STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

1330 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036-1795

(202) 429-3000
FACSIMILE: (202) 429-3902
TELEX: 89-2503

PHOENIX, ARIZONA
TWO RENAISSANCE SQUARE

TELEPHONE: (602) 257-5200
FACSIMILE: (602) 257-5299

ALFRED M. MAMLET
(202) 429-6205

STEPTOE & JOHNSON INTERNATIONAL
AFFILIATE IN MOSCOW, RUSSIA

TELEPHONE: (011-7-501) 258-5250
FACSIMILE: (011-7-501) 258-5251

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20054

Re: In the Matter of Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996

Dear Mr. Caton:

Enclosed please find for filing on behalf of Sequel Concepts, Inc. ("Sequel"), an original and eleven copies of Reply Comments prepared in connection with the above-referenced rulemaking. Also enclosed is an additional copy of the Reply Comments which we ask you to date stamp and return with our messenger.

Respectfully submitted,

Alfred M. Mamlet

Alfred M. Mamlet
Colleen A. Sechrest

Enclosures

No. of Copies rec'd 0+11
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of **Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996**	**CC Docket No. 97-11**

REPLY COMMENTS OF SEQUEL CONCEPTS, INC.

I. INTRODUCTION AND SUMMARY

Sequel Concepts, Inc. ("Sequel") provides international services to the Philippines on a facilities basis and to a variety of other countries on a resale basis.[1/] Sequel has followed this and takes this opportunity to support those comments filed by GTE Service Corporation ("GTE") and Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD") which argue that the Commission should not exclude international services from the scope of Section 402(b)(2)(A)'s exemption. The NPRM's decision to do so is contrary to both the clear language of the statute and its underlying intent. It is also contrary to prior Commission practice. Moreover, neither the NPRM nor any other commenters offer any coherent justification for why such disparate treatment for international services is warranted.

[1/] In the Matter of Sequel Concepts, Inc., 10 FCC Rcd. 2698 (1995); Sequel Concepts, Inc., Public Notice No. 42609, File No. ITC-94-170 (1994).

II. THE COMMISSION SHOULD NOT EXCLUDE INTERNATIONAL SERVICES FROM THE SCOPE OF SECTION 402(b)(2)(A)

The Commission should not exclude international services from the scope of Section 402(b)(2)(A)'s exemption from Section 214 requirements. As TLD points out, the NPRM's proposal to do so is contrary to the language of the statute, its underlying intent and prior Commission precedent. Moreover, no commenter has provided any justification as to why international services should be denied the exemption -- particularly in light of the overwhelming evidence to the contrary.

First, Section 402(b)(2)(A) explicitly requires the Commission to "permit **any** common carrier to be exempt from the requirements of Section 214 of the Communications Act of 1934 for the extension of **any line**. . .[2] This language could not be more clear: line extensions by any common carrier, irrespective of the type of service it provides, should be exempt from Section 214's requirements.

The NPRM evades this clear congressional language by referring to "eligible" (*i.e.*, domestic) and "ineligible" (*i.e.*, international) carriers.[3] This eligibility standard is a completely new regulatory concept that has no basis in Section 402(b)(2)(A), Section 214 or past Commission precedent.[4]

Second, the NPRM's proposal to exclude international services from the scope of Section 402(b)(2)(A) also conflicts with the intent of the statute. In particular, this section was designed to deregulate entry requirements for previously authorized common carriers, consistent with the overall pro-competitive objectives of the 1996 Act.

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[2] Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act") (emphasis supplied).

[3] NPRM ¶ 21.

[4] Comments of TLD at 3 & 6.

The NPRM's proposals, however, affirmatively limit competition in the international services market.

Third, the Commission's position is in conflict with both the Supreme Court's and its own precedent. As TLD argued in its Comments, neither the Supreme Court's Texas & Pacific[5] decision nor the Commission's Mackay Radio[6] decision imply that geographic expansion is limited by the United States' political boundaries. Even more importantly, the Commission itself has long defined "extension" in a way which includes international expansion, both in full Commission decisions and International Bureau actions.[7]

No commenter offered any justification as to why the Commission should implement Section 402(b)(2)(A) in a way which so clearly contradicts both statute and precedent. Some commenters did make policy arguments.[8] However, as GTE points out, such arguments are not valid. In particular, the international services market is becoming more competitive every day. Thus, the Commission "should not be concerned whether a carrier is overbuilding facilities since captive ratepayers would not

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[5] Texas & P. Ry. Co. v. Gulf, C & S.F. Ry. Co., 270 U.S. 266, 278 (1926) ("Texas & Pacific").

[6] Mackay Radio and Tel Co., 6 F.C.C. 2d 562, 574 (1938) ("Mackay Radio").

[7] See Comments of TLD at 7-9 (citing In the Matter of American Telephone & Telegraph Co., 29 F.C.C. 2d 229, 237 (1971); In the Matter of International Record Carriers, 76 F.C.C. 2d 115, 135 (1980); In the Matter of Western Union International, Inc., 76 F.C.C. 2d 167, 183 (1980); In the Matter of BT North America, Inc., 9 FCC Rcd. 6851 (1994)).

[8] Comments of Bell South at 8-9; Comments of Pacific Telesis at 3-4; Comments of Sprint at 2; Comments of U.S. West at 3. See also NPRM at ¶ 35.

be required to subsidize these actions."[9] This is particularly true in light of the recently concluded WTO telecommunications trade agreement.[10]

Moreover, whether the Commission or other carriers believe that there are policy reasons for maintaining restrictions on international line extensions is irrelevant: Congress has already stated that such restrictions are not to be maintained.[11]

Several commenters also find support for the NPRM's proposal to exclude international services from Section 402(b)(2)(A)'s exemption in the Commission's Streamlining Order.[12] Yet, as this proceeding evidences, the Streamlining Order was not intended to implement Section 402(b)(2)(A). Indeed, the Streamlining Order itself limited its discussion of the statute to five sentences which simply hinted at the Commission's position, a position which, as discussed above, is in conflict with all available precedent.[13]

III. CONCLUSION

Sequel urges the Commission to define "extension" consistent with the language and intent of the statute as well as Commission precedent. Specifically, the Commission should adopt its own alternative definition of "extension" as "any augmentation of lines in a carrier's network, heretofore subject to Section 214 certification, without distinguishing 'new' lines from 'extensions.'"[14] This definition will

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[9] Comments of GTE at 6.

[10] Comments of USTA at 2.

[11] Comments of TLD at 8.

[12] Comments of Sprint at 3; Comments of U.S. West at 3; Comments of Bell South at 8-9 (citing In the Matter of Streamlining the International Section 214 Authorization Process and Tariff Requirements, 11 FCC Rcd. 12884 (1996)).

[13] Streamlining Order, ¶ 10.

[14] NPRM ¶ 35(ii).

ensure that all extensions by all common carriers are treated equally in line with Congress' injunction to exempt from Section 214's requirements the extension of "any line" by "any common carrier."

Date: March 17, 1997

Respectfully Submitted,

SEQUEL CONCEPTS, INC.

Alfred M. Mamlet

Eric Hernaez
General Counsel
SEQUEL CONCEPTS, INC.
3001 Hadley Road, Office No. 7
South Plainfield, New Jersey 07080
(908) 668-5300

Alfred M. Mamlet
Colleen A. Sechrest
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
(202) 429-3000

Counsel for Sequel Concepts, Inc.

CERTIFICATE OF SERVICE

I, Colleen Sechrest, hereby certify that copies of the foregoing Reply Comments were served by hand delivery (or by first class mail, postage prepaid (*)), this 17th day of March, 1997, on the following persons:

Diane Smith
ALLTEL Corporate Services, Inc.
655 15th Street, N.W., Suite 220
Washington, D.C. 20005-5701

Encarnita Catalan-Marchan*
Maria Pizarro-Figueroa
Telefonica Larga Distancia de Puerto Rico
Metro Office Park
Building No. 8, Street No. 1
Guaynabo, Puerto Rico 009

Mary McDermott
Linda Kent
Keith Townsend
Hance Haney
United States Telephone Association
1401 H Street, N.W.
Suite 600
Washington, D.C. 20005

Sam Cotten, Chairman*
Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 300
Anchorage, Alaska 99501

Michael E. Glover
Bell Atlantic Network Services, Inc.
1710 H Street, N.W.
8th Floor
Washington, D.C. 20006

Margaret E. Garber
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Leon M. Kestenbaum
Marybeth M. Banks
Sprint Communications Company L.P.
1850 M Street, N.W.
Suite 1110
Washington, D.C. 20036

Mark C. Rosenblum*
Peter H. Jacoby
AT&T Corp.
295 North Maple Avenue
Room 3250J1
Basking Ridge, New Jersey 07920

Lawrence Fenster
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

William B. Barfield*
M. Robert Sutherland
BellSouth Corporation
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Lucille M. Mates*
Randall E. Cape
Pacific Telesis Group
140 New Montgomery Street, Room 1526
San Francisco, CA 94105

Mitchell F. Brecher
Robert E. Stup, Jr.
Fleischman & Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, D.C. 20554

John L. Traylor
Coleen M. Egan Helmreich
U S West, Inc.
Suite 700
1020 19th Street, N.W.
Washington, D.C. 20036

Raul R. Rodriguez
Walter P. Jacob
AmericaTel Corporation
Leventhal, Senter & Lerman
2000 K Street, N.W., Suite 600
Washington, D.C. 20006

Margaret M. Charles
Dalhi N. Myers
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Michael J. Karson*
Ameritech Operating Companies
Room 4H88
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Robert M. Lynch*
Durward D. Dupre
Mary W. Marks
Marjorie M. Weisman
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, Missouri 63101

Carolyn C. Hill
ALLTEL Telephone Services Corporation
655 15th Street, N.W., Suite 220
Washington, D.C. 20005

David Cosson
L. Marie Guillory
National Telephone Cooperative Association
2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

International Transcription Service
Room 246
1919 M Street, N.W.
Washington, D.C. 20554

Colleen Sechrest

Colleen Sechrest