- To the extent PC freezes are permitted, customers must be informed fully and neutrally in order that they may fully understand the result of the freeze and how to override it should they later wish to switch carriers.

- Access to information concerning whether a customer has selected a PC freeze must be made available to all carriers on nondiscriminatory terms and conditions.

- PC freezes should not be applied to a customer's interLATA, intraLATA and local service carrier selection without the customer's explicit permission as to each service. To this end, customers should have PC freeze options specific to each type of service to which they subscribe.

- ILECs should be prohibited from soliciting or enforcing PC freezes for local and intraLATA services until at least six months after those services become subject to competition in a particular market.

- Where a carrier offers PC freeze options to its own customers, it must offer the same PC-freeze options to customers pre-subscribed to other carriers.

III. CONSUMERS AND PROVIDERS ALIKE MUST BE ABLE TO RELY ON UNIFORM, CONSISTENT NATIONAL RULES

- Rules and requirements governing slamming, cramming, and PC freezes must be uniform and consistent on a national basis, lest both consumers and carriers suffer confusion, the prospect of inaccurate and conflicting advice, and most especially increased costs of service. Because long distance carriers, ILECs and CLECs typically operate on a national or multi-state basis, multiple and inconsistent specifications for documents, notices and procedures can only increase, perhaps substantially, the ultimate cost to consumers of telecommunications services-- a result wholly at odds with the overarching consumer welfare goal of such rules.

- We acknowledge the right of states to enforce strong pro-competitive, anti-slamming and anti-cramming measures with respect to intrastate services. Provisions in current federal regulation preserving this authority (e.g., 47 CFR 64.1160: "Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services") should be preserved.

BEFORE THE
SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

PREPARED TESTIMONY OF JAMES M. SMITH

VICE PRESIDENT - LAW AND PUBLIC POLICY

EXCEL COMMUNICATIONS, INC.

November 3, 1997

PREPARED TESTIMONY OF JAMES M. SMITH
VICE PRESIDENT-LAW AND PUBLIC POLICY
EXCEL COMMUNICATIONS, INC.

BEFORE THE
SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NOVEMBER 3, 1997

Good afternoon. My name is James M. Smith. I am Vice President-Law and Public Policy of Excel Communications Inc., which in a few short years has become the nation's fourth-largest long distance telecommunications company serving residential subscribers, and the fifth-largest in terms of presubscribed lines. I joined Excel recently after seven years as President of the Competitive Telecommunications Association (CompTel), the national industry association of over 225 competitive telecommunications service providers and their suppliers.

Excel greatly appreciates the opportunity to testify today on protecting consumers -- and, for that matter, authorized carriers like Excel-- from "slamming." As the chosen long distance company of 5 million residential customers, Excel is harmed by the slamming of our customers. Let me be categorical: Slamming in any form is unacceptable, and it should not be tolerated of any carrier, whether large or small, local or long distance.

Excel is a meteoric success story in the long distance industry, growing from 105,000 presubscribed lines and $31 million in revenue to 5 <u>million</u> lines and $2 billion in annual revenues nationally in the last four years. More importantly, Excel has brought the public some of the lowest priced, highest quality long distance services in the nation. Excel's "Dime Deal" features a flat rate of 10 cents per minute to anywhere in the nation, 24 hours a day, seven days a week, at a monthly service charge of only one dollar (which also provides the customer with up to 50% discounts on hotel accommodations, rental cars, etc.) I am aware of no better residential long distance deal anywhere. (Additional background information on Excel is appended hereto as Exhibit 1).

With Excel's rapid growth, we and our customers have increasingly been on the receiving end of unauthorized long distance carrier ("PIC") changes. In other words, we have been slammed far too often, and we have suffered real economic harm from slamming. And, candidly, like every other carrier, we have had our own instances of inadvertently engaging in unauthorized transfers of customers. Excel's track record is one of the cleanest and best in the industry-- according to the ILECs and the FCC, our ratio of PIC change disputes to PIC changes is far lower than the industry average (Exhibit 2) -- but it has not been perfect. Literally all carriers make innocent mistakes in the course of customer acquisition that result in "slams." In most cases, these are unavoidable on the part of the long distance carrier, as for instance where one member of a household authorizes the change unbeknownst to others, or a clerical error (e.g., data entry) is made by either the long distance company that reports the change or the local phone company that we must rely upon to execute it properly. In rare instances there are forgeries of signatures on seemingly legitimate Letters of Agency ("LOAs"). And, unfortunately, there are unscrupulous customers and unscrupulous carriers. Excel has never intentionally slammed a customer. But whatever the explanation, as I said earlier, all slams are unacceptable, to Excel as well as to lawmakers.

Allow me to describe some of the steps Excel has taken to reduce to a bare minimum the possibility of a slam. First, Excel does not employ telemarketers to acquire new customers, and we don't use contests, sweepstakes or checks with fine print to lure customers. Instead, our independent representatives ("IRs") deal virtually exclusively in written LOAs, signed by the customer. We believe this is the best, hard evidence that a consumer wants to be switched to Excel, and we make sure that our rates are clearly described on that LOA that the customer sees and signs. So the consumer sees it in writing, and we get it in writing. We think this is a far superior method to reliance on the telemarketer, who always seems to call you at home during the dinner hour, is always is a total stranger, and who may or may not be honest and clear about what he's selling.

Some companies that rely on telemarketing to solicit customers have suggested that signed LOAs should actually be abolished as a form of customer verification in favor of so-called third-party verification ("TPV")-- also over the phone-- of all change orders. This serves the interests of telemarketers, because it's very easy for them to "hot-key" the solicited consumer to the third-party verifier, all in the same phone call. But TPV is flawed, because if the person on the phone isn't the head of the household, or says yes but is unclear as to what he or she is buying, the TPV during the same call perpetuates the problem.

Excel thinks our person-to-person approach and getting the order in writing is the superior approach, but it isn't conducive to *subsequent* third-party verification. In California, where TPV is mandatory, we are unable to reach 18 percent of our new customers to perform the verification. They're not home, or they consider returning another phone call to reiterate their intent to subscribe to be a nuisance or imposition. So we wind up unable to hook up a substantial number of customers who have already signed up with us in writing This will frustrate the customer, and will cost excel tens of millions of dollars in foregone revenue. So, TPVencourages the telemarketing approach and discourages the personal approach. So if you want more and more telemarketing-- more of those calls during the dinner hour-- then TPV is for you. We think getting it in writing is the better way, and so do the 5 million satisfied consumers who have switched to Excel over the past four years.

Even so, we recognize that we must guard against even the possibility of fraudulent conduct or forged LOAs. Therefore, we randomly screen and verify 10-15 percent of these LOAs, and we always verify when an IR submits 3 or more LOAs at a time. Upon receiving each LOA, we send the customer a "welcome package" to confirm the order, describe our rates again, and to give him or her another opportunity to rescind the change. Indeed, we give each new customer a 90-day guarantee, during which we will pay for his switch back to another company, with no questions asked. To further guard against human error, two Excel employees "double key" the LOA information into our database, and any discrepancy is automatically detected. Moreover, we carefully train our representatives to avoid inadvertent transfers; we have established strong, "zero tolerance" anti-slamming policies, communicate them clearly and frequently to our reps and make them a part of the representation contract; and upon receiving a complaint, we automatically terminate a representative unless a reasonable explanation is forthcoming within ten days. Needless to say, we always reimburse a complaining customer to switch back to his carrier of choice, and re-rate our charges to make the customer "whole." Excel's anti-slamming policies and procedures are further described in Exhibit 3.

Excel welcomes and pledges to cooperate with efforts by Congress and federal and state agencies to reduce and punish slamming. Both the Federal Communications Commission (FCC) and Congress, in enacting Section 258 of the Telecommunications Act of 1996, have also adopted a "zero tolerance" anti-slamming policy and have taken effective action to control the problem without disproportionately punishing carriers for unavoidable or innocent mistakes. As FCC Commissioner Susan Ness testified two weeks ago at a Senate Commerce Committee hearing in Denver (Exhibit 4), the FCC's current rules require long distance carriers to use one of four PIC change verification procedures, including a written authorization, the method that Excel employs and considers most reliable. (The other three permitted methods are confirmation by the customer via a dedicated toll-free number, verification by an independent third party, or a "welcome package" sent to subscribers which allows them to reject the change-- a method used by Excel in <u>addition</u> to the written LOA). The FCC also strictly prescribes the form and content of a written LOA to avoid deceptive marketing and customer confusion, and it has frequently exercised its authority to assess steep fines even for inadvertent slamming. Section 258 of the new Telecom Act further requires slamming carriers to transfer any monies received from a subscriber to the rightful carrier.

The FCC is nearing completion of a rulemaking (CC Dkt. 94-129) to add the anti-slamming provisions of the Act to its rules and to consider additional measures to combat slamming and make consumers whole, such as reimbursement for any premiums or frequent-flyer miles that would have been earned with the authorized carrier. Excel endorses the FCC's existing rules and generally supports its further proposals.

Finally, the FCC is seeking to address a growing and prospectively huge new form of slamming. As local exchange competition develops, and as ILECs begin to provide long distance service, the former role of the ILEC as neutral and disinterested executor of PIC changes will be obliterated. Already, the Ohio Commission has sanctioned Ameritech for soliciting "PIC freezes" designed to inhibit new competitors from vying for local or intraLATA customers. Moreover, in the future it is easy to imagine that an ILEC that will also be providing long distance will no longer process competitors' PIC changes neutrally, but instead will use the notification as a trigger to dissuade the consumer from making the change or to solicit the customer to instead choose (or keep) its own services. Therefore, we have urged the FCC to ensure that whenever the submitting and the executing carrier is the same, any PIC change or PIC "freeze" must be subjected to verification, and that incumbent carriers may never use PIC change requests to solicit a PIC freeze or win-back. This potential will be minimized if the ILEC is required to process PIC changes in a timely manner (e.g., three days).

Generally, Excel believes that the Telecom Act and the FCC rules and proposals are on the right track to minimize slamming. With regard to the bills introduced this year in the Senate, we agree that strict reporting requirements would be beneficial, and we believe that severe penalties for intentional, systematic and repeated slammers are appropriate. But I would urge extreme caution in contemplating the establishment of a private right of action, much less trebled damages, for slamming disputes. I think the last thing Congress would want is to create a new federal tort that could easily result in an explosion of new and often unjustified or even fraudulent claims. As I have described, most unauthorized carrier changes are unintentional. I do not think such mistakes should spawn potentially thousands of lawsuits, with inevitable pressures to settle irrespective of the merits. I urge Congress not to unwittingly create a new cottage industry for frivolous or fraudulent lawsuits.

That said, Excel strongly agrees that policymakers can do more to reduce and penalize slamming. We would commend to Congress and the FCC the above-mentioned policies, procedures and safeguards that Excel has adopted and has found effective in preventing slamming, including the use of signed LOAs to evidence a customer's intention to change carriers. More particularly, I would suggest that the FCC should require all local exchange carriers to regularly report the number of PIC change requests and number of disputed PIC changes received for each carrier, to give it and Congress a more accurate picture of each carrier's practices and conduct and to identify where further agency action may be warranted. The Commission should focus on a carrier's ratio of complaints to PIC change requests, rather than absolute numbers of complaints, in judging a carrier's conduct. Six complaints may be significant if the carrier submits 100 PIC changes, but less so if it submits 10,000.

In conclusion, Excel takes its responsibilities to the public seriously, and we welcome your initiatives to reduce and penalize slamming. As a company, we renew our pledge to provide excellent customer service to all our subscribers, and to handle all complaints and disputes in a fair, responsive and expeditious manner. We are anxious to work with the Congress and the FCC to eradicate slamming by all carriers, local and long distance, to the maximum extent possible.

Thank you.

EXHIBIT 1

EXCEL COMMUNICATIONS, INC.

Backgrounder

NEWS & INFORMATION

EXCEL COMMUNICATIONS, INC.

<u>Corporate Summary</u>

Dallas-based Excel Communications, Inc. is one of the fastest growing providers of telecommunications services in the U. S. Excel's innovative combination of business and marketing strategies has enabled the company to command significant market share of the residential long distance telephone market. Through strategic business alliances, Excel expects to increase its communications products and services to provide consumers with a range of new, proven high-tech products at competitive prices.

In June 1997, Excel announced a definitive merger agreement with Telco Communications Group, Inc. of Chantilly, VA, whereby Excel Communications will combine with Telco in a transaction valued at approximately $1.2 billion. The merger will create a combined company with consolidated revenues of $2 billion and 11 billion long distance minutes of usage on an annualized basis, 6.3 million customers, and 100,000 network miles of DS-3 fiber optic capacity. The proposed merger solidifies Excel's position as the fifth largest long distance company in the U.S.

Excel currently resells long distance through a nationwide marketing network of Independent Representatives (IRs). Once the merger is complete, Excel will have all the cost saving advantages of a nationwide facilities-based network allowing for seamless introduction of new products and services into the Excel marketing plan.

Revenue and Income

In 1996, the company's total revenues were $1.4 billion, representing a 167 percent increase compared to 1995 total revenues of $506.7 million. In addition, net income jumped from $44.4 million in 1995 to $144.4 million in 1996.

Year Founded

Founded in 1988 as a regional reseller by Chairman and CEO, Kenny A. Troutt, national operations began in 1989.

Nationwide Services

Excel offers long distance phone service throughout the United States, with limited services offered in Alaska.

Licensing

The company is licensed with state public utility commissions in all states that require such licensing. Excel maintains an FCC license for its international long distance services.

- more -

Company Ranking	The company ranks fifth (based on presubscribed lines) as a provider of long distance phone service after AT&T, MCI, Sprint and Worldcom.
Employees	Excel employs more than 2,200 personnel in the company's Dallas headquarters and three service call centers in Addison, Texas, Houston and Reno. Dallas- and Addison-based personnel also include management, human resources, administrative, network management, marketing and information technology personnel as well as customer and representative teleservice staff.

Corporate Contact Information

Address	8750 North Central Expressway Suite 1500 Dallas, Texas 75231-6428
Phone Numbers	
Main	(214) 863-8000
Media Relations	(214) 863-8400
Investor Relations	(214) 863-8455
Fax Number	(214) 863-8843
Web-Site	http://www.exceltel.com

Products & Services

Long-Distance Phone

Excel resells long distance and value-added services at competitive rates to subscribers in equal access areas. These telephone services currently include:

- long distance residential
- long distance commercial
- 800 service
- international service
- calling cards
- paging products/services

Billing & Collection

Excel has billing and collection agreements in place with local exchange carriers (LECs) allowing billing with more than 95 percent of the available access carriers in the U.S., representing 90 percent of all customers billed. These agreements ensure Excel's long distance charges appear on the customer's local phone bill.

- more -

Marketing Network

Summary

Excel markets its products and services exclusively through a nationwide network of Independent Representatives (IRs). Relationship selling is the basis of the Excel business opportunity. IRs seek subscribers among their immediate circle of family, friends, business associates and acquaintances. There is *no inventory to purchase, minimal paper work, no sales quotas* and *no collection duties*. The Excel business opportunity allows IRs to set their own personal, professional and financial goals.

Training & Support Services

Excel provides training opportunities for IRs through regularly scheduled schools. Information is provided to IRs through the *Communicator,* a monthly news magazine; through ***Excelevision***, a satellite television broadcast; Internet updates; voice-mail systems and regional sales rallies. Business support includes customer and representative service call centers, 24-hour automated voice response "hotline," accounting reports and a comprehensive catalog of sales aids and business development materials.

Compensation

All IR compensation is paid directly by Excel and is based on the acquisition of subscribers and their long distance usage. The company does not pay a commission to IRs solely for introducing new reps to the company. Instead, representatives are paid commissions for the subscriber acquisition and the long distance usage of customers signed up by IRs they have recruited directly or indirectly.

Customers

Excel has approximately 4 million residential and small business long distance subscribers.

Customer Service

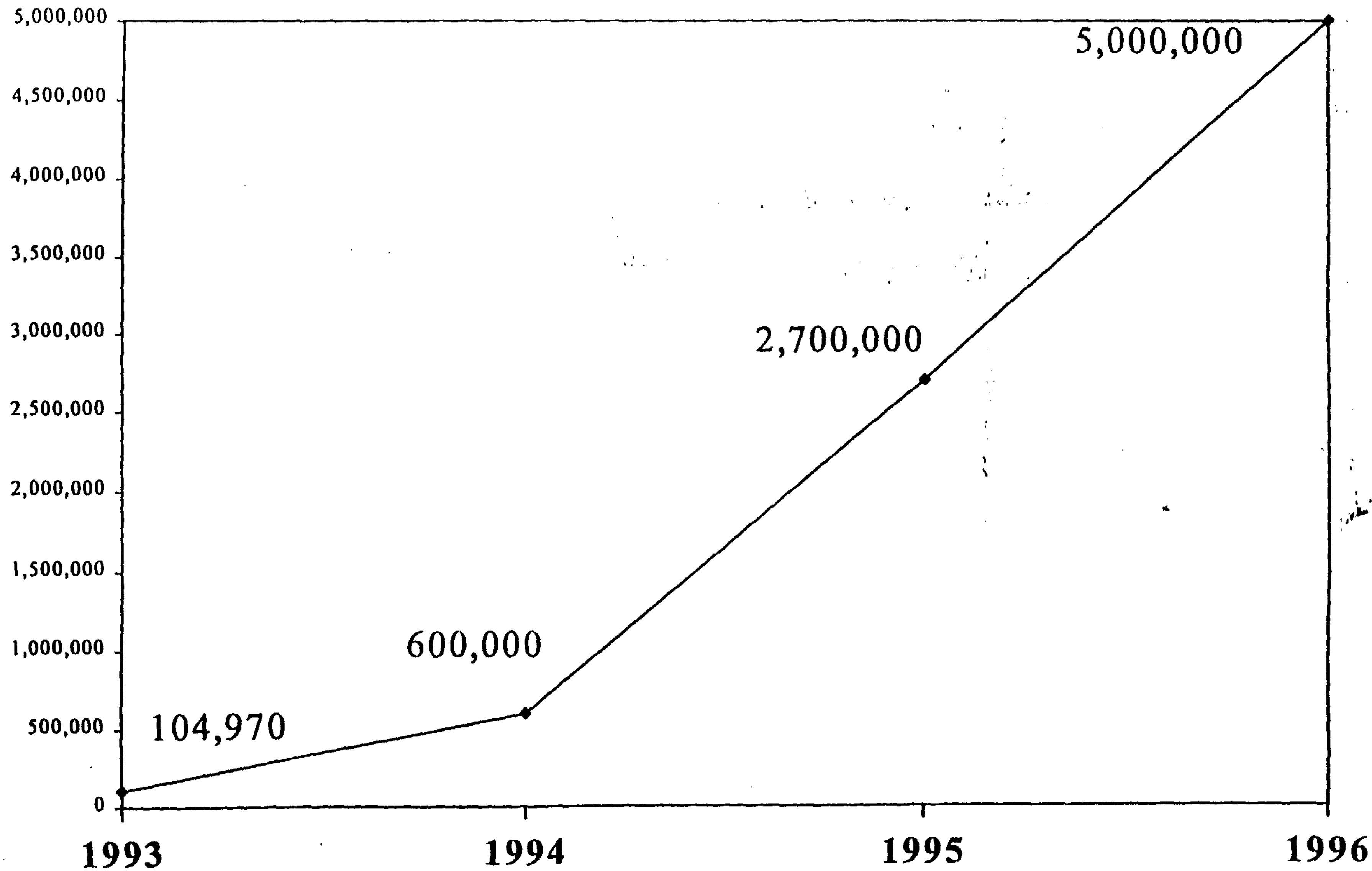
The company currently operates three call centers in:
- Addison, Texas
- Houston, Texas
- Reno, Nevada

The centers are equipped with high-tech call management/ database systems to provide customers with timely, responsive personal service. Call center personnel receive initial training and on-going education keeps them current on relevant news and information to help them utilize the technology provided.

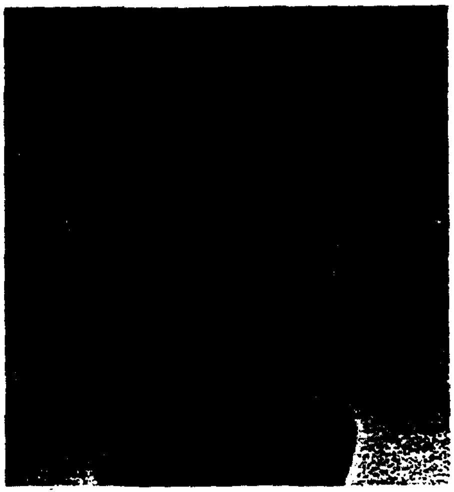
Executive Management

Kenny A. Troutt	Chairman and Chief Executive Officer
John J. McLaine	President and Chief Operating Officer
Stephen R. Smith	Executive Vice President, Marketing
Tom Marino	Executive Vice President, Network Operations
Chris Dance	Executive Vice President, General Counsel and Secretary

GROWTH IN EXCEL PRESUBSCRIPTIONS



EXCEL COMMUNICATIONS, INC.



Who says long distance relationships have to be complicated?

Somewhere in Missouri, Leslie picks up the phone to call her grandmother in Lansing, Michigan. Before she dials, she wonders if now is the right time to call. Perhaps if she waits an hour, the call would be cheaper. No, hold on, that's only on holidays. Or is it Thursdays? Wait, she remembers now. As long as she talks for at least 10 minutes, she will get the lowest rate her current plan offers. Unless of course there are only 30 days in the current month. Finally, Leslie gives up and takes out a notebook. Perhaps writing a letter to her grandmother would be simpler.

Leslie obviously doesn't have Excel's Dime Deal(SM).

Excel's Dime Deal(SM) keeps things simple.

With Dime Deal(SM), you'll always know how your long distance service works.

- No minimum usage required. All your calls are only 10¢ a minute.
- One of the lowest, residential rates available among the top carriers.
- No special calling periods, no restrictions.
- Low monthly service fee of just $1.00.
- Convenient billing
- Free calling cards

Don't fall into the same trap as Leslie. Excel's Dime Deal(SM) was designed to keep things simple so you can concentrate on staying in touch with friends and loved ones. You'll always know how much each call costs, regardless of when you call. And this rate is good anywhere in the continental U.S.

Don't get caught up in the time you call or how long you talk. Take the guesswork out of your long distance calling plan. Make Excel's Dime Deal(SM) your deal.

Notice the savings Excel's Dime Deal(SM) delivers.				
Service	Day		Evening Night/Weekend	
	Interstate	Intrastate	Interstate	Intrastate
AT&T One Rate(1)	15¢	15¢	15¢	15¢
HomeMCI One(2)	15¢	15¢	15¢	15¢
Sprint Sense(3)	25¢	21¢-30¢	10¢	9¢-25¢
Excel's Dime Deal*	10¢ a minute - 24 hours			

1. The $0.15 interstate rate is applicable in all states except California, Maryland and New Jersey. The $0.15 intrastate rate is applicable in all states except California, Florida, Georgia, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York and Wisconsin.

2. The $0.15 intrastate rate is applicable in all states except California, Delaware, Illinois, Michigan, New York and Ohio. Lower rates are available if the monthly bill is at least $25.

3. Intrastate rates in California fall outside the range shown.

* The following calls are exceptions: Intrastate calls in Florida, Maine, North Carolina and Texas; interstate calls between Hawaii and Alaska, interstate calls between Hawaii and the Mainland, interstate calls terminating in Alaska, interstate calls terminating in Puerto Rico/U.S. Virgin Islands. A $1.00 monthly service charge applies. Calls will be billed in full minute increments. All interstate calls are based on tariffs in effect August 4, 1997 as are Excel and AT&T intrastate costs. Intrastate costs for MCI and Sprint are based on tariffs in effect May 1, 1997. Intrastate rates listed are for intrastate-interlata calling.

As always, when you become an Excel Long Distance customer, you'll receive Excel Connections(SM), our exclusive customer incentives program with savings up to 50% at thousands of participating hotels and resorts worldwide. You also have the option to add additional calling features like My 800(SM), our personal 800 service and Excel WorldRate One(SM), our flat rate international service. And our newest product, ExcelPaging(SM), which offers a full line of numeric and alphanumeric paging services.

We're so sure you'll be satisfied with Excel Long Distance, we offer this no-risk guarantee: Should you decide to stop using Excel service – for any reason – within 90 days of your service date, we will reimburse you, at your request, for the cost of switching you back to your original carrier.

Building Long Distance Relationships

What makes Excel different from all the other long distance companies in America? That's easy. Excel doesn't just build a long distance customer base, we build long distance relationships.

We don't have huge advertising budgets. Instead, we rely on a network of Independent Representatives who are the people you know – neighbors, family members and friends – to spread the word about Excel. And once your Representative signs you up as a customer, we take over and make sure that you receive the best value and service possible.

We hope you find that Dime Deal(SM) is the service for you. Simply let your Excel Independent Representative know that you want to be an Excel customer.

Become a part of Excel's Long Distance family and see how different a long distance company can be.

Last Modified: September 30, 1997

EXHIBIT 2

PIC DISPUTES

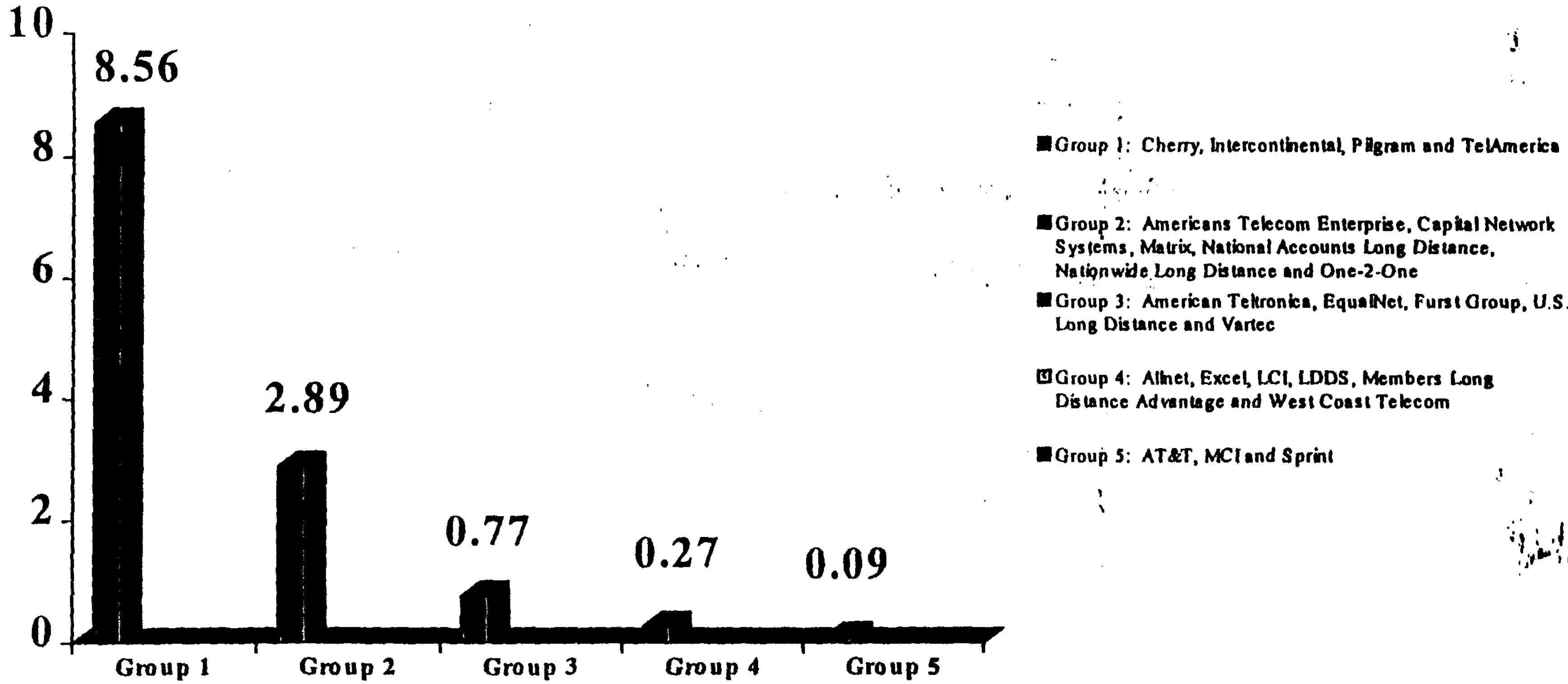
LEC	INDUSTRY AVERAGE 1996	EXCEL'S RATE 1996
Alltel	Does not provide	Does not provide
Ameritech	5.50%	1.50%
Bell Atlantic	3.81%	0.21%
Bell South	1.17%	0.59%
GTE	3.10%	1.70%
NYNEX	Does not provide	Does not provide
Southwestern Bell	5.28%	1.67%
Pacific Telesis	3.64%	1.50%
US West	12.50%	3.82%

Percentages listed are based on

$$\frac{\text{PIC Disputes}}{\text{PIC Changes}}$$

PIC = Primary Interexchange Carrier

COMPLAINTS SERVICED PER MILLION DOLLARS OF INTERSTATE REVENUE: 1994



Source: FCC Common Carrier Scorecard - October 1996

HOW EXCEL ADDRESSES "SLAMMING"

Constant customer contact

- Regulatory Affairs
- Customer Relations Group
- Customer Service Group

Procedures for handling unauthorized customer switches ("slamming")

- Always reimburse customer to switch back to carrier of choice and re-rate long distance charges
- Service Request Form (SRF) must be signed by customer requesting change of carrier
- Customer information from SRF is double keyed by two employees into data base
- Random SRFs are reviewed for completeness and accuracy
- Verification of data when 5 or more SRFs submitted at one time.
- Field audits of business presentations made by independent representatives

EXHIBIT 3

"Slamming" is the unauthorized conversion of a customer's long distance phone service from their current carrier to a new long distance carrier. **The "slamming" of a customer to Excel's long distance service is <u>prohibited</u> by Excel's Policies and Procedures as set forth in every Excel Independent Representative's Application and Agreement, and <u>will result in the immediate termination</u> of the IR Application and Agreement and forfeiture of any and all commissions.**

In addition, Excel may take legal action against such IR including, but not limited to, claims for reimbursement for fines levied upon Excel for slams by such IR. "Slamming" is illegal under Federal law and in every state and may carry criminal penalties. **<u>Excel will refer representatives who slam customers for criminal prosecution.</u>**

(Source: PIC procedure described in the Excel Policies and Procedures Manual)

Complaint Resolution Process

Excel is committed to provide caring service and anticipate customer needs resulting in a positive experience and a long term relationship. Customers may contact our Customer Service Department by calling our toll-free telephone number, 800-875-9235, with any questions or concerns. The vast majority of customer service issues are resolved with one phone call. However, if the matter cannot be resolved initially and the customer submits a complaint to the regulatory agency, the matter is forwarded to the Regulatory Affairs Department. The mission of the Regulatory Affairs Department is to respond to every regulatory inquiry and complaint in a timely manner and ensure full compliance and excellent working relationships with federal, state and local regulatory entities.

Upon receipt of a complaint, the department staff date stamps the material, establishes a file and assigns a case number for tracking purposes. After the case has been entered in our database, an analyst reviews the complaint thoroughly to ensure that every issue is addressed. All internal records related to the establishment of the account are examined, including any letters of authorization ("LOAs") signed by the customer and Independent Representative ("IR") applications.

Call detail records are analyzed, as well as any records of the primary carrier and records supplied by the inter-exchange point of contact ("IPOC"). All complaints are reviewed and completed within the required 10-day response period. In most situations, the customer is contacted in order to resolve the complaint and achieve a satisfactory resolution when possible. A root cause code and description are entered in the case file in an effort to improve internal processes. In addition, customer service concerns are brought to the attention of the appropriate company manager as well as our Quality Assurance Department. In those instances where an Independent Representative is accused of submitting an alleged forged application, the contract of the representative is terminated pending a 10-day appeal process.

Each analyst is committed to the following five (5) key objectives in resolving complaints:

1. Commitments -- We will make and keep the appropriate commitments;
2. Communications -- We will utilize effective written and verbal communication skills;
3. Accountability -- We will make the appropriate contacts and address all issues;
4. Resolution -- We will do the right thing;
5. Root Cause -- We will identify the primary root cause and any broken processes in an effort to prevent future occurrences.

EXHIBIT 4

[text version]

Testimony of
FCC Commissioner Susan Ness
before the
Subcommittee on Communications
Senate Committee on Commerce, Science, and Transportation
Denver, Colorado
October 14, 1997
(as prepared for delivery)

Hearing on Slamming

Thank you, Chairman Burns and Senator Campbell, for inviting me to testify you today on the issue of telephone slamming -- the practice of changing a consumer's long distance carrier without the consumer's knowledge and consent.

Mr. Chairman, you mentioned that over the past few months your own family was slammed. I understand that the same occurred with a Congressman and a Committee staff member. May I add to this list my own secretary and the president of the dominant Mexican telephone company. They have all been slammed.

The Commission receives more complaints about slamming than any other telephone-related complaint. In 1996, complaints totalled 16,000. Already during the first nine months of this year over 15,000 were filed. I understand from Montana Commissioner Bob Rowe that our state colleagues are similarly besieged.

Because most slammed consumers grin and bear it, we don't know how many of the 50 million carrier selection changes each year result from slamming. If just 1% were changes due to slamming -- a very conservative estimate -- that would total over 500,000 slamming incidents each year.

Not only is slamming a growing problem, but it is also one about which consumers care passionately. For example, in complaints to the Commission, consumers use words like "abused," "cheated," "pirated," "hi-jacked," and "violated" to describe how they felt.

Slamming scenarios involve deceptive sweepstakes, misleading forms, forged signatures and telemarketers who do not understand the word "no."

Quite simply, consumers are furious that their carrier selections are being changed without their consent.

And now we're seeing complaints about slamming of intraLATA toll service in areas where carriers are competing for presubscription. Once local service competition is introduced, I'm sure reports of slamming won't be far behind.

The FCC takes slamming very seriously. We have a two-pronged approach to combat this problem: First, our rules make it harder for carriers to slam. Second, carriers who do not follow the rules are severely punished.

In crafting these rules, the Commissionc carefully balanced the twin goals of consumer protection and unfettered competition.

The Commission's *current* anti-slamming rules require long distance carriers to use one of four verification procedures to confirm carrier change orders resulting from telemarketing:

1. a written authorization;
2. confirmation from the subscriber via a toll-free number provided exclusively for this purpose;
3. an independent third party to verify the subscriber's order; or
4. a "welcome package" -- a letter that the consumer receives in the mail that requires the consumer to affirmatively reject the change in carrier, otherwise the change goes into effect after two weeks.

Thus, your service cannot be changed simply because you tell a telemarketer "okay;"-- there must be a subsequent verification of that authorization.

Another Commission rule regarding letters of agency (LOA) details the minimum form and content for written authorizations of carrier changes. These rules shut the door on misleading and deceptive marketing practices, such as having promotional material in one language and the form to authorize a change in carrier in another language.

Finally, under our current policy, carriers who provide unauthorized services must recompute the consumer's bill so that the consumer pays no more than would have been paid to the properly authorized carrier.

Enforcement is the second prong of our anti-slamming campaign. Since 1994, the Commission has imposed consent decrees and has assessed companies more than $1 million in forfeitures, with approximately $500,000 in additional penalties pending.

Also, the Commission recently has taken steps to revoke the operating authority of a group of companies accused of violating the Commission's anti-slamming rules.

The message is loud and clear: we will not tolerate slamming. But more needs to be done.

Through its Further Notice of Proposed Rulemaking, released in July, the Commission sought comment on how best to use the additional authority granted by Congress under Section 258 of the 1996 Telecommunications Act to combat slamming. We hope to complete that rulemaking by the end of January.

Section 258 requires the slamming carrier to disgorge any moneys it has received from the consumer and turn them over to the rightful carrier. In this fashion, the slamming carrier reaps no benefit from its illegal actions.

We propose to require the slamming carrier to reimburse the consumer for any premiums or frequent flyer miles that otherwise would have been earned with the chosen carrier.

We also ask whether a slammed consumer should have to pay at all for the service rendered by the slamming carrier. Here, we must weigh the deterrent effect against the possibility of encouraging bogus complaints.

We also ask whether the existing verification procedures are effective in deterring slamming -- for example whether a "welcome package" requiring the consumer to respond affirmatively to *prevent* a carrier change -- is adequate verification. I don't believe it is -- not all consumers read the mail they get from communications companies. I sure don't.

And we ask whether rules are needed to address preferred carrier freezes. In a freeze, local carriers get consumers to authorize the blocking of future carrier changes unless the consumer gives his or her written or oral consent to the *blocking* carrier -- not just to the *requesting* carrier.

As local competition arrives, the blocking local exchange carrier is poised to compete for long distance with the requesting carrier. Thus, the local exchange carrier may no longer be acting as a neutral third party, but may have instituted freeze procedures for anticompetitive reasons. In drafting our rules, we