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

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APR 24 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Policy and Rules Concerning the the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

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COMMENTS OF EXCEL TELECOMMUNICATIONS, INC.

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April 25, 1996

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SUMMARY OF COMMENTS

As a reseller and one of the fastest growing providers of long distance services in the U.S., Excel's Comments address two important issues. First, Excel believes that the record in the instant proceeding supports permissive detariffing, not mandatory detariffing as the Commission's Notice proposes. As Excel's Comments demonstrate, the record before the Commission with respect to mandatory detariffing does not satisfy the requirements of Section 401 of the Telecommunications Act of 1996. By contrast, the record applicable to permissive detariffing does satisfy the requirements of Section 401.

Excel also believes that permissive detariffing, at least at this point in time, offers greater public interest benefits than mandatory detariffing. As shown in its Comments, permissive detariffing offers the public at large (i.e., the ratepaying consumers) ready access to domestic, interstate common carrier rates, as well as terms and conditions information. In addition, permissive detariffing should make market entry easier for new carriers which find it easier and less costly to place a simple tariff on file than to individually negotiate contracts with a wide range of customers. Moreover, the Commission has had years of experience with permissive detariffing, and the record before the Commission affirms the success of this approach. Thus, instead of taking the more extreme step of mandatory detariffing, Excel urges the Commission to embrace permissive detariffing, at least as a transitional measure.

Second, as shown below, Excel supports the Commission's proposal to allow non-dominant interexchange carriers to bundle CPE with interstate, interexchange services. However, Excel believes that interexchange carriers which are affiliated with monopoly local exchange operations (and thus can exercise monopoly power)--such as the Bell Operating Companies--

should remain subject to the antibundling rule.

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COMMENTS OF EXCEL TELECOMMUNICATIONS, INC.

Excel Telecommunications, Inc. ("Excel"), by its attorneys and pursuant to the Commission's Notice of Proposed Rulemaking released March 25, 1996 ("Notice"), hereby submits its Comments in the above-captioned proceeding.

I. INTRODUCTION

Excel is one of the fastest growing providers of long distance telecommunications services in the U.S. As a reseller which commenced operations in 1989, Excel provided service to approximately 1.9 million residential and small business customers by the end of last year. The Company offers a variety of long distance services and products, including residential service, commercial service, 800 service, international services and calling cards. As a reseller with a substantial customer base located throughout the country, Excel's operations stand to be substantially impacted by the instant proceeding.

As shown below, Excel does not believe that the record in the instant proceeding supports

mandatory detariffing. Instead, Excel believes that permissive detariffing would best achieve the Commission's goals at this point in time. In addition, Excel supports the Commission's proposal to allow non-dominant interexchange carriers to bundle customer premises equipment ("CPE") and interstate, interexchange services, subject to a limited exception to address the Bell Operating Companies' ("BOCs'") continuing monopoly power.

II. THE COMMISSION SHOULD IMPLEMENT PERMISSIVE DETARIFFING, NOT MANDATORY DETARIFFING

In its Notice, the Commission seeks comment on its tentative conclusion that it adopt a mandatory detariffing policy for domestic services offered by non-dominant interexchange carriers. Notice at ¶ 36. As discussed below, Excel believes that the record in this proceeding does not support mandatory detariffing, but instead, supports an alternative approach--permissive detariffing--which would best achieve the Commission's goals.

The Telecommunications Act of 1996 ("1996 Act")[1] requires the Commission to forbear "from applying any regulation or any provision of this Act" if 1) enforcement of the regulation or provision is unnecessary to ensure that the carrier's rates and practices are just and reasonable; 2) enforcement is not necessary to protect consumers; and 3) forbearance is consistent with the public interest. Notice at ¶ 17, citing 1996 Act, §401. Insufficient data exists to warrant mandatory detariffing with respect to each of these three factors.

First, absent filed rates, it becomes extremely difficult for the Commission to ensure that carrier rates and practices are just, reasonable and non-discriminatory. If a carrier has a tariff on

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§151 et seq.)

file, the Commission is in a much better position to ascertain if the applicable, filed rate is being assessed in a non-discriminatory manner to similarly situated customers. Absent this, the rate that should have been charged to a customer and the applicable terms and conditions are likely to be unclear, requiring a more thorough investigation (and expenditure of resources) by the Commission in enforcement matters.

Second, an insufficient record exists for the Commission to conclude that tariff filings are not necessary for the protection of consumers of interexchange services. Absent tariffed rates, carrier charges could potentially fluctuate in a frequent and haphazard manner such that consumers have no clear understanding as to what constitutes the actual rate. Moreover, in its Fourth Report and Order adopting a policy of permissive detariffing, the Commission concluded that the risk of collusive pricing would be diminished by permissive detariffing, not complete forbearance.[2]

Finally, and perhaps most importantly, a substantiated record does not exist for the conclusion that forbearing from imposing tariff filing requirements is consistent with the public interest. The Notice states that "forbearance from requiring tariff filings for non-dominant carriers will promote competition and deter price coordination." Notice at ¶ 30. Notwithstanding this argument, it will be impossible for major carriers to compete on the basis of price if they are unable to ascertain their competitors' prices. Only by ensuring that price information is available can carriers make informed decisions to underprice a competitor's service pricing.[3]

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[2] See Fourth Report and Order, 95 FCC 2d 544, 580 (1983).

[3] The Notice also reiterates the Commission's findings in its Sixth Report and Order. Specifically, the Sixth Report and Order determined that requiring tariffs can 1) take away carriers' ability to make a rapid, efficient response to changes in demand and cost; 2) impede and

Instead of taking the radical step of mandatory detariffing, Excel urges the Commission to embrace permissive detariffing, at least as a transitional measure. A thoroughly substantiated record exists in support of permissive detariffing. Specifically, the Commission has had years of experience with permissive detariffing and concludes that it has proven to be a success over the years.[4] Unlike mandatory detariffing, permissive detariffing can easily be shown to satisfy the criteria of Section 401 of the 1996 Act on the basis of the Commission's past experience with it. Most importantly, permissive detariffing offers the following important benefits when contrasted with mandatory detariffing. First, permissive detariffing offers the public at large (i.e., the ratepaying consumers) ready access to domestic, interstate common carrier rates, as well as terms and conditions information. And second, permissive detariffing should make market entry easier for new carriers which find it easier and less costly to place a simple tariff on file than to individually negotiate contracts with a wide range of customers.[5]

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remove incentives for competitive discounting; and 3) impose costs on carriers that attempt to make new tariff filings. Notice at ¶ 30, citing Sixth Report and Order, 99 FCC 2d at 1030. Excel does not agree that these conclusions are valid in today's regulatory environment. First, since non-dominant carriers can now file tariffs on one day's notice, response to changes in demand and cost can occur almost instantaneously. To the contrary, it may be more time-consuming to modify an individually-negotiated customer contract to respond to demand or cost factors. Second, notwithstanding the Notice's contrary claim, carriers have freely introduced discounted calling plans. Finally, Excel does not believe that tariffing would impose costs on carriers making new offerings. Non-dominant carrier tariff filings are relatively simple documents which can be filed for minimal cost. Amending individually-negotiated contracts, on the other hand, can easily entail more cost.

[4] See, e.g., Report and Order (FCC 92-494), CC Dkt. No. 92-13 (released Nov. 25, 1996) at ¶ 39.

[5] In comparing mandatory detariffing and permissive detariffing, the Notice determines that the former presents the following two advantages: 1) mandatory detariffing is the most pro-competitive, deregulatory regime; and 2) mandatory detariffing would abolish the filed rate doctrine which allows carriers certain rights to unilaterally change tariff rates, terms and conditions and to limit their liability. Notice at ¶ 34. To the contrary, the record in this

Thus, Excel believes that the Commission should implement permissive detariffing pursuant to the Section 401 mandate. If the Commission later concludes that permissive detariffing does not adequately protect the public interest, it can then, based on a more complete record, move to mandatory detariffing.

III. THE COMMISSION SHOULD ALLOW NON-DOMINANT INTEREXCHANGE CARRIERS TO BUNDLE CPE WITH INTERSTATE, INTEREXCHANGE SERVICES

In its Notice, the Commission seeks comment on its tentative conclusion that non-dominant interexchange carriers should be allowed to bundle CPE with interstate, interexchange services. Notice at ¶ 88. Subject to an express exception for Bell Operating Companies ("BOCs") with monopoly local exchange operations, Excel supports the Commission's proposal.

Excel concurs with the findings and tentative conclusions in the Commission's Notice. Excel believes that both the interexchange and CPE markets are robustly competitive and, thus, the anti-bundling rule contained in Section 64.702 of the Commission's Rules no longer serves the purpose for which it was intended.[6] Elimination of the rule would promote competition by allowing carriers to offer attractive service/equipment packages to consumers.

However, only interexchange carriers which are truly non-dominant should be exempt from the antibundling requirement. Interexchange carriers which are affiliated with monopoly

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proceeding is devoid of any substantive consideration of the benefits of permissive detariffing. As shown supra at 3, Commission precedent clearly establishes that permissive detariffing is pro-competitive. The record in the instant proceeding cannot simply ignore this and conclude that mandatory detariffing is the superior alternative.

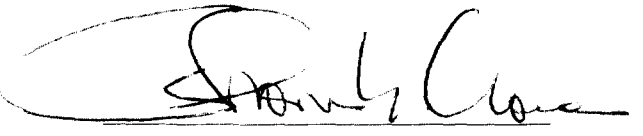
[6] See 47 C.F.R. §64.702.

local exchange operations (and thus can exercise monopoly power)--such as the BOCs--should remain subject to the antibundling rule. The BOCs continue to control bottleneck local exchange facilities in their in-region states and thus would have the ability and incentive to anticompetitively favor their bundled equipment/service offerings.

III. CONCLUSION

For the reasons indicated above, the Commission should implement permissive detariffing, not mandatory detariffing. Further, Excel supports the Commission's proposal to allow non-dominant interexchange carriers to offer bundled packages of CPE and interstate, interexchange services.

Respectfully submitted,



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Dated: April 25, 1996

CERTIFICATE OF SERVICE

I, Guled Hersi, serving as secretary to the Law Offices of Thomas K. Crowe, P.C., hereby certify that a copy of the foregoing Comments was sent by first class United States mail, postage pre-paid, or by hand delivery where indicated by an asterisk (*), this 25th day of April, 1996, to the following:

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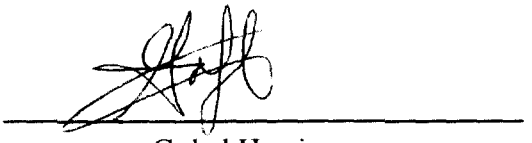

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