes resold in the latest 12 month period for which data are available.

Excel provides OnePlus, 1-800 and travel card services in Arizona. The company does not provide operator services.

3. If "no", when does your company plan to begin providing service in Arizona?

(A-8) ✓ Include "Attachment B." Attachment B must include copies of all proposed rates and tariffs for each service to be provided that state the maximum rate as well as the price to be charged, and that also state other terms and conditions, including deposits, that will apply to provision of the service(s) by the telecommunication company. The Commission provides pricing flexibility by allowing competitive telecommunications service companies to price their services at levels equal to or below the maximum rates contained in their tariffs.

Application for Competitive Reseller CC&N

✓
(A-9) The geographic market to be served is:

statewide.

other, describe and provide a map depicting the area.

✓
(A-10) List the states in which you currently provide the services similar to those you intend to provide in Arizona.

See Appendix A

✓
(A-11) Describe your complaint processing procedures.

See Appendix B

✓
(A-12) Provide a list of states in which you have sought to offer telecommunications services but in which the state regulatory commission granted your application with major changes and conditions or did not grant your application for those services. For each state listed, provide a copy of the commission's decision modifying or denying your application for authority to provide telecommunications services.

None

✓
(A-13) Has the company been granted authority to provide telecommunications services in any state where subsequently the authority was revoked? If "yes", provide copies of the state regulatory commission's decision revoking its authority.

No

✓
(A-14) Has the company been or is the company currently involved in any formal complaint proceedings before any state or federal regulatory commission? If "yes", in which states is the company involved in proceedings and what is the substance of these complaints. Also, provide copies of commission orders that have resolved any of these complaints.

See Appendix C

✓
(A-15) Has the applicant been involved in any civil or criminal investigations related to the delivery of telecommunications services within the last five years? If "yes", in which states has the applicant been involved in investigations and why is the applicant being investigated?

See Appendix D

Application for Competitive Reseller CC&N

(A-16) Has the applicant been convicted of any civil or criminal acts related to the delivery of telecommunications services within the last five years? If "yes", list the states where convictions occurred and provide a copy of the court order of the convictions.

No

B. Technical Information

(B-1) Resellers should include "Attachment C." Attachment C should provide the following information:

1. ✓ A diagram of the applicant's basic call network used to complete Arizona intrastate telecommunications traffic. This diagram should show how a typical call is routed in both its originating and terminating ends (i.e. show the access network and call completion network). Also include on the diagram the underlying carrier(s) for each major network component and indicate if the carrier is facilities-based or not.
2. ✓ Indicate who owns the facilities (within the State of Arizona) that are used to originate and terminate the applicant's intrastate telecommunications traffic (i.e. provide a list of the Arizona facilities-based long distance carriers whose facilities are used to complete the applicant's intrastate traffic). Allnet

(B-2) ✓ Describe those actions that your customers will have to take to make a telephone call if your system goes down.

Customers would be advised to utilize the access code of another carrier such as MCI, Sprint, or AT&T.

C. Financial Information

(C-1) ✓ Include "Attachment D." Attachment D should provide copies of the following audited financial information for the most recent two years for all Arizona operations. Check boxes indicating items attached.

- current intrastate balance sheet
- current intrastate income statement
- current intrastate cash flow statement
- other financial information evidencing financial resources.

Application for Competitive Reseller CC&N

I certify that if the applicant is an Arizona corporation, a current copy of the Articles of Incorporation is on file with the Arizona Corporation Commission and the applicant holds a Certificate of Good Standing from the Commission. If the company is a foreign corporation or partnership, I certify that the company has authority to transact business in Arizona. I certify that all appropriate city, county and/or State agency approvals have been obtained. Upon signing of this application, I attest that I have read the Commission's rules and regulations related to the regulation of telecommunications services and that the company will abide by Arizona State law including the Arizona Corporation Commission Rules and Regulations. I certify that to the best of my knowledge the information provided in this application is true and correct.

Chris Dance

(Signature of Authorized Representative)

November 29, 1995

(Date)

Christopher Dance

(Printed Name of Authorized Representative)

Vice President, Legal Affairs

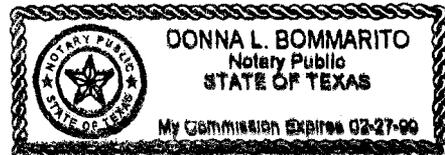
(Title)

SUBSCRIBED AND SWORN to before me this 29th day of NOVEMBER, 1995

Donna L. Bommarito

NOTARY PUBLIC

My Commission Expires 2-27-99



ATTACHMENT A

DIRECTORS

Kenny A. Troutt

Steve Smith

John J. McLaine

OFFICERS

**Kenny A. Troutt, Chairman of the Board,
President, Chief Executive Officer**

Steve Smith, Executive Vice President

**John J. McLaine, Vice President,
Secretary, Treasurer**

Excel Telecommunications, Inc.
Shareholders and Percentage of Ownership

<u>Shareholder</u>	<u>Number of Shares</u>	<u>Percentage</u>
Kenny A. Troutt	64,180	64.83
Austex Enterprises, Ltd.	10,000	10.10
William Casner	10,000	10.10
Thomas Wittmann	5,820	5.88
Dan Martignon, Jr.	4,000	4.04
Fred and Charlotte Parrill	2,000	2.02
Bank One Texas, N.A., Trustee of the Excel Telecommunications, Inc. Employee Ownership Plan Trust	<u>3,000</u>	<u>3.03</u>
	99,000	100.00

ATTACHMENT B

REGULATIONS AND SCHEDULE OF CHARGES APPLICABLE
TO EXCEL TELECOMMUNICATIONS, INC.

WITHIN THE STATE OF ARIZONA

Issued:
Issued By:

Kenny A. Troutt, President
Excel Telecommunications, Inc.
9101 LBJ Freeway, Suite 800
Dallas, Texas 75243
(214) 705-5500

Effective Date:

CHECK SHEET

All sheets of this tariff are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this sheet.

<u>PAGE</u>	<u>REVISION</u>	<u>PAGE</u>	<u>REVISION</u>
Title	Original*	21	Original*
1	Original*	22	Original*
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6	Original*	27	Original*
7	Original*	28	Original*
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19	Original*		
20	Original*		

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Concurring, Connecting And Participating Carriers

Concurring Carriers: None.

Connecting Carriers: None.

Participating Carriers: None.

EXPLANATION OF SYMBOLS, REFERENCE MARKS, AND ABBREVIATIONS

The following symbols shall be used in this tariff for the purpose indicated below:

- C- to signify changed regulation
- D- to signify discontinued rate or regulation
- I- to signify a rate increase
- M- to signify matter relocated without change
- N- to signify a new rate or regulation
- R- to signify a rate reduction
- S- to signify a reissued matter
- T- to signify a change in text but no change in rate or regulation

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Effective Date:

APPLICATION OF TARIFF

This tariff contains the regulations and rates applicable to the provision of telecommunications service by Excel Telecommunications, Inc. (hereinafter referred to as "Excel" or the "Company") between and among domestic points within the United States as specified herein. Service is furnished subject to transmission, atmospheric and like conditions.

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SECTION I - TECHNICAL TERMS AND ABBREVIATIONS

Accounting Code -

A multi-digit code which enables a Customer to allocate long distance regulated charges to its internal accounts.

Access Line -

A circuit used to carry long distance calls all or part way between Customer premises and the underlying carrier's switches.

Authorization Code -

A numerical code, one or more of which are assigned to a Customer to enable Carrier to identify use of Service on the Customer's account and to bill the Customer accordingly. Multiple authorization codes may be assigned to a Customer to identify individual users or groups of users. Entitlement to any authorization code shall create no property or other right or interest in the use of any particular authorization code.

Authorized User -

A person, firm, corporation, or any other entity authorized by the Customer to communicate, utilizing the Carrier's service.

Commission -

Federal Communications Commission.

Carrier -

Excel Telecommunications, Inc. unless otherwise clearly indicated by the context.

Company -

Excel Telecommunications, Inc. unless otherwise clearly indicated by the context.

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SECTION I - TECHNICAL TERMS AND ABBREVIATIONS (CONTINUED)

Customer -

The person, firm, corporation or other entity which orders, cancels, amends or uses service under this tariff and is responsible for payment of regulated charges and compliance with the Company's tariff.

Holidays -

For the purposes of call rating, the Company observes the following holidays (as Federally observed):

Thanksgiving Day	Christmas Day	Labor Day
New Year's Day	Independence Day	

Long Distance Resale Service -

Long Distance Resale Service is a public communications service for hire, which includes providing long distance service to Customers through the resale of leased lines and services provided by multiple other common Carriers.

User -

A person, firm, corporation or other entity which contracts and/or presubscribes with Excel for services offered by Excel, as set forth in this tariff, and is responsible for payment of regulated charges and compliance with the Company's tariff.

V & H Coordinates -

Geographic points which define the originating and terminating points of a call in mathematical terms so that the airline mileage of the call may be determined. Call mileage is used for the purpose of rating calls.

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SECTION II - RULES AND REGULATIONS

2.1 Undertaking of Excel

- 2.1.1 Excel's services and facilities are furnished for communications originating at specified points within Arizona under terms of this tariff. Service is provided twenty-four hours a day, seven days a week.
- 2.1.2 Excel is a resale common carrier. Excel's services provide intrastate long distance message telephone service to Customers for their direct transmission and reception of voice, data, and other types of communications. Excel may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities (such as the local exchange carrier), when authorized by the Customer, to allow connection of a Customer's location to the Excel network. The Customer shall be responsible for all regulated charges due for such service arrangement. The Carrier agrees to dutifully abide by all Rules and Regulations as set forth by the Commission.
- 2.1.3 The Customer's monthly charge for services are based upon the total time the Customer actually uses the service subject to billing increments set forth in Section 3.5.1 and any additional charges which may apply.
- 2.1.4 The rates and regulations contained in this tariff apply only to the services furnished by Excel and do not apply to the lines, facilities, or services provided by a local exchange telephone carrier or other common carrier for use in accessing the services of Excel.

2.2 Initial Contract Period and Termination of Service by Customer

- 2.2.1 Contract Periods -- The initial contract period for service is thirty (30) days.
- 2.2.2 Termination by Customer - Service may be canceled at any time by a Customer taking switched services. A Customer taking dedicated WATS or Point-to-Point services may cancel service on not less than thirty (30) days prior written notice to Carrier.

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SECTION II - RULES AND REGULATIONS (CONTINUED)

2.3 Obligation of Customer

2.3.1 The Customer will assume responsibility for all usage and services billed.

2.4 Limitations

2.4.1 Service is offered subject to the availability of the necessary facilities and equipment, or both facilities and equipment, and subject to the provisions of this tariff.

2.4.2 Excel reserves the right to disconnect or limit service when necessitated, per Commission Rules and with twenty-four hours written notice, by conditions beyond its control, or when the Customer is using service in violation of provisions of this tariff, or in violation of the law.

2.4.3 With the exception of shared tenant services, all facilities and services provided under this tariff are directly or indirectly controlled by Excel, and the Customer may not transfer or assign the use of service or facilities without the express written consent of the Company. Such transfer or assignment shall only apply where there is no interruption of the use or location of the service or facilities.

2.5 Use

2.5.1 Services provided under this tariff may be used only for the transmission of communications by customers in a manner consistent with the terms of this tariff and regulations of the Federal Communications Commission.

2.5.2 Services provided under this tariff shall not be used for unlawful purposes.

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SECTION II - RULES AND REGULATIONS (CONTINUED)

2.6 Liability of Carrier

- 2.6.1 The Company's liability, if any, for its willful misconduct is not limited by this tariff. With respect to any other claim of suit, by a Customer or any other person including any traffic aggregator, for damages associated in any way with the installation, provision, termination, maintenance, repair, restoration or use of services governed by this tariff, including any and all equipment and facilities incidental to or associated with such services, the Company's liability, if any, shall not exceed an amount equal to the charge applicable under this tariff to the period during which services were affected. This liability for damages shall be in addition to provisions of this tariff, if any, as a credit allowance. However, any mistakes, omissions, interruptions, delays, errors, or defects associated in any way with the installation, provision, termination, maintenance, repair, restoration or use of services, which are caused by or contributed to by the negligence or willful act of the Customer, or which arise from facilities or equipment used by the customer, shall not result in the imposition of any liability whatsoever upon Company.
- 2.6.2 The company is not liable for any damages caused in whole or in part by, or associated with, any service (including but not limited to channels, maintenance, repair, restoration, or local exchange services) or equipment which it did not furnish. Company is not liable for the quality of service provided by any local exchange carrier.
- 2.6.3 In no event shall the Company be liable for special, punitive consequential or incidental damages. The Company disclaims any express or implied warranties with respect to its services or equipment, including without limitation, any implied warranties of merchantability and fitness for a particular purpose.

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SECTION II - RULES AND REGULATIONS (CONTINUED)

2.6 Liability of Carrier (Continued)

- 2.6.4 In the event the Company is subjected to any liability or damages for its acts or omissions, other than willful misconduct, notwithstanding the provisions of the two preceding sections, the Company shall be indemnified, defended, and held harmless by the Customer or traffic aggregator against all claims, losses, or damages arising in whole or in part from, or in any way associated with, the installation, provision, termination, maintenance, repair, restoration or use of services governed by this tariff, including any and all equipment and facilities incidental to or associated with such services. In addition, the Company shall be indemnified and saved harmless by the Customer from and against all loss, liability, damage and expense, including reasonable counsel fees, due to claims for libel, slander, or infringement or copyright in connection with the material transmitted over the Company's facilities; and any other claim relating to the use of the Company's facilities.
- 2.6.5 The Company's failure to provide, maintain or restore service under this tariff shall be excused by labor difficulties, governmental orders, civil disturbances, acts of God, fire, flood and other catastrophes and other circumstances beyond the Company's reasonable control, subject to the Credit Allowances in this tariff, if any, applicable to interruption in service.

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SECTION II - RULES AND REGULATIONS (CONTINUED)

2.7 Responsibilities of the Customer

- 2.7.1 The Customer is responsible for compliance with the applicable regulations set forth in this tariff.
- 2.7.2 The Customer is responsible for placing any necessary orders; for complying with tariff regulations; and for assuring that users comply with tariff regulations. The Customer shall ensure compliance with any applicable laws, regulations, orders or other requirements (as they exist from time to time) of any governmental entity relating to services provided or made available by the Customer to other Customers. The Customer is also responsible for the payment of all charges for calls originated at the Customer's numbers which are not collect, third party, calling card, or credit card calls.
- 2.7.3 The Customer shall ensure that Customer's terminal equipment and/or system is properly interfaced with Excel's facilities or services, that the signals emitted into Excel's network are of the proper mode, bandwidth, power, and signal level for the intended use of the Customer and in compliance with the criteria set forth in this tariff, and that the signals do not damage equipment, injure personnel, or degrade service to other Customers.

2.8 Disconnection

- 2.8.1 Without incurring liability, Excel may disconnect services to a Customer or may withhold the provision of ordered or contracted services, subject to the procedures per Commission Rules and with written notice, under any of the following conditions:
- 2.8.1.A For nonpayment of any sum due Excel for more than thirty days after issuance of the bill for the regulated amount due.
- 2.8.1.B For periods of account inactivity in excess of sixty days.

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SECTION II - RULES AND REGULATIONS (CONTINUED)

2.8 Disconnection, (Continued)

- 2.8.1.C In the event that the Customer supplies false or inaccurate information of a material nature in order to obtain service.
- 2.8.1.D For violation of any of the provisions of this tariff.
- 2.8.1.E For the use of foul or profane expressions, the impersonation of another with fraudulent intent.
- 2.8.1.F For violation of any law, rule, regulation or policy of any governing authority having jurisdiction over Excel's services.
- 2.8.1.G By reason of any order or decision of a court or other governing authority prohibiting Excel from furnishing its services.
- 2.8.1.H If the Customer fails to maintain Customer's equipment and/or system properly, with resulting imminent harm to Excel equipment, personnel, or the quality of service to other Customers, Excel may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, Excel may, upon written notice, terminate the Customer's service.
- 2.8.2 Excel may disconnect service without notice for any of the following reasons:
 - 2.8.2.A If a Customer or user causes or permits any signals or voltages to be transmitted over Excel's network in such a manner as to cause a hazard or to interfere with Excel's service to others.
 - 2.8.2.B If a Customer or user uses Excel's services in a manner to violate the law.

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SECTION II - RULES AND REGULATIONS (CONTINUED)

2.8 Disconnection, (Continued)

2.8.3 Procedures for disconnection of existing service:

2.8.3.A In all other circumstances, Excel will provide the Customer with written notice stating the reason for disconnection, and will allow the Customer not less than 10 days to remove the cause for disconnection. In cases of non-payment of regulated charges due, the Customer will be allowed at least five days, excluding Sundays and holidays, to make full payment of all undisputed regulated charges, and in no event will service be disconnected on the day preceding any day on which Excel is not prepared to accept payment of the amount due and to reconnect service.

2.9 Interruption of Service

2.9.1 Without incurring liability, Excel may interrupt the provision of services at any time in order to perform tests and inspections to assure compliance with tariff regulations and the proper installation and operation of Customer and Excel equipment and facilities and may continue such interruption until any items of non-compliance or improper equipment operation so identified are rectified, in compliance with the Commission Rules. When a Customer(s) service is interrupted and remains out of service for twenty-four consecutive hours as a result of the above, or after being reported, the Company shall make an appropriate adjustment to the Customer's bill.

2.9.2 Credit allowances for interruptions of service which are due to the negligence of the Customer, or the failure of channels, equipment or communication systems provided by the Customer, are subject to the general liability provisions set forth in Section 2.6 herein. It shall be the obligation of the Customer to notify Carrier, when known, immediately of any interruption of service for which a credit allowance is desired by Customer, unless the Company is aware or should be aware of system outages. Before giving such notice, Customer shall ascertain that the trouble is not within his or her control, or is not in wiring or equipment, if any furnished by Customer and connected to Carrier's terminal.

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SECTION II - RULES AND REGULATIONS (CONTINUED)

2.9 Interruption of Service, (Continued)

2.9.3 Service may be disconnected by Excel without prior notice to the Customer, but with notice per Commission Rules, by blocking traffic to certain countries, cities, or NXX exchanges, or by blocking calls using certain Customer authorization codes, when Excel deems it necessary to take such action to prevent unlawful use of its service. Excel will restore service as soon as it can be provided the Customer affected and assign a new authorization code to replace the one that has been deactivated, per Commission Rules.

2.10 Customer's Liability in the Event of Denial or Disconnection of Service

2.10.1 In the event Customer's service is denied or disconnected by the Carrier for any of the reasons stated in Section 2.8 Customer shall be liable for all unpaid regulated charges due and owing to Carrier.

2.11 Reinstitution of Service

2.11.1 If Customer seeks reinstatement of service following disconnection of service by Carrier, Customer shall pay to Carrier prior to the time service is reinstated (1) all undisputed accrued and unpaid regulated charges and (2) a new connection fee as described in Section IV of this tariff.

2.12 Authorization to Obtain Credit Information

2.12.1 Carrier reserves the right to require all Customers to establish credit-worthiness to the reasonable satisfaction of Carrier. Upon application for service, Customer shall be deemed to have authorized Carrier to obtain such routine credit information and verification as Carrier shall require in accordance with its then existing credit policies. All criteria and methods used in the acquisition and assessment of credit related information shall be consistent and uniform for all applicants or Customers.

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SECTION II - RULES AND REGULATIONS (CONTINUED)

2.13 Description of Payment and Billing Periods

- 2.13.1 Charges for service are applied on a recurring and non-recurring basis. Service is provided and billed in arrears on a monthly basis until canceled by the Customer.
- 2.13.2 Billing will be payable upon receipt and past due 20 days after deposit in U.S. mail, postage prepaid.
- 2.13.3 Charges for usage are based on actual usage during a month and will be billed monthly in arrears. Service charges will be billed monthly in advance.
- 2.13.4 The Customer is responsible for the payment of ALL regulated undisputed charges for services. This applies to Customers where the provision of service by Carrier includes the use of authorization (access) codes. The Customer agrees to pay to Carrier ANY regulated undisputed cost incurred as a result of ANY DELEGATION OF AUTHORITY resulting in use of his/her authorization code.
- 2.13.5 Where a Customer, e.g. an employer, provides the use of authorization codes to his/her employees, or where the Customer, e.g. a family member, provides the use of authorization codes to his/her family relations or friend, guest, etc., the Customer agrees to pay to Carrier ANY regulated undisputed cost incurred as a result of these of the authorization codes.

2.14 Deposit

- 2.14.1 The Company does not collect deposits from Customers for intrastate services.

2.15 Taxes

- 2.15.1 All federal taxes are listed as separate line items on monthly bills to Customers and are not included in the quoted rates.

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SECTION II - RULES AND REGULATIONS (CONTINUED)

2.16 Right to Backbill for Improper Use of Carrier's Services

2.16.1 Any person or entity which uses, appropriates or secures the use of services from Carrier, whether directly or indirectly, in any unlawful manner or through the providing of any misleading or false information to Carrier and which use, appropriation, or securing of services is inconsistent with the stated uses and purposes of this tariff or any restrictions, conditions, and limitations stated herein, shall be liable for an amount equal to the accrued and unpaid regulated charges that would have been applicable to the use of Carrier's services actually made by Customer.

2.17 Late Payment

2.17.1 In addition, Carrier shall bill an amount equal to a late payment fee of 1.5 percent per month (unless a lower rate is prescribed by law) for the period(s) for which such regulated charges would have been payable, if a billing remains unpaid after twenty days of deposit of said billing in the U.S. Mail. Each Customer will be granted at least a one-time relief of late payment charges for each calendar year for the first time a late payment occurs. Customer will be notified that this relief has been applied immediately following same by first class mail or telephone.

2.18 Returned Checks

2.18.1 If Company receives a check from a Customer in payment for regulated service rendered or for any other reason of indebtedness and which is returned from the bank due to insufficient or uncollected funds, closed account, apparent tampering, missing signature or endorsement, or for any other reason, Company shall apply a service charge after Customer has been forwarded a notice of returned item.

2.18.2 The returned check charge, as described in Section IV of this tariff, shall be applied to Customer's monthly billing, in addition to any other regulated charges which may apply under this tariff.

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SECTION II - RULES AND REGULATIONS (CONTINUED)

2.18 Returned Checks (Continued)

2.18.3 Payment rendered by check, which is subsequently dishonored shall not constitute payment until such time as repayment is made by valid means.

2.19 Emergency Calls

2.19.1 Excel is not an operator service provider and as such does not handle emergency calls. All emergency calls will be handled by its underlying carrier(s).

2.20 Customer Service

2.20.1 In the event that the Customer is experiencing a service or billing problem, the Customer can contact the Company at the phone number located on the bill of the billing entity for resolution. The Customer can communicate with Excel's Customer Service Department in Dallas, Texas by dialing their toll free number, (800) 875-9235. Excel will make all reasonable attempts to resolve the problem. The Customer will receive a response within thirty days of receipt of complaint.

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SECTION III - DESCRIPTION OF SERVICES

3.1 General Description of Service

- 3.1.1 Excel resells facilities-based interexchange (IXC) carrier services including, but not limited to, access, switching, transport, termination and other services for the direct transmission and reception of voice, data, and other types of communications. Customers may place intrastate long distance calls by presubscribing to Excel's service or by using a valid access number and authorization code.
- 3.1.2 Customer's monthly regulated charges for Carrier's service are based on the total connected time Customer actually uses the service subject to billing increments as set forth in Section 3.4.1 and any additional charges which may apply.
- 3.1.3 Excel's services are offered to Customers on a monthly basis.
- 3.1.4 Excel's services are offered to Customers twenty-four hours a day.
- 3.1.5 All service shall remain in effect for a minimum of thirty days.
- 3.1.6 Customers may use accounting codes to identify the Customers or user groups on an account. The numerical composition of the codes shall be set by the Company to assure compatibility with the Company's accounting and billing systems and to avoid the duplication of codes.

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SECTION III - DESCRIPTION OF SERVICES (CONTINUED)

3.2 Excel Long Distance Service Options

- 3.2.1 **ExcelPLUS Service:** ExcelPLUS Service is a one-way, dial out multipoint service allowing the Customer to originate and terminate calls via local exchange carrier access facilities. Customers may access ExcelPLUS only in Equal Access areas.
- 3.2.2 **ExcelPLUS II Service:** ExcelPLUS II Service is a one-way, dial in-dial out multipoint service allowing the Customer to originate and terminate calls via local exchange carrier access facilities. Customers may access ExcelPLUS II only in Equal Access areas.
- 3.2.3 **PremierPLUS II Service:** PremierPLUS II Service is a one way dial in-dial out multipoint service allowing the Customer to originate and terminate calls via local exchange carrier access facilities. Customers may access PremierPLUS II only in Equal Access areas.
- 3.2.4 **Premier Dial One Service:** Premier Dial One Service is a one-way, dial in - dial out multipoint service allowing the Customer to originate and terminate calls via local exchange carrier access facilities. Customers may subscribe to this service only in Equal Access areas.
- 3.2.5 **Excel Premier 800 Service:** Excel Premier 800 Service is a one-way, dial in service allowing the Customer to receive calls via local exchange carrier access facilities. Excel Premier 800 Service permits calls to a Customer's station in one location from stations in diverse geographical service areas, and in which the Excel Premier 800 Service Customer is billed for the calls rather than the call originators. Customers may use this service in Equal Access areas only.

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SECTION III - DESCRIPTION OF SERVICES (CONTINUED)

3.2 Service Options, (Continued)

- 3.2.6 **My 800 Service:** Excel's My 800 Service is a one-way, dial in service allowing the Customer to receive calls via local exchange carrier access facilities. My 800 Service permits calls to a Customer's station in one location from stations in diverse geographical service areas, and in which the My 800 Service Customer is billed for the calls rather than the call originators. Customers may use My 800 Service only in Equal Access areas.
- 3.2.7 **Excel Calling Card Service:** Excel's Calling Card Service provides facilities to complete toll calls between two points when the Customer is away from his or her premises. The Customer will be assigned a unique travel authorization code(s) that authorizes the use of Calling Card Service by that Customer. Customers will receive a Calling Card for use in accessing Excel's carrier services when away from their telephones. The appropriate carrier access number sequence specified on the Customer's Excel Calling Card must be dialed.
- 3.2.8 **Directory Assistance:** The underlying carrier provides service to Excel to offer directory assistance services which the Customer may access by dialing the area code plus 555-1212. Customer will be billed for such service by Excel, except as stated in this tariff.

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SECTION III - DESCRIPTION OF SERVICES (CONTINUED)

3.3 Calculation of Distance

3.3.1 Usage charges for all mileage sensitive products are based on the airline distance between rate centers associated with the originating and terminating points of the call.

3.3.2 The airline mileage between rate centers is determined by applying the formula below to the vertical and horizontal coordinates associated with the rate centers involved.

3.3.2.A FORMULA:
$$\sqrt{\frac{(V1 - V2)^2 + (H1 - H2)^2}{10}}$$

3.4 Timing of Calls3.4.1 Billing increments

3.4.1.A **PremierPLUS II, ExcelPLUS, ExcelPLUS II, Excel Calling Card and My 800 Services:** Each call completed will have an initial minimum of one minute and any time beyond that minimum will be billed in addition using one minute increments, rounded up to the next whole minute.

3.4.1.B **Premier Dial One Service:** Each call completed will have an initial minimum of thirty seconds and any time beyond that minimum will be billed in addition using six second increments, rounded up to the next whole six second (1/10 of one minute) increment.

3.4.1.C **Premier 800 Service:** Each call completed will have an initial minimum of one minute and any time beyond that minimum will be billed in addition using six second increments, rounded up to the next whole six second (1/10 of one minute) increment.

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SECTION III - DESCRIPTION OF SERVICES (CONTINUED)

3.5 Rate Period Overlap

3.5.1 For messages which overlap one or more rate periods, the rate in effect at the time of call origination in the originating area applies to the entire duration of that call.

3.5.2 Subject to the billing increments set forth in 3.4.1, plus any additional charges which may apply, long distance usage charges are based on the actual usage of Excel's network. Usage begins when the called party picks up the receiver. When the called party picks up timing is determined by hardware answer supervision. Chargeable time ends when either party "hangs up" thereby releasing the network connection. Excel does not bill for uncompleted calls.

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SECTION IV - RATES

4.1 EXCEL Maximum Long Distance Service Rates

The following maximum base rates are applicable to calls placed using the Company's services. Customers may be eligible for discounts based on traffic volume and calling patterns as specified herein.

4.1.1 PREMIER DIAL ONE Service

PEAK	OFF PEAK
\$0.2145	\$0.2145

4.1.2 PREMIERPLUS II Service

DAY	EVENING	NIGHT/ WEEKEND
\$0.2365	\$0.1870	\$0.1705

4.1.3 PREMIER 800 Service

DAY	EVENING/NIGHT/ WEEKEND
\$0.2640	\$0.2640

4.1.4 EXCEL CALLING CARD Service

FIRST MINUTE	EACH ADDITIONAL
\$0.9790	\$0.3190

4.1.5 My 800 Service

DAY	EVENING
\$0.2640	\$0.2090

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SECTION IV - RATES (CONTINUED)

4.1 EXCEL Maximum Long Distance Service Rates (Continued)4.1.6 EXCELPLUS Service

The following maximum rates are applicable to calls placed using ExcelPlus Service.

RATE MILEAGE	DAY		EVENING		NIGHT/ WEEKEND	
	1st Min.	Add Min.	1st Min.	Add Min.	1st Min.	Add Min.
0 - 10	\$0.3500	\$0.2000	\$0.2700	\$0.1700	\$0.2300	\$0.1000
11 - 22	\$0.3700	\$0.2200	\$0.2900	\$0.1900	\$0.2500	\$0.1200
23 - 55	\$0.3800	\$0.2400	\$0.3100	\$0.2100	\$0.2700	\$0.1400
56 - 124	\$0.4500	\$0.3000	\$0.3300	\$0.2400	\$0.2900	\$0.1700
125 - 292	\$0.4600	\$0.3100	\$0.3500	\$0.2600	\$0.3100	\$0.1900
Over 292	\$0.4700	\$0.3300	\$0.3800	\$0.2900	\$0.3300	\$0.2300

4.1.7 EXCELPLUS II Service

The following maximum rates are applicable to calls placed using ExcelPlus II Service.

RATE MILEAGE	DAY		EVENING		NIGHT/ WEEKEND	
	1st Min.	Add Min.	1st Min.	Add Min.	1st Min.	Add Min.
0 - 10	\$0.3500	\$0.2000	\$0.2700	\$0.1700	\$0.2300	\$0.1000
11 - 22	\$0.3700	\$0.2200	\$0.2900	\$0.1900	\$0.2500	\$0.1200
23 - 55	\$0.3800	\$0.2400	\$0.3100	\$0.2100	\$0.2700	\$0.1400
56 - 124	\$0.4500	\$0.3000	\$0.3300	\$0.2400	\$0.2900	\$0.1700
125 - 292	\$0.4600	\$0.3100	\$0.3500	\$0.2600	\$0.3100	\$0.1900
Over 292	\$0.4700	\$0.3300	\$0.3800	\$0.2900	\$0.3300	\$0.2300

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SECTION IV - RATES (CONTINUED)

4.1 EXCEL Maximum Long Distance Service Rates (Continued)4.1.9 DIRECTORY ASSISTANCE

\$1.00 per access

4.2 Recurring Charges

Premier Dial One	\$7.00
ExcelPlus II	\$5.00
Premier 800	\$15.00
My 800	\$5.00
PremierPLUS II	\$7.00
Accounting Code Charge:	\$15.00 per month or \$0.50 per month per validated code number, whichever is greater.

4.3 Non-Recurring Charges

Returned Check Charge	\$25.00 or 5% , which ever is greater, per incident.
Reconnection Fee	\$50.00
Late Payment	1.5% per month, unless a lower rate is prescribed by law.
Accounting Code	\$50.00 Setup/Change

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SECTION IV - RATES (CONTINUED)

4.4 Volume Discounts

The following maximum volume discounts apply where savings are directly proportional to usage.

4.4.1 Premier Dial One Discount

VOLUME	% DISCOUNT
\$0 - \$74.99	30%
\$75.00 - \$499.99	35%
\$500.00 - \$1,999.99	40%
\$2,000.00 - \$4,999.99	45%
Over \$5,000.00	50%

4.4.2 Premier 800 Discount

VOLUME	% DISCOUNT
\$0 - \$99.99	30%
\$100.00 - \$499.99	35%
\$500.00 - \$1,999.99	40%
Over \$2,000.00	45%

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SECTION IV - RATES (CONTINUED)

4.5 Discount Calling Plans

Discounts apply to specified services where appropriate. Excel offers the following intrastate discount calling plans.

- 4.5.1 **ExcelPLUS:** A maximum 60% discount applies to charges incurred for direct dialed calls terminated at ExcelPLUS, ExcelPLUS II and PremierPLUS II numbers (participating Excel Customers). ExcelPLUS Customers using calling cards to complete calls will receive a discount of up to 60% for all charges following the initial minute for calls made to ExcelPLUS, ExcelPLUS II and PremierPLUS II Customers. No discounts apply to Calling Card calls terminated at all other numbers.
- 4.5.2 **ExcelPLUS II:** A maximum 60% discount applies to charges incurred for direct dialed calls terminated at ExcelPLUS, ExcelPLUS II and PremierPLUS II numbers (participating Excel Customers). A discount of up to 45% discount applies to charges incurred for direct dialed calls terminated at all other numbers. ExcelPLUS II Customers using calling cards to complete calls will receive a maximum discount of 60% for all charges following the initial minute for calls made to, ExcelPLUS, ExcelPLUS II and PremierPLUS II Customers. No discounts apply to Calling Card calls terminated at all other numbers.
- 4.5.3 **PremierPLUS II:** A maximum 60% discount applies to charges incurred for direct dialed calls terminated at ExcelPLUS, ExcelPLUS II and PremierPLUS II numbers (participating Excel Customers). A discount of up to 30% applies to charges incurred for direct dialed calls terminated at all other numbers. PremierPLUS II Customers using calling cards to complete calls will receive a discount of up to 60% discount for all charges following the initial minute for calls made to ExcelPLUS, ExcelPLUS II and PremierPLUS II Customers. No discounts apply to Calling Card calls terminated at all other numbers.

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SECTION IV - RATES (Continued)

4.6 Service Hours

The following service types are defined by the named service, day of the week and time of day the call is originated. The letters "D"ay, "N"ight "E"vening and "H"olidays represent specific times of a 24 hour day and are usually, but not always, associated with their familiar portions of a 24 hour day.

4.6 **TYPE I:**

Service: **PremierPLUS II Service.**

	MON	TUE	WED	THUR	FRI	SAT	SUN	"H"
8:00 AM TO 5:00 PM*	"D"					"N"		
5:00 PM TO 11:00 PM*								
11:00 PM TO 8:00 AM*	"N"							

* To but not including.

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SECTION IV - RATES (Continued)

4.6 Service Hours, (Continued)

4.6.B **TYPE II:**

Services: **ExcelPLUS and ExcelPLUS II**

	MON	TUE	WED	THUR	FRI	SAT	SUN	"H"
7:00 AM TO 6:00 PM*	"D"					"N"		8:00 AM
						5:00 PM		
6:00 PM TO 11:00 PM*	"E"					5:00 PM		
11:00 PM TO 7:00 AM*	"N"							

* To but not including.

4.6.C **TYPE III**:**

Services: **My 800 Service.**

	MON	TUE	WED	THUR	FRI	SAT	SUN
7:00 AM TO 6:00 PM*	"D"						
6:00 PM TO 7:00 AM*	"E"						

* To but not including.

** Holiday rates do not apply to Type III services.

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SECTION IV - RATES (Continued)

4.6 Service Hours, (Continued)

4.6.D **Type IV**:**

Services: **Excel Calling Card and Directory Assistance**

Rates apply 24 hours a day, 7 days a week.

** Holiday rates do not apply to Type IV services.

4.6.E The following service types are defined by the named service, day of the week and time of day the call is originated. The letters "P"eak and "O"ff-Peak represent specific times of a 24 hour day.

TYPE V:

Services: **Excel Premier Dial One and Premier 800 Services.**

	MON	TUE	WED	THUR	FRI	SAT	SUN
8:00 AM TO 5:00 PM*	"P"						
5:00 PM TO 8:00 AM*	"O"						

* To but not including.

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Effective Date:

PRICE SCHEDULES
APPLICABLE TO
COMMUNICATION SERVICES
IN THE STATE OF ARIZONA

Offered by:

Excel Telecommunications, Inc.

Issued:
Issued By:

Kenny A. Troutt, President
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Dallas, Texas 75243
(214) 705-5500

Effective Date:

1. EXCEL Long Distance Service Rates

The following base rates are applicable to calls placed using the Company's services. Customers may be eligible for discounts based on traffic volume and calling patterns as specified herein.

1.1 PREMIER DIAL ONE Service

PEAK	OFF PEAK
\$0.1950	\$0.1950

1.2 PREMIERPLUS II Service

DAY	EVENING	NIGHT/ WEEKEND
\$0.2150	\$0.1700	\$0.1550

1.3 PREMIER 800 Service

DAY	EVENING/NIGHT/ WEEKEND
\$0.2400	\$0.2400

1.4 EXCEL CALLING CARD Service

FIRST MINUTE	EACH ADDITIONAL
\$0.8900	\$0.2900

1.5 My 800 Service

DAY	EVENING
\$0.2400	\$0.1900

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1. EXCEL Long Distance Service Rates (Continued)

1.6 EXCELPLUS Service

The following rates are applicable to calls placed using ExcelPlus Service.

RATE MILEAGE	DAY		EVENING		NIGHT/ WEEKEND	
	1st Min.	Add Min.	1st Min.	Add Min.	1st Min.	Add Min.
0 - 10	\$0.3299	\$0.1899	\$0.2299	\$0.1299	\$0.1699	\$0.0899
11 - 22	\$0.3299	\$0.1899	\$0.2299	\$0.1299	\$0.1699	\$0.0899
23 - 55	\$0.3299	\$0.1899	\$0.2299	\$0.1299	\$0.1699	\$0.0899
56 - 124	\$0.4099	\$0.2399	\$0.2799	\$0.1799	\$0.2199	\$0.1399
125 - 292	\$0.4099	\$0.2599	\$0.2799	\$0.1799	\$0.2199	\$0.1399
Over 292	\$0.4099	\$0.2799	\$0.2799	\$0.1799	\$0.2299	\$0.1399

1.7 EXCELPLUS II Service

The following rates are applicable to calls placed using ExcelPlus II Service.

RATE MILEAGE	DAY		EVENING		NIGHT/ WEEKEND	
	1st Min.	Add Min.	1st Min.	Add Min.	1st Min.	Add Min.
0 - 10	\$0.3299	\$0.1899	\$0.2299	\$0.1299	\$0.1699	\$0.0899
11 - 22	\$0.3299	\$0.1899	\$0.2299	\$0.1299	\$0.1699	\$0.0899
23 - 55	\$0.3299	\$0.1899	\$0.2299	\$0.1299	\$0.1699	\$0.0899
56 - 124	\$0.4099	\$0.2399	\$0.2799	\$0.1799	\$0.2199	\$0.1399
125 - 292	\$0.4099	\$0.2599	\$0.2799	\$0.1799	\$0.2199	\$0.1399
Over 292	\$0.4099	\$0.2799	\$0.2799	\$0.1799	\$0.2299	\$0.1399

1.8 DIRECTORY ASSISTANCE

\$0.85 per access

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2. Recurring Charges:

PREMIER DIAL ONE	\$5.00
EXCELPLUS II	\$1.00
PREMIER 800	\$10.00
MY 800	\$3.50
PREMIERPLUS II	\$3.00

Accounting Code Charge: \$5.00 per month or \$0.20 per month per Validated code number, whichever is greater.

3. Non-Recurring Charges

Returned Check Charge	\$15.00 or 5% , which ever is greater, per incident.
Reconnection Fee	\$25.00
Late Payment	1.5% per month, unless a lower rate is prescribed by law.
Accounting Code Setup/Change	\$20.00

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4. Volume Discounts

The following volume discounts apply where savings are directly proportional to usage.

4.1 Premier Dial One Discount

VOLUME	% DISCOUNT
\$0 - \$74.99	-----
\$75.00 - \$499.99	23%
\$500.00 - \$1,999.99	23%
\$2,000.00 - \$4,999.99	23%
Over \$5,000.00	23%

4.2 Premier 800 Discount

VOLUME	% DISCOUNT
\$0 - \$99.99	-----
\$100.00 - \$499.99	23%
\$500.00 - \$1,999.99	23%
Over \$2,0000.00	23%

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5. Discount Calling Plans

Discounts apply to specified services where appropriate. Excel offers the following intrastate discount calling plans.

- 5.1 **ExcelPLUS:** A 50% discount applies to charges incurred for direct dialed calls terminated at ExcelPLUS, ExcelPLUS II and PremierPLUS II numbers (participating Excel Customers). ExcelPLUS Customers using calling cards to complete calls will receive a 50% discount for all charges following the initial minute for calls made to ExcelPLUS, ExcelPLUS II and PremierPLUS II Customers. No discounts apply to Calling Card calls terminated at all other numbers.
- 5.2 **ExcelPLUS II:** A 50% discount applies to charges incurred for direct dialed calls terminated at ExcelPLUS, ExcelPLUS II and PremierPLUS II numbers (participating Excel Customers). A 30% discount applies to charges incurred for direct dialed calls terminated at all other numbers. ExcelPLUS II Customers using calling cards to complete calls will receive a 50% discount for all charges following the initial minute for calls made to, ExcelPLUS, ExcelPLUS II and PremierPLUS II Customers. No discounts apply to Calling Card calls terminated at all other numbers.
- 5.3 **PremierPLUS II:** A 50% discount applies to charges incurred for direct dialed calls terminated at ExcelPLUS, ExcelPLUS II and PremierPLUS II numbers (participating Excel Customers). A 30% discount applies to charges incurred for direct dialed calls terminated at all other numbers. PremierPLUS II Customers using calling cards to complete calls will receive a 50% discount for all charges following the initial minute for calls made to ExcelPLUS, ExcelPLUS II and PremierPLUS II Customers. No discounts apply to Calling Card calls terminated at all other numbers.

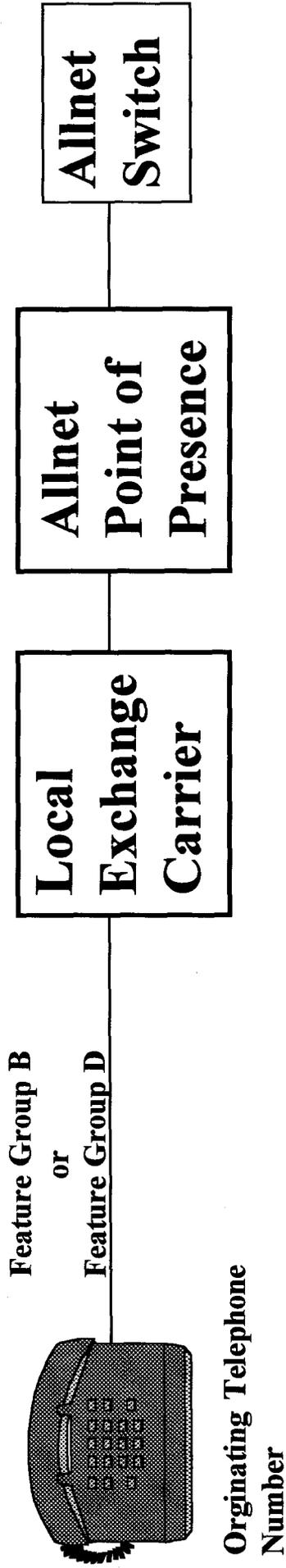
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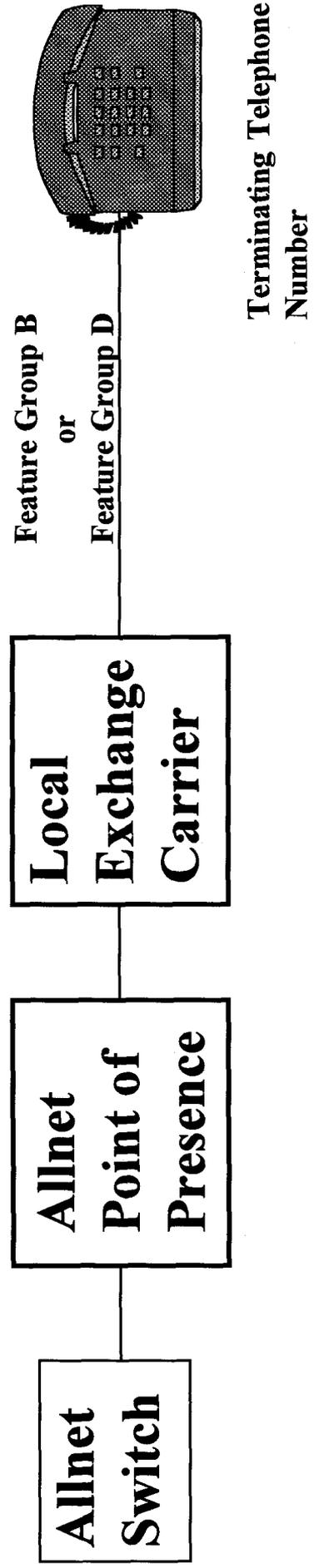
Effective Date:

ATTACHMENT C

Call Origination



Call Termination



ATTACHMENT D

EXCEL TELECOMMUNICATIONS, INC.

Financial Statements
As Of December 31, 1994

Together With Auditors' Report

ARTHUR ANDERSEN LLP

REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To the Board of Directors of
Excel Telecommunications, Inc.:

We have audited the accompanying balance sheet of Excel Telecommunications, Inc. as of December 31, 1994, and the related statements of operations, stockholders' equity, and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Excel Telecommunications, Inc. as of December 31, 1994, and the results of its operations and its cash flows for the year then ended in conformity with generally accepted accounting principles.

Arthur Andersen LLP

Dallas, Texas,
February 15, 1995

EXCEL TELECOMMUNICATIONS, INC.

BALANCE SHEET--DECEMBER 31, 1994
(In thousands)

ASSETS

CURRENT ASSETS:

Cash and cash equivalents	\$ 6,545
Accounts receivable, net	28,591
Inventories	1,077
Other current assets	<u>876</u>

Total current assets 37,089

PROPERTY AND EQUIPMENT:

Furniture and equipment	2,610
Leasehold improvements	611
Less- Accumulated depreciation	<u>(745)</u>

2,476

OTHER ASSETS

618

\$40.183

LIABILITIES AND STOCKHOLDERS' EQUITY

CURRENT LIABILITIES:

Accounts payable	\$14,029
Commissions payable	4,717
Dividends payable	3,000
Federal income tax payable	2,083
Accrued liabilities	4,850
Current portion of long-term debt	<u>518</u>

Total current liabilities 29,197

LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS,
less current portion

3,369

DEFERRED TAX LIABILITY

140

COMMITMENTS AND CONTINGENCIES

STOCKHOLDERS' EQUITY:

Common stock, no par value, 100,000 shares authorized and issued	257
Additional paid-in capital	188
Retained earnings	7,045
Less- Treasury stock, 1,000 shares at cost	<u>(13)</u>

7,477

\$40.183

The accompanying notes are an integral part of this statement.

EXCEL TELECOMMUNICATIONS, INC.

STATEMENT OF OPERATIONS

FOR THE YEAR ENDED DECEMBER 31, 1994
(In thousands)

REVENUES:	
Long distance service	\$108,068
Fees and other income	<u>48,033</u>
	156,101
OPERATING EXPENSES:	
Transmission charges	58,925
Selling, general, and administrative	78,639
Depreciation	<u>346</u>
	137,910
INCOME FROM OPERATIONS	18,191
INTEREST INCOME (EXPENSE):	
Interest expense	(295)
Interest income	<u>83</u>
INCOME BEFORE PROVISION FOR INCOME TAXES	17,979
PROVISION FOR INCOME TAXES	<u>(6,390)</u>
NET INCOME	<u>\$ 11,589</u>

The accompanying notes are an integral part of this statement.

EXCEL TELECOMMUNICATIONS, INC.

STATEMENT OF STOCKHOLDERS' EQUITY

FOR THE YEAR ENDED DECEMBER 31, 1994
(In thousands, except share and per share amounts)

	<u>Common Stock</u> <u>No Par Value</u>		<u>Additional</u>	<u>Retained</u>		<u>Total</u>
	<u>Shares</u>	<u>\$</u>	<u>Paid-in</u>	<u>Earnings</u>	<u>Treasury</u>	<u>Stockholders'</u>
			<u>Capital</u>	<u>(Deficit)</u>	<u>Stock</u>	<u>Equity</u>
BALANCE, December 31, 1993	100,000	\$257	\$ 67	\$ (94)	\$(112)	\$ 118
Net income	-	-	-	11,589	-	11,589
Dividends declared	-	-	-	(4,450)	-	(4,450)
Purchase of treasury stock	-	-	-	-	(30)	(30)
Issuance of treasury stock	-	-	121	-	129	250
BALANCE, December 31, 1994	<u>100,000</u>	<u>\$257</u>	<u>\$188</u>	<u>\$ 7,045</u>	<u>\$ (13)</u>	<u>\$ 7,477</u>

The accompanying notes are an integral part of this statement.

EXCEL TELECOMMUNICATIONS, INC.

STATEMENT OF CASH FLOWS

FOR THE YEAR ENDED DECEMBER 31, 1994

(In thousands)

CASH FLOWS FROM OPERATING ACTIVITIES:

Net income	\$11,589
Adjustments to reconcile net income to net cash provided by operating activities-	
Depreciation	346
Deferred income tax benefit	(411)
Changes in current assets and liabilities:	
Accounts receivable	(23,727)
Inventories	(889)
Other current assets	12
Accounts payable	11,386
Commissions payable	3,417
Accrued liabilities	<u>6,646</u>
Net cash provided by operating activities	8,339

CASH FLOWS FROM INVESTING ACTIVITIES:

Purchases of property and equipment	(811)
Release of long-term security deposits	764
Investment in joint venture	<u>(245)</u>
Net cash used in investing activities	(292)

CASH FLOWS FROM FINANCING ACTIVITIES:

Net increase in credit line	2,500
Payments of other debt and capital lease obligations	(2,928)
Purchase of treasury stock	(30)
Payments of dividends	<u>(1,450)</u>
Net cash used in financing activities	<u>(1,908)</u>

NET INCREASE IN CASH AND CASH EQUIVALENTS

6,139

CASH AND CASH EQUIVALENTS, beginning of year

406

CASH AND CASH EQUIVALENTS, end of year

\$ 6,545

SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:

Cash paid for-	
Interest	\$ 295
Income taxes	4,469
Non-cash financing activities-	
Financing of property and equipment purchases	\$ 1,349

The accompanying notes are an integral part of this statement.

EXCEL TELECOMMUNICATIONS, INC.

NOTES TO FINANCIAL STATEMENTS

DECEMBER 31, 1994

1. OPERATIONS AND SIGNIFICANT ACCOUNTING POLICIES:

Description of Business and Operations

Excel Telecommunications, Inc. (the "Company" or "Excel") was incorporated in the state of Texas in December 1988. Excel is a switchless reseller of long distance telephone service. The Company primarily utilizes independent sales representatives to market its long distance service to residential and commercial subscribers throughout the United States. The Company completes subscriber calls to all directly dialable locations worldwide. Since its formation, the Company has utilized network switching and transmission facilities provided primarily by one supplier. During 1994, the Company invested in a joint venture which will begin providing the Company's network switching and transmission services during 1995.

Substantially all of the Company's long distance service was provided by one supplier (the "Supplier") during 1994. Under the agreement with the Supplier (the "Supplier Agreement"), the Company purchases long distance service at certain per-minute rates which vary depending on the time and distance of the call. Under the Supplier Agreement, the Company is required to purchase \$1.1 million of long distance service per month. The Supplier Agreement is collateralized by a security interest in the Company's receivables. The Supplier Agreement expires on March 31, 1995, and may be renewed monthly at the option of both the Supplier and the Company. The Company believes that the Supplier Agreement will be renewed on a monthly basis until the Company is able to obtain switching and transmission services from its joint venture. The Company has met all of its obligations under the Supplier Agreement.

During 1994, the Company made an initial capital contribution of \$245,000 to obtain a 49% interest in a joint venture by the name of Switched Services Communications, L.L.C. (SSC). In January 1995, the Company made an additional capital contribution of \$190,000. The 1994 contribution is included in other assets on the accompanying balance sheet. SSC's results of operations during 1994 were insignificant. SSC was formed for the purpose of obtaining and operating digital switches to provide telecommunications services to the Company and other long distance providers. Under the terms of the joint venture agreements, the Company is required to purchase a minimum number of minutes per month from SSC at specified rates for a period of five years, beginning in 1996. The remaining 51% of SSC is owned by a third party which is committed to operate SSC and provide marketing and certain back-office support. Usage of SSC's network facilities is also being marketed to other long distance companies. The Company intends to make additional capital contributions to SSC and intends to guarantee certain of SSC's obligations.

Marketing Activities

Excel's long distance service is sold primarily by independent sales representatives. These representatives are located throughout the United States. Sales representatives, upon registration, are required to make a \$50 refundable application deposit with Excel as an expression of commitment. Sales representatives have an option to purchase a start-up package which includes training, a starter kit of forms and sales aids, support services, and monthly reports for \$195. If the start-up package is purchased, the \$50 deposit requirement is waived.

In addition to selling Excel's products, certain representatives also provide training for new recruits. Commissions are paid to Excel representatives for selling the Company's products, recruiting other sales representatives, and training sales representatives. Fees received by Excel from sales representatives and revenues from the sale of related sales aids are included in fees and other income in the accompanying statement of operations. Commissions paid to sales representatives and the cost of sales aids sold are included in selling, general, and administrative expense.

Cash and Cash Equivalents

For purposes of the statement of cash flows, the Company considers all highly liquid investments with original maturities of three months or less to be cash equivalents.

Allowance for Doubtful Accounts

Accounts receivable are net of allowance for doubtful accounts of approximately \$1.7 million as of December 31, 1994.

Revenue Recognition

Long distance service revenues are recognized as service is provided to customers. Direct selling revenues are recognized when fees are received or sales aids are shipped.

Concentrations of Credit Risk

The Company's customers are primarily residential customers and are not concentrated in any specific geographic region. The Company has agreements with local telephone exchange companies (LECs) which provide billing and collection services to the majority of the Company's customers. As of December 31, 1994, approximately 79% of the Company's accounts receivable were due from LECs. The Company establishes an allowance for doubtful accounts based upon factors surrounding the credit risk of specific customers, historical trends, and other information.

Inventories

Inventories are stated at the lower of cost (determined on a first-in, first-out basis) or market and are comprised primarily of marketing materials.

Property and Equipment

Property and equipment are stated at cost and depreciated using the straight-line method over the estimated useful lives of the assets, as follows:

<u>Asset Classification</u>	<u>Estimated Useful Life</u>
Furniture and equipment	5 years
Leasehold improvements	Life of lease

Income Taxes

The Company accounts for income taxes in accordance with SFAS No. 109, "Accounting for Income Taxes."

2. LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS:

Long-term debt and capital lease obligations consisted of the following at December 31, 1994 (in thousands):

Revolving credit line	\$2,500
Capital lease obligations (see Note 5)	<u>1,387</u>
	3,887
Less- Current portion	<u>(518)</u>
Long-term debt and capital leases	<u>\$3,369</u>

As of December 31, 1994, the Company had a revolving credit line agreement (the "Agreement") with a bank. The amount available under the Agreement is limited to the lesser of \$6 million or the borrowing base, as defined in the Agreement, minus any letters of credit outstanding. The Company had additional available borrowing capacity of approximately \$1.9 million under the Agreement at December 31, 1994. A commitment fee is payable monthly on the unused portion of the credit line at 0.5% per annum. Commitment fees related to the unused portion of the line of credit during the year ended December 31, 1994, were insignificant. A minimum borrowing fee is payable monthly at an amount equal to the prime rate multiplied by the excess of \$2.5 million over the outstanding loan amount. Commitment and borrowing fees are included as components of interest expense in the accompanying financial statements.

Interest is payable monthly at an annual rate of prime plus 1.5% (10% at December 31, 1994) and the interest rates for the year ended December 31, 1994, ranged from 8.75% to 10%. The facility will mature on May 26, 1997, with a one-year renewal at the option of the bank, and is secured by accounts receivable, inventories, and property and equipment. The Agreement contains limitations on incurring additional indebtedness and requires the maintenance of certain financial ratios and covenants. The Agreement is personally guaranteed by a shareholder of the Company.

Future maturities of long-term debt and capital leases are as follows (in thousands):

1995	\$ 518
1996	523
1997	2,747
1998	64
1999	35
Thereafter	<u>-</u>
Total	<u>\$3,887</u>

3. INCOME TAXES:

The components of the provision for income taxes are as follows for the year ended December 31, 1994 (in thousands):

Current	\$6,681
Deferred	(441)
State	<u>150</u>
Provision for income taxes	<u>\$6,390</u>

Temporary differences which give rise to the net deferred income tax asset at December 31, 1994, are as follows (in thousands):

Deferred income tax asset:	
Allowance for doubtful accounts	5581
Deferred income tax liability:	
Depreciation	<u>(140)</u>
Net deferred income tax asset	<u>\$441</u>

The provision for income taxes was different than the amount computed, using the statutory income tax rate for the reasons set forth in the following table (in thousands):

Tax computed at statutory rate	\$6,293
State income tax	150
Other	<u>(53)</u>
	<u>\$6,390</u>

4. STOCKHOLDERS' EQUITY:

During 1994, the Company purchased 1,000 shares of treasury stock for \$30,000. Also during 1994, the Company issued 10,000 shares of treasury stock to a shareholder of the Company in return for personally guarantying the Company's revolving credit line.

5. COMMITMENTS AND CONTINGENCIES:

The Company leases certain office equipment and office space under operating leases. Total rental expense for the year ended December 31, 1994, was approximately \$762,000.

Future minimum rents due under operating leases with initial or remaining terms greater than 12 months are as follows (in thousands):

1995	\$930
1996	910
1997	981
1998	772
1999	13
Thereafter	-

The Company has also entered into various capital lease agreements for certain furniture and equipment. Future minimum payments for these leases at December 31, 1994, are as follows (in thousands):

1995	\$ 665
1996	600
1997	272
1998	70
1999	34
Thereafter	<u>-</u>
Total future minimum lease payments	1,641
Less- Interest	<u>254</u>
Present value of future minimum lease payments (including maturities of \$518 in 1995)	<u>\$1,387</u>

Assets recorded under capital leases are included in property and equipment and consisted of the following at December 31, 1994 (in thousands):

Furniture and equipment	\$1,945
Accumulated depreciation	<u>(558)</u>
	<u>\$1,387</u>

The Company had approximately \$1.6 million in outstanding letters of credit at December 31, 1994, in connection with certain transmission purchases. A fee of 1.75% per annum is payable monthly on the letters of credit outstanding.

The Company's long distance and marketing activities are subject to certain federal and state regulations. The Company is involved in various regulatory matters as well as lawsuits incidental to its business. In the opinion of management, these regulatory matters and lawsuits in the aggregate will not have a material adverse effect on the Company's financial position or the results of operations of future periods.

6. RELATED-PARTY TRANSACTIONS:

In 1993, the Company entered into an agreement with Tobor Technologies, Inc. ("Tobor") to obtain data processing and related services. The Company's president and the Company own a 22% and a 21% interest, respectively, in this affiliated company. For the year ended December 31, 1994, Excel paid Tobor approximately \$596,000 for data processing and related services. During 1994, data processing and related services were transitioned from Tobor to the Company's internal information systems department. The Company's equity in earnings and net investment in Tobor were insignificant during 1994. As of December 31, 1994, the Company's relationship with Tobor terminated and Tobor has no significant operations.

7. EMPLOYEE BENEFIT PLANS:

The Company provides a 401(k) Plan (the "Plan") to substantially all eligible employees of the Company, as defined. Discretionary profit sharing contributions may be made by the Company to employees in an amount equal to 4% of their respective compensation. Company contributions to the Plan for the year ended December 31, 1994, were insignificant.

APPENDIX A

LIST OF STATES

Currently operating

Alabama
Arkansas
California
Colorado
Delaware
Florida
Georgia
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Mexico
New York
New Jersey
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wyoming

Authorization pending

Alaska
Connecticut

Authorization denied

none

APPENDIX B

Customer Service

Excel's Customer Service department is available to handle customer inquiries and billing questions 24 hours per day, seven days per week. When a call is received, a service representative will retrieve customer account information and be prepared to address specific billing inquiries including questions about the customer's overall monthly bill, specific rates and charges, and the mechanics of the company's special discount programs. Service representatives are also available to assist customers with questions about the company and its product offerings.

Excel strives to work with customers to resolve a complaint in a satisfactory manner. When a billing adjustment is needed, the service representative will process the adjustment at the time of inquiry. Each representative has the authority to adjust a customer's bill up to a specified dollar amount; any adjustments which exceed this amount are handled by a department supervisor. When an adjustment is made, the customer will see the credit within sixty days of its issuance.

Written inquiries from regulatory agencies and others are handled by the Customer Relations Department. When a written complaint is received, it is promptly reviewed and researched. In some instances, a service representative may contact the customer to ascertain more information about a particular grievance. A letter addressing the problem and documenting the resolution is then forwarded to the agency, customer, or complainant as appropriate.

Excel provides its service representatives with one-on-one, hands-on training. In addition, Department meetings and periodic service bulletins keep service representatives apprised of changes in rates, billing policies, and operating procedures. Future systems enhancements and modifications of current procedures are aimed at assuring that customers receive the help they need in the most expeditious and efficient manner possible.

APPENDIX C

The company is currently involved in a proceeding in which the Federal Communications Commission has alleged that Excel had inappropriately presubscribed customers to its service. Excel has filed an opposition to the Commission's allegation. A copy of the relevant orders are attached.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

DA 95-1833

In the Matter of)	
)	File No. ENF-95-15
EXCEL TELECOMMUNICATIONS, INC.)	
)	NAL/Acct. No. 516EF0005
)	
Apparent Liability for Forfeiture)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 18, 1995; Released: August 18, 1995

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture ("NAL"), we initiate enforcement action against Excel Telecommunications, Inc. ("Excel").¹ For the reasons discussed below, we find that Excel willfully or repeatedly violated Commission rules and orders² by changing the primary interexchange carrier ("PIC") designated by Mr. Bruce Adelman ("Adelman") of Los Angeles, California and Mrs. Robert J. Blake ("Blake") of Altadena, California, without Adelman's or Blake's authorization. Based upon our review of the facts and circumstances surrounding the violations, we find that Excel is apparently liable for a forfeiture in the amount of eighty thousand dollars (\$80,000).

II. BACKGROUND

2. In its Allocation Order and subsequent Reconsideration Order and Waiver Order,³ the Commission set forth rules and

¹ Excel Telecommunications, Inc. is located at 9101 LBJ Freeway, Suite 800, Dallas, Texas 75243. Kenny Troutt is the Chairman, President and Chief Executive Officer.

² 47 C.F.R. § 64.1100; Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Phase 1, 101 FCC 2d 911 (1985) (Allocation Order); recon. denied, 102 FCC 2d 503 (1985) (Reconsideration Order); Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Phase 1, 101 FCC 2d 935 (1985) (Waiver Order).

³ See supra proceedings cited at note 2.

procedures for implementing equal access⁴ and customer presubscription⁵ to an interexchange carrier ("IXC").⁶ The Commission's original allocation plan required IXCs to have on file a letter of agency ("LOA") signed by the customer before submitting PIC change orders to the local exchange carrier ("LEC") on behalf of the customer.⁷ After considering claims by certain IXCs that this requirement would stifle competition because consumers would not be inclined to execute the LOAs even though they agreed to change their PIC, the Commission later modified the requirement to allow IXCs to initiate PIC changes if they had "instituted steps to obtain signed LOAs."⁸ In 1992, the Commission again revised its rules because it continued to receive complaints about unauthorized PIC changes.⁹ Specifically, while the Commission recognized the benefits of permitting a telephone-based industry to rely on telemarketing to solicit new business, it required IXCs to institute one of the following four confirmation procedures before submitting PIC change orders generated by telemarketing: (1) obtain the consumer's written authorization; (2) obtain the consumer's electronic authorization by use of an 800 number; (3) have the

⁴ Equal access for interexchange carriers ("IXCs") is that which is equal in type, quality and price to the access to local exchange facilities provided to AT&T and its affiliates. United States v. American Tel. & Tel., 552 F. Supp. 131, 227 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (Modification of Final Judgement or "MFJ"). "Equal access allows end users to access facilities of a designated [IXC] by dialing '1' only." Allocation Order, 101 FCC 2d at 911.

⁵ Presubscription is the process by which each customer selects one primary interexchange carrier ("PIC"), from among several available carriers, for the customer's phone line(s). Allocation Order, 101 FCC 2d at 911, 928. Thus, when a customer dials "1", only the customer accesses the primary IXC's services. An end user can also access other IXCs by dialing a five-digit access code (10XXX). Id. at 911.

⁶ Pursuant to the MFJ, the Bell Operating Companies (BOCs) were ordered to provide, where technically feasible, equal access to their customers by September 1986. Id.

⁷ An LOA is a document, signed by the customer, which states that the customer has selected a particular carrier as that customer's primary long distance carrier. Allocation Order, 101 FCC 2d at 929.

⁸ Waiver Order, 101 FCC 2d at 942.

⁹ Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd 1038-39 (1992) (PIC Change Order).

consumer's oral authorization verified by an independent third party; or (4) send an information package, including a prepaid, returnable postcard, within three days of the consumer's request for a PIC change, and wait 14 days before submitting the consumer's order to the LEC, so that the consumer has sufficient time to return the postcard denying, cancelling or confirming the change order.¹⁰ Hence, the Commission's rules and orders require that IXCs either obtain a signed LOA or, in the case of telemarketing solicitations, complete one of the four telemarketing verification procedures before submitting PIC change requests to LECs on behalf of consumers.

3. Because of its continued concern over unauthorized PIC changes, the Commission recently prescribed the general form and content of the LOA used to authorize a change in a customer's primary long distance carrier.¹¹ The Commission's recent rules prohibit the potentially deceptive or confusing practice of combining the LOA with promotional materials in the same document.¹² The rules also prescribe the minimum information required to be included in the LOA and require that the LOA be written in clear and unambiguous language.¹³ The rules prohibit all "negative option" LOAs¹⁴ and require that LOAs and any accompanying promotional materials contain complete translations if they employ more than one language.¹⁵

4. On March 13, 1995 and November 7, 1994, the Commission received written complaints from Adelman and Blake, respectively, alleging that Excel had converted Adelman's and Blake's prescribed long distance service provider from AT&T Corporation ("AT&T") to

¹⁰ See 47 C.F.R. § 64.1100; PIC Change Order, 7 FCC Rcd at 1045.

¹¹ Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, FCC 95-225 (June 14, 1995) (LOA Order).

¹² See LOA Order, FCC 95-225 at para. 27. Checks that serve as an LOA are excepted from the "separate or severable" requirement so long as the check contains certain information clearly indicating that endorsement of the check authorizes a PIC change and otherwise complies with the Commission's LOA requirements. Id. at para. 25.

¹³ See id. at para. 10.

¹⁴ See id. at para. 11. "Negative option" LOAs require consumers to take some action to avoid having their long distance telephone service changed.

¹⁵ See id. at para. 40.

Excel without either Adelman's or Blake's authorization.¹⁶ Both Adelman and Blake state that the "Residential Service Request Forms" ("authorization form") forwarded to them by Excel as verification of their requests to have their long distance service switched to Excel, bear forged signatures and fabricated social security numbers.¹⁷

5. Subsequently, the Common Carrier Bureau's Enforcement Division (the "Division") sent a letter to Excel directing it to provide specific information regarding the allegations listed in both the Adelman and Blake complaints.¹⁸ In response to the complaints, Excel explains that its marketing is based exclusively on obtaining a written LOA from a prospective customer, typically as the result of an in-person, one-on-one presentation by one of its independent marketing agents. Excel states that its practice is to review LOAs obtained from prospective customers to ensure completeness and that it occasionally checks social security numbers. Excel states that it is unable to ascertain whether these review procedures were implemented with regard to the Adelman and Blake LOAs or whether the signatures are authentic.¹⁹ Excel concedes that it is possible that Adelman's and Blake's signatures and social security numbers may have been forged by the independent marketing representatives who submitted the forms at issue.²⁰

III. DISCUSSION

6. We have carefully evaluated the information submitted in connection with Adelman's and Blake's informal complaints and conclude that Excel is apparently liable for forfeiture for willful or repeated violation of the Commission's rules and PIC change requirements. We find Excel's apparent actions particularly egregious. It appears that on or about August 22, 1994 and August 30, 1994, Excel submitted two PIC change requests to Pacific Bell, based on apparently forged LOAs, which resulted in the conversion of both Adelman's and Blake's telephone service from AT&T to Excel.

¹⁶ Bruce Adelman, Informal Complaint No. 95-10834; Mrs. Robert J. Blake, Informal Complaint No. 95-02575.

¹⁷ Bruce Adelman, Informal Complaint No. 95-10834; Mrs. Robert J. Blake, Informal Complaint No. 95-02575.

¹⁸ See, e.g., Official Notice of Informal Complaint, Complaint No. 95-10834.

¹⁹ See, e.g., Excel Response to Informal Complaint No. 95-10834 at 7 (Excel Adelman Response); Excel Response to Informal Complaint No. 95-02575 at 7 (Excel Blake Response).

²⁰ See, e.g., Excel Adelman Response at 5; Excel Blake Response at 5.

The statements and information provided by Adelman, Blake, and Excel leave virtually no doubt that the LOAs were forged, the social security numbers falsified, and consequently, that Excel lacked the requisite authorization to request a PIC change to either Adelman's or Blake's long distance service. With respect to the Adelman complaint, there is no similarity between the signature on Adelman's complaint and his purported signature on the LOA form that Excel used as the basis for the PIC change submitted to Pacific Bell. With respect to the Blake complaint, information obtained from the complainant indicates that neither Mr. or Mrs. Blake ever met with an Excel representative nor were they ever contacted by telephone regarding a switch in their long distance service. Further, the complainant confirmed that Mr. Blake's name is misspelled, his signature is forged, and that the purported social security number appearing on the form is not his. Under these circumstances, we conclude that Excel's apparent actions were in willful or repeated violation of the Commission's PIC change rules and orders and that a substantial forfeiture penalty is appropriate.

7. Section 503(b)(2)(B) of the Communications Act authorizes the Commission to assess a forfeiture of up to one hundred thousand dollars (\$100,000) for each violation or each day of a continuing violation up to a statutory maximum of one million dollars (\$1,000,000) for a single act or failure to act.²¹ In exercising such authority, the Commission is required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²² For purposes of determining an appropriate forfeiture penalty in this case, we regard the conversion of Adelman's and Blake's telephone lines as two violations. After weighing the circumstances surrounding the violation, we find that Excel is apparently liable for a forfeiture of forty thousand dollars (\$40,000) for each of the unauthorized conversions, resulting in a total forfeiture of eighty thousand dollars (\$80,000). Excel will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.²³ In this regard, we note that the Commission has previously held that a licensee's gross revenues are the best indicator of its ability to pay a forfeiture and that use of gross revenues to determine a party's ability to pay is reasonable, appropriate, and a useful yardstick in helping to analyze a

²¹ 47 U.S.C. § 503(b)(2)(B).

²² Id. § 503(b)(2)(D).

²³ See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

company's financial condition for forfeiture purposes.²⁴ We will give full consideration to any financial information provided by Excel before assessing a final forfeiture amount.

IV. CONCLUSIONS AND ORDERING CLAUSES

8: We have carefully reviewed the information submitted in connection with Adelman's and Blake's informal complaints and conclude that on or about August 22, 1994 and August 30, 1994, Excel apparently converted or caused a local exchange carrier to convert Adelman's and Blake's telephone lines without either Adelman's or Blake's authorization through the use of apparently forged LOAs. We further conclude that Excel thereby willfully or repeatedly violated Commission rules governing primary interexchange carrier conversions, and that its conduct warrants a forfeiture in the amount of eighty thousand dollars (\$80,000).

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Excel Telecommunications, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of eighty thousand dollars (\$80,000) for its willful or repeated violation of the Commission's PIC change rules and orders, 47 C.F.R. § 64.1100; PIC Change Order, 7 FCC Rcd 1038 (1992); Allocation Order, 101 FCC 2d 911 (1985); Waiver Order, 101 FCC 2d 935 (1985).

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty days of the release of this Notice, Excel Telecommunications, Inc. SHALL PAY the full amount of the proposed forfeiture²⁵ OR SHALL FILE a

²⁴ PJB Communications of Virginia, 7 FCC Rcd 2088, 2089 (1992) (finding that forfeitures of \$5,000 and \$3,000 assessed against two jointly owned and operated paging companies were not excessive because the total forfeiture amount (\$8,000) represented approximately 2.02 percent of the companies' combined gross revenues of \$395,469). See also David L. Hollingsworth d/b/a Worland Services, 7 FCC Rcd 6640 (Com. Car. Bur. 1992) (\$6,000 forfeiture representing approximately 1.21 percent of licensee's 1991 gross revenues and approximately 1.34 percent of projected 1992 gross revenues not found to be excessive); Afton Communications Corp., 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (\$6,000 forfeiture representing approximately 3.91 percent of 1990 gross revenues and 2.75 percent of projected 1992 gross revenues not found to be excessive).

²⁵ The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on Excel Telecommunications, Inc.'s

response showing why the proposed forfeiture should not be imposed or should be reduced.

11. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Kenny Troutt, Chairman, President and Chief Executive Officer of Excel Telecommunications, Inc., 9101 LBJ Freeway, Suite 800, Dallas, Texas 75243.

FEDERAL COMMUNICATIONS COMMISSION



Kathleen M.H. Wallman
Chief, Common Carrier Bureau

check or money order to "NAL/Acct. No. 516EF0005." Such remittances must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
SEP 6 1995
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of)
)
EXCEL TELECOMMUNICATIONS,) File No. ENF No. 95-15
INC.)
) NAL/Acct. No. 516EF0005
Apparent Liability for)
Forfeiture)

PETITION FOR RECONSIDERATION

Excel Telecommunications, Inc. ("Excel"), by its attorney and pursuant to 47 C.F.R. §1.106, hereby petitions for reconsideration of the Commission's Notice of Apparent Liability for Forfeiture ("Notice") in the above-captioned matter released on August 18, 1995.¹ Specifically, Excel requests that the Commission reduce the amount of the assessed forfeiture for two reasons: 1) Excel has a history of compliance and has never before been assessed a forfeiture by the Commission; and 2) the possibility exists, albeit slight, that the Letters of Agency ("LOAs") were not forged by Excel Independent Representatives ("Representatives").

The Commission's Notice assesses forfeitures against Excel in the amount of \$40,000 for each of two instances in which consumers in California were converted to Excel's long distance service apparently without their authorization or consent. Thus, the total

¹ See Notice of Apparent Liability for Forfeiture (DA 95-1833), File No. ENF-95-15; NAL/Acct. No. 516EF0005, released Aug. 18, 1995.

amount of the forfeiture assessed is \$80,000. The Notice requires Excel to either submit a response showing why the proposed forfeiture should not be imposed or should be reduced, or to pay the full amount of the proposed forfeiture. Notice at para. 10, 7. In accordance with the Notice, and pursuant to the Commission's Rules,² Excel is submitting the instant response in order to request that the Commission reduce the proposed forfeiture amount.

While the Commission has the authority to assess forfeitures up to specified ceiling amounts,³ the Commission remains free to exercise discretion in particular cases.⁴ Section 503(b) of the Communications Act of 1934, as amended, requires that the Commission "take into account the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require."⁵ In exercising this discretion, the Commission has on numerous occasions reduced proposed forfeitures⁶ and even rescinded them

² See 47 C.F.R. §1.80.

³ See 47 U.S.C. §503.

⁴ See In the Matter of the Commission's Forfeiture Policy Statement, 10 FCC Rcd 2945 (1995), citing Guardian Federal Savings & Loan Ass'n. v. Federal Savings and Loan Insurance Co., 589 F. 2d 658 (D.C. Cir. 1978).

⁵ 47 U.S.C. §503(b)(2)(D).

⁶ See, e.g., In re Digital Mobile Communications, Inc. (DA 95-1779), File No. 216MS0031, released Aug. 18, 1995 (\$40,000 reduced to \$5,000); In re DIAL-A-PAGE, INC. (DA 95-1780), File No. 163500-92-1-A-BFW, released Aug. 18, 1995 (\$32,000 reduced to \$3,500); In the Matter of Private Land Mobile Station WSM 534, 9 FCC Rcd 1647 (1994); In the Matter of Ellwood Beach Broadcasting,

altogether.⁷

In light of the foregoing, Excel believes that the Commission should be aware of, and take into account, the following.

First, a reduction in the proposed forfeiture is warranted since Excel has a history of overall compliance. The Commission has reduced proposed forfeitures on the basis of history of overall compliance.⁸ In the case of Excel, the instant Notice is the first notice of apparent liability Excel has received from the Commission. Given the large amount of the proposed fine combined with the fact that Excel otherwise has a history of compliance with Commission requirements, the proposed forfeiture should be reduced.

Second, Excel believes that reduction of the proposed forfeitures is warranted because the record does not conclusively demonstrate that the contested LOAs were in fact forged. In its responses to the notices of informal complaints in this matter, Excel admits that it was "unable to ascertain whether the signatures are authentic or not" and goes on to state that "the

Ltd., 8 FCC Rcd 453 (1993); and In the Matter of TNI Associates (DA 95-1777), File No. 316MS0009, released Aug. 18, 1995.

⁷ See, e.g., In re Afton Communications Corporation (DA 95-1778), File No. 63500-92-4-JSG, released Aug. 18, 1995; In the Matter of High Tech Communications of Iowa, Inc. (DA 95-1782), File Nos. 316MS0008, 316MS0012 and 316MS0011, released Aug. 18, 1995; and In the Matter of The Computer Shop, 8 FCC Rcd 7973 (1993).

⁸ See, e.g., In the Matter of TNI Associates (DA 95-1777), File No. 316MS0009, released Aug. 18, 1995; In the Matter of Scott Home Center, 8 FCC Rcd (1993); In the Matter of The CB Shop, 8 FCC Rcd 6707 (1993); In the Matter of Jan Mar Courier, Inc., 8 FCC Rcd 7570 (1993).

signatures may have been forged by the independent representative who submitted the form."⁹ Nonetheless, as an issue of fact, the possibility exists that the two LOAs at issue here were not the result of a forgery by Excel Representatives.¹⁰

For example, someone related to the consumer such as a spouse, sibling or other relative (perhaps residing within the customers' residence) could have submitted the LOA on the consumers' behalf. It is also possible that a neighbor or someone who otherwise knew the consumer committed the wrongful act and submitted the LOAs as a prank. It is even possible, albeit highly unlikely, that the consumer submitted an erroneous LOA, but subsequently forgot taking this action. The Commission itself appears to recognize that the evidence in this case is less than conclusive when it states that "[t]he statements and information ...leave virtually no doubt that

⁹ See letter dated June 26, 1995 from Counsel for Excel to Kathie A. Kneff at 5. Excel's sales force consists of independent representatives--independent firms and individuals which have contracted with Excel to market its long distance services. Excel recognizes that, pursuant to Commission policy, it has an obligation to ensure compliance with the Commission's Rules by its independent sales force. The company has made efforts, and continues to make efforts, to strengthen its control over the actions of its representatives in order to prevent unauthorized conversions. Notwithstanding this, the Commission should be aware that the company does occasionally encounter representatives which do not properly follow Excel procedures and policies. If the LOAs in the instant cases were in fact forged, it was by the actions of representatives which violated both their contracts with Excel as well as the company's policies--not representatives typical of the Excel independent sales force.

¹⁰ In making this argument, Excel is not disputing the substantial possibility that the LOAs were forged by its Representatives, nor is it attempting to minimize the serious industry-wide problem posed by unauthorized conversions. Excel is merely indicating that the actual facts are not conclusive.

the LOAs were forged...." Notice at para. 6 (emphasis added).

Were the Commission to assess a forfeiture in the amount of \$80,000, as proposed, and further investigation by Excel reveal conclusively that the LOAs were not forged or the result of any wrongdoing on Excel's behalf, a serious injustice would have been allowed to occur. In the instant case, justice requires that the Commission take into account the conclusiveness of the factual record.¹¹ Taking this into account, Excel submits that the Commission should substantially reduce the proposed forfeiture to protect against potential injustice.

¹¹ See 47 U.S.C. §503(b)(2)(D). In many forfeiture cases, the Commission does not face a question of fact. Such cases typically are absolutely conclusive insofar as a violation has occurred, and include violations such as the following: operation without a license witnessed by a Commission inspector; failure to file required forms such as reporting requirements by Commission deadline; failure to light an antenna tower structure; failure to properly label computing devices; etc. Unlike typical forfeiture cases, the instant case leaves a lingering question as to who committed the violation, i.e., the carrier, some third party or even the consumer.

For the reasons indicated above, the Commission should reduce the amount of both proposed forfeitures being assessed against Excel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas K. Crowe", written over a horizontal line.

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Dated: September 6, 1995

APPENDIX D

Maine

Excel is currently the subject of an investigation before the Maine Public Utilities Commission ("MPUC") which addresses recent proposed rate changes. Specifically, the company filed proposed rate increases and the MPUC initiated an investigation into (1) whether the proposed rate increase violates a Maine statute that prohibits a general rate increase by companies that have filed such an increase within the past year; (2) whether the Company should notify its customers prior to implementing the rate increase; (3) the Company's marketing practices in connection with the proposed rate increase; and (4) the Company's characterization of its proposed tariff filing, including rate increases. The Company is currently in the process of negotiating a stipulation with the Commission staff and interested parties which would terminate the investigation without any penalties being assessed against the Company and without a hearing.

Florida

Excel is currently the subject of an investigation before the Florida Public Service Commission addressing complaints regarding the conversion of customer Primary Interexchange Carriers or PICs in the State of Florida. The investigation is ongoing.