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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
EXCEL TELECOMMUNICATIONS, INC. FOR A)	CASE NO. EXC-T-02-1
CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY TO PROVIDE LOCAL)	
EXCHANGE TELECOMMUNICATIONS)	COMMENTS OF THE
SERVICES.)	COMMISSION STAFF
)	

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Lisa D. Nordstrom, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 29190 on February 4, 2003, submits the following comments.

APPLICATION

On January 28, 2002, Excel Telecommunications, Inc. (Excel, Company) filed an Application for a Certificate of Public Convenience and Necessity to provide competitive local exchange service within the State of Idaho. Excel's Application states that the Company is not requesting authority to provide service in areas that fall within the scope of rural exemptions. The Application also requests that the Commission approve the Company's proposed local exchange services tariff.

Initially Excel proposes to provide local services statewide to residential customers. If future economic conditions permit, it may offer services to business customers as well. Via UNE-Ps and resold services, Excel plans to provide a full range of telecommunications and data services including local service, private line, data transmission service and Internet service.

BACKGROUND

In 1997, Excel previously applied for a Certificate of Public Convenience and Necessity in Case No. EXC-T-97-1. Staff opposed that Application based on the Company's record of operations as an interexchange carrier and the number of complaints the Commission received from Excel's customers. The complaints concerned billing problems, rates and policies, carrier selection and slamming, and other miscellaneous issues. Staff noted that Excel had been sanctioned by the Federal Communications Commission for slamming and forging letters of agency. The Commission also received 21 comments expressing support for Excel's Application. Excel subsequently requested permission to withdraw its Application without prejudice until its business plans permitted it to concentrate on obtaining certification and providing high quality cost-efficient services in Idaho. The Commission granted this request on October 17, 1997 and dismissed the case without prejudice. Order No. 27159.

Since that time, the number of complaints against Excel from Idaho customers has significantly decreased. However, Staff was concerned when the Commission received five complaints in a five-month period in 2002. Of these complaints, four customers complained of slamming but only two provided Staff with enough information to pursue investigations. In both cases, Excel was found to have slammed its customers. In one instance, Excel reported that the customer's service was changed by a relative who was not a resident of the household but presented herself as an authorized decision maker. Excel reimbursed the customer for all charges incurred in this process. In the second instance, Excel failed to respond to the Commission's correspondence. According to the Commission's Customer Relations Rules, failure to respond to a slamming allegation within 21 days will result in a determination by Staff that the customer was slammed. I.D.A.P.A. 31.41.01.703.02. Excel apologized and reimbursed the customer for the charges incurred and subsequently terminated the service representative who failed to respond.

In response to Staff's concerns, Excel explained to Staff in February 2003 that its business profile has undergone significant changes since 1997. This privately-held corporation sold more than \$750 million of communications services in 2002 and was purchased by VarTec in April 2002. Excel has taken the following steps to address and correct the concerns Staff expressed in 1997:

- (1) Excel utilizes a nationwide third party verification (TPV) system to confirm residential primary interexchange carrier changes;
- (2) The Company has developed a specialized group within the Customer Service Department whose sole function is to investigate and resolve slamming allegations and other related issues. This group ensures that consumers' concerns are fully addressed and any appropriate credits and adjustments are made;
- (3) Excel's Independent Representatives (IRs) are encouraged to build ongoing relationships with their customers to ensure continued satisfaction with Excel's products and services; and
- (4) Excel has adopted a strict "zero tolerance policy" and business code of ethics. Excel will promptly terminate its relationship with any IR who is found to have engaged in illegal or improper conduct, specifically with regards to slamming.

The Company stated in its February 21, 2002 letter to Staff, "Excel has the utmost commitment to ensuring that the potential for slams is avoided. . . . The Company believes that it has proven itself as a quality provider of interexchange telecommunications services and eager to expand its service offerings to the competitive residential local telephone market." In recent years several state Commissions and the FCC have noted the extraordinary steps that Excel has implemented to advance the accuracy of the customer order provisioning process and to devise complaint resolution safeguards — effectively setting an industry standard.

Excel submitted unaudited Income Statements, Balance Sheets and Cash Flow statements for 1999, 2000 and eleven months of 2001 with its Application. These documents reflect financial events prior to VarTec's purchase of Excel and showed declining revenue accompanied by reduced expenses. The Company's total profit margin was up slightly in 2001 from 2000, and its net operating income was slightly less negative in 2001 than in 2000. In response to Staff's concerns, Excel submitted an Affidavit from VarTec dated July 25, 2002 wherein VarTec guarantees the financial support of Excel.

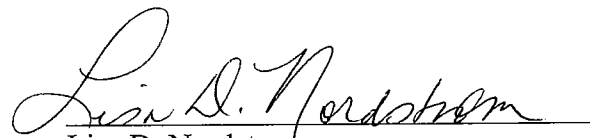
The Company's illustrative tariff includes a deposit requirement that reflects the Commission rules. Excel has agreed to correct a few points in its final tariff to address Staff's other concerns. The Company further agrees to comply with all applicable Commission rules but requests the Commission waive the requirement for an escrow account to cover customer deposits due to VarTec's written guarantee of financial support.

STAFF RECOMMENDATION

Excel has submitted the necessary documents and met the Commission's requirements for a Certificate of Public Convenience and Necessity. While its customer relations history has not been stellar, Excel made considerable improvements in recent years and promises to continue to improve. Excel's financial history would normally lead Staff to recommend some form of surety, but VarTec's Affidavit guaranteeing financial support of Excel would appear to relieve this concern.

Staff recommends that the Commission grant Excel's Application for a Certificate of Public Convenience and Necessity to provide statewide service in Idaho (excluding service in areas that fall within the scope of rural exemptions). Staff also recommends the Commission accept VarTec's guarantee of financial support in lieu of a surety bond for Excel in its endeavor to obtain certification and provide telecommunications services.

Respectively submitted this 25th day of February 2003.


Lisa D. Nordstrom
Deputy Attorney General

Technical Staff: Beverly Barker
Birdelle Brown

LN:i:umisc/comments/exct02.1lnbabbb

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 25TH DAY OF FEBRUARY 2003, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. EXC-T-02-1, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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SECRETARY

CERTIFICATE OF SERVICE