



## KELLEY DRYE &amp; WARREN LLP

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FEB 13 2002

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

February 12, 2002

Ms. Debra Elofson  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Re: Application of Excel Telecommunications, Inc. for Expansion of its Certificate of Public Convenience and Necessity to Provide Competitive Facilities-Based Local Exchange Telecommunications Services in the State of South Dakota

Dear Ms. Elofson,

Enclosed, on behalf of Excel Telecommunications, Inc., please find an original, a duplicate and ten copies of the above-captioned filing. Please date-stamp the duplicate copy of this submission and return in the pre-addressed envelope provided. If there are any questions regarding this filing, please contact me at (703) 918-2315. Thank you in advance for your assistance with this matter.

Cordially,



Winafred Brantl

enclosures

BEFORE THE  
PUBLIC UTILITIES COMMISSION  
of  
SOUTH DAKOTA

RECEIVED

FEB 13 2002

Application of )  
 )  
EXCEL TELECOMMUNICATIONS, INC. )  
 )  
for Expansion of its Certificate of Public )  
Convenience and Necessity to Provide )  
Competitive Facilities-Based Local )  
Exchange Telecommunications Services )  
in the State of South Dakota )

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Docket No. \_\_\_\_\_

APPLICATION

Excel Telecommunications, Inc. ("Excel," "Applicant" or "Company"), by its attorneys and pursuant to SDAR §20:10:32:03, respectfully requests that the South Dakota Public Utilities Commission ("Commission") grant it an expansion of its Certificate of Public Convenience and Necessity to provide facilities-based local exchange services throughout the State of South Dakota. Excel was granted authority to provide resold local exchange services in South Dakota on December 9, 1996 in Docket No. TC96-099.<sup>1</sup> The Company now proposes to offer facilities-based local exchange services to consumers in the State of South Dakota utilizing combinations of unbundled network elements ("UNEs"), specifically the unbundled network elements platform ("UNE-P") purchased from the incumbent local exchange carrier.<sup>2</sup>

Initially, Excel will focus on providing local services to residential customers. This focus is unique. This Commission is well aware that residential customers typically have scant choice in their

<sup>1</sup> The Company had previously been granted authority to provide interexchange services on January 24, 1990 in Docket No. F-3876.

<sup>2</sup> At some future date, should the telecommunications market and related business considerations dictate, the Company may expand into facilities-based services via strategic deployment of its own equipment; however, at present, Excel intends to concentrate upon provision of service through UNE combinations.

local service provider. Nationwide, many entrants to the local marketplace have chosen to concentrate their efforts strictly on large and medium sized businesses.

Excel has had success in taking a different path. Excel has brought high quality long distance services, at competitively low prices, to the residential consumer--- both in urban and in outlying areas -- --to low volume users as well as high. Unlike other applicants, Excel plans to direct its local service offerings to a solidly residential base of customers.

The challenge ahead is to bring comparable choice in service providers to residential customers. Excel respectfully submits that approval of its Application, authorizing the Company to commence provision of a full range of competitive facilities-based local services to residential consumers will be a measurable step towards achieving that important goal and therefore is in the public interest.

### PRELIMINARY RESPONSES

In support of its Application, Excel provides the following information:

**20:10:32:03(1)**: Excel is a corporation with principal address at:

Excel Telecommunications, Inc.  
8750 North Central Expressway, Suite 2000  
Dallas, Texas 75231  
Telephone: (214) 863-8700  
Facsimile: (214) 863-8721  
Toll Free: (800) 875-9235

**20:10:32:03(2)**: The following is a list of Excel's officers:

Christina A. Gold	Chairman, President and CEO
Huntley W. Bakich	Senior Vice President, eBusiness
Mike Roudi	Senior Vice President — North American Product Marketing
William G. Smit	Senior Vice President, Network
Laura Collins	Senior Vice President of US Sales and North American Representative Services
James R. McFelea	Senior Vice President, Customer Service
James G. Timmer	Executive Vice President and Chief Financial Officer
Christopher P. Kelly	General Counsel
Michael T. Boychuk,	Executive Vice President and Chief Financial Officer [BCE]
David G. Masse	Assistant Corporate Secretary [BCE]

The following is a list of Excel's Directors:

Christina A. Gold  
William G. Smit  
James G. Timmer

Biographical materials discussing the backgrounds and experience of these officers and directors are appended as *Exhibit A*. All of the above-listed individuals may be reached at the following address:

8750 North Central Expressway, Suite 2000  
Dallas, Texas 75231  
Telephone (214) 863-8700

**20:10:32:03(3)**: Not applicable. Applicant will operate under the name shown in subdivision 1.

**20:10:32:03(4)(a)**: Applicant does not have an office in the State of South Dakota at this time.

Excel's registered agent in South Dakota is

CT Corporation System  
319 South Coteau Street  
Pierre, SD 57501

**20:10:32:03(4)(b)**: Excel is an indirect wholly-owned subsidiary of Excel Communications, Inc.<sup>3</sup>

**20:10:32:03(4)(c)**: Excel was formed on December 6, 1988 under the laws of Texas. A copy of the Company's Articles of Incorporation is appended as *Exhibit B*.

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<sup>3</sup> Through a series of intervening companies, Excel is an indirect wholly-owned subsidiary of Bell Canada Enterprises ("BCE"). BCE, at the time of this filing, has negotiated to transfer control of the North American Excel companies to VarTec, Inc. ("VarTec"), pursuant to the obtaining of all federal and state regulatory approvals. Notification of this transaction was filed with the Commission on November 9, 2001.

**20:10:32:03(4)(d)**: Excel is authorized to transact business in the State of South Dakota. A copy of the Company's Certificate of Authority is appended as *Exhibit C*.

**20:10:32:03(5)**: *Certification*

As of the date of this Application, Excel is authorized by virtue of certification, registration, or (where appropriate) on an unregulated basis to provide local exchange and/or interexchange telecommunications services in the jurisdictions listed on the chart attached as *Exhibit D*.

In addition to this request for expansion of its authority to operate in South Dakota, Excel is currently seeking authority via pending applications to provide resold and facilities-based local exchange services in the jurisdictions listed on the chart attached as *Exhibit E*.

**20:10:32:03(6)**: *Corporate Structure*

Excel was organized to provide state-of-the-art telecommunications services to customers in the State of South Dakota and throughout the United States. A chart illustrating Excel's corporate structure and identifying the Applicant's parent and affiliates as well as their address(es) is appended as *Exhibit F*.

**20:10:32:03(7)**: *Description of Proposed Services*

Excel intends to operate as a provider of UNE combination-based local exchange telecommunications services in the State of South Dakota and throughout the United States. The Company is committed to provision of a full range of competitive local services to residential consumers.<sup>4</sup> Excel's objective is to provide its customers with a complete solution for their communications needs.

By this Application, Excel seeks authority from the Commission to provide a full range of facilities-based local telecommunications and data services. Excel intends to operate as a competitive local exchange service provider primarily using the UNE platform. Specifically,

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<sup>4</sup> After a time, should economic conditions permit, the Applicant may begin to offer services to business customers as well; however, the Company's primary customer base will be residential consumers.

Excel seeks authority to provide, on a facilities basis, all forms of switched and dedicated telecommunications services, including but not limited to the following local services:

- *“Plain Old Telephone Service”* -- originating and terminating local calls;
- *Access Service* -- originating and terminating traffic between a customer premise and an IXC POP;
- *Private Line*;
- *Data transmission service*; and
- *Internet services*.

**20:10:32:03(8):** *Proposed Service Territory*

Applicant requests authority to provide services in all areas of the State approved by the Commission for provision of competitive local exchange services.

**20:10:32:03(9)(a):** *Qualifications: Technical and Managerial*

As demonstrated herein, Excel is well-qualified managerially and technically to provide the competitive local exchange telecommunications services for which authority is requested in this Application.

The Commission has previously reviewed Excel's managerial and technical expertise and found the Company well-qualified to provide local and interexchange telecommunications services in the State of South Dakota. The Excel management team includes individuals with substantial experience in the successful development and operation of telecommunications businesses. Moreover, the Company is managed by persons with substantial technical expertise in designing, constructing and operating telecommunications networks. This wealth of experience will enable Excel to provide its local exchange customers with advanced, state-of-the-art technology for its telecommunications services as described in this request. Further details regarding the business and operational experience of Excel's officers and management personnel are provided in *Exhibit A*.

**20:10:32:03(9)(b):** *Customer Service*

Excel's customer service representatives will be able to assist customers with billing questions between the hours of 8:00 AM to 5:00 PM, Monday through Friday at (888) 227-7631. 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 other questions about the company and its product offerings.

Excel strives to work with customers to resolve any complaints 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 approved by a Commission supervisor. When an adjustment is made, the customer will see the credit within sixty (60) days of issuance. Alternatively, customers will be able to communicate billing questions or concerns to Excel customer service representatives in writing.

Written inquiries from regulatory agencies and others are handled by the Regulatory Affairs Department. When a written complaint is received, it is promptly reviewed and researched. In some instances, a Regulatory Analyst may contact the customer to obtain 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, Commission 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 ensuring that Excel's customers receive the help they need in the most expeditious and efficient manner possible.

For service and maintenance issues, customers will be able to contact Excel's customer services 24 hours a day, seven (7) days a week, by calling toll-free at (888) 227-7631.



**20:10:32:03(10): *Operational Compliance***

Consistent with this Commission's regulations and related agency requirements, Excel will coordinate with its underlying carrier and appropriate agency officials to ensure that all customers have prompt access to both 911 (or E-911) services and Telecommunications Relay Services. The Company will enable its customers to obtain interexchange services from other toll carriers and to access operator services and directory assistance services from other providers on a non-discriminatory basis.

**20:10:32:03(11): *Financial Strength***

As specifically demonstrated in the financial statements of Excel Communications, Inc., Applicant's parent company, appended as *Exhibit G*, Excel has access to sufficient capital to fund the development and maintenance of its telecommunications operations in South Dakota, and to meet any lease and ownership obligations associated with its provision of local exchange telecommunications services in South Dakota. Excel is privately-held and does not have audited financial statements; however included as well in *Exhibit G* are Applicant's own unaudited statements for year-end 1999 and 2000. 2001 statements for Excel are being finalized and will be submitted as soon as they become available.

**20:10:32:03(12): *Interconnection***

Excel anticipates purchasing UNEs from the incumbent provider, U S West. The Company is undertaking currently the requisite steps to opt into an existing interconnection agreement with U S West and will submit a copy of its agreement, pursuant to the Commission's procedures, once the process is completed.

**20:10:32:03(13): *Tariff***

All of the proposed local exchange services offered by Excel in South Dakota will be provided pursuant to the terms and conditions set forth in Excel's local exchange services tariff. A draft of this tariff is appended as *Exhibit H*. Upon grant of the requested expansion of authority and before providing services in South Dakota, Excel will file a final tariff for its facilities-based local exchange services with the Commission.

**20:10:32:03(14): Not applicable to competitive services.**

**20:10:32:03(15):** *Marketing*

Excel's services are marketed nationwide through a network of Independent Representative ("IRs") who make in-person presentations to potential subscribers. Network marketing, also known as multi-level marketing, is a 50 year-old industry that includes more than 600 companies. Many nationally recognized companies have successfully marketed products in a similar manner, including other large long-distance companies. AT&T, MCI, and Sprint have used network marketing as have Colgate-Palmolive, Rexall, and Gillette.

Excel encourages its IRs to enroll subscribers with whom the IRs have an ongoing relationship, whether as a family member, friend, business associate, neighbor or otherwise. Excel encourages, but does not require, the IRs to use Excel products and services themselves and to communicate their personal experiences with those products and services to the subscribers that they enroll. Excel also expects its IRs to maintain relationships with those subscribers to track their satisfaction with Excel.

In order to promote responsible use of network marketing, the industry has established the Direct Selling Association (DSA). This organization has a code of ethics that ensures responsible conduct. Excel's membership in the organization required a comprehensive application process that took over a year to complete, as well as documented conformance to the organization's high standards. Excel's past CEO and founder, Kenny Troutt, was honored with a seat on the Board of Directors of this organization. Excel's current CEO, Christina Gold now serves on the Board of DSA.

**20:10:32:03(16):** Not applicable. The Company is not requesting authority to operate in the service territory of any rural carrier.

**20:10:32:03(17):** *Certification History*

A list of jurisdictions in which the Company is certified to provide telecommunications services is appended as *Exhibit D*. Excel is in good standing in all jurisdictions where it is registered or certified.

Excel has only had one application to provide local exchange service rejected; however, the Company was able to resolve all issues and subsequently was granted local exchange authority. In August of 1997, the Texas Public Utility Commission ("TXPUC") denied Excel's application to provide resold local exchange services, based in part upon concerns generated by a

single complaint, which was raised at the open meeting of the TXPUC to discuss Excel's local application. This complaint later proved to be false. Nevertheless, the TXPUC directed Excel to show improvement in overall complaint levels. When Excel returned to the TXPUC for certification some months later, the Company was recognized for setting new industry customer safeguard standards with its processes and procedures. The Company has since "upgraded" its resold local certification in Texas to include facilities-based services and has remained in good standing before the TXPUC.

**20:10:32:03(18):** *Contact Information:*

The designated contact for this application is:

Winafred R. Brantl  
KELLEY DRYE & WARREN, LLP  
8000 Towers Crescent Drive, Suite 1200  
Vienna, VA 22182  
Telephone: (703) 918-2315  
Facsimile: (703) 918-2450  
Email: [wbrantl@kelleydrye.com](mailto:wbrantl@kelleydrye.com)

Copies of all correspondence, notices, inquiries and orders should be sent to the following individual, who is Applicant's initial contact person for all regulatory and compliance issues:

Jerry G. Kirby, Tariff Manager - Regulatory Affairs  
Excel Telecommunications, Inc.  
8750 North Central Expressway, Suite 2000  
Dallas, Texas 75231  
Telephone: (214) 863-8720  
Facsimile: (214) 863-8918  
E-mail Address: [jkirby@excel.com](mailto:jkirby@excel.com) or [RegulatoryAffairs@excel.com](mailto:RegulatoryAffairs@excel.com)  
Commission Toll-Free Number: (800) 783-2909

with the exception of consumer issues or customer complaints which should be addressed to:

Joel Ballew, Director, Regulatory Affairs  
Excel Telecommunications, Inc.  
8750 North Central Expressway, Suite 2000  
Dallas, Texas 75231  
Telephone: (214) 863-8700  
Facsimile: (214) 863-8721  
E-mail Address: [jballew@excel.com](mailto:jballew@excel.com) or [RegulatoryAffairs@excel.com](mailto:RegulatoryAffairs@excel.com)  
Commission Toll-Free Number: (800) 783-2909

Those persons specifically in charge of Excel's South Dakota operations are still to be determined; however, in the interim, all questions regarding the Applicant's operations may be addressed to:

Joel Ballew  
Director, Regulatory Affairs  
EXCEL TELECOMMUNICATIONS, INC.  
8750 North Central Expressway, Suite 200  
Dallas, Texas 75231  
Telephone: (214) 863-8700  
Facsimile: (214) 863-8721  
Toll Free: (800) 783-2909

**20:10:32:03(19):** *Billing*

Excel will bill all of its end-user customers directly. Excel does not intend to utilize a billing agent, a "billing clearinghouse" or other outside entity to issue bills to its customers. All invoices sent to end-user customers will bear the company's name and provide a toll-free number for customer inquiries and complaints.

**20:10:32:03(20):** *Customer Solicitation & Anti-Slamming Procedures*

Excel's program for general marketing and solicitation of customers is discussed above. In addition to the Company's proactive steps to ensure that its customers are satisfied with its services and products, however, Excel is firmly committed to taking the steps necessary to avoid unauthorized Primary Interexchange Carrier ("PIC") changes or "slamming." Over the years, several state Commissions and the FCC have noted the extraordinary steps that Excel has implemented to advance the accuracy of the customer provisioning process. In one case, the regulatory agency even characterized Excel's complaint resolution safeguards as effectively setting an industry standard. The Company periodically reviews the FCC and state approved means to effect consumer carrier changes and has been utilizing a nationwide independent third party verification ("TPV") system for the last couple of years. This TPV system allows for verification of all residential primary interexchange carrier ("PIC") changes. Excel will continue to innovate its systems to provide consumers with efficiency, convenience, and accuracy in carrying out the consumer's choice in carrier.

**20:10:32:03(21):** *Carrier Change Issues*

Notwithstanding its best efforts in customer service and satisfaction, and as is the case for many carriers of Excel's size and comparably long history of operations, there have been occasions where the switch to Excel's service was at issue or a billing-related issue arose. On all these occasions, the Company has worked diligently to resolve the matter to the complete satisfaction of both the customer and the relevant regulatory commission. In addition, as discussed above, the Company has taken proactive measures to prevent future occurrences of these issues. A list of relevant regulatory proceedings involving such cases is attached as *Exhibit I*. Notably, all the occasions listed therein either have been resolved, are at the end of a settlement process, or although open, are inactive due to lack of pursuit by the regulatory staff.

**20:10:32:03(23):** The Company's Federal tax identification number is 75-226-4299 .

**STATEMENTS OF COMPLIANCE**

The Applicant agrees to abide by all applicable statutes, orders, rules and regulations entered and adopted by the Commission for competitive local carriers in South Dakota. The Applicant will allow its local exchange customers to obtain interLATA and intraLATA long distance service from other toll carriers as well as local operator services and directory assistance services from other providers on a non-discriminatory basis. Where the Applicant offers a service in a particular exchange, the Applicant will offer that service on a non-discriminatory basis to all customers in that exchange. Excel will provide its local customers with a local calling area that is at least as large in scope as the calling scope of the incumbent local exchange carrier in the relevant area.

As a competitive provider of telecommunications services in South Dakota, Applicant respectfully requests that it be subject to the same streamlined regulatory treatment applicable to other similarly-situated competitive carriers.


**PUBLIC INTEREST CONSIDERATIONS**

Approval of this Application and Excel's proposed tariff will serve the public interest and result in direct benefits to local service customers in South Dakota. First, Excel's provision of the services described above will expand the availability of high quality affordable telecommunications services to South Dakota consumers. Moreover, the Company's proposed operations will increase the demand for and usage of the existing state-of-the-art networks of its underlying carriers as well its own facilities, thereby promoting continued development of advanced telecommunications infrastructure to serve the needs of South Dakota residential consumers. As discussed above, Excel's entry into the facilities-based local exchange services market will focus upon the still underserved residential market in South Dakota. While the majority of new local exchange entrants continue to focus upon the business sector, Excel will concentrate instead upon the market group for whose benefit telecommunications competition was originally intended: residential users.

WHEREFORE, Excel respectfully petitions this Commission for expansion of its Certificate of Public Convenience and Necessity in order to provide competitive facilities-based local exchange telecommunications services in the State of South Dakota, for approval of the Company's proposed local exchange services tariff and for such other relief as the Commission deems necessary and appropriate.

Respectfully submitted,

**EXCEL TELECOMMUNICATIONS, INC.**

By:   
Winifred Brantl  
KELLEY DRYE & WARREN LLP  
8000 Towers Crescent Drive  
Suite 1200  
Vienna, VA 22182  
(703) 918-2315

February 12, 2002

**VERIFICATION**

State of Texas

:            **SS.**

County of Dallas

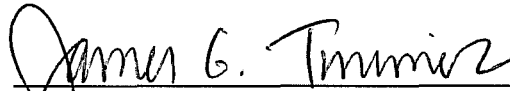
:

**James G. Timmer**, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

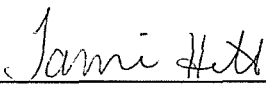
He is the Executive Vice President, Chief Financial Officer of Excel Telecommunications, Inc.;

That he is authorized to and does make this affidavit for Excel Telecommunications, Inc.;

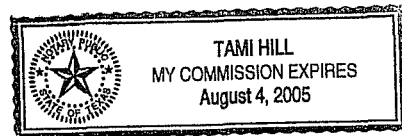
That the facts above set forth are true and correct to the best of his knowledge, information, and belief and that he expects said corporation to be able to prove the same at any hearing hereof.

  
\_\_\_\_\_  
James G. Timmer  
Executive Vice President, Chief Financial Officer  
Excel Telecommunications, Inc.

Sworn and subscribed before me this 25<sup>th</sup> day of January, 2002

  
\_\_\_\_\_  
Signature of official administering oath

My commission expires 8/4/05



# EXHIBIT A

## STATEMENT OF MANAGERIAL AND TECHNICAL QUALIFICATIONS



## BIOGRAPHICAL INFORMATION

**Christina A. Gold, Chairman, President, Chief Executive Officer and Director** - Christina Gold is Chairman, President and CEO of Excel Communications, Inc. — one of the nation's premier direct selling companies offering telecommunications and e-commerce products and services through a nationwide network of Independent Sales Representatives. Previously, Ms. Gold was President and Founder of The Beaconsfield Group, an advisory firm specializing in global direct selling and marketing/distribution strategies. Prior to the establishment of her company, she had a distinguished career at Avon Products, Inc., for 28 years.

While at Avon, Ms. Gold held a number of key positions in executive management, including Executive Vice President — global direct selling development; President and Chief Executive Officer of Avon Canada; and President of Avon North America, where she is credited with the company's turnaround.

In addition to her duties at Excel, Ms. Gold is a member of the Dallas Chamber of Commerce, and of the boards of directors of ITT Industries, Inc., Torstar Corporation and Meredith Corporation; a Trustee and Vice Chairman of the Conference Board, Inc., in New York; and a director of the Conference Board of Canada. She is also a member of the boards of both the Direct Selling Education Foundation and the Direct Selling Association (both in Washington) and the board of the non-profit National Executive Service Corporation; co-chairman of the Aspen Institute — DSG Group; and she serves on the President's Advisory Council of Carleton University in Ottawa, Canada.

In January 1997, she was named one of the "Top 25 Managers of the Year" by *Business Week* magazine and was honored by Birmingham Southern University with the Woman of Distinction Award. Ms. Gold is a graduate of Carleton University, Ottawa.

**Huntley W. Bakich, Senior Vice President, eBusiness** - Huntley W. Bakich leads the strategic implementation of Excel's domestic and International eBusiness products and services, including Internet, intranet and extranet strategy, execution and operations. The eBusiness division creates and supports the online presence and eCommerce capabilities of Excel's vast network of Independent Sales Representatives. In addition to all Internet, extranet and corporate intranet products/services, Mr. Bakich is the principle executive responsible for building and enhancing the Design Marketing functions of the overall business. These functions include Excel's corporate brand strategy and marketing positioning across all of Excel's distribution channels.

Previously, Mr. Bakich was a partner at USWeb/CKS where he was responsible for developing and operating an insurance and asset management division focusing on eCommerce business creation for the newly formed financial services practice division. Prior to USWeb/CKS, he served as Vice President, eCommerce for SunAmerica Financial where he was responsible for the online strategy and overall execution of its Internet functions for over 10,000 financial professionals.

Before SunAmerica, Mr. Bakich is credited with the original creation, implementation and managing of Strong Capital Management's direct Internet sales channel. While at Strong Funds, he delivered one of the first Internet mutual fund transaction websites and eCare centers in the industry. Strong's website has since won over 20 design, customer and industry awards.

Mr. Bakich received his bachelor's degree in government relations and computer applications from the University of Notre Dame.

**Mike Roudi, Senior Vice President — North American Product Marketing** - Mike Roudi is Senior Vice President — North American Product Marketing. Previously, he held the position of Vice President — US Product Marketing. Mr. Roudi is responsible for the development, management and marketing of Excel's long distance, "dial-around", wireless and paging product lines for the North American marketplace. Additionally, Mr. Roudi has responsibility for the sales and marketing business planning process for North America.

Prior to joining Excel, Mr. Roudi spent 13 years at AT&T in product management, consumer marketing and marketing operations.

Mr. Roudi was born and raised in New Jersey where he earned a bachelor's degree in marketing from Caldwell College.

**William G. Smit, Senior Vice President, Network and Director** - Bill Smit is Senior Vice President, Network for Excel where he is responsible for Network Operations including the Network Monitoring and Reporting Centers and the Network Trouble Resolution Center. He is also responsible for Field Operations, which includes Switch Site Operations, Network Engineering, Switch Databases and the Corporate Voice functions.

Previously, Mr. Smit managed the Field Operations organization for Telco Network Services, Inc, which was acquired by Excel in October 1997. Prior to joining Excel he held Network Operations and Engineering positions at IBM Global Network, Advantis, Sears Corporate Communications and AT&T.

**Laura Collins, Senior Vice President of US Sales and North American Representative Services** - Laura Collins is Senior Vice President of US Sales and North American Representative Services. Previously, she held the position of Excel Vice President — Sales.

Ms. Collins possesses more than 12 years of senior management experience, five of which have been spent in the network marketing industry. She brings experience from her previous posts as a Training Manager with J. Crew, Operations and Training Manager with Disney Direct Marketing Services and Regional Vice President Sales and Director of Customer and Consultant Services for Princess House. Ms. Collins is a native of Lynchburg, Virginia and attended Liberty University where she studied Communications.

**James R. McFelea, Senior Vice President, Customer Service** - James R. McFelea is Senior Vice President, Customer Service at Excel. He is responsible for customer care and order fulfillment functions at the company.

Prior to joining Excel, Mr. McFelea held a variety of positions with AT&T in local services, long distance and operations, spanning a career of 30 years.

Mr. McFelea received a B.S. in Business Administration from Indiana University.

**James Timmer, Chief Financial Officer** - Jim Timmer joined Excel in July 2000 as Executive Vice President and Chief Financial Officer. Previously, he was Vice President Finance and Planning for GTE. Mr. Timmer holds a BA in Accounting from LORAS College and an MBA from Drake University.

**Christopher P. Kelly, General Counsel** - Since joining Excel in April 1996, Chris Kelly successfully managed the Company's litigation in a wide variety of fields. He also wrote the first associate handbook and current employment application, oversaw the filing of the Company's first patent application, and handled legal issues with key third party vendors.

Mr. Kelly holds a B.S. in Physics from Manhattan College and a J.D. from the University of Virginia. He is a member of Phi Beta Kappa and has been admitted to practice law in New York and Texas. He is currently President of the Dallas-Ft. Worth ACCA (American Corporate Counsel Association), State Bar of Texas, Texas General Counsel Forum, AIPLA, and numerous other committees.

**Michael T. Boychuk, Executive Vice President and Chief Financial Officer** - Mr. Boychuk joined the Company as Treasurer in November 2000. Mr. Boychuk has also been Corporate Treasurer of BCE and Bell Canada since November 1999. From September 1997 to November 1999, Mr. Boychuk was President and Chief Executive Officer of BCE Capital Inc. Prior to joining BCE, Mr. Boychuk was Co-founder, Principal and Chief Operating Officer of Manitex Capital Inc.

**David G. Masse, Assistant Corporate Secretary** - Mr. Masse joined the Company as Assistant Corporate Secretary in November 2000. He has also been Assistant Corporate Secretary of BCE and Bell Canada since June 1997. Prior to joining BCE, Mr. Masse was a partner with the law firm of Chait Amyot. Mr. Masse earned his law degrees from McGill University and is a member of the Quebec Bar.

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With such vast technical experience contributed by the members of its management team, in addition to the outstanding team of engineers and network specialists it employs, Excel has the adequate technical experience and managerial capability to develop and maintain a successful local exchange operation in this state.

**EXHIBIT B**

**ARTICLES OF INCORPORATION**



# The State of Texas

SECRETARY OF STATE

CERTIFICATE OF AMENDMENT  
OF

EXCEL TELECOMMUNICATIONS, INC.  
CHARTER NO. 1096708-0

The undersigned, as Secretary of State of Texas, hereby certifies that the attached Articles of Amendment for the above named entity have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law, hereby issues this Certificate of Amendment.

Dated: December 28, 1995

Effective: December 28, 1995



*Antonio O. Garza, Jr.*

Antonio O. Garza, Jr.  
Secretary of State

pac

ARTICLES OF AMENDMENT  
TO THE ARTICLES OF INCORPORATION  
OF  
EXCEL TELECOMMUNICATIONS, INC.  
(the "Corporation")

FILED  
In the Office of the  
Secretary of State of Texas

DEC 28 1995

Corporations Section

Pursuant to the provisions of Article 4.04 of the Texas Business Corporation Act, the Corporation adopts the following Articles of Amendment to its Articles of Incorporation.

ARTICLE ONE

The name of the Corporation is Excel Telecommunications, Inc.

ARTICLE TWO

The following amendment to the Articles of Incorporation was adopted by the shareholders of the Corporation on December 28, 1995, so as to amend the capitalization of the Corporation set forth in Article Four. Article Four of the Articles of Incorporation is hereby amended to read in its entirety as follows:

A. The aggregate number of shares that the Corporation shall have authority to issue is One Million Two Hundred Thousand (1,200,000) shares. Such shares shall be issued in two (2) classes of stock to be designated "Common Stock" and "Preferred Stock." The number of shares of Common Stock authorized is Two Hundred Thousand (200,000) shares having no par value per share. The number of shares of Preferred Stock authorized is One Million (1,000,000) shares having no par value per share.

B. The Preferred Stock may be issued from time to time in one (1) or more series. The Board of Directors is hereby authorized, by filing a statement pursuant to Article 2.13 of the Texas Business Corporation Act, to fix or alter from time to time the designations, preferences, limitations and relative rights of the shares of each such series, including, without limitation, the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and the liquidation preferences of any wholly unissued series of Preferred Stock, and to establish from time to time the number of shares constituting any such series and the designation thereof, or any of them (a "Preferred Stock Designation"); and to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.



ARTICLE THREE

The number of shares of the Corporation outstanding at the time of such adoption was 99,000, and the number of shares entitled to vote thereon was 99,000.

ARTICLE FOUR

The number of shares voted for such amendment was 74,180; the number of shares voted against such amendment was 0. The holders of at least a majority of the shares of Common Stock outstanding and entitled to vote on the amendments set forth above have signed a consent in writing pursuant to Article 9.10 adopting such amendments as set forth below and any written notice required by Article 9.10 has been given to all shareholders who did not consent in writing.

ARTICLE FIVE

The amendment does not involve any exchange, reclassification or cancellation of issued shares of the Corporation.

ARTICLE SIX

The amendment does not effect a change in the amount of stated capital of the Corporation.

Dated: December 28, 1995

EXCEL TELECOMMUNICATIONS, INC.  
A Texas Corporation

By: Kenny A. Troutt  
Name: Kenny A. Troutt  
Title: President

STATEMENT OF CANCELLATION OF TREASURY SHARES

In the Office of the Secretary of State of Texas

DEC 28 1995

Pursuant to the provisions of Article 4.11 of the Texas Business Corporation Act, the undersigned corporation submits the following statement of cancellation by resolution of its Board of Directors of shares of the corporation reacquired by it:

1. The name of the corporation is Excel Telecommunications, Inc. (the "Corporation").
2. A resolution was duly adopted by the Board of Directors of the Corporation on December 28, 1995, authorizing the cancellation of One Thousand (1,000) treasury shares, itemized as follows:

Class	Series	Number of Shares
Common Stock	n/a	1,000

3. The amount of stated capital represented by the shares to be cancelled is Twelve Thousand Nine Hundred Fifty Dollars (\$12,950).
4. The aggregate number of issued shares, itemized by classes and series and par value, if any, after giving effect to such cancellation is itemized as follows:

Class	Series	Par Value	Number of Shares
Common	n/a	no par	99,000

5. The amount of the stated capital of the corporation after giving effect to such cancellation is Two Hundred Fifty Seven Thousand Four Hundred Seventy Three Dollars (\$257,473).

Dated: December 28 1995

EXCEL TELECOMMUNICATIONS, INC.  
A Texas Corporation

By: Kenny A. Troutt  
Name: Kenny A. Troutt  
Title: President



# The State of Texas

## SECRETARY OF STATE CERTIFICATE OF MERGER

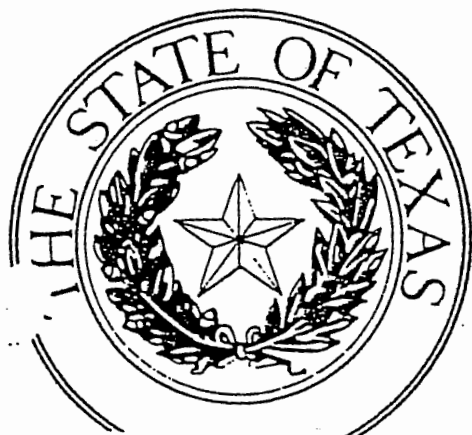
The undersigned, as Secretary of State of Texas, hereby certifies that the attached Articles of Merger of

EXCEL MERGER SUBSIDIARY, INC. (a Delaware no permit)  
with  
EXCEL TELECOMMUNICATIONS, INC.

have been received in this office and are found to conform to law. ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law, hereby issues this Certificate of Merger.

Dated December 28, 1995.

Effective January 1, 1996 12:01 AM



1077.

Antonio O. Garza, Jr.

FILED  
 In the Office of the  
 Secretary of State of Texas  
 DEC 28 1995  
 Corporations Section

**ARTICLES OF MERGER**

Pursuant to the provisions of Article 5.04 of the Texas Business Corporation Act (the "TBCA"), Excel Telecommunications, Inc., a Texas corporation ("Surviving Corporation"), and Excel Merger Subsidiary, Inc., a Delaware corporation (the "Merged Corporation"), submit the following Articles of Merger for the purpose of effecting a merger (the "Merger") in accordance with the provisions of Article 5.01 of the TBCA:

1. An Agreement and Plan of Merger (the "Plan of Merger"), adopted in accordance with the provisions of Article 5.03 of the TBCA, pursuant to which the Merged Corporation will be merged with and into the Surviving Corporation, was duly authorized by all action required by the TBCA and the articles or certificate of incorporation of such corporations, a copy of which is attached to these Articles of Merger and made a part hereof.

2. The names of the undersigned corporations and the laws of the State under which such corporations were formed are:

<u>Name of Corporation</u>	<u>State</u>
Excel Telecommunications, Inc.	Texas
Excel Merger Subsidiary, Inc.	Delaware

3. As to the Surviving Corporation and the Merged Corporation, the number of shares outstanding are as follows:

- (a) Surviving Corporation: 99,000 shares of common stock, no par value per share.
- (b) Merged Corporation: 1,000 shares of common stock, par value \$.001 per share.

4. As to the Surviving Corporation and the Merged Corporation, the numbers of shares voted for and against such Plan of Merger by the shareholders and stockholders, as applicable, of such corporations are, respectively, as follows:

- (a) Surviving Corporation:
  - (i) TOTAL VOTED FOR: 74,180 shares
  - (ii) TOTAL VOTED AGAINST: 0 shares
- (b) Merged Corporation:
  - (i) TOTAL VOTED FOR: 1,000 shares
  - (ii) TOTAL VOTED AGAINST: 0 shares

(c) The holders of at least two-thirds of the shares of Common Stock of the Surviving Corporation have signed a consent in writing pursuant to Article 9.10 adopting the Plan of Merger and any written notice required by Article 9.10 has been given to all shareholders of the Surviving Corporation who did not consent in writing.

5. The Plan of Merger and the performance of its terms were duly authorized by all action required by the laws under which each foreign corporation or other entity that is a party to the Plan of Merger was incorporated or organized and by its constituent documents.

6. The effective date and time of the Merger shall be January 1, 1996, at 12:01 a.m., Central Standard Time.

Executed December 28, 1995.

EXCEL TELECOMMUNICATIONS, INC.  
a Texas corporation

By: Kenny A. Troutt  
Name: Kenny A. Troutt  
Title: President

EXCEL MERGER SUBSIDIARY, INC.  
a Delaware corporation

By: Kenny A. Troutt  
Name: Kenny A. Troutt  
Title: President

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Plan of Merger"), to be effective as of the Effective Time (as defined in Section 1.2), is executed by Excel Merger Subsidiary, Inc., a Delaware corporation ("Merged Corporation"), Excel Telecommunications, Inc., a Texas corporation ("Surviving Corporation"), and Excel Telecommunications Holdings, Inc., a Delaware corporation ("Parent Corporation").

### RECITALS:

The respective Boards of Directors of Merged Corporation, Surviving Corporation and Parent Corporation have adopted resolutions in accordance with the Texas Business Corporation Act ("TBCA") and the Delaware General Corporation Law ("DGCL"), as applicable, approving this Plan of Merger, recommending its approval by the respective shareholders or stockholders of each entity and directing that this Plan of Merger be submitted to the respective shareholders or stockholders of each entity for approval.

NOW, THEREFORE, in consideration of the promises and the mutual agreements, covenants and provisions herein contained, the parties hereto agree as follows:

### ARTICLE I

#### The Mergers

1.1 The Merger. At the Effective Time and in accordance with the TBCA and the DGCL, the Merged Corporation shall be merged with and into the Surviving Corporation, the separate existence of the Merged Corporation shall cease, and the Surviving Corporation, as the surviving corporation of such merger (the "Merger"), shall continue to exist by virtue of and shall be governed by the laws of the State of Texas.

1.2 Effective Time of Merger. Articles of Merger setting forth the information required by, and otherwise in compliance with, the TBCA shall be filed with the Secretary of State of the State of Texas and a Certificate of Merger setting forth the information required by, and otherwise in compliance with, the DGCL shall be filed with the Secretary of State of the State of Delaware and the merger of the Merged Corporation with and into the Surviving Corporation shall become effective at 12:01 a.m. Central Time January 1, 1996 (the time of such effectiveness is herein called the "Effective Time").

1.3 Effect of Merger. The Merger shall have the effects set forth in Article 5.06 of the TBCA, Section 259 of the DGCL and of the other relevant provisions of the TBCA and the DGCL.

1.4 Articles of Incorporation. The Articles of Incorporation of the Surviving Corporation as in effect at the Effective Time shall be the Articles of Incorporation of Surviving

Corporation. No changes are to be effected to the Articles of Incorporation of the Surviving Corporation as a result of the Merger.

1.5 Bylaws. The Bylaws of the Surviving Corporation as in effect at the Effective Time shall be the Bylaws of the Surviving Corporation. No changes are to be effected to the Bylaws of the Surviving Corporation as a result of the Merger.

1.6 Officers. The officers of the Surviving Corporation who are serving as such at the Effective Time shall be the officers of the Surviving Corporation from and after the Effective Time, each such individual to serve until his or her successor has been duly elected or appointed and qualified or until his or her earlier death, resignation or removal in accordance with law, the Surviving Corporation's Articles of Incorporation and its Bylaws.

1.7 Directors. The directors of the Surviving Corporation who are serving as such immediately prior to the Effective Time shall be the directors of the Surviving Corporation from and after the Effective Time, each such individual to serve until his or her successor has been duly elected or appointed and qualified or until his or her earlier death, resignation or removal.

1.8 Further Assurances. If at any time the Surviving Corporation, or its successors or assigns, shall consider or be advised that any further assignments or assurances in law or any other acts are necessary or desirable to (a) vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its rights, title or interest in, to or under any of the rights, properties or assets of the Merged Corporation acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger, or (b) otherwise carry out the purposes of this Plan of Merger, the Merged Corporation and its proper officers and directors shall be deemed to have granted to the Surviving Corporation an irrevocable power of attorney to execute and deliver all such proper deeds, assignments and assurances in law and to do all acts necessary or proper to vest, perfect or confirm title to and possession of such rights, properties or assets in the Surviving Corporation and otherwise to carry out the purposes of this Plan of Merger; and the proper officers and directors of the Surviving Corporation are fully authorized in the name of the Merged Corporation or otherwise to take any and all such action.

1.9 Amendment. Notwithstanding shareholder or stockholder approval of this Plan of Merger, this Plan of Merger may be amended, modified or supplemented by resolution of the boards of directors of the Merged Corporation and the Surviving Corporation, at any time on or before filing of Articles of Merger or a Certificate of Merger embodying the Plan of Merger with the Secretary of State of the State of Texas or the Secretary of State of Delaware, if permitted by the TBCA and the DGCL.

1.10 Successor to Rights and Liabilities. At the Effective Time, the separate existence of the Merged Corporation shall cease, and the Surviving Corporation shall succeed without other transfer to all the rights and property of the Merged Corporation and shall be subject to all the

debts and liabilities of the Merged Corporation in the same manner as if the Surviving Corporation had itself incurred them.

## ARTICLE II

### Conversion of Shares in the Merger and Other Matters

#### 2.1 Conversion.

(a) Except as otherwise provided in Section 2.1(b) and except for shares with respect to which the holder thereof ("Dissenter") ultimately receives payment pursuant to Articles 5.11 through 5.13 of the TBCA ("Dissenters' Securities"), each share of issued and outstanding shares of the no par value per share common stock of the Surviving Corporation ("Excel Common Stock") immediately prior to the Effective Time shall be converted into 1,000 shares ("Merger Consideration") of the Parent Corporation's \$.001 par value per share Common Stock (the "Parent Common Stock") and in connection therewith such shares of the Excel Common Stock shall be cancelled and restored to the status of authorized but unissued shares.

(b) Upon the conversion of the Excel Common Stock provided for in Section 2.1(a), each share of capital stock of the Merged Corporation outstanding immediately prior to the Effective Time shall be converted into one share of Excel Common Stock.

(c) The Parent Common Stock held by the Surviving Corporation immediately prior to the Effective Time shall be cancelled and retired and thereafter such shares of the Parent Common Stock shall be restored to the status of authorized but unissued shares.

2.2 Dissenters. If after the Effective Time a Dissenter loses the right to receive payment pursuant to Articles 5.11 through 5.13 of the TBCA, the Dissenter's Securities held by such Dissenter shall be treated as if they had been converted as of the Effective Time into the Merger Consideration.

#### 2.3 Surrender and Payment.

(a) Each holder of the Excel Common Stock that shall have been converted into the Merger Consideration, upon surrender to the Parent Corporation of a certificate or certificates formerly representing such shares of Excel Common Stock, will be entitled to receive the stock certificates of the Parent Corporation representing the Merger Consideration issuable in respect of such shares of Excel Common Stock. Until so surrendered, each such certificate shall, after the Effective Time, represent for all purposes, the appropriate Merger Consideration. In no event will a holder of shares of Excel Common Stock be entitled to interest on the Merger Consideration issuable in respect of such Parent Corporation.



(b) After the Effective Time, there shall be no further registration of transfers of shares of Excel Common Stock held prior to the Effective Time except as may be permitted by Articles 5.11 through 5.13 of the TBCA. If, after the Effective Time, certificates formerly representing Excel Common Stock are presented to the Surviving Corporation, they shall be canceled and exchanged for the consideration provided for, and in accordance with the procedures set forth, in this Article II.

2.4 Options. At the Effective Time, the Parent Corporation shall hereby assume the Surviving Corporation's rights and obligations under the 1995 Stock Option Plan of Surviving Corporation and under each option agreement issued pursuant thereto of which options for 5,041.575 shares of Excel Common Stock have been granted (the "Options"). Pursuant to this assumption and without further action on the part of the Parent Corporation or the Surviving Corporation, Parent Corporation hereby agrees that, after the Effective Time, upon exercise of such Options, the holders thereof will be entitled to receive 1,000 shares of Parent Corporation Common Stock for each share of Excel Common Stock with an exercise price equal to 1/1000th of the exercise price originally set forth in the option agreements for each share of Excel Common Stock, subject to further adjustments as set forth in such agreements for subsequent events.

### ARTICLE III

#### Miscellaneous

3.1 Counterparts. This Plan of Merger may be executed in any number of counterparts, each of which shall be deemed an original, but all of which collectively shall constitute one and the same instrument. Each such multiple counterpart of this Plan of Merger may be transmitted via facsimile or other similar electronic means and executed by one or more of the undersigned, and a facsimile of the signature of one or more of the undersigned shall be deemed an original signature for all purposes and have the same force and effect as a manually-signed original.

3.2 Governing Law. This Plan of Merger shall be governed by, and construed in accordance with, the laws of the State of Texas, except to the extent that the DGCL applies by its terms.

3.3 Section Headings. The section headings contained in this Plan of Merger are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Plan of Merger.

3.4 Termination. This Plan of Merger may be terminated at any time before the Effective Time by appropriate resolution of the Board of Directors of the Surviving Corporation for any reason which it deems appropriate.

3.5 Amendment. To the extent permitted by law, this Plan of Merger may be amended or supplemented (a) at any time before the Effective Time, by action taken by the Boards of Directors of Surviving Corporation, Merged Corporation and Parent Corporation and (b) at any time after the Effective Time, by action taken by the Board of Directors of Parent Corporation.

IN WITNESS WHEREOF, the parties hereto have executed this Plan of Merger on the date or dates indicated below, to be effective as of the date first set forth above.

EXCEL TELECOMMUNICATIONS, INC.

By: Kenny A. Troutt  
Its: President

EXCEL MERGER SUBSIDIARY, INC.

By: Kenny A. Troutt  
Its: President

EXCEL TELECOMMUNICATIONS HOLDINGS, INC.

By: Kenny A. Troutt  
Its: President

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The State of Texas  
Secretary of State

DEC. 6, 1988

DAVID L. SHERWOOD  
600 NORTH DALLAS BANK TOWER 12900 PRESTON RD  
DALLAS, TX 75230

RE:  
EXCEL TELECOMMUNICATIONS, INC.  
CHARTER NUMBER 01096703-00

IT HAS BEEN OUR PLEASURE TO APPROVE AND PLACE ON RECORD THE ARTICLES OF INCORPORATION THAT CREATED YOUR CORPORATION. WE EXTEND OUR BEST WISHES FOR SUCCESS IN YOUR NEW VENTURE.

AS A CORPORATION, YOU ARE SUBJECT TO STATE TAX LAWS. SOME NON-PROFIT CORPORATIONS ARE EXEMPT FROM THE PAYMENT OF FRANCHISE TAXES AND MAY ALSO BE EXEMPT FROM THE PAYMENT OF SALES AND USE TAX ON THE PURCHASE OF TAXABLE ITEMS. IF YOU FEEL THAT UNDER THE LAW YOUR CORPORATION IS ENTITLED TO BE EXEMPT YOU MUST APPLY TO THE COMPTROLLER OF PUBLIC ACCOUNTS FOR THE EXEMPTION. THE SECRETARY OF STATE CANNOT MAKE SUCH DETERMINATION FOR YOUR CORPORATION.

IF WE CAN BE OF FURTHER SERVICE AT ANY TIME, PLEASE LET US KNOW.



VERY TRULY YOURS,

*Carl M. Beins*

Secretary of State

ARTICLES OF INCORPORATION  
OF  
EXCEL TELECOMMUNICATIONS, INC.

FILED  
In the Office of the  
Secretary of State of Texas

DEC 06 1988

Clerk I-B  
Corporations Section

Article I

The name of the corporation is EXCEL TELECOMMUNICATIONS, INC.

Article II

The period of its duration is perpetual.

Article III

The purpose for which the corporation is organized is the transaction of any or all lawful business for which corporations may be incorporated under the Texas Business Corporation Act.

Article IV

The aggregate number of shares which the corporation shall have authority to issue is one hundred thousand (100,000) shares of no par value.

Article V

The corporation will not commence business until it has received for the issuance of shares consideration of the value of One Thousand Dollars (\$1,000.00) consisting of money, labor done, or property actually received.

Article VI

The street address of its initial registered office is 12202 Pleasant Valley Drive, Dallas, Texas 75243, and the name of its initial registered agent at such address is Kenny A. Troutt.

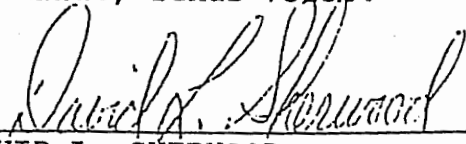
Article VII

Kenny A. Troutt shall constitute the initial sole director of the Board of Directors, and he shall serve as director until the first annual meeting of the shareholders, or until his successor shall be elected and qualify. The address of said director is:

Kenny A. Troutt                      12202 Pleasant Valley Drive  
Dallas, Texas 75243

Article VIII

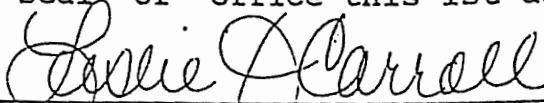
The name and address of the incorporator is David L. Sherwood, Post Office Box 670035, Dallas, Texas 75230.

  
\_\_\_\_\_  
DAVID L. SHERWOOD

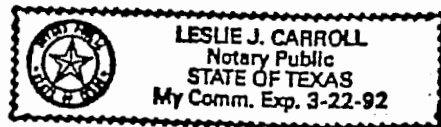
STATE OF TEXAS    )  
                          : ss.  
COUNTY OF DALLAS)

BEFORE ME, the undersigned Notary Public, on this day personally appeared DAVID L. SHERWOOD, known to me to be the person whose name is subscribed to the foregoing document, and being by me first duly sworn, declared that the statements therein contained are true and correct.

GIVEN under my hand and seal of office this 1st day of December, 1988.

  
\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

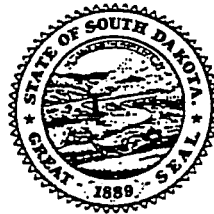
My commission expires:  
3/22/92



**EXHIBIT C**

**CERTIFICATE OF AUTHORITY**

# State of South Dakota

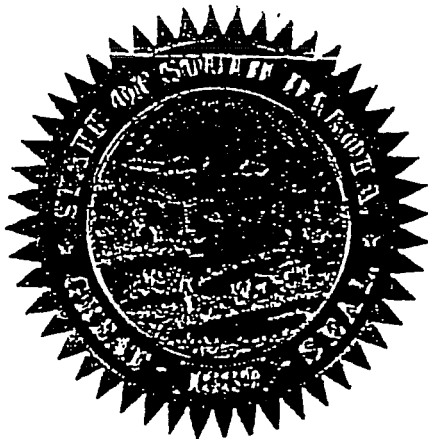


## OFFICE OF THE SECRETARY OF STATE

### CERTIFICATE OF AUTHORITY

I, JOYCE HAZELTINE, Secretary of State of the State of South Dakota, hereby certify that the Application for a Certificate of Authority of EXCEL TELECOMMUNICATIONS, INC. (TX) to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Corporation Acts, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Authority and attach hereto a duplicate of the application to transact business in this state under the name of EXCEL TELECOMMUNICATIONS, INC.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this February 23, 1996.

JOYCE HAZELTINE  
Secretary of State

**EXHIBIT D**

**CURRENT TELECOMMUNICATIONS AUTHORITY**



**Excel Telecommunications, Inc.**  
**Current Authority**

(as of December 27, 2001)

Federal

Section 214 authority: File No. ITC-93-145

Interexchange

All fifty states

Local Exchange

Connecticut (Resale only)	North Carolina (CLP)
Florida (ALEC)	North Dakota (Resale only)
Illinois (Resale only)	Ohio (Resale only)
Indiana (Resale only)	Oklahoma
Kansas (Resale only)	Oregon (Resale only)
Kentucky (Resale only)	Rhode Island (CSR)
Louisiana	South Dakota (Resale only)
Maryland (Resale only)	Tennessee (Resale only)
Massachusetts	Texas
Michigan	Utah (Resale only)
Minnesota (Resale only)	Vermont
Mississippi (Resale only)	Virginia (Resale only)
Missouri	Washington (Resale only)
Montana (Resale only)	West Virginia (Resale only)
Nebraska (Resale only)	Wisconsin (Resale only)
Nevada (Basic)	Wyoming (Resale only)

Unless otherwise indicated (ie., Resale only), Excel has full local exchange authority.

**EXHIBIT E**

**PENDING TELECOMMUNICATIONS APPLICATIONS**

**Excel Telecommunications, Inc.**  
**Pending Applications**

(as of December 27, 2001)

Excel has an application pending for resold local exchange authority in Arizona. This application will be amended to include a request for facilities-based authority.

Applications for resold and facilities-based authority are currently being prepared for filing in the following states:

Alabama	Idaho
Alaska	Iowa
Arkansas	Maine
California	New Hampshire
Colorado	New Jersey
Delaware	New Mexico
District of Columbia	New York
Georgia	Pennsylvania
Hawaii	South Carolina

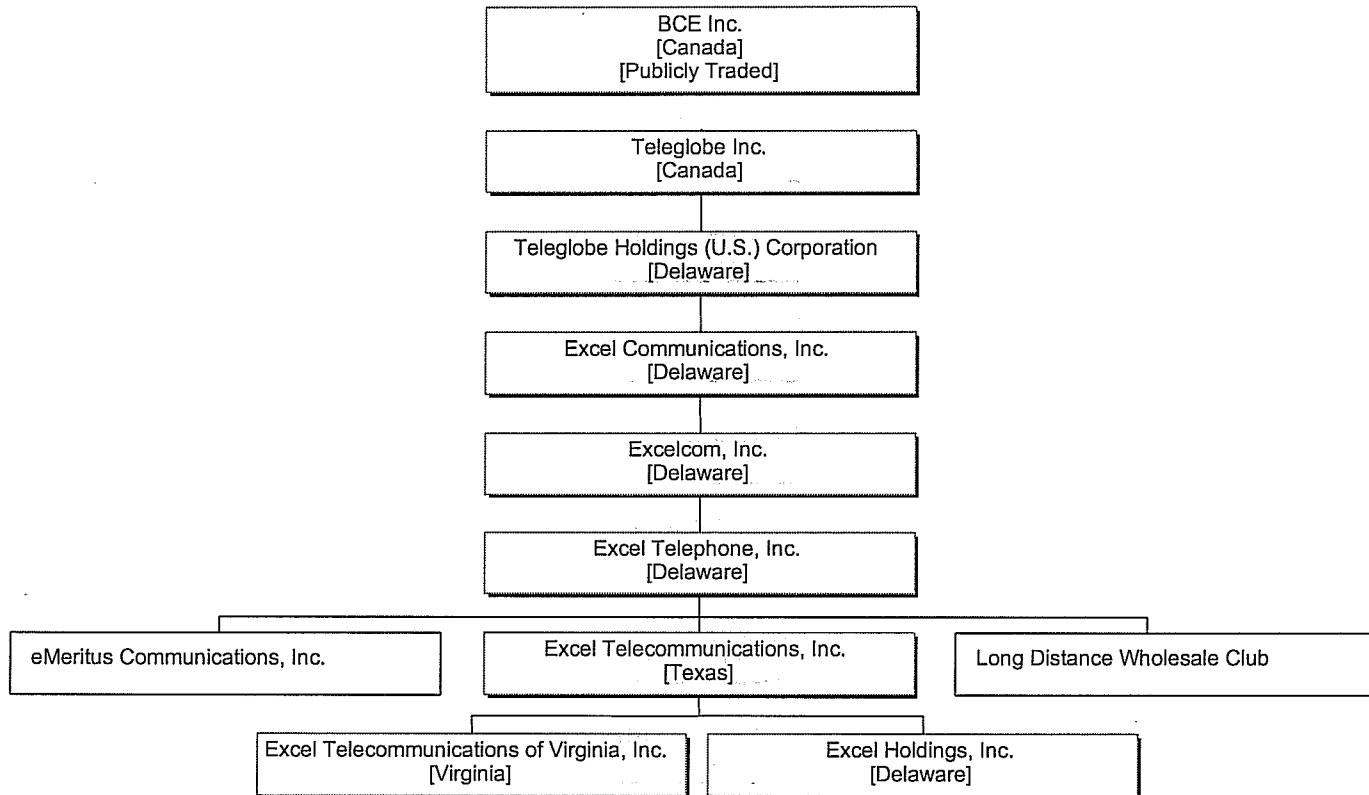
Applications to expand existing resold local exchange authority to include facilities-based authority are currently being prepared for filing in the following states:

Connecticut	Ohio (tariff filing)
Illinois	Oregon
Indiana	Rhode Island (Class 1 CLEC upgrade)
Kansas	South Dakota
Kentucky (tariff filing)	Tennessee
Maryland	Utah
Minnesota	Virginia
Mississippi	Washington (tariff filing)
Montana	West Virginia
Nebraska	Wisconsin
North Dakota	Wyoming

# **EXHIBIT F**

## **CORPORATE ORGANIZATIONAL CHART**

CORPORATE STRUCTURE OF  
EXCEL TELECOMMUNICATIONS, INC. (APPLICANT)  
AS OF NOVEMBER 30, 2001



Excel Communications, Inc. and its subsidiaries may be contacted at:

8750 North Central Expressway, Suite 2000  
Dallas, TX 75231

# EXHIBIT G

## FINANCIAL STATEMENTS



# Total Excel Balance Sheet

(\$ in thousands)

	December 31, 1999 <i>(unaudited)</i>	December 31, 2000 <i>(unaudited)</i>	November 30, 2001 <i>(unaudited)</i>
<b>ASSETS</b>			
<b>Current Assets:</b>			
Cash and cash equivalents	\$ (22,271)	\$ 2,251	\$ (1,443)
Accounts receivable, net	226,767	126,325	111,663
Income taxes receivable	49,395	7,106	12,962
Inventories	1,538	4,367	2,031
Deferred income tax asset	41,680	43,497	54,498
Other current assets	13,810	11,836	7,527
<b>Total Current Assets</b>	<b>310,919</b>	<b>195,382</b>	<b>187,238</b>
Property and equipment, net	502,335	515,424	459,676
Goodwill, net	851,281	850,813	-
Other assets	37,075	47,404	44,901
<b>Total Assets</b>	<b>\$ 1,701,610</b>	<b>\$ 1,609,023</b>	<b>\$ 691,815</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>			
<b>Current Liabilities:</b>			
Accounts payable	\$ 51,528	\$ 58,437	\$ 34,481
Commissions payable	11,030	12,997	6,098
Intercompany Payable	57,670	85,858	39,439
Intercompany interest payable	737	68,817	-
Accrued liabilities	115,910	87,470	57,660
Deferred revenue and other	5,300	375	2,767
Current portion of long-term debt	793	3,642	1,706
<b>Total Current Liabilities</b>	<b>\$ 242,968</b>	<b>\$ 317,596</b>	<b>\$ 142,151</b>
Intercompany long-term debt	620,000	620,000	-
Capital lease obligations	787	8,419	7,557
Deferred income taxes payable	42,226	(37,529)	(53,702)
<b>STOCKHOLDERS' EQUITY:</b>			
Paid-in capital	555,607	581,093	1,452,258
Unrealized gain (loss) on translation	263	427	(677)
Retained earnings	239,759	119,017	(855,772)
<b>Total Stockholders' Equity</b>	<b>795,629</b>	<b>700,537</b>	<b>595,809</b>
	<b>\$ 1,701,610</b>	<b>\$ 1,609,023</b>	<b>\$ 691,815</b>



# Total Excel Operating Income Statement

	For the Twelve Months Ended December 31, 1999 <i>(unaudited)</i>	For the Twelve Months Ended December 31, 2000 <i>(unaudited)</i>	For the Eleven Months Ended November 30, 2001 <i>(unaudited)</i>
(\$ in thousands)			
Communication Services	\$ 1,366,600	\$ 863,395	\$ 694,622
Intercompany Services	57,592	86,936	32,249
Marketing Services	60,758	40,106	27,753
<b>Total Revenues</b>	<b>1,484,950</b>	<b>990,437</b>	<b>754,624</b>
Communication Services COS	652,772	468,546	322,898
Intercompany COS	57,592	92,436	31,756
Marketing Services COS	17,613	20,896	20,096
<b>Total Cost of Sales</b>	<b>727,977</b>	<b>581,878</b>	<b>374,750</b>
Communication Margin	713,828	394,849	371,724
Intercompany Margin	-	(5,500)	493
Marketing Margin	43,145	19,210	7,657
<b>Total Margin</b>	<b>756,973</b>	<b>408,559</b>	<b>379,874</b>
Selling	189,295	122,834	95,755
Other Marketing	43,669	13,439	7,474
Customer Support	212,586	160,469	130,914
Department G&A	184,128	166,869	123,287
<b>EBITDA</b>	<b>127,295</b>	<b>(55,052)</b>	<b>22,444</b>
Depreciation/Amortization	67,795	98,115	78,288
<b>Operating Income</b>	<b>59,500</b>	<b>(153,167)</b>	<b>(55,844)</b>

**NOTE:** This financial statement may not include subsequent accounting entries and adjustments which have been made, pursuant to auditing reviews, in order to more accurately reflect attribution of income and expenses among the years shown, as well as certain other post-audit adjustments which appropriately fall below the operating income line.



**Excel Telecommunications, Inc.**  
**Balance Sheet**  
Amounts in Thousands

	As of December 31, 1999	As of December 31, 2000
<b>ASSETS</b>		
<i>Current Assets</i>		
Cash and cash equivalents	\$ -	\$ 4,747
Accounts receivable, net of allowance for bad debts of \$20,259 at December 31, 1999 and \$29,731 at December 31, 2000	149,384	107,138
Inventories, net	301	1,086
Other current assets	7,779	3,764
Total current assets	<u>\$ 157,464</u>	<u>\$ 116,735</u>
Investments	376	376
Property and equipment, net	14,554	45,828
Intangible Assets	-	-
Other assets	14	737
Total assets	<u>\$ 172,408</u>	<u>\$ 163,676</u>
<b>LIABILITIES AND STOCKHOLDERS EQUITY</b>		
<i>Current Liabilities</i>		
Accounts payable	\$ 26,258	\$ -
Current maturities of debt obligations	-	-
Other current liabilities	(30,860)	30,902
Total current liabilities	<u>\$ (4,602)</u>	<u>\$ 30,902</u>
Long term debt	-	-
Other liabilities	69	305,909
Total Liabilities	<u>\$ (4,533)</u>	<u>\$ 336,811</u>
<i>Stockholders' equity</i>		
Common stock	\$ -	\$ -
Additional paid-in capital	(8,886)	(8,886)
Retained earnings	185,827	(164,250)
Total stockholders' equity	<u>\$ 176,941</u>	<u>\$ (173,136)</u>
Total Liabilities and Stockholders' Equity	<u>\$ 172,408</u>	<u>\$ 163,676</u>

**Excel Telecommunications, Inc.**  
**Income Statement**  
Amounts in Thousands

	For the Year Ended December 31, 1999	For the Year Ended December 31, 2000
<b>REVENUE</b>		
Communication Services	\$ 963,457	\$ 709,879
Marketing Services	-	3,081
Total Revenue	<u>\$ 963,457</u>	<u>\$ 712,959</u>
<b>COST OF SALES</b>		
Communication Services	\$ 424,052	\$ 362,581
Marketing Services	-	7,283
Total Cost of Sales	<u>\$ 424,052</u>	<u>\$ 369,864</u>
Gross Margin	<u>\$ 539,405</u>	<u>\$ 343,095</u>
<b>SELLING, GENERAL &amp; ADMINISTRATIVE</b>		
Selling	\$ 100,045	\$ 89,594
General & Administrative	14,239	17,865
Total Selling, General & Administrative	<u>\$ 114,285</u>	<u>\$ 107,459</u>
<b>DEPRECIATION &amp; AMORTIZATION</b>		
Depreciation	\$ 517	\$ 11,602
Amortization	32	-
Total Depreciation & Amortization	<u>\$ 549</u>	<u>\$ 11,602</u>
<b>OPERATING INCOME (LOSS)</b>	\$ 424,571	\$ 224,035
Other Income (Expense)	(15,793)	43,985
Interest Expense	(316)	(33)
<b>INCOME (LOSS) BEFORE PROVISION FOR TAXES</b>	\$ 408,462	\$ 267,987
#REF!	-	-
<b>NET INCOME (LOSS) BEFORE ALLOCATIONS</b>	\$ 408,462	\$ 267,987
<b>ALLOCATIONS</b>	(377,717)	(530,613)
<b>NET INCOME (LOSS)</b>	<u>\$ 30,745</u>	<u>\$ (262,626)</u>

# Exhibit H

## PROPOSED LOCAL EXCHANGE TARIFF

**SOUTH DAKOTA  
LOCAL EXCHANGE SERVICES**

This Tariff contains the descriptions, regulations, and rates applicable to the furnishing of service and facilities for local exchange telecommunications services within the State of South Dakota by Excel Telecommunications, Inc. ("Company"). This Tariff is on file with the South Dakota Public Utilities Commission, and copies may also be inspected, during normal business hours, at the following location: 8750 North Central Expressway, Dallas, TX 75231.

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Effective: \_\_\_\_\_

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Excel Telecommunications, Inc.  
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CHECK SHEET

The Title Page and pages listed below of this tariff are effective as of the date shown. Revised sheets contain all changes from the original tariff that are in effect as of the date indicated.

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**CHECK SHEET (Continued)**

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**EXPLANATION OF SYMBOLS**

- (C) Indicates a Change in Regulations
- (D) Indicates a Discontinued Rate or Regulation
- (E) Indicates a Correction of an Error Made During a Revision
- (I) Indicates a Rate Increase
- (M) Indicates a Move of Text but no Change in Text, Rate or Regulation
- (N) Indicates a New Rate or Regulation
- (R) Indicates a Rate Reduction
- (T) Indicates a Change in Text but no Change in Rate or Regulation

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**SECTION 1 - DEFINITIONS**

The definitions specified herein apply to the intrastate local exchange services and facilities furnished by Excel Telecommunications, Inc. (hereinafter also referred to as "the Company") in the State of South Dakota.

**ACCESS LINE**

A central office line which provides access to the telephone network for local and long distance telephone services.

**AIR LINE MEASUREMENT**

The shortest distance between two points.

**ANCILLARY DEVICES**

All terminal equipment except telephone instruments, PBX-PABX systems, key systems and data services.

**ANSWERING EQUIPMENT**

Equipment that will automatically answer incoming calls and make an announcement. It may also be equipped to record messages.

**APPLICANT**

Any person, partnership, cooperative corporation, corporation, or any combination thereof requesting affirmative service or action from the Company.

**AUTHORIZED USER**

A person, firm or corporation (other than the customer) who has been authorized by the Company to communicate over a private line or channel according to the terms of the tariff and (1), on whose premises a station of the private line service is located or (2), who receives from or sends to the customer over such private line or channel communications relating solely to the business of the customer.

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**SECTION 1 - DEFINITIONS - (Continued)**

**BUILDING**

A structure under one roof, or two or more structures under separate roofs but connected by passageways, in which the wires or cables of the Company can be safely run provided the plant facility requirements are not appreciably greater than would normally be required if all structures were under one roof. In those cases where there are several structures under separate roofs but connected by passageways and the plant facility requirements for furnishing telephone service are appreciably greater than would normally be required if all the structures were under one roof, the term "Same Building" applies individually to each of the separate structures.

**BUSINESS SERVICE**

Telecommunications service furnished to customers where the primary or obvious use is of a business, professional or occupational nature.

**CALL**

An attempted communication, whether completed or not.

**CALLING AREA**

See Local Service Area.

**CANCELLATION CHARGES**

A charge applicable under certain conditions when application for service and/or facilities is canceled in whole or in part prior to the completion of the work involved or before contract period is completed.

**CENTRAL OFFICE**

A switching unit in a telecommunications system which provides service to the general public, having the necessary equipment and operating arrangements for the terminating and interconnecting of exchange lines and trunks or trunks only. There may be more than one central office in a building or exchange.

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**SECTION 1 - DEFINITIONS - (Continued)**

**COMPANY**

Excel Telecommunications, Inc.

**COMMISSION**

South Dakota Public Utilities Commission.

**CUSTOMER TROUBLE REPORT**

Any oral or written report from a customer or user of telecommunications service received by the Company relating to a physical defect or to difficulty or dissatisfaction with the service provided by the Company's facilities.

**DELINQUENT BILLS**

Outstanding account balances which are not paid by the due date.

**DEMARCATIION POINT**

The point of interconnection between Company communications facilities and the terminal equipment, protective apparatus or wiring at a subscriber's premises. The Demarcation Point is located on the customer's side of the Company's protector or equivalent, where a protector is not used, and consists of a modular jack or equivalent.

**DIRECT CONNECTION**

Connection of terminal equipment to the Company's exchange facilities by means other than acoustic and/or inductive coupling.

**DIRECTORY**

A book which alphabetically lists each telephone customer with his/her address and telephone number.

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**SECTION 1 - DEFINITIONS - (Continued)**

**DIRECTORY ASSISTANCE SERVICE**

A service provided to assist customers in obtaining telephone numbers which are or are not listed in the directory.

**DIRECTORY ASSISTANCE CALL COMPLETION**

A service provided that gives customers the option of having their local or intraLATA calls automatically completed when they request a telephone listing from the Directory Assistance (DA) operator.

**DIRECTORY LISTING**

The publication of the Company's directory and/or directory assistance records, of information relative to a customer's telephone number, by which telephone users are able to ascertain the call number of a desired station.

**DISCONNECT NOTICE**

The written notice sent to a customer following billing, notifying the customer that service will be disconnected if charges are not satisfied by the date specified on the notice.

**DISCONNECTION OF SERVICE**

An arrangement made at the request of the customer or initiated by the Company for violation of tariff regulations by the customer, for a permanent interruption of telephone service. A "final" bill would be rendered showing moneys owed to the Company as of the date the service was disconnected.

**ENTRANCE FACILITIES**

Facilities extending from the point entrance on private property to the premises on which service is furnished.

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**SECTION 1 - DEFINITIONS - (Continued)**

**EXCHANGE**

A unit established by the Company for the administration of telecommunications service in a specified area for which a separate local rate schedule is provided. The area usually embraces a city, town, or village and its environs. It consists of one or more central offices, together with associated plant facilities used in furnishing telecommunications services in that area.

**EXCHANGE AREA**

The area within which the Company furnishes complete telephone service from one specific exchange at the exchange rates applicable within that area.

**EXCHANGE LINE**

Any circuit connecting an exchange access line with a central office.

**EXCHANGE SERVICE**

Exchange service is a general term describing as a whole, the facilities for local intercommunications, together with the capability to send and receive a specified or an unlimited number of local messages at charges in accordance with the provisions of this Tariff.

- (a) Flat Rate Service: A classification of exchange service furnished a customer under tariff provisions, for which a stipulated charge is made, regardless of the amount of use.
- (b) Individual Line Service: A classification of exchange service which provides that only one exchange access line shall be served by the circuit connected.

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**SECTION 1 - DEFINITIONS - (Continued)**

**EXCHANGE SERVICE AREA**

The area within which the Company furnishes complete local telephone service at the applicable exchange rates for that area.

**EXTENDED AREA SERVICE**

A type of telephone service furnished under tariff provisions whereby customers of a given exchange may complete calls to and/or may receive calls from one or more exchanges without the application of long distance message telecommunications charges.

**FACILITIES**

All the plant and equipment of the Company and all instrumentalities owned, licensed, used, controlled, furnished, or supplied for or by the Company, including any construction work in progress allowed by the Commission.

**FAMILY**

A group of two or more persons related by blood, marriage or adoption and residing together. A primary family consists of the head of a household and all (one or more) other persons in the household related to the head. A secondary family comprises two or more persons such as guests, lodgers, or resident employees and their relatives, living in a household or quasi-household (other than the negligible number or such groups among inmates or institutions) and related to each other.

**FLAT-RATE SERVICE**

A classification of exchange service furnished a customer under tariff provisions for which a stipulated charge is made regardless of the amount of use.

**FOREIGN EXCHANGE SERVICE**

Exchange Service furnished under tariff provisions by means of a circuit connecting a customer's premises with a central office of an exchange other than that which regularly serves the exchange area in which the customer is located.

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**SECTION 1 - DEFINITIONS - (Continued)**

**GENERAL EXCHANGE SERVICES**

Services furnished by the Company connected to or associated with primary Local Exchange Service.

**HARM**

Electrical hazards to Company personnel, damage to Company equipment, malfunctions of Company billing equipment, and degradation of service to persons other than the user as well as the calling or called party.

**HOUSEHOLD**

A Household comprises all persons who occupy a dwelling unit, that is, a house, an apartment or other group of rooms or a room that constitutes separate living quarters. A Household includes the related persons (the head of the household and others in the dwelling unit who are related to the head) and also the lodgers and employees, if any, who regularly live in the house. A person living alone or a group of unrelated persons sharing the same dwelling unit as partners is counted as a Household.

**ILEC**

Incumbent Local Exchange Carrier.

**INDIVIDUAL LINE SERVICE**

A classification of exchange service furnished under tariff provisions which provides that only one exchange access line shall be served by the circuit connected.

**INITIAL NONRECURRING CHARGE**

A nonrecurring charge made for the furnishing of telephone services, which may apply in addition to service connection charges.

**INITIAL SERVICE PERIOD**

The minimum period of time for which service is provided.

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**SECTION 1 - DEFINITIONS - (Continued)**

**INSTALLATION CHARGE**

A nonrecurring charge associated with optional service features and may sometimes be called an "initial" charge, and may apply in addition to Service Connection Charges.

**INTERCEPT SERVICE**

A service arrangement provided by the Company whereby calls placed to a disconnected or discontinued telephone number are intercepted and the calling party is informed by an operator or by a recording that the called telephone number has been disconnected, discontinued, changed to another number, or that calls are received by another telephone.

**INTERFACE**

- (a) The junction or point of interconnection between two systems or equipments having different characteristics which may differ with respect to voltage, frequency, speed of operation, type of signal and/or type of information coding including the connection of other than Company-provided facilities to exchange facilities provided by the Company.
- (b) The point of interconnection between Company equipment and communications facilities on the premises of the Customer. Also referred to as Demarcation Point.

**INTERFACE EQUIPMENT**

Equipment provided by the Company at the interface location to accomplish the direct connection of facilities provided by the Company with facilities provided by other than the Company.

**INTRALATA**

Long Distance Message Telecommunications Service where service point locations are within the same Local Access and Transport Area (LATA).

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**SECTION 1 - DEFINITIONS - (Continued)**

**LOCAL ACCESS AND TRANSPORT AREA (LATA)**

Denotes a geographic area established for the administration of telecommunications service. It encompasses designated local operating telephone company exchanges which are grouped to serve common, social, economic and miscellaneous purposes.

**LOCAL CALLING AREA**

See Local Service Area.

**LOCAL CHANNEL**

Applies to that portion of a channel which connects a station to the interexchange channel or to a channel connecting two or more exchange access lines within an exchange area.

**LOCAL EXCHANGE SERVICE**

Provides for telephone communication within local service area in accordance with the provisions of this Tariff, including the use of exchange facilities required to establish connection between exchange access lines.

**LOCAL MESSAGE**

A communication between two access lines within the local service area of the calling telephone.

**LOCAL MESSAGE CHARGE**

The charge that applies for a completed message that is made when the calling access line and the called access line are both within the same local calling area where a local message charge is applicable.

**LOCAL SERVICE**

The intercommunication (by means of facilities connected with a Company central office or offices and under the provisions of the Company) between access lines located in the same exchange or in different exchanges between which no long distance (toll) rates or charges apply.

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**SECTION 1 - DEFINITIONS - (Continued)**

**LOCAL SERVICE AREA (LOCAL CALLING AREA)**

The area within which telephone service is furnished customers under a specific schedule of exchange rates (flat or measured) and without toll charges. A local service area may include one or more exchange areas under extended area service arrangement.

**LOCAL SERVICE CHARGE**

The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local service area. This local service calling area may include one or more exchange areas.

**MAINTENANCE SERVICE CHARGE**

A charge made by the Company when a service difficulty or trouble report results from customer-provided equipment or facilities.

**MESSAGE**

A communication between two exchange access lines. Messages may be classified as local or toll.

**MILEAGE**

The measurement (airline, route, etc.,) upon which a charge for the use of part or all of a circuit furnished by the Company is based.

**MINIMUM CONTRACT PERIOD**

The minimum length of time for which a customer is obligated to pay for service, facilities and equipment, whether or not retained by the customer for such minimum length of time.

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**SECTION 1 - DEFINITIONS - (Continued)**

**NETWORK CONTROL SIGNALING**

The transmission of signals used in the telecommunications system which perform functions such as supervision (control, status, and charging signals), address signaling (e.g., dialing), calling and called number identification and audible tone signals (call progress signals indicating reorder or busy conditions, alerting coin denominations, coin collect and coin return tones) to control the operation of switching machines in the telecommunications system.

**NETWORK CONTROL SIGNALING UNIT**

The terminal equipment furnished, installed and maintained by the Company for the provisions of network control signaling.

**NETWORK INTERFACE**

See Interface.

**NON-LISTED TELEPHONE NUMBER**

A telephone number associated with an exchange line which, at the request of the customer, is not listed in a telephone directory but may be obtained from the Directory Assistance Operator.

**NON-PUBLISHED TELEPHONE NUMBER**

A telephone number associated with an exchange access line which, at the request of the customer, is not listed in a telephone directory and is not made available to the general public by the Company.

**NONRECURRING CHARGE**

A one-time charge associated with certain installations, changes or transfers of services, either in lieu of or in addition to recurring monthly charges.

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**SECTION 1 - DEFINITIONS - (Continued)**

**ONE-PARTY SERVICE**

Any exchange access line designed for the provision of exchange service to one premises.

**OTHER COMMON CARRIER (OCC)**

Denotes Specialized Common Carriers, Domestic and International Record Carriers and Domestic Satellite Carriers engaged in providing services authorized by the Federal Communications Commission.

**OTHER COMMON CARRIER TERMINAL LOCATION**

A discrete operational and equipment location of the OCC from which the OCC furnishes and administers common carrier communications services to its patrons.

**PERMANENT DISCONNECT**

A discontinuance of service in which the facilities used in the service are immediately made available for use of another service.

**PERSON**

Includes individuals, partnerships, corporations, governmental bodies, associations and any other such entity.

**PREMISES**

Building or buildings on contiguous property (except railroad rights-of-way, etc.) not separated by a public highway.

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**SECTION 1 - DEFINITIONS - (Continued)**

**PREMISES WIRING**

All wire within a customer's premises, including connectors, jacks and miscellaneous materials associated with the wire's installation. Premises inside wire is located on the customer's side of the Company's premises protector. By definition, Customer Premises Inside Wire excludes riser, buried and aerial cable.

**PREASSIGNED NUMBER**

A telephone number preassigned before service is actually established.

**PRESUBSCRIPTION**

Presubscription is the process by which end user customers may select and designate to the Telephone Company an Interexchange Carrier (IC) to access, without an access code, for interLATA/interstate or interLATA/intrastate calls. This IC is referred to as the end user's predesignated IC.

**PREWIRING**

Any inside wiring done at the location of a residence or business prior to the initial installation of telephone service.

**PRIMARY TERMINATION**

Applied to channels which extend beyond the continuous property of a customer or the confines of a single building housing the premises of more than one customer. Also, denotes the first termination of such a channel at a station or PBX on the continuous property of a customer. When more than one customer's premises is located within the same building, the first termination of such a channel at that building constitutes a "Primary Termination." For purpose of this definition, the location of a "Primary Termination" for channel services associated with "Switching System Services" is considered to be at the "Switching System Services" serving central office. When the "Switching System Services" serving central office is not in the same exchange as the main location, the "Mileage Service Area" center for the main location will be used in lieu of the "Switching System Services" serving central office.

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**SECTION 1 - DEFINITIONS - (Continued)**

**PUBLISHED TELEPHONE NUMBER**

A number which appears in the current telephone directory, or is scheduled to appear in a forthcoming telephone directory, and which also appears in the information records for general public information.

**RATE CENTER**

A specified geographical location within an exchange area from which mileage measurements are determined for the application of rates between exchange areas.

**REFERENCE LISTING**

The listing of a generally accepted name of a firm or corporation followed by a reference to another listing.

**RESIDENCE EXCHANGE ACCESS LINE**

An exchange access line used to provide exchange telephone service to a residence customer.

**RESIDENTIAL SERVICE**

Telecommunications service furnished to customers when the actual or obvious use is for domestic purposes.

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**SECTION 1 - DEFINITIONS - (Continued)**

**ROTARY LINE SERVICE**

A central office service arrangement whereby a called busy line in a specified line group will automatically advance until an idle line or trunk is found.

**SERVICE CALL**

A visit to a customer's premises in connection with a service difficulty. See also Maintenance Service Charge.

**SERVICE CHARGES**

A nonrecurring charge applying to the provisions of telephone service.

**SUBSCRIBER**

Any person, firm, partnership, corporation, municipality, cooperative organization or governmental agency furnished communication service by the Company under the provisions and regulations of this tariff and responsible for the payment of charges and compliance with the rules and regulations of the Company.

**SUPPLEMENTAL CONTRACT**

A contract for service, equipment or facilities in addition to that provided for under the original contract.

**SUSPENSION OF SERVICE**

An arrangement made at the request of the customer or initiated by the Company, for temporarily interrupting service.

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**SECTION 1 - DEFINITIONS - (Continued)**

**TARIFF**

The schedule of the Company containing all rates, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the Company stated separately by type or kind of service and the customer class as filed with the Commission.

**TELECOMMUNICATIONS SERVICES**

The various services offered by the Company as specified in this tariff.

**TELEPHONE NUMBER**

A numerical designation assigned to a customer for convenience in operation and identification. The telephone numbers include the number prefix of a central office, which is termed "Central Office Designation".

**TELEPHONE OR TELECOMMUNICATIONS NETWORK**

The local telephone exchange and long distance message telecommunications facilities, or network; both inter and intrastate.

**TEMPORARY DISCONNECTION**

See Suspension of Service.

**TEMPORARY SERVICE**

The provision of service definitely known to be required for a short period of time (generally less than twelve consecutive months) such as service furnished to building contractors, service to a convention, and service for seasonal business including resorts.

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**SECTION 1 - DEFINITIONS - (Continued)**

**TERMINATION AGREEMENT**

An agreement between the Company and the customer to provide or furnish certain lines or equipment representing a comparatively high investment or in lieu of a contribution to construction for temporary service whereby the customer agrees to compensate the Company in case the service is discontinued prior to the date specified in the agreement.

**TERMINATION CHARGE**

A charge made to liquidate a customer's obligation for termination of service prior to the expiration of the initial contract period.

**TERMINATION OF SERVICE**

The discontinuance of service or facilities provided by the Company, either at the request of the customer or by the Company, under its regulations concerning cancellation for cause.

**TONE DIALING SERVICE**

A classification of exchange service whereby calls are originated through the use of tone dial instruments in lieu of a rotary dial instrument.

**TRUNK**

A telephone communication path connecting a central office and customer premises equipment, used in the establishment of end-to-end service.

**UNBUNDLED NETWORK ELEMENT**

Physical and functional elements of the network that can be combined into a complete set in order to provide end-to-end circuits.

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## SECTION 2 -RULES AND REGULATIONS

### 2.1 APPLICATION OF TARIFF

The rules and regulations contained in this Section apply to the services and facilities provided by the Company in the State of South Dakota. When services and facilities are provided in part by the Company and in part by other connecting companies, the regulations of the Company apply to the portion of the services or facilities furnished by the Company. Failure on the part of the customer to observe these rules and regulations after due notice of such failure, automatically gives the Company the right to discontinue service to that customer.

- a. In the event of a conflict between any rate, rule, regulation or provision contained in this tariff and any rate, rule, regulation or provision contained in the tariffs of Companies in which the Company concurs, the rate, rule, regulation or provision contained in this tariff shall prevail.
- b. Should there be any conflict between this tariff and the Rules and Regulations of the Commission, the Commission's rules shall apply unless otherwise established by the courts.

### 2.2 AVAILABILITY OF FACILITIES

#### 2.2.1 General

The Company's obligation to furnish, or continue to furnish, telecommunications service is dependent upon its ability to obtain, retain, and maintain, without unreasonable expense, suitable rights-of-way and facilities, and to provide for the installation of those facilities required to furnish and maintain that service.

Local Exchange Service is provided in the Local Service Areas as specified below:

#### 2.2.2 Local Calling Scopes and Availability

The Company concurs with the Incumbent Local Exchange Carrier(s) tariff for the provision of local exchange service in the State of South Dakota. Exchange Areas for all Customers whose premises are located in the ILEC's territory will be the same as the ILEC's service areas except where noted by service or rate element.

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**SECTION 2 -RULES AND REGULATIONS - (Continued)**

**2.2 AVAILABILITY OF FACILITIES (Continued)**

**2.2.3 Maps**

The Company concurs with the Incumbent Local Exchange Carrier(s) local exchange maps reflecting base rate areas, exchange area, and zone area boundaries which are part of their local exchange tariff(s).

**2.3 CUSTOMER SERVICE AND PROTECTION**

This part of the Rules and Regulations Section of the tariff provides information to telephone consumers about: resolving disputes with the Company, applying for service, the classification of business and residential rates, deposits, billing, refusal of service, disconnection of service and cancellation of service. The Company relies on principles established by the Commission..

**2.3.1 Resolution of Disputes**

Any customer or applicant for service who wishes to dispute any action or determination of the Company under the Company's customer service rules shall be given an opportunity for a supervisory review by the Company.

**2.3.2 Application for Service**

Application for service, or requests from customers for additional service or changes in the grade or class of service, become contracts when received by the Company and are subject to the minimum contract term of one month unless specified otherwise. The Company reserves the right to require application for service to be made in writing on forms supplied by it.

Any general change in rates, rules or regulations modifies the terms of the contract to the extent of such change without further notice. However, if rates are increased, the customer may cancel his contract upon reasonable written notice and upon payment for all service and any contractual liability.

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**SECTION 2 -RULES AND REGULATIONS - (Continued)**

**2.3 CUSTOMER SERVICE AND PROTECTION - (Continued)**

**2.3.3 Refusal of Service**

The Company may refuse service to a customer or applicant whose service has been discontinued for non-payment of bills for any telecommunications service. The customer or applicant will be required to pay all bills due the Company for telecommunications service or make other arrangements satisfactory to the Company to re-establish credit before service is restored or service started.

If service is established and it is subsequently determined that the customer or applicant is indebted to the Company for service previously furnished, the Company may suspend or terminate such service until satisfactory arrangements have been made for the payment of prior indebtedness.

**2.3.4 Application Of Business Or Residence Rates**

**2.3.4.1. Business rates apply at the following locations:**

- a. in offices, stores, factories, and all other places of a strictly business nature;
- b. in boarding houses (except as noted below), offices of hotels, halls and offices of apartment buildings, quarters occupied by clubs, or lodges, public, private or parochial schools, colleges, hospitals, libraries, churches, and other similar institutions, except in churches and lodges as specified below;
- c. at residence locations when the customer has no regular business telephone, and the use of the service either by himself, members of his household or his guests, or parties calling him can be considered as more of a business than a residential nature. This fact might be indicated by some form of Customer advertising, or when such business use is not typically characteristic of residential telephone usage;
- d. at residential locations where the service is located in a shop, office or other place of business;

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**SECTION 2 -RULES AND REGULATIONS - (Continued)**

**2.3 CUSTOMER SERVICE AND PROTECTION - (Continued)**

**2.3.4 Application Of Business Or Residence Rates (Continued)**

**2.3.4.1. Business rates apply at the following locations: (Continued)**

- e. in college fraternity houses where the members lodge within the house;  
and/or
- f. at any location where the location and expected usage of telephone  
service at that location are indicative of a business, trade or profession.

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**SECTION 2 -RULES AND REGULATIONS - (Continued)**

**2.3 CUSTOMER SERVICE AND PROTECTION - (Continued)**

**2.3.4 Application of Business or Residence Rates - (Continued)**

**2.3.4.2 Residence rates apply at the following locations:**

- a. in a private residence where business listings are not provided;
- b. in private apartments of hotels, rooming houses or boarding houses where service is confined to the customer's use and which are not advertised as a place of business;
- c. in the place of residence of a clergyman, physician, nurse or other medical practitioner, provided the office is located in their residence and is not a part of an office building. In any such cases, the listing may indicate the customer's profession, but only in connection with an individual name. If listings of firms or partnerships, etc., or additional listings of persons not residing in the same household are desired, business rates apply;
- d. in a private stable or garage when strictly a part of a domestic establishment;
- e. in churches where the service is not accessible for public use as in a clergyman's study; and/or
- f. in fire department dormitories or sleeping quarters where the telephone number is not published, and the telephone is not available for use by the general public.

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SECTION 2 -RULES AND REGULATIONS - (Continued)

2.3 CUSTOMER SERVICE AND PROTECTION - (Continued)

2.3.5 Deposits

2.3.5.1 Requirements for Permanent Residential Applicants

- a. The Company may require a residential applicant for service to establish satisfactory credit, but establishment of credit shall not relieve the customer from complying with rules for prompt payment of bills. Credit history shall be applied equally for a reasonable period of time to a spouse or former spouse who shared the service. Credit history maintained by one must be applied equally to the other without modification and without additional qualifications not required of the other.
- b. Subject to the following condition, a residential applicant may not be required to pay a deposit:
  - (i) if the residential applicant has been a customer of any telephone company within the last two years and is not delinquent in payment of any such telephone service account and during the last twelve (12) consecutive months of service did not have more than one occasion in which a bill for such service was paid after becoming delinquent and never had service disconnected for nonpayment;
- c. The Company may require an initial deposit from residential customers if:
  - (i) the customer has on more than one occasion during the last twelve (12) consecutive months of service been delinquent in paying a bill for telephone service; or
  - (ii) the customer's service was disconnected for nonpayment.

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**SECTION 2 -RULES AND REGULATIONS - (Continued)**

**2.3 CUSTOMER SERVICE AND PROTECTION - (Continued)**

**2.3.5 Deposits - (Continued)**

**2.3.5.2 Requirements for Business Service Customers**

If the credit of a business applicant for service has not been satisfactorily established to the Company, the applicant may be required to make a deposit.

**2.3.5.3 Establishment and Reestablishment of Credit**

An applicant who had previously been a customer of the Company and whose service had been discontinued for nonpayment of bills shall be required, before service is rendered, to pay all amounts due the Company, or execute a deferred payment agreement, if offered, to reestablish credit.

The Company may conduct a credit investigation of each customer or applicant prior to accepting a service order, or customer deposit. A customer whose service has been discontinued by the Company for non-payment of bills for any telecommunications service will be required to pay all bills due the Company for telecommunications services or make other arrangements satisfactory to the Company and to re-establish credit before service is restored or any service started.

**2.3.5.4. Amount of Deposit for Permanent Residential and Business Service**

- a. Initial Deposit - The initial deposit is an amount equivalent to one-sixth (1/6) of the estimated annual billings including the charges of interexchange carriers where the Company provides billing for the interexchange carrier.
- b. Additional Deposit Requirements - The Company reserves the right to request additional deposit if needed.
- c. In determining the amount of any deposit permitted in this tariff, no revenue from estimated telephone directory advertising will be used.

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**SECTION 2 -RULES AND REGULATIONS - (Continued)**

**2.3 CUSTOMER SERVICE AND PROTECTION - (Continued)**

**2.3.5 Deposits - (Continued)**

**2.3.5.5 Refund of Deposit**

- a. If service is not connected or after disconnection of service, the Company shall promptly and automatically refund the customer's deposit on the balance, if any, in excess of the unpaid bills for service furnished. A transfer of service from one premises to another within the service area of the Company shall not be deemed a disconnection within the meaning of these rules, and no additional deposit may be demanded unless in accordance with these rules.
- b. When the customer has paid bills for service for twelve (12) consecutive residential billings or for twenty-four (24) consecutive business billings without having service disconnected for nonpayment and without having more than two occasions on which a bill was delinquent, and when the customer is not delinquent in the payment of current bills, the Company may refund the deposit, including interest, to the customer in the form of cash or credit to a customer's bill or void the guarantee.. If the customer does not meet these refund criteria, the deposit may be retained.

**2.3.5.6 Deposit Not to Affect Regular Collection Practices**

The fact that a deposit has been made shall in no way relieve the applicant or subscriber from complying with the Company's regulations as to advance payments and the prompt payment of bills on presentation, nor constitute a waiver or modification of the regular practices of the Company providing for the discontinuance of service for nonpayment of any sum due the Company for services rendered. The Company may discontinue service to any subscriber failing to pay current bills without regard to the fact that such subscriber has made a deposit with the Company (to secure the payment of such bills).

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Effective: \_\_\_\_\_

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SECTION 2 -RULES AND REGULATIONS - (Continued)

2.3 CUSTOMER SERVICE AND PROTECTION - (Continued)

2.3.6 Billing and Payment For Service

2.3.6.1 General

The customer is responsible for payment of all charges for services furnished, including charges for service originated or accepted at the customer's access line.

2.3.6.2 Disputed Bills

In the event of a dispute between a customer and the Company over any bill for utility service, the Company shall make an appropriate investigation and report the results to the customer.

- a. The customer shall pay all charges for monthly service in advance. Payment is due on or before the due date which is not less than fifteen (15) days after issuance of the bill. The postmark, if any, on the envelope of the bill, or the issuance date on the bill, if there is no postmark on the envelope, shall constitute proof of the date of issuance. If the bill is not paid by the due date, the Company will notify the customer in writing that the account is delinquent. The Company may discontinue service not less than ten (10) days after written notice has been sent to the customer.
- b. A one-time penalty not to exceed 4.0% may be made on delinquent commercial or industrial bills; however, no such penalty shall apply to residential bills under this section. Residential customers are assessed a late payment charge as set forth in Section 2.3.10.
- c. Any applicant or one for whom an application is made, owing the Company for service furnished under a former contract, shall pay or make satisfactory arrangements for paying any bill outstanding and unpaid before any additional service will be furnished.

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**SECTION 2 - RULES AND REGULATIONS - (Continued)**

**2.3 CUSTOMER SERVICE AND PROTECTION - (Continued)**

**2.3.6.3 Adjustments of Charges for Service Interruptions**

In the event a customer's service is interrupted other than by the negligence or willful act of the customer and remains out of order for twenty-four (24) hours or longer after access to the premises is made available and after the customer reports to the Company that the service is out of order, the Company may make an appropriate adjustment to the customer's bill.

**2.3.7 Discontinuance of Service**

**2.3.7.1 Discontinuance with notice.**

Proper notice consists of a separate mailing or hand delivery at least ten (10) days prior to the stated date of disconnection. Telephone service may be disconnected after proper notice for any of the following reasons:

- a. failure to pay a delinquent account for telephone service;
- b. violations of the Company's rules pertaining to the use of service in a manner which interferes with the service of others or relating to the operation of nonstandard provided equipment, if a reasonable attempt has been made to notify the customer, and the customer has been afforded a reasonable opportunity to remedy the situation;
- c. failure to comply with the Company's deposit arrangements in accordance with Section 2.3.5., preceding; and/or
- d. a returned check from the customer.

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**SECTION 2 -RULES AND REGULATIONS - (Continued)**

**2.3 CUSTOMER SERVICE AND PROTECTION - (Continued)**

**2.3.7 Discontinuance of Service - (Continued)**

**2.3.7.2 Discontinuance without notice.**

Telephone service may be disconnected without notice under either of the following conditions:

- a. a known dangerous condition exists; and/or
- b. service is connected without authority by a person who has not applied for service or who has reconnected service without authority.

**2.3.7.3 Collection costs.**

The customer is responsible for all collection costs, including attorney's fees, incurred by the Company as a result of any breach of contract by the customer.

**2.3.7.4 Disputes.**

In the event of a dispute between a customer and the Company, the Company shall not disconnect service pending completion of a supervisory review of the dispute as provided in Section 2.3.1., above.

**2.3.8 Cancellation of Application For Basic Service**

When the customer cancels an application for service prior to the start of installation of service, or prior to the start of special construction, no charge applies.

When installation of service has been started prior to the cancellation, a cancellation charge equal to the minimum service charge shall apply.

Where special construction has been started prior to the cancellation, a charge equal to the cost incurred in the special construction, less net salvage, applies. Installation or special construction for a customer is considered to have started when the Company incurs any expense in connection with the installation which would not otherwise have been incurred.

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**SECTION 2 -RULES AND REGULATIONS - (Continued)**

**2.3 CUSTOMER SERVICE AND PROTECTION - (Continued)**

**2.3.9 Returned Check Charge**

In addition to any late payment charges specified in this tariff, the customer will be assessed a charge of \$15.00 for each check, bank draft, or electronic funds transfer submitted by the customer to the Company which a financial institution refuses to honor.

**2.3.10 Late Payment Charge**

If any portion of a residential Customer's payment is received by the Company after the payment due date, or if any portion of the payment is received by the Company in funds which are not immediately available upon presentment, a late payment charge shall be due to the Company, provided billing capability exists. The late payment charge shall be the portion of the payment not received by the date due, multiplied by a factor. The late payment factor shall be 1.5% per month.

Late payment charges do not apply to the disputed portion of unpaid balances, if resolved in favor of the Customer. The disputed portion of unpaid balances, if resolved in favor of the Company, may be subject to the late payment charge as of the original due date noted on the Customer's bill. Undisputed amounts of the same bill may be subject to the late payment charge if they remain unpaid by the due date noted on the Customer's bill. Collection procedures and security deposit requirements are unaffected by the application of the late payment charge.

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SECTION 2 - RULES AND REGULATIONS - (Continued)

2.3 CUSTOMER SERVICE AND PROTECTION - (Continued)

2.3.11 Restoration of Service

If a Customer's service is restored after having been suspended and/or disconnected in accordance with this tariff but a Company service order to terminate such service has not been completed when such service is restored, the Customer may be required to pay a restoration of service charge.

When a Customer's service has been disconnected in accordance with this tariff and the service has been terminated through the completion of a Company service order, service will be re-established only upon the basis of an application for new service.

Service initiated after the discontinuance for non-payment will be subject to the standard non-recurring charges for new service as defined in Sections 3 and 4 of this tariff. Service that has been re-established may require the assignment of a new telephone number.

If any Company service has been suspended, restricted, or discontinued for nonpayment, service will be re-established upon receipt of all charges due, which includes charges for services and facilities during the period of restriction or suspension and which may include a service restoration fee. If the Customer has a history of payments returned for insufficient funds, the Company may require payment by cash, money order or certified check. If such payments are made by personal check, restoration of service will be effected upon bank clearance of the check.

If service is established and it is subsequently determined that the Customer is indebted to the Company for service previously furnished, the Company may restrict, suspend or terminate such service until satisfactory arrangements have been made for the payment of the prior indebtedness.

As Customer who has service restricted, suspended, or disconnected may be subject to all standard non-recurring charges defined in Sections 3 and 4 of this tariff during the restoration of service.

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SECTION 2 -RULES AND REGULATIONS - (Continued)

2.4 USE OF SERVICE AND FACILITIES

2.4.1 Use of Service

2.4.1.1 **General** - The customer is responsible for payment of all charges incurred, regardless of whether such charges are associated with his usage, or that of any of his authorized users.

2.4.1.2 **Transmitting Messages** - The Company does not transmit messages but offers the use of its facilities for communications between its customers.

2.4.1.3 **Use of Lines of Other Companies** - When suitable arrangements can be made, lines of other telephone companies may be used in establishing connections to points not reached by the Company's lines. In establishing connections with the lines of other companies, the Company is not responsible or liable for any action of the connecting company.

2.4.1.4 **Unauthorized Attachments or Connections** - No unauthorized equipment, accessory, apparatus, circuit or device shall be attached to or connected with Company facilities; In case any such unauthorized attachment or connection is made, the Company shall have the right to remove or disconnect the same, to suspend service during the continuance of said attachment or connection or to disconnect service. The customer shall be held responsible for the cost of correcting any impairment of service caused by the use of such attachments or connections and shall be billed for each service call made to his premises because of the use of such attachments or connections.

Except as otherwise provided in this Tariff, nothing herein shall be construed to permit the use of a device to interconnect any Company-owned line or channel with any other communications line or channel of the Company or of any other person.

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Issued: \_\_\_\_\_

Effective: \_\_\_\_\_

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**SECTION 2 -RULES AND REGULATIONS - (Continued)**

**2.4 USE OF SERVICE AND FACILITIES - (Continued)**

**2.4.2 Obligations of Customers**

**2.4.2.1 Alterations** - The customer agrees to notify the Company promptly in writing whenever alterations or new construction on premises owned or leased by him will necessitate changes in the Company's facilities, and the customer agrees to pay the Company's current costs for such changes.

**2.4.2.2 Use of Commercial Power** - Unless specifically provided otherwise in this tariff, when commercial power is used for the operation of customer provided premises equipment, the customer provides the necessary power wiring, power outlets and commercial power and assumes all responsibility for the safe condition of the power wiring, power outlets and commercial power.

**2.4.2.3 Reimbursement to the Company for damages** - The customer shall reimburse the Company for damages to Company facilities utilized to provide services under this tariff caused by the negligence or willful act of the customer, or resulting from the customer's improper use of the Company facilities or equipment provided by other than the Company. Such damages will be the actual cost of the materials and the actual hours required for repair of the damage multiplied by the appropriate labor rate.

Nothing in the foregoing provision shall be interpreted to hold one customer liable for another customer's actions. The Company will, upon reimbursement for damages, cooperate with the customer in prosecuting a claim against the person causing such damage and the customer shall be subrogated to the right of recovery by the Company for the damages to the extent of such payment.

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SECTION 2 -RULES AND REGULATIONS - (Continued)

2.4 USE OF SERVICE AND FACILITIES - (Continued)

2.4.3 Rights of the Company

2.4.3.1 **Work Performed on an Overtime Basis** - The charges specified in this Tariff do not contemplate work being performed by Company employees at a time when overtime wages apply due to the request of the customer. If the customer requests that overtime labor be performed, an additional charge, based on the additional costs involved, applies.

2.4.3.2 **Work Interruption** - The charges specified in this Tariff do not contemplate work once begun being interrupted by the customer. If the customer interrupts work once begun, an additional charge, based on the additional costs involved, applies.

2.4.3.3 **Ownership** - Any facilities on the customer's premises furnished by the Company shall be and remain the property of the Company, whose agents and employees have the right to enter said premises at any reasonable hour for the purpose of installing, terminating, inspecting, maintaining or repairing service.

2.4.3.4 **Impairment of Telephone Service** - When the general telephone service to the public is impaired by a customer's use of telephone service, or service directly incident thereto, the Company shall have the right to require the customer to contract with the Company for such additional facilities as may be necessary in the Company's judgment to remove the cause of said impairment, or if the customer refuses this requirement or will not remedy the situation, to discontinue service completely.

2.4.3.5 **Abandonment of Telephone Service** - The Company may discontinue service which has been abandoned.

2.4.3.6 **Abuse of Telephone Service** - After giving the customer a reasonable opportunity to remedy the situation and after giving proper notice, the Company may discontinue service which is used:

- a. in such a way that interferes with the service of other telephone users;
- b. for any purpose other than as a means of communication;

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**SECTION 2 -RULES AND REGULATIONS - (Continued)**

**2.4 USE OF SERVICE AND FACILITIES - (Continued)**

**2.4.3 Rights of the Company- (Continued)**

**2.4.3.6 Abuse of Telephone Service- (Continued)**

- c. to communicate profane or obscene language;
- d. for a call or calls, anonymous or otherwise, if made in a manner which reasonably could be expected to frighten, abuse, torment or harass another;
- e. in any fraudulent or unlawful manner;
- f. in manner which violates any of the Company's lawful regulations; or
- g. to obtain a customer's listed name, address or telephone number from Directory Assistance for any purpose other than to facilitate the making of a telephone call.

**2.4.3.7 Telephone Numbers** - The Company reserves the right to change the telephone number or numbers assigned to a customer or the central office designation associated with such telephone number or numbers, or both, as reasonably appropriate in the conduct of its business. The customer has no property right in any number or central office designation assigned by the Company.

**2.4.4 Liability of the Company**

**2.4.4.1** Given the customer's exclusive control of his communications over Company-provided facilities, and of the other uses for which Company facilities may be furnished, and because errors incident to the service and the use of facilities are unavoidable, the services and facilities furnished by the Company are subject to the terms, conditions and limitations specified herein.

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**Dallas, Texas 75231**

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SECTION 2 -RULES AND REGULATIONS - (Continued)

2.4 USE OF SERVICE AND FACILITIES - (Continued)

2.4.4 Liability of the Company (Continued)

2.4.4.2 The Company's failure to provide or maintain facilities under this tariff shall be excused by labor difficulties, governmental orders, civil commotions, acts of God and other circumstances beyond the Company's control, subject to the interruption allowance provisions by this tariff.

2.4.4.3 The Company shall not be liable for any act or omission of any other carrier or customer providing a portion of a service, nor shall the Company for its own act or omission hold liable any other carrier or customer providing a portion of a service.

2.4.4.4 **Defacement of Premises** - No liability shall attach to the Company by reason of any defacement or damage to the customer's premises resulting from the existence of the Company's facilities on such premises, or by the installation or removal thereof, when such defacement or damage is not the result of the sole negligence of the Company or its employees.

2.4.4.5 **Interruptions of Service** - In the event a customer's service is interrupted by other than the negligence or willful act of the customer, and it remains out of order for twenty-four (24) hours or longer after access to the premises is made available and after being reported to be out of order, appropriate adjustments or refunds may be made to the customer. The amount of adjustment or refund may be determined on the basis of the known period of interruption, generally beginning from the time the service interruption is first reported. Any refund to the customer shall be the pro rata part of the month's flat rate charges for the period of days and that portion of the service facilities rendered useless or inoperative. The refund may be accomplished by a credit on a subsequent bill for telephone service. No allowance for interruption of service will be made for any period in which such service interruption is caused by malfunction or failure of customer-owned equipment.

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SECTION 2 -RULES AND REGULATIONS - (Continued)

2.4 USE OF SERVICE AND FACILITIES - (Continued)

2.4.4 Liability of the Company - (Continued)

2.4.4.6 **Indemnification** - The Company's liability, if any, for its gross negligence or willful misconduct is not limited by this Tariff. With respect to any other claim or suit, by a customer or by any others, the customer indemnifies and holds harmless the Company against claims, losses or suits for injury to or death of any person, or damage to any property which arises from:

- a. the use, placement or presence of the Company's facilities on the customer's premises; or
- b. the use of customer-provided premises equipment, voltages or currents transmitted over the Company's facilities caused by customer-provided premises equipment.

Further, the customer indemnifies and holds harmless the Company against claims for libel, slander, or the infringement of copyright arising directly or indirectly from the material transmitted over the Company's facilities or the use thereof by the customer; against claims for infringement of patents arising from, combining with, or using in connection with, facilities furnished by the Company and apparatus, equipment, and systems provided by the customer; and against all other claims arising out of any act or omission of the customer in connection with the services or facilities provided by the Company.

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SECTION 2 -RULES AND REGULATIONS - (Continued)

2.4 USE OF SERVICE AND FACILITIES - (Continued)

2.4.4 Liability of the Company - (Continued)

2.4.4.7 **Liability** - The Company's liability, if any, for its gross negligence or willful misconduct is not limited by this tariff. With respect to any other claim or suit, by a customer or any others, for damages arising out of mistakes, omissions, interruptions, delays or errors, or defects in transmission occurring during provision of telephone service, the Company's liability, if any, shall not exceed an amount equivalent to the proportionate charge to the customer for the period of service during which such mistake, omission, interruption, delay, error, or defect in transmission or service occurs and continues. This liability shall be in addition to any amounts that may otherwise be due to the customer under this tariff as an allowance for interruptions. However, any such mistakes, omissions, interruptions, delays, errors, or defects in transmission or service which are caused or contributed to by the negligence or willful act of the customer or authorized user, or joint user, or which arise from the use of customer-provided premises equipment shall not result in the imposition of any liability whatsoever upon the Company.

**IN NO EVENT SHALL THE COMPANY BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS AND LOST SAVINGS, ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO, THE SERVICES AND FACILITIES FURNISHED BY THE COMPANY, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

NEITHER EXCEL NOR ITS SUBCONTRACTORS SHALL BE LIABLE FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. This limitation does not apply to any damages for bodily injury (including death) and, if work has not been performed in a workmanlike manner, damage to real property and tangible personal property.

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SECTION 2 -RULES AND REGULATIONS - (Continued)

2.5 UNDERTAKING OF THE COMPANY

2.5.1 General

The Company undertakes to provide the services offered in this tariff on the terms and conditions and at the rates and charges specified.

Local Exchange Service consists of furnishing one-way or two-way telecommunications to or from a demarcation point on the Customer's premises and another demarcation point within a Local Service Area.

Service is provided on the basis of a minimum period of at least one month, 24-hours per day. For the purpose of computing adjustments or prorating charges in this tariff, a month is considered to have 30 days.

Service will be provided where facilities, billing capability and the resale of total local service or underlying network elements are available, or a combination thereof.

The Company's obligation to furnish service, features and/or facilities is also dependent upon its ability to provide, secure and retain, without unreasonable expense to the Company (a) suitable facilities and rights for the construction and maintenance of the necessary circuits and equipment, (b) suitable space for its plant and facilities in the building where service is or is to be provided, (c) facilities for interconnection from alternate suppliers.

In the event of a dispute, the non-prevailing party may be liable for reasonable court costs and attorney's fees.

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**SECTION 2 -RULES AND REGULATIONS - (Continued)**

**2.5 UNDERTAKING OF THE COMPANY - (Continued)**

**2.5.2 Terms and Conditions**

Customers may be required to enter into written service orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in this tariff. The Customer may also be required to execute any other documents as may be reasonably requested by the Company. The Company reserves the right, at its discretion, to change the terms and conditions specified in this tariff, including, but not limited to, the rates for services. Any changes to the terms and conditions will be applicable to services provided after the effective date of the change.

At the expiration of the initial term specified in each service order, or in any extension thereof, service shall continue on a month to month basis at the then current rates. Any termination shall not relieve the Customer of its obligation to pay any charges incurred under the service order and this tariff prior to termination. The rights and obligations, which by their nature extend beyond the termination of the term of the service order shall survive such termination.

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**SECTION 2 -RULES AND REGULATIONS - (Continued)**

**2.5 UNDERTAKING OF THE COMPANY - (Continued)**

**2.5.3 Interconnection of Facilities**

Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Local Exchange Services and the channels, facilities or equipment of others shall be provided at the Customer's expense.

Local Exchange Services may be connected to the services or facilities of other communications carriers only when authorized by and in accordance with the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections.

**2.5.4 Inspections**

Upon reasonable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in the section for the installation, operation and maintenance of Customer-provided facilities, equipment and wiring in the connection of Customer-provided facilities and equipment to Company-provided facilities and equipment.

If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the Customer must take corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action deemed necessary, including the suspension of or disconnection of service, to protect its facilities, equipment and personnel from harm.

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**SECTION 2 -RULES AND REGULATIONS - (Continued)**

**2.5 UNDERTAKING OF THE COMPANY - (Continued)**

**2.5.5 Assignment or Transfer of Service**

The Customer may not assign or transfer its rights or duties in connection with the services and equipment or facilities provided by the Company without the written consent of the Company. The Company may assign its rights and duties (a) to any subsidiary, parent company or affiliate of the Company, (b) pursuant to any sale or transfer of substantially all the assets of the Company, or (c) pursuant to any financing, merger or reorganization of the Company.

**2.5.6 Notices and Communications**

All notices or other communications required to be given pursuant to this tariff will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following placement of the notice, communication, or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.

The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing.

**2.5.7 Provisions of Certain Local Taxes and Fees**

Any assessments, franchise fees, privilege, license, occupation, excise, or other similar taxes, whether in a lump sum or at a flat rate, or based on receipts, or based on poles, wire or other utility property units, imposed upon the Company by any governmental authority shall be added pro rata, insofar as practical, to the rates and charges stated in the Company's standard schedules, in amounts which in the aggregate for the Company's Customers of any political entity shall be equal to the amount of any such tax upon the Company. Company shall, so long as any such tax or fee is in effect, add to the bills of the Customers in such political entity pro rata on the basis of the revenue or as otherwise required and/or allowed by law derived by Company from each such Customer, an amount sufficient to recover any such tax or fee.

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SECTION 2 -RULES AND REGULATIONS - (Continued)

2.5 UNDERTAKING OF THE COMPANY - (Continued)

2.5.8 Special Arrangements

2.5.8.1 **Contract Service Arrangements** - When economically practicable, Customer specific contract service arrangements may be furnished in lieu of existing tariff offerings.

- a. Rates, Charges, Terms and additional regulations, if applicable, for the contract service arrangements will be developed on an individual case basis, and will include all relevant costs, plus an appropriate level of contribution.
- b. Unless otherwise specified, the regulations for contract service arrangements are in addition to the applicable regulations and rates specified in other sections of this Tariff.

2.5.8.2 **Promotional Offerings** - The Company may offer special promotions of new or existing services or products. These promotions will be offered on a non-discriminatory basis with each subscriber in the classification of service and area for which the promotion is offered having an equal opportunity for participation, subject to availability of products, services and facilities. Promotions may include, but are not limited to, reductions in recurring rates and/or waiver of non-recurring charges.

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**SECTION 2 -RULES AND REGULATIONS - (Continued)**

**2.5 UNDERTAKING OF THE COMPANY - (Continued)**

**2.5.8 Special Arrangements - (Continued)**

**2.5.8.3 Special Construction** - If the provision of service to a Customer would require the construction of additional facilities, replacement facilities or special facilities designed to meet the Customer's particular needs, the Company, at its option, may seek to obtain the facilities from another carrier, or may construct the facilities. The Customer may be required to pay all of the Company's actual expenses incurred in obtaining or constructing the facilities, including but not limited to, any unusual maintenance costs or removal costs. Construction charges may be payable, at the Company's option, prior to acceptance of the Customer's application for service or when billing is rendered. The Customer may be required to enter into a written agreement to pay the construction charges if they are not paid prior to initiation of service.

Any facilities constructed by the Company by the use of construction charges, however financed, shall be and remain the property of the Company, unless otherwise agreed to by the Company pursuant to a written agreement. The Customer does not obtain any rights of ownership in facilities provided by the Company.

The charges and regulations applicable to special construction apply in connection with all classes of service, facilities or equipment furnished by the Company and are in addition to the installation charges, service connection and move charges and monthly service charges otherwise applicable to the provision of service to the Customer pursuant to other sections of this tariff.

**2.6 EMERGENCY SERVICES (ENHANCED 911)**

This service allows Customers to reach the appropriate emergency services including police, fire and medical services. Enhanced 911 has the ability to selectively route an emergency call to the primary E911 provider so that it reaches the correct emergency service located closest to the caller. In addition, the Customer's address and telephone information will be provided to the primary E911 provider for display at the Public Service Answering Point (PSAP). These services will be provided free of charge to all Customers.

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Issued: \_\_\_\_\_

Effective: \_\_\_\_\_

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**SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS**

**3. CONSUMER LOCAL SERVICE DESCRIPTIONS**

Excel Telecommunications, Inc. (the Company and/or Excel) is a telecommunications provider incorporated under the laws of the State of Texas. Excel Telecommunications, Inc. provides telecommunications services in the areas certified to it within the State of South Dakota.

Excel Telecommunications, Inc.'s authority to serve this area is granted in its Certificate of Public Convenience and Necessity as determined by the Commission.

All rules, regulations and rates of the Company apply to its certified area unless otherwise specifically noted in this tariff.

Excel Local Exchange Services may be offered in conjunction with an associated long distance service offering provided by Excel.

**3.1 NONRECURRING CHARGES**

**3.1.1 Service Connection Charges**

These charges are nonrecurring and apply to various Customer requests for connecting, moving or changing service. They are in addition to any other scheduled rates and charges that would normally apply under this tariff. The charges in this section for the connection, move, or change of service contemplate work being performed by Company employees involved at a time when overtime wages do not apply. No distinction is made between a "New Installation and Connection" and an "Outside Move". All changes in location of Customer's equipment or service from one premises to another, are treated as new service connections with service charges applying.

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**SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)**

**3. CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)**

**3.1 NONRECURRING CHARGES - (Continued)**

**3.1.1 Service Connection Charges - (Continued)**

**a. Local Service Charge**

This charge is for receiving, recording and processing information necessary to execute a Customer's request for service. One Local Service Charge, per line, is applicable for all changes and/or additions ordered and provided at the same time for the same Customer. Charges are applicable to, but not limited to, the following:

- Transfer a Customer from one carrier to another for local exchange service.

**b. Long Distance PIC Charge**

To transfer a Customer from one carrier to another for long distance service, a Long Distance PIC Charge applies as specified in this tariff. This charge will not be applied when the customer initiates local service with the Company.

**c. IntraLATA PIC Charge**

To transfer a Customer from one carrier to another for IntraLATA service, a IntraLATA PIC Charge applies as specified in this tariff. This charge will not be applied when the customer initiates local service with the Company.

**d. Add New Line**

To add a new primary line to customer's residence if facilities construction is required.

**e. Additional New Line/Same Trip**

To add an additional new line to customer's residence if another telephone line is provided by the Company at the same residence and initiated at the same time.

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Issued: \_\_\_\_\_

Effective: \_\_\_\_\_

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**SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)**

**3. CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)**

**3.1 NONRECURRING CHARGES - (Continued)**

**3.1.1 Service Connection Charges - (Continued)**

**f. Service Activation Charge**

To initiate service if no facilities construction is required.

**g. Special Construction**

To perform any customer required special construction or change of existing telephone equipment at the customer premises.

**3.1.2 Miscellaneous Charges**

**a. Feature Service Charge**

When a Customer adds, deletes, or changes a feature or changes features within a local package, the Company cannot apply more than one Feature Service Charge per order per line.

**b. Record Order Charge**

One Record Order Charge, per line, is applicable for all changes and/or additions ordered and provided at the same time for the same Customer. When multiple Record Orders are required for Company reasons, only one Record Order Charge applies. Charges are applicable to, but not limited to, the following:

- Change of a directory listing name or address
- Change of a telephone number except in the case of harassing calls
- Changes of billing address

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SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)

3.2 EXCHANGE SERVICES

3.2.1 Local Service Offers

Customers subscribing to the Company's Local Service must purchase a local package consisting of an access line (dial tone), Touch Tone and a pre-determined number of Custom Features. Customers who order an additional line(s), are exceptions to the local package purchase requirement. EXCEL Local Service offers are furnished as follows:

- a. **Excel Complete Communications Package:** Single line service with Touch Tone, with the following automatic features included: Call Waiting, Call Return, Caller ID, Auto Redial, Call Blocking, Three-Way Calling, Distinctive Ring, Speed Dialing, Anonymous Call Rejection (ACR) or Call Forwarding.

3.2.2 Touch Tone Calling Service

- a. Touch Tone calling service provides for the origination of calls by means of instruments equipped for tone-type address signaling and special central office facilities. The service is furnished subject to the availability of central office facilities.
- b. All dial-type lines that terminate in an instrument equipped for tone-type address signaling shall be equipped for Touch Tone calling service except for dial-type lines served from a central office where the special facilities for Touch Tone calling service are not available.
- c. Other facilities, miscellaneous and supplemental equipment, requested by Customers and not detrimental to this service or other services of the Company will be furnished under the regulations and at the rates specified in the applicable sections of this tariff.

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SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)

3.3 CUSTOM FEATURES

The features in this section are made available on an individual basis or as a part of feature packages. Custom features are offered on a monthly basis where facilities are available.

- a. **Anonymous Call Rejection (ACR)** - Allows customers to automatically reject all calls that have been marked anonymous, unavailable, or private by the calling party. When ACR is active, the called party receives no alerting (ringing) for a call that has been rejected. The call is routed to a denial announcement and subsequently terminated.
  
- b. **Auto Redial (Repeat Dialing)** - This feature automatically redials the last outgoing number dialed by the Customer. Activation and deactivation of this feature is completed by the Customer. Repeat Dialing will attempt to call the number for a maximum of thirty (30) minutes after the feature is activated. Once the call is established, the Customer will hear a special ring when the call can be completed. NOTE: Some telephones are only capable of providing a standard ring. Customers must contact the manufacturer or distributor of their telephone set if they have any questions.

Repeat Dialing (usage sensitive) is available on a pay-per-use basis And the functionality is the same as Repeat Dialing. Repeat Dialing (usage sensitive) will be provisioned with local service unless customer requests the feature to be blocked or it is included in a package.

- c. **Call Blocking - Full Restriction** - Call Blocking - Full Restriction is a central office service that restricts long distance calling. Restricted calls are directed to a central office announcement. Call Blocking - Full Restriction is activated when a one or a zero precedes a dialed number. However, calls to 800 type services are not restricted, and where facilities permit, one plus calls to Company business offices and repair service are not restricted. All calls to operator services are disallowed for residence Customers.

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SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)

3.3 CUSTOM FEATURES - (Continued)

- d. **Call Forwarding** - Permits a customer to transfer all incoming calls to another dialable telephone number. The customer pre-selects a second telephone number to which all incoming calls are to be transferred automatically. Calls may be transferred to a long distance message telecommunications point subject to the availability of the necessary facilities in the central office from which the calls are to be transferred.

Call Forwarding shall not be used to extend calls on a planned and continuing basis to intentionally avoid the payment in whole or in part, of message toll charges that would regularly be applicable between the access line originating the call and the access line to which the call is transferred. Customers utilizing Call Forwarding service are responsible for the payment of charges for each toll call between his access line and the distant access line to which the call was transferred.

- e. **Call Return** - This feature allows the Customer to automatically return the most recent incoming call, even if it is not answered. If the telephone number is busy, Call Return will attempt to call the number for a maximum of thirty (30) minutes after the feature is activated. Once the call is established, the Customer will hear a special ring when the call can be completed. This is accomplished by the Customer activating a code. NOTE: Some telephones are only capable of providing a standard ring. Customers must contact the manufacturer or distributor of their telephone set if they have any questions.

Call Return (usage sensitive) is available on a pay per use basis and the functionality is the same as Call Return. Call Return (usage sensitive) will be provisioned with local service unless customer requests the feature to be blocked or it is included in a package.

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SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)

3.3 CUSTOM FEATURES - (Continued)

- f. **Call Waiting** - This feature provides a tone signal that alerts the Customer talking on the line when a second call is incoming. A maximum of two calls may be in process at one time. A Customer who subscribes to Call Waiting can also inhibit the reception of the Call Waiting tone for the duration of a single call, preventing interruption of the call by activating the code (\*70) to cancel Call Waiting. This functionality is automatically included with the Call Waiting feature at no additional cost to the Customer.
  
- g. **Speed Dialing 8** - This feature allows the Customer to reach a list of frequently called numbers by dialing an abbreviated code. The Customer may call up to eight pre-selected numbers by dialing one-digit codes. Programming of these numbers is completed by the Customer.
  
- h. **Three-Way Calling** - Enables a customer to add a third party on an existing call without operator assistance, thereby establishing a three-way conversation. The transmission quality may vary depending on the distance and routing necessary and may not necessarily meet normal standards.

Three-Way Calling (usage sensitive) is available on a pay per use basis and the functionality is the same as Three-Way Calling. Three-Way Calling (usage sensitive) will be provisioned with local service unless customer requests the feature to be blocked or it is included in a package.

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SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)

3.3 CUSTOM FEATURES - (Continued)

- j. **Caller ID with Name and Number** - Allows the Customer to identify most callers by letting him/her see the names and phone numbers on special display equipment. The customer must purchase the equipment separately and it is not available under this tariff
  
- k. **Distinctive Ring Service** - This feature permits the Customer to preselect telephone numbers that can be given a distinctive alerting signal, ring or Call Waiting tone (if the Customer also subscribes to Call Waiting). The Customer can create or change a list of telephone numbers by dialing an activation code. NOTE: Some telephones are only capable of providing a standard ring. Customers must contact the manufacturer or distributor of their telephone set if they have any questions.

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SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)

3.4 LISTINGS

**3.4.1. General** - Customers shall provide the Company with information for all listings. The Company will include the Standard listing in the White Pages (Alphabetical Section) of the telephone directory and will offer one additional listing to the Customer. The Customer must identify its non-published and non-listed telephone numbers for directory purposes.

BNA (bill name and address) information associated with listed/published telephone numbers will be provided for calling card calls and collect and third party billed calls. The Company's BNA service is not available with respect to accounts of non-published/unlisted end users who, by request to the Company (which may be submitted at any time), have specified that such information may not be released, except when the requesting carrier's BNA request for non-published/unlisted end users are as a result of dial-around usage on the requesting carrier's network. If a non-published/unlisted end user requests that the information not be released, all collect and billed to third party calls will be blocked.

**3.4.2. Directory Listing - Standard** - The Customer will receive one Standard listing per telephone number, in the alphabetical section of the directory, at no additional charge.

**3.4.3. Directory Listing - Additional** - The term Additional listing denotes any White Page listing, regardless of form, in addition to the Standard listing. A monthly rate applies for one Additional listing. An additional listing may be any of the following:

- a. Names of members of the Customer's family or of persons residing in the Customer's household.
- b. When the Customer's name or names of other persons residing in the household is spelled in more than one way, additional listings of the alternative spelling are permitted.
- c. The owner of a duly licensed amateur radio station may obtain a listing of the station with this residence telephone number.

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Issued: \_\_\_\_\_

Effective: \_\_\_\_\_

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**SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)**

**3.4 LISTINGS - (Continued)**

**3.4.4 Directory Listing - Non Published**

**a. General**

Non-published telephone numbers are not listed in either the Company's directories or directory assistance records available to the general public. When a call is placed from a telephone number associated with a non-published listing, the number and name may be disclosed if the called party has equipment to display Calling Number Delivery and/or Calling Name Delivery. Customers may prevent the display of the calling number and name by activating Caller ID blocking. Caller ID blocking is available, at no charge, in areas where Caller ID disclosure is possible.

**b. Regulations**

Incoming calls will be completed by the Company only when the calling party places the call by dialing the telephone number. The Company will adhere to this practice notwithstanding any claim of emergency the calling party may present. The acceptance by the Company of the Customer's request to refrain from publishing his/her telephone number in the directory does not create any relationship or obligation, direct or indirect, to any other person than the Customer.

The Company's liability, if any, for its gross negligence or willful misconduct or the right of the Customer to seek any legal remedy available for the same is not limited by this tariff. In the absence of gross negligence or willful misconduct with respect to any claim or suit brought by, or other legal remedies available to, the Customer for damages associated with publishing the telephone number of non published service in the directory or disclosing said number to any person, the Company's liability, if any, shall not exceed the monthly charges which the Customer may have made for such unpublished service for the period during which the service was affected.

Except as provided above, the Customer indemnifies and saves the Company harmless against any and all claims for damages caused or claims to have been caused, directly or indirectly, by the publication/non-publication of the non published listed number or the disclosing/non-disclosing of said number to any person.

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**SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)**

**3.4 LISTINGS - (Continued)**

**3.4.5 Directory Listing - Non Listed**

**a. General**

Non listed numbers are not listed in the Company's directories but are included in directory assistance records available to the general public.

**b. Regulations**

The Customer indemnifies and saves the Company harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly by the publication of the listing, which the Customer has requested, be omitted from the telephone directory. Where such a listing is published in the telephone directory, the Company's liability shall be limited to a refund of any monthly charges assessed by the Company for the particular non-listed service.

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**SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)**

**3.5 OPERATOR SERVICES**

**3.5.1 Directory Assistance**

Allows Customers to obtain help determining listed telephone numbers. A maximum of two (2) requested telephone numbers will be provided for each Directory Assistance call.

**3.5.2 Busy Line Verification**

Provides operator assistance in determining if there is a conversation in progress at the called station. The charge only applies if 1) a conversation is detected, or 2) the line is detected to be off-hook but no conversation.

**3.5.3 Busy Line Verification/Interrupt**

Provides for operator interruption of a conversation in progress on a called station. A charge applies for each attempt to interrupt regardless of whether or not the called station releases the call. A Busy Line Verification must be made prior to a Busy Line Interrupt and both service charges will apply.

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**SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)**

**3.5 OPERATOR SERVICES - (Continued)**

**3.5.4 Customer Dialed Calling Card Station**

Customer Dialed Calling Card Station rates apply when calls are originated and billed as specified below. Customer Dialed Calling Card Station rates do not apply when (1) the Customer dials the appropriate Company access code and does not enter the called number prior to the call timing out and being transferred to a live Company operator or the automated operator system; or, (2) the Customer dials a Company-designated number for completion of Customer Dialed Calling Card calls, but fails to respond to system prompts and must be transferred to a Company operator.

**a. Customer Dialed Automated**

The Customer dials the appropriate Company access code (e.g. 0 or 10-10-XXX+0, a Company-designated number for completion of Customer Dialed Calling Card calls), plus the telephone number desired and completes the call without the assistance of a live Company operator or the automated operator system (except in the case for calls made from a rotary phone), and the call is billed to a consumer calling card.

**b. Operator Must Assist**

The Customer dials the appropriate Company access code (e.g. 0 or 10-10-XXX+0, a Company-designated number for completion of Customer Dialed Calling Card calls), plus the telephone number desired and (1) the local exchange operator services equipment capability precludes the Customer from completing the call without the assistance of a Company operator and the call is billed to the Customer's calling card, or (2) the Customer's calling card number, when input, is not the accepted length to be automatically validated and requires operator intervention.

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**SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)**

**3.5 OPERATOR SERVICES - (Continued)**

**3.5.4 Customer Dialed Calling Card Station - (Continued)**

**c. Customer Dialed and Operator Assisted**

The Customer dials the appropriate Company access code (e.g., 0, 10-10-XXX+0, a Company-designated number for completion of Customer Dialed Calling Card calls), plus the telephone number desired and is able to input the calling card number but uses Company operator assistance that is limited to recording the calling card number for billing purposes.

**3.5.5 Operator Assisted**

Operator Assisted station-to-station and person-to-person charges are determined by adding the appropriate Operator Assisted service charge and/or surcharge, specified in Section 4.5., including the applicable calling rate.

The service charge categories for station-to-station Operator Assisted Calls are as follows:

- Sent Paid
- Station Collect/Directory Assistance
- Bill to Third Number
- Bill to Third Number/Directory Assistance
- Person-to-Person
- Person-to-Person/Directory Assistance

A surcharge applies to Operator Assisted station-to-station and person-to-person calls. The surcharge applies in addition to any applicable service charges.

Incoming Collect and Billed to Third party Calls can be blocked at the customer's request.

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SECTION 3 - CONSUMER LOCAL SERVICE DESCRIPTIONS - (Continued)

3.5 OPERATOR SERVICES - (Continued)

3.5.6 Application of Service Charges and Surcharges

TYPE OF CALL	<u>OPERATOR SERVICE CHARGE</u>	<u>OPERATOR DIALED SURCHARGE</u>
- Busy Line Interruption	Yes	No
- Busy Line Verification	Yes	No
- Customer Dialed Calling Card Station Automated (0+)	Yes	No
- Operator Must Assist (0+)	Yes	No
- Operator Assisted (0+)	Yes	No
- Operator Station-to-Station (Customer dialed 0+) collect, billed to third number, sent paid	Yes	No
- Operator Station-to-Station (operator dialed 0-) collect, billed to third number, sent paid	Yes	Yes
- Operator Station-to-Station (operator dialed 0-) billed to a calling card	Yes	No
- Operator Dialed Calling Card Station (operator dialed 0-) billed to a calling card	Yes	No
- Person-to-Person (Customer dialed 0+) collect, billed to third number, sent paid	Yes	No
- Person-to-Person (operator dialed 0-) collect, billed to third number, sent paid	Yes	Yes
- Person-to-Person (operator dialed 0-) billed to a calling card	Yes	No

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SECTION 4 - CONSUMER LOCAL RATES AND CHARGES

4.1 NON-RECURRING CHARGES

4.1.1 Service Connection Charges		<u>Non-Recurring Charge:</u>
a.	Local Service Connection Charge	\$25.00
b.	Subscriber Line Charge (SLC)	\$5.00
c.	Add New Line Charge	\$25.00
d.	Additional New Line/ Same Trip	\$25.00
e.	Service Activation Charge	\$25.00
f.	Special Construction	Individual case basis (ICB)

4.1.2 Service Connection Charges		<u>Non-Recurring Charge:</u>
a.	Feature Service Charge	\$25.00
b.	Record Order Charge	\$10.00

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**SECTION 4 - CONSUMER LOCAL RATES AND CHARGES - (Continued)**

**4.2 EXCHANGE SERVICES**

**4.2.1 Local Service Offers: Price Per Month:**

a. EXCEL Complete Communications Package \$31.95

**4.2.2 Local Service Access Lines**

Prices for Local Service Access Lines as defined in this tariff, are reflected in the Local Service Offers prices in 4.2.1, preceding, and are not rate additive.

**4.2.3 Touch Tone Calling Service**

Prices for Touch Tone Calling Service, as defined in this tariff, are reflected in the Local Services Offers prices in 4.2.1, preceding, and are not rate additive.

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**SECTION 4 - CONSUMER LOCAL RATES AND CHARGES - (Continued)**

**4.3 CUSTOM FEATURE RATES**

The following features are furnished, as part of the Excel Complete Communications Package:

-Anonymous Call Rejection (ACR)	No Additional Charge
-Auto Redial (Repeat Dialing)	No Additional Charge
-Call Blocking Full Restriction	No Additional Charge
-Call Forwarding	No Additional Charge
-Call Return	No Additional Charge
-Call Waiting	No Additional Charge
-Speed Dialing 8	No Additional Charge
-Three Way Calling	No Additional Charge
-Caller ID With Name and Number	No Additional Charge
-Distinct Ring Service	No Additional Charge

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**SECTION 4 - CONSUMER LOCAL RATES AND CHARGES - (Continued)**

**4.4 LISTINGS**

4.4.1 Directory Listing – Standard	No Charge
4.4.2 Directory Listing - Additional (a maximum of three)	\$2.00/Month
4.4.3 Directory Listing - Non Published	\$2.40/Month
4.4.4 Directory Listing - Non Listed	\$2.40/Month

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**SECTION 4 - CONSUMER LOCAL RATES AND CHARGES - (Continued)**

**4.5 OPERATOR SERVICES**

4.5.1 Local Directory Assistance Service Charge, up to 2 listings  
\$0.35, Per Call

4.5.2 Local Directory Assistance Call Completion Service Charge  
\$0.35, Per Call

4.5.3 Busy Line Verification/Interrupt Service Charges  
  
\$2.00, Per Verification  
\$3.00, Per Interrupt

4.5.4 Calling Card Service Charges

- Customer Dialed, Automated	\$0.45
- Customer Dialed, Operator Must Assist	\$1.65
- Customer Dialed and Operator Assisted	\$1.65
- Calling Card / Directory Assistance	\$0.80

4.5.5 Operator Assisted Calling Service Charges

- Sent Paid	\$1.65
- Station Collect	\$1.65
- Bill to Third Number	\$1.65
- Person-to-Person	\$3.00

4.5.6 Operator Service Per Minute Rate: \$0.40

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**SECTION 5 - COMMERCIAL LOCAL SERVICE DESCRIPTIONS**

**Reserved For Future Use**

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**SECTION 6 - COMMERCIAL RATES AND CHARGES**

**Reserved For Future Use**

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**SECTION 7 - CHARGES APPLICABLE UNDER SPECIAL CONDITIONS**

**7.1 SPECIAL CHARGES**

**7.1.1 Applications**

Special charges may be applied in addition to the usual service connection charges and monthly rates. Special charges apply primarily when unusual investment or expense will be incurred by the Company. Special charges will apply when:

- a. conditions require or the Customer request the provision of special equipment or unusual or nonstandard methods of plant construction, installation or maintenance or a move of equipment or necessary facilities;
- b. the Customer's location requires the use of costly private right-of-way; and
- c. the proposed service is of a temporary nature, and the plant to be placed would not be useful to the Company in the general conduct of its business after that service was discontinued.

**7.1.2 Customer Requirements**

- a. Temporary Construction - The Customer shall be charged the estimated cost of construction and removal of the plant which would not be of value to the Company, less the estimated net recovery value of the material used. The Company may require the Customer to pay the cost of construction plus the cost of removal, less salvage, for temporary construction performed in advance of permanent construction or to provide temporary service.
- b. The Company shall retain title (if applicable) to all plant constructed, as specified within this tariff, provided wholly or partially at a Customer's expense.
- c. When attachments are made to poles of other companies, instead of providing construction for which the Customer would be charged under the provisions of this section, the Customer shall pay the other company's cost for such attachments.
- d. The Customer is required to pay the construction charges made by another telephone company providing facilities to connect with the facilities of the Company.

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**SECTION 7 - CHARGES APPLICABLE UNDER SPECIAL CONDITIONS - (Continued)**

**7.2 LINE EXTENSIONS**

**7.2.1 Conditions for Line Extension Charges**

Construction Charges for line extensions are applied to Customer's with abnormally long extension requirements to prevent unreasonable burdening of the general body of existing Customers or service subscribers.

**7.2.2 Rules for Line Extension Charges**

- a. All costs will be computed on a current basis, and material cost will be computed on the basis of the extension of the minimum sized cable used by the Company or its designated facilities provider to the Customer.
- b. The Company will determine the type of cable plant extension required on the basis of current and projected conditions and estimate the cost accordingly.
- c. The construction charge for line extensions is apportioned equally among all Customers of a group.
- d. Customers may be required to make advance payments to cover all or a portion of the excess construction charges for exchange service or special service arrangements when in the Company's judgement there is evidence of credit risk. A cash deposit may also be required as specified in Rules and Regulations, Section 2.3.5., on Deposits.
- e. Payments for line construction are not refundable, and no credit will be allowed for future installations on line extensions constructed under the above regulations.

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**SECTION 7 - CHARGES APPLICABLE UNDER SPECIAL CONDITIONS - (Continued)**

**7.2 LINE EXTENSIONS - (Continued)**

**7.2.3 Poles on Private Property**

The Company or its designated facilities provider will provide the poles on private property which are used in serving an individual Customer at no cost to the Customer except in cases where the Customer is required to pay for constructing the line extension. Poles requested by the Customer, in excess of those deemed necessary by the Company, will be charged to the Customer at the installed cost.

**7.2.4 Provisions of Private Rights-of-Way**

The Company's obligation to provide service through line extension depends entirely on its ability to secure, retain and maintain suitable rights-of-ways without incurring unreasonable expense. When conditions require, Customers shall provide, without expense to the Company, private rights-of-way as needed. Any and all private rights-of-way permit requirements and any and all associated costs will be the responsibility of the Customer and must be furnished before a plant extension project begins.

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**SECTION 7 - CHARGES APPLICABLE UNDER SPECIAL CONDITIONS - (Continued)**

**7.3 SPECIAL CONSTRUCTION**

**7.3.1 Construction on Private Property**

- a. The Company or its designated facilities provider will furnish an average amount of entrance and distribution facilities, provided the facilities are of the standard type normally furnished for the particular location or kind of service.
- b. If additional entrance or distribution facilities are required, or if conditions require special equipment, maintenance or methods of construction, if the installation is for a temporary purpose, or if for any other reason, the construction costs are excessive as compared with the revenue to be derived from the project, the Customer may be required to pay for costs over and above the costs applicable for a normal installation.
- c. The Customer will provide the Company upon request and without charge written permission for the placement of Company facilities (or the facilities of a Company-designated service provider) on their property.
- d. The Customer is responsible for providing satisfactory entrance to the building and space for mounting any necessary network protection equipment.

**7.3.2 Temporary Service**

Where plant construction is required to provide any temporary service or facility, or where it is necessary to place temporary construction in advance of permanent construction in order to meet the Customer's requirements, the Company may require the Customer to pay the nonrecoverable costs of the temporary construction or to contract for service beyond the initial period, or both.

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**SECTION 7 - CHARGES APPLICABLE UNDER SPECIAL CONDITIONS - (Continued)**

**7.3 SPECIAL CONSTRUCTION - (Continued)**

**7.3.3 Service Provided to Movable Premises**

- a. When telephone service is provided to movable premises by means of aerial plant, the Customer shall provide a clearance pole if the Company considers it necessary. The clearance pole must comply with the Company's specifications. The Customer shall place, own and maintain the pole. However, if the Customer elects and the Company agrees, the Company or its designated service provider will place, own and maintain the pole and bill the Customer the cost of placing the pole.
  
- b. Where plant construction is required to provide any service or facility to a movable premises, and it is necessary to place temporary construction in advance of permanent construction in order to meet the Customer's requirements, the Company may require the Customer to pay the nonrecoverable costs of the temporary construction or to contract for service beyond the initial period, or both.

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**SECTION 7 - CHARGES APPLICABLE UNDER SPECIAL CONDITIONS - (Continued)**

**7.3 SPECIAL CONSTRUCTION - (Continued)**

**7.3.4 Service to Residential and Commercial Developments**

The construction charges, allowances and provisions previously specified in this Section contemplate the extension of facilities into areas of normal growth and development. Where facilities are to be extended into new areas of residential or commercial real estate development which, in the Company's opinion, are of a promotional or speculative nature, the Company may require an advance deposit equal to all or a portion of the costs of such construction, depending on the circumstances in each case. This advance deposit will be payable prior to the start of construction.

- a. The Company and the developer may enter into a contractual agreement that provides for the periodic refund of portions of the deposit as Customers in the development receive telephone service, and other terms of the contract are met. The contract will specify the estimated number of telephone customers expected to receive service within the area and the time required to complete the project (not to exceed five years). The contract will provide that the construction charge be recomputed to reflect regular tariff allowances, design changes made by the developer, damage to telephone facilities by persons other than Company employees or agents or unusual construction requirements. Periodic refunds to the developer will be adjusted accordingly.
- b. The Customer for telephone service to a development is required to provide the Company, at his own expense, the necessary easements for installation and maintenance of telephone facilities, clear the ground where facilities are to be installed according to Company specifications and request installation of telephone facilities at an appropriate time during construction of the project to avoid unnecessary costs to the Company.

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**SECTION 7 - CHARGES APPLICABLE UNDER SPECIAL CONDITIONS - (Continued)**

**7.3 SPECIAL CONSTRUCTION - (Continued)**

**7.3.5 Underground Service Connections**

When a Customer requests that underground service connections be installed instead of aerial facilities which would ordinarily be used, or when aerial facilities are used to provide service, and the Customer subsequently requests that facilities be placed underground, the following regulations apply:

- a. the Customer shall pay the cost on constructing and maintaining underground conduits which will be built according to Company specifications or according to the specifications of the Company's designated service provider;
- b. any ducts required in the underground conduit by the Company to furnish service shall be reserved for its exclusive use;
- c. if a Customer requests that cable be installed in a trench, the trench shall be constructed and back filled under the Company's supervision at the Customer's expense;
- d. the Company or its designated service provider will maintain and replace cable installed in conduit where the Company has inspected and approved the conduit. The Company or its designated service provider will repair or replace cable in conduit or trench necessitated by damage caused by the Customer or his representatives, only at the Customer's expense; and
- e. the Company or its designated service provider may replace existing aerial facilities with underground facilities in connection with planned projects or during its normal operations. If a Customer requests the removal and replacement of existing aerial facilities with underground facilities prior to the time of normal replacement, the Customer will be responsible for the expense incurred by the Company in making the replacement.

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**SECTION 7 - CHARGES APPLICABLE UNDER SPECIAL CONDITIONS - (Continued)**

**7.4 SPECIAL SERVICE ARRANGEMENTS**

**7.4.1 General**

- a. If a Customer's requirements cannot be met by regular service arrangements, the Company will provide, where practical, special service arrangements at charges equal to the estimated cost of furnishing such facilities. These special service arrangements will be provided if the provision of such arrangements is not detrimental to any other services furnished under the Company's tariffs.
- b. If any type of qualifying special assembly device is subscribed to by more than three (3) customers, the Company may file the offering as a general service offering in the appropriate tariff section.

**7.4.2 Rates and Charges**

**7.4.2.1** Rates for special service arrangements are equivalent to the estimated costs of furnishing the special service arrangements.

**7.4.2.2** Estimated costs, which consist of an estimate of the total cost to the Company of providing the special service arrangement, may include the following:

- a. cost of maintenance;
- b. cost of operation;
- c. depreciation on the estimated installed cost of any facilities used to provide the special service arrangement based on anticipated useful service life less estimated net salvage value;
- d. general administration expenses, including taxes on the basis of average charges for these items;
- e. any other item of expense associated with the particular special service arrangement; and
- f. an amount, computed on the estimated installed cost of the facilities used to provide the special service arrangement, for return on investment.

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**SECTION 7 - CHARGES APPLICABLE UNDER SPECIAL CONDITIONS - (Continued)**

**7.4 SPECIAL SERVICE ARRANGEMENTS - (Continued)**

**7.4.2 Rates and Charges - (Continued)**

**7.4.2.3** The estimated installed cost described above will include the costs of equipment and materials provided or used, plus estimated labor costs, including the cost of installation, engineering, supervision, transportation, rights-of-way, in addition to other items chargeable to the capital accounts.

**7.4.2.4** Special service arrangement rates are subject to revision depending on changing costs.

**7.4.2.5** If and when a special service arrangement becomes a tariffed offering, the tariffed rate or rates will apply from the date of tariff approval.

**7.4.2.6** The following rate treatments may be used in connection with charges for special service arrangements:

- a. monthly rental or termination agreement with or without an installation charge; and
- b. installation charge only.

**7.5 OTHER REGULATIONS**

Line extensions and special service arrangements are further subject to the regulations specified in the tariffs of this Company, or in the tariffs of the Company's designated service provider, as they now exist, and any revisions, additions or supplements which may be made in the future.

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**SECTION 8 - LOCAL MARKET TRIALS**

**8. LOCAL MARKET TRIALS**

- 8.1 Purpose** - A market trial is intended to enable the Company to test its ability to provide services that may eventually be made available to the general public. As a part of a market trial, the Company may need to test the capabilities of the systems required by a proposed service, including, but not limited to, systems needed to establish, provision, operate, bill and/or collect for a service, whether such systems are provided solely by the company or in combination with systems provided by other carriers or vendors. A market trial is not an offer to provide service to the general public.
- 8.2 Eligibility** - The Company may limit customers who are eligible to receive a service that is offered as part of a market trial, including but not limited to, limitations on the number of customers or the classes of customers who may subscribe to the service during the market trial. Additionally, the Company may limit the market trial to customers who are employees of the Company.
- 8.3 Availability** - The Company, at its option, may choose to offer a market trial service on a statewide basis or may limit the availability of a market trial service to a smaller geographic area. The area in which a market trial service is available may include all or part of an exchange and need not conform to existing exchange area boundaries.
- 8.4 Duration** - A market trial may be conducted for any period of time defined by the Company, not to exceed 12 months.
- 8.5 Notice** - The Company will notify the Commission in writing of any local market trial services being offered in South Dakota.
- 8.6 Applicability of Other Tariff Provisions** - If the terms and conditions of the market trial conflict with other provisions of this tariff, the market trial terms and conditions shall govern the market trial service offering. In all other instances, a market trial shall be subject to the other terms and conditions for service as contained in this tariff.

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# **Exhibit I**

## **REGULATORY HISTORY**

Excel has a strong commitment to observing the highest standards of customer service as well as to bringing competitive choice to the residential marketplace.

As in any business, customer issues of various types arise in the normal course of operations. An important measure of customer satisfaction in such situations is the Company's responsiveness in promptly resolving such issues. Each of the approximately 400 customer service associates staffing the Company's two state-of-the-art call centers receives approximately 100 hours of training annually in customer care and provisioning standards. This training is designed to promote long term relationships with Excel customers as well as timely resolution of customer problems. Excel has a "First Call Resolution" standard to ensure that consumers have their questions answered and/or problems resolved with one call. Moreover, since its inception, Excel has given new long distance customers a 90-day guarantee, during which Excel will pay for a customer's switch-back to his/her previous company with no questions asked.

Other steps that Excel has taken to guarantee consumer satisfaction include the development of a specialized group within the customer service department whose sole function is to deal with reported problems of service-not-requested, claims of slamming, and other issues quickly and efficiently. This group ensures that the consumer is satisfied and that any appropriate credits/adjustments are made. Finally, and perhaps most importantly, serving as the "first line" of consumer satisfaction are Excel's Independent Representatives ("IRs"). The IRs are encouraged to build ongoing relationships with their customers to ensure satisfaction with Excel's services and products on a continuing basis. Further, Excel has undertaken to provide training to its IRs with respect to Excel's strict Zero Tolerance Policy and business ethics. Excel will terminate its relationship with any IR who is found to have engaged in illegal or improper conduct, specifically with regards to slamming.

Beyond the Company's proactive steps to ensure that its customers are satisfied with its services and products, Excel has been praised for its forthrightness in keeping regulatory agencies informed when consumer issues do arise. It deserves mention that, over the years, several state Commissions and the FCC have taken documented note of the extraordinary steps that Excel has implemented to advance the accuracy of the customer provisioning process and to devise complaint resolution safeguards, deeming these to effectively set an industry standard. The Company periodically reviews the FCC and state approved means to effect consumer carrier changes and has been utilizing a nationwide independent third party verification ("TPV") system

over the last couple of years. This TPV system allows for verification of all residential primary interexchange carrier (“PIC”) changes. Excel will continue to innovate its systems to provide consumers with efficiency, convenience, and accuracy in carrying out the consumer's choice in carrier.

Notwithstanding its best efforts in customer service and satisfaction, and, as is the case for many carriers of Excel's size and comparably long history of operations, Excel has from time to time been the subject of informal commission inquiries or even formal proceedings. In response to the Commission's request a summary of relevant proceedings is provided in this Exhibit. Because each state commission applies its own rules and standards to treat, handle and classify consumer complaints, we have looked to a factor for categorizing these issues that would be common across all states—regulatory complaints that have been resolved by issuing an order dismissing an action or approving a settlement. Accordingly, the attached summary of regulatory actions also serves as a summary of the Applicant's complaint history in other states.

## Regulatory Proceedings Summary

Pursuant to 20:10:32:03(21), the following list identifies and summarizes relevant regulatory proceedings, except for informal consumer complaints or referrals. We discuss proceedings in which Excel Telecommunications, Inc. has been the subject within the past three years.

### **CLOSED**

Federal Communications Commission, Washington, DC 20554, File Number EB-99-TC-012, Enforcement Bureau Investigation (Closed April 25, 2000). Excel entered into a Consent Decree with the FCC to resolve several complaints of unauthorized PIC changes. Excel proactively initiated discussions with the FCC. As a result, no Notice of Apparent Liability was ever issued. As part of this consent decree, Excel: made no admission of liability agreed to continue its then recently implemented nationwide third party verification, which requires the use of social security numbers as an added measure of assurance that the person conducting the PIC change is indeed the responsible party for the line at least through April 25, 2002, and implemented other preventative procedures. In connection with the consent decree, Excel also made a voluntary contribution of \$400,000 to the US Treasury.

Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0870; Docket No. 991459-TP (Closed September 13, 2000). Excel noted an increase in complaints concerning alleged unauthorized PIC changes. Taking a proactive approach, Excel met with the Florida Commission Staff to discuss the issue. The Company stopped the use of written LOAs and instead instituted a TPV system for all consumer PIC changes other than those made to the ILEC directly, and made a voluntary contribution of \$400,000 to the General Revenue Fund of the State of Florida.

Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0870; Docket No. 97-1490-T1 (Closed February 22, 1999). A show cause order was opened against twelve telecommunications carriers, including AT&T, MCI, Sprint, LCI, and UniDial, among other long distance carriers, in addition to Excel Telecommunications, Inc. The proceeding was initially opened in December of 1997 and the formal show cause order was issued on July 22, 1998. Excel made a voluntary contribution of \$68,000 to the General Revenue Fund of the State of Florida.

Kentucky Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky, 40602; Case No. 2000-316 (Closed March 24, 2000). The Commission opened a proceeding to investigate allegations of slamming. Excel and the Commission reached a Settlement Agreement following meetings with Staff in which Excel demonstrated the extensive steps that the Company had taken enhance the existing provision of service mechanism thus reducing the occurrence of slamming complaints. In addition, Excel agreed to pay \$65,000 to the Kentucky State Treasurer's Office.

Maryland Public Service Commission, William Donald Schaeffer Tower, 6 St. Paul Street, Baltimore, Maryland 21202; Case No. 100033632 (Closed January 30, 2001). This proceeding involved a single consumer complaint of slamming. The consumer contacted the Commission, which in turn contacted Excel. The Company settled the matter, ensuring that the consumer received the credits to which he was entitled without further Commission action.

Michigan Public Service Commission, 6545 Mercantile Way, Lansing, MI 48910, Case No. U-11987 (Closed September 14, 1999). This proceeding focused upon a single consumer complaint of an unauthorized PIC change. Excel and the consumer subsequently were able to reach settlement without further Commission involvement.

Nevada Office of the Attorney General, Bureau of Consumer Protection, 1325 Airmotive Way, #340, Reno, Nevada, 89502 (Closed February 4, 2000). A Release and Settlement Agreement was entered into by Excel and the Nevada Attorney General's office in a case brought by the Attorney General for alleged slamming. Excel and the Nevada Attorney General's Office settled with no admission of liability on Excel's part and a voluntary disbursement of \$75,000 to the Office of the Nevada Attorney General.

Oregon Department of Justice, 1162 Court Street NE, Salem, Oregon, 97310, Case No. 00C14467 (Closed May 23, 2000). Excel entered into an Assurance of Voluntary Compliance in this case brought by the Department of Justice based upon various complaints that were billing and PIC-change related. Without admitting liability, Excel voluntarily contributed \$75,000 to the Consumer Protection and Education Revolving Account.

Commonwealth of Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, Pennsylvania, Case No. C-00015520 (Closed September 13, 2001). This proceeding arose out of a misunderstanding by the consumer as to the amount of monthly service charges for her long distance calling. Excel and the consumer settled their differences without further Commission involvement.

Commonwealth of Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, Pennsylvania, Case No. C-00003546 (Closed June 27, 2000). A single consumer complaint was lodged against the Company, alleging failure to switch back the consumer to a different PIC. Excel resolved the problem to the consumer's satisfaction upon receipt of the customer's complaint.

Public Utilities Commission of South Dakota, 500 East Capitol Avenue, Pierre, SD 57501, Case No. CT00-106 (Closed December 20, 2000). The case arose from a complaint made by a couple for 1) a billing dispute and 2) an allegation of an unauthorized PIC change on their home phone line. Excel and the consumers came to a settlement without further Commission involvement.

Public Utilities Commission of South Dakota, 500 East Capitol Avenue, Pierre, SD 57501, Case No. CT00-039 (Closed May 4, 2001). The basis for this action was a complaint by a single consumer regarding a billing issue. Excel and the consumer came to a settlement with minimal Commission involvement.



Public Utilities Commission of South Dakota, 500 East Capitol Avenue, Pierre, SD 57501, Case No. CT01-0034 (Closed October 18, 2001). This action arose in response to a billing complaint by a former customer. Excel and the consumer came to a settlement without Commission involvement.

Public Utilities Commission of South Dakota, 500 East Capitol Avenue, Pierre, SD 57501, Case No. CT00-076 (Closed July 13, 2000). This action arose in response to a complaint by a single consumer alleging unauthorized switch of carrier. Excel and the consumer came to a settlement without further Commission involvement.

Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN 37243-0505; Docket No. 99-0794 (Closed May 1, 2000). The Tennessee Regulatory Authority ("TRA") brought an action in October 1999 for complaints of alleged slamming. Excel voluntarily implemented a third party verification system for all Tennessee residential service requests (other than those submitted by a customer directly to local exchange carrier) to resolve the matter.

Texas Public Utility Commission, 1701 N. Congress Avenue, Austin, Texas 78711; Docket No. 20933 (Closed August 20, 1999). This case was instituted on April 22, 1999 and involved alleged unauthorized PIC changes. Excel and the Commission entered into a Stipulation and Settlement Agreement. Excel also consented to a voluntary contribution of \$35,000 to the Treasury of the State of Texas, with no admission of liability or wrongdoing.

Public Service Commission of West Virginia, 201 Brooks Street, Charleston, WV 25301, Case No. 01-0042-T-C (Closed March 6, 2001). This case arose from a single consumer complaint regarding the billing for two calls. Excel demonstrated that it had credited the consumer the amount in dispute to the Commission's satisfaction.

#### **PENDING**

Florida Attorney General, Subpoena issued December 9, 1999. The Florida Attorney General issued a subpoena requesting certain information from the Company. Excel met with members of the Attorney General's office on the matter and delivered information covered by the subpoena. This matter has been inactive since May 2000.

Louisiana Public Service Commission, P.O. Box 91154, Baton Rouge, Louisiana, 70821-9154; Docket No. U-24873. (Opened May 1, 2000) This action arises out of one consumer slamming complaint. Excel has reached a settlement with Commission staff; dismissal of the action is pending.

Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Madison, WI 53718. This matter arose out of a single consumer complaint. The Consumer objected to paying Excel's tariffed long distance charges for adult entertainment calls the Customer claims he did not make. Excel does not bill for adult entertainment calls. The Department issued a civil investigative request for information to Excel on August 2, 2001, supplemented on September 4, 2001. Having responded to requests, Excel continues to cooperate to resolve this matter.

**South Dakota Public Utilities Commission**  
**WEEKLY FILINGS**  
**For the Period of February 7, 2002 through February 13, 2002**

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this filing. Phone: 605-773-3705 Fax: 605-773-3809

**TELECOMMUNICATIONS**

**TC02-014 In the Matter of the Application of Telefyne Incorporated for a Certificate of Authority to Provide Alternative Operator Services in South Dakota.**

Telefyne Incorporated (Telefyne) has filed an application for registration as an alternative operator service provider in South Dakota. The applicant is a reseller which intends to offer intrastate alternative operator service. Telefyne was issued a Certificate of Authority to provide interexchange telecommunications services in South Dakota on July 27, 2001.

Staff Analyst: Heather Forney  
Staff Attorney: Karen Cremer  
Date Docketed: 02/08/02  
Intervention Deadline: 03/01/02

**TC02-015 In the Matter of the Application of Excel Telecommunications, Inc. for a Certificate of Authority to Provide Competitive Facilities-Based Local Exchange Services in South Dakota.**

Excel Telecommunications, Inc. has filed an application requesting an expansion of its Certificate of Authority to provide telecommunications services in South Dakota. The applicant was granted authority to provide resold local exchange services in South Dakota on December 17, 1996. The Company now proposes to offer facilities-based local exchange services to consumers in the State utilizing combinations of unbundled network elements ("UNEs"), specifically the unbundled network elements platform ("UNE-P") purchased from the incumbent local exchange carrier.

Staff Analyst: Heather Forney  
Staff Attorney: Kelly Frazier  
Date Docketed: 02/13/02  
Intervention Deadline: 03/01/02

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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	<b>ORDER CLOSING DOCKET</b>
<b>EXCEL TELECOMMUNICATIONS, INC. FOR A</b>	)	
<b>CERTIFICATE OF AUTHORITY TO PROVIDE</b>	)	<b>TC02-015</b>
<b>COMPETITIVE FACILITIES-BASED LOCAL</b>	)	
<b>EXCHANGE SERVICES IN SOUTH DAKOTA</b>	)	

On February 13, 2002, the Public Utilities Commission (Commission) received an application from Excel Telecommunications, Inc. (Excel) requesting an amendment to its certificate of authority to provide competitive facilities-based local exchange services in South Dakota. Excel was granted authority to provide local exchange services in South Dakota on December 17, 1996.

On February 14, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of March 1, 2002, to interested individuals and entities. No petitions to intervene or comments were filed.

At a regularly scheduled March 28, 2002, meeting, Commission Staff requested clarification from the Commission on the necessity for Excel to amend its current certificate of authority in order to provide facilities-based local exchange service. In the order from Docket TC96-099, the Commission granted Excel a certificate of authority to provide "local exchange services." The matter was deferred at that time.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-69 and ARSD 20:10:32:03.

At a regularly scheduled April 17, 2002, meeting, the Commission considered Excel's request for an amendment to its certificate of authority to provide competitive facilities-based local exchange services in South Dakota. The Commission voted unanimously that the final order and decision granting an amended certificate of authority in Docket TC96-099 granted Excel authority to provide local exchange service generally within the territory specified in the order. Excel's authority is limited only by specific conditions set forth in the final order and is not limited by the means in which Excel may provide service within its authorized territory. As a result, Excel is not required to obtain an amendment to its certificate of authority in order to provide local exchange service by means of resold service, unbundled network elements or its own facilities. It is therefore

**ORDERED**, that the docket shall be closed.

Dated at Pierre, South Dakota, this 19<sup>th</sup> day of April, 2002.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Melaine Kalbo

Date: 4/23/02

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Robert K. Sahr  
ROBERT K. SAHR, Commissioner