State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: JANUARY 21, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (BEDELL) CB NB
DIVISION OF CONSUMER AFFAIRS (MCHARGUE)
DIVISION OF COMMUNICATIONS (BIEGALSKI) KO

RE: DOCKET NO. 971490-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST EXCEL TELECOMMUNICATIONS, INC. FOR VIOLATION OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE, INTEREXCHANGE CARRIER SELECTION

AGENDA: 02/02/99 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\971490.RCM

CASE BACKGROUND

Excel Telecommunications, Inc. (Excel), Certificate Number 2440, is a provider of interexchange telecommunications service and was certificated on March 21, 1990. Excel reported gross operating revenues of $73,584,960 and intrastate revenues of $16,088,967 on its Regulatory Assessment Fee Return for the period January 1, 1997, through December 31, 1997. As a provider of interexchange telecommunications service in Florida, Excel is subject to the rules and regulations of this Commission.

For the period April 1, 1996, through April 9, 1998, the Commission staff has received 37 complaints against Excel that have been determined to be apparent unauthorized carrier change (slamming) infractions in violation of Rule 25-4.118, Florida Administrative Code. Based on the number of complaints received by Commission staff and the number of apparent slamming violations, the Commission issued Order No. PSC-98-1000-SC-TI, on July 22,

1998, requiring Excel to show cause why it should not have certificate number 2440 canceled or be fined $1,110,000 for 37 apparent violations of Rule 25-4.118, Florida Administrative Code. On August 11, 1998, Excel filed a timely response to the Show Cause Order and a Motion for More Definite Statement. On December 17, 1998, Excel filed an offer of settlement. (Attachment A, Pages 5-12)

Staff's recommendations on Excel's settlement proposal and procedural motion are set forth below.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Excel's Motion for More Definite Statement?

RECOMMENDATION: If the Commission approves Excel's Settlement Offer, the Motion for More Definite Statement will become moot. (Bedell)

STAFF ANALYSIS: As stated in the Case Background, when Excel filed its response to the Commission's Show Cause Order, it also filed a Motion for More Definite Statement. If the Commission approves Excel's Offer of Settlement, the outstanding Motion will be moot. If the Settlement Offer is rejected, staff will write a recommendation on the Motion for More Definite Statement for a subsequent Agenda. Therefore, staff recommends that if the Commission approves staff's recommendation in Issue 2, the pending Motion for More Definite Statement will be moot.

ISSUE 2: Should the Commission accept the settlement offer proposed by Excel to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection?

RECOMMENDATION: Yes. (Biegalski)

STAFF ANALYSIS: On December 17, 1998, after several meetings with staff, Excel submitted an offer to settle. In its settlement offer Excel agreed to do the following:

- Excel will establish a toll-free slamming awareness hotline.

- Excel will cooperate with the Commission in establishing a system whereby customers calling the Commission with complaints of unauthorized PIC changes may be transferred directly to Excel's toll-free line with the goal of prompt resolution.

- Excel commits to engaging in ongoing dialogue and quarterly reviews, conducted by conference call if appropriate, with Commission staff of complaints lodged against it with the Commission.

- Excel will file civil actions in Florida against Independent Representative's (IR's) who cheat Excel and customers by submitting forged LOAs.

- Excel will determine whether data bases are available under public records law or on some more cost-effective basis so that cross-verification of LOAs against social security numbers or drivers license numbers can be performed routinely.

- Excel will create an award program that encourages error free completion of LOAs.

- Whenever Excel has reason to believe that an IR has forged an LOA, as a normal part of its investigation, Excel will review the validity of every LOA submitted by that IR during the preceding six months.

- Excel will make a contribution of $68,000 to the general revenue fund of the State of Florida with no admission of liability or wrongdoing.

Staff supports Excel's proposal to establish a toll-free slamming awareness number in addition to establishing a warm transfer system with the Commission for consumer complaints. Staff believes this will allow for expedited resolution of those consumer complaints. Staff also supports Excel's proposal to file civil action against IR's who forge LOAs. Staff believes this will encourage Excel representatives to be extremely accurate when

completing LOAs. Furthermore, staff supports Excel's proposal to re-evaluate LOAs previously submitted by an IR who appears to have forged an LOA. Staff believes this will enable Excel to determine if there is a pattern of this behavior.

The company has satisfactorily addressed each of staff's concerns. Moreover, the company has been very cooperative in resolving all issues. Therefore, staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support the voluntary contribution to the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, in the amount of $68,000.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. With the approval of Issue 2, this docket should remain open pending the remittance of the $68,000 voluntary contribution within five business days after the order approving the settlement becomes final. Upon remittance of the settlement payment, this docket should be closed. The $68,000 settlement should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. **(Bedell)**

STAFF ANALYSIS: If the Commission approves the staff recommendation in Issue 2, this docket should remain open pending the remittance of the $68,000 voluntary contribution within 5 business days after the order approving the settlement becomes final. Upon remittance of the settlement payment, this docket should be closed.

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December 17, 1998

Ms. Cathy Bedell
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 971490-TI

Dear Ms. Bedell:

The purpose of this letter is to propose a settlement of the above docket. As such, this communication is privileged and confidential,[1] and nothing herein may be viewed as an admission against interest,[2] or in any way used against Excel if this matter is not settled.

I. INTRODUCTION

This is the fourth formal settlement proposal made by Excel in this proceeding and is crafted to respond to staff's reaction to our third proposal. We are hopeful that our mutual efforts to resolve this matter without litigation will now be successful.

This settlement proposal contains three basic parts. First, Excel proposes certain additional prophylactic and remedial measures as refinements to Excel's already comprehensive approach to avoiding unauthorized PIC conversions. Second, Excel addresses the nature of its responsibility for the conduct of its Independent Representatives (IRs). And third, Excel proposes a voluntary contribution to the State in settlement of the alleged violations contained in the Show Cause Order.

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[1] Excel is not claiming protection from disclosure under the Public Records law, but rather protection against use of this communication against it if this matter cannot be settled.

[2] More specifically, nothing in this proposal may be viewed as an admission by Excel that it has willfully transferred a PIC without authorization or engaged in any other behavior that would justify sanctions under Section 364.285, Florida Statutes.

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II. SETTLEMENT PROPOSALS

A. PROPOSALS TO REFINE EXCEL'S CURRENT APPROACH

The additional prophylactic and remedial measures proposed here are in fact refinements to an existing comprehensive and well-conceived approach to avoiding unauthorized PIC conversions. Indeed, some carriers have only recently proposed to use safeguards against slams that Excel has had in place for nearly two years. To provide the necessary context for the proposed refinements, Excel's current approach to avoiding unauthorized PIC conversions is outlined in an appendix to this letter. The specific additional proposals are as follows.

1. Slamming Hotline

Excel will establish a toll-free slamming awareness hotline. Excel will, at its discretion, provide notice of this number and its purpose to the public.

2. Hot Key/Warm Transfer

In addition Excel will cooperate with the Commission in establishing a system whereby customers calling the Commission with complaints of unauthorized PIC changes may be transferred directly to Excel's toll-free line with the goal of prompt resolution.

3. Quarterly Reviews with Staff of Customer Complaints

Excel commits to engaging in ongoing dialogue and quarterly reviews, conducted by conference call if appropriate, with Commission Staff of complaints lodged against it with the Commission. This review will include, among other things, a discussion of the slamming complaints identified in the Commission's monthly consumer Activity Report.

4. Filing of Civil Actions Against IRs Who Forge LOAs.

With respect to forgeries, Excel will file civil actions in Florida against IRs who cheat Excel and customers by submitting forged LOAs.

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5. **Determine whether data bases are available under public records law or on some more cost-effective basis for cross-verification of LOAs**

With respect to forgeries, to determine whether data bases are available under public records law or on some more cost-effective basis so that cross-verification of LOAs against social security numbers or drivers license numbers can be performed routinely.

6. **Create award program for IRs that are error free**

With respect to submission errors, to create an award program that encourages error free completion of LOAs.

6. **Re-evaluate LOAs previously submitted by an IR who appears to have forged an LOA.**

Whenever Excel has reason to believe that an IR has forged an LOA, as a normal part of its investigation Excel will review the validity of every LOA submitted by that IR during the preceding 6 months.

B. **NATURE OF EXCEL'S RESPONSIBILITY FOR CONDUCT OF IRs**

We assure the Commission that Excel has always considered itself fully responsible to the customer for the conduct of the Independent Representatives marketing Excel's services. For example, to remedy any marketing or conversion errors, Excel has long provided a 90 day guarantee of a cost-free switch-back and generous re-rating or forgiving of toll rates where a customer complains of unauthorized conversion. In addition, because Excel has considered itself responsible as a principal to ensure to the fullest extent practicable that its agents follow the law, Excel has invested substantial effort and money in developing its comprehensive approach to avoiding unauthorized PICs. This same sense of responsibility led Excel to request the Attorney General to help prosecute IRs who cheat Excel and customers by forging, and more recently, to initiate civil suits against IRs who forge. Excel pledges to continue and, per this settlement, to intensify its anti-slamming efforts in Florida.

Excel, however, does not and cannot consider itself vicariously liable for the quasi-criminal conduct of IRs that exceed the scope of agency in order to cheat both Excel and the customer by forging LOAs. To reiterate, Excel has a well-conceived protocols to detect and prevent forged LOAs, does not ratify such forgeries, and does not benefit from them. And because Excel does

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have these protocols, does not ratify the forgeries, and is in fact harmed by them. Excel will bring civil actions against the IRs. Any acquiescence in the proposition that Excel is vicariously liable for the unlawful behavior of the IRs where warranted would in fact undercut its ability to bring the civil suits, and thus would be counter-productive to the public interest.

C. Voluntary Contribution

Subject to the conditions stated below, Excel will offer a voluntary contribution to the State of Florida General Revenue Fund of $68,000 in settlement of any and all complaints arising from or relating to alleged unauthorized PIC changes contained in the Show Cause Order.

Excel does not, by this proposal, admit any violation of any statute, Commission Rule, or other rule, regulation or order, or any facts which might form the basis of a cause of action against the Company. By making this proposal, Excel does not waive any of its legal rights in the event the Commission does not accept this proposal, including the right to contest any and all assertions of fact or law set forth in the staff recommendation. If this offer is accepted by the Commission, it shall be attached to the final order accepting the settlement and closing the docket.

III. CONCLUSION

Excel hopes that the staff and the Commission find this proposal acceptable. If you have any questions about this proposal, please do not hesitate to call.

Sincerely,

Patrick Knight Wiggins

APPENDIX

CONTROLS AND PROCEDURES USED BY EXCEL TO THE PREVENT UNAUTHORIZED PIC CONVERSIONS

I. INTRODUCTION

Excel was founded in 1988, and began providing long distance service in 1989. In 1997, Excel had sales of $1.5 billion. Excel employs approximately 3,700 nationwide, and has over 5,000,000 customers. By year's end, Excel will have spent $69 million on customer service in 1998.

Excel's telecommunications sales are predominantly to the residential market, with particular strength in rural markets -- the same markets that currently have little alternatives for local phone service. Excel has been a pioneer in offering low-cost, high-quality service to its customers. Excel was a leader in adopting the 10 cents a minute/anytime interstate rate (Dime Deal), and now has a 7 cents a minute interstate rate for high volume residential customers (Simply Seven).

Excel recently received very positive results in the J.D. Powers Residential Long Distance Customer Satisfaction Survey. This report is a syndicated study independently funded by J.D Powers, which acts as an unbiased third party analyzing consumers' opinions. In the area of credibility/cost/value, Excel ranked number one by customers averaging over $50 per month in long distance usage and number two by customers averaging less than $50 per month. Excel also showed improvements since 1997 in the areas of call quality, customer service, and corporate image. Customers billing less than $50 per month ranked Excel as the top company at resolving problems with a single call. In the over $50 group, Excel's customers reported the fewest service problems of any provider.

This extraordinary customer satisfaction reflects Excel's uncommon commitment to excellence. And this commitment to excellence is also reflected in Excel's efforts to avoid unauthorized PIC conversions, which are are focused in three basic areas:

- in the design and operation of its PIC transfer system;

- in the ongoing training of its employees; and

- the ongoing training of the Independent Representatives (IR) who market Excel services.

These areas are addressed in more detail below.

II. CONTROLS AND PROCEDURES RELATING TO THE PREVENTION OF UNAUTHORIZED PIC CONVERSIONS

A. DESIGN AND OPERATION OF PIC TRANSFER SYSTEM

To achieve high accuracy in order processing, Excel uses a true double-entry system to input the ordering data for LOAs. Specifically, Excel uses two separate operators to input twice the service request data. Any mismatch between the separate entries is automatically identified so that the submission receives further scrutiny.

In addition to this double entry system, Excel uses other procedures to ensure that a valid PIC transfer is submitted to the LEC, as well as to identify and avoid slamming generally. These additional procedures include the following:

1. Commissions/Income Fraud Investigation

IRs with aberrant income progression are investigated by the IR Compliance (IRC) unit along with their respective downlines. This process works to reduce significantly the possibility of future slamming violations.

2. Generating IR Report

IRs who directly sponsor slammed customers are canceled by the IRC unit for violating Excel's policy on slamming. If the IRs appeal, Excel then conducts a more detailed investigation of the charge.

3. Procedures for Confirming Accuracy of LOAs

Excel's confirmation department performs detailed verification of random samples of LOAs and LOA submissions that match certain profiles. If this verification process detects possible slams, these LOAs are forwarded to IRC for investigation and possible termination of the sponsoring IR.

4. Exceptions Management - Apparently Problematic LOAs

LOAs without critical information or with apparent defects are not provisioned but rather forwarded to Exceptions Management.

Exceptions Management will use the Internet, CD-ROM software and direct contact with the customer(s) or sponsoring IR(s) to remedy missing or incorrect information. All accounts that are unable to be corrected remain in a canceled status.

5. Extensive Review of Possibly Forged LOAs

LOAs that are possibly forged merit special discussion here. When Excel receives a "service not requested" complaint from a consumer the possibility of a forgery is raised. Immediately a letter is sent to the IR giving him or her ten days to respond. If no response is received, then the IR's agency relationship with Excel is immediately terminated. If the explanation from the IR is unsatisfactory, the relationship is terminated.

At the same time the letter is being forwarded to the IR, the complaint is referred to a special investigation group that does a data base search of both the IR's "upline" and "downline" to see if there have been any other problems in that cluster of IRs. If so, appropriate action is taken.

Excel has not been content to leave the matter of forgery with simply terminating agency relationship with the IR. If an IR forges an LOA, he or she must be held accountable for the violation of company and regulatory policy. In this respect, Excel's materials make it clear that Excel will cooperate in any criminal or civil enforcement action against the IR by the government.

In Florida, Excel attempted to refer possible forgeries for prosecution in 1995. Specifically, on behalf of Excel I wrote the Attorney General for the State of Florida asking for assistance in prosecuting IRs who forge LOAs. The Attorney General declined to assist, and instead referred Excel to the Public Service Commission.

Given that law enforcement agencies are not able or willing to prosecute IRs who cheat Excel and customers by forging LOAs, Excel recently took the next step and filed civil actions against certain IRs. To date such actions have been filed in Texas and Louisiana. Excel has plans to file similar suits in Florida in the near future.

B. TIMELY HIRING AND COMPLETE TRAINING OF TELESERVICES REPRESENTATIVES (TSRS)

Excel has formalized policies with respect to training its employees. TSRs receive excellent training on what constitutes slamming, how unauthorized switches may occur, and steps to be taken to address the situation.

C. TIMELY AND COMPLETE TRAINING OF IRS