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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

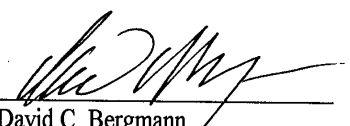
In the Matter of the Application of Excel)
Telecommunications, Inc. to Amend its)
Certificate of Public Convenience and) Case No. 96-683-TP-ACE
Necessity to permit it to Provide Local)
Exchange Resale Services.)

**MOTION TO INTERVENE
AND REQUEST FOR HEARING**

Robert S. Tongren, in his capacity as Ohio Consumers' Counsel (OCC), hereby moves to intervene in this proceeding, pursuant to Ohio Rev. Code § 4903.221 and Ohio Admin. Code § 4901-1-11. The OCC further requests that a hearing be held in this matter, pursuant to Ohio Rev. Code § 4905.24. The grounds for this motion and this request are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

ROBERT S. TONGREN
CONSUMERS' COUNSEL


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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On July 15, 1996, Excel Telecommunications, Inc. (Excel) filed the application under consideration here. In the application, Excel sought authority to provide resold local exchange service throughout the State of Ohio. Application at 5.¹ Excel proposes to serve both residence and business customers. *Id.* at 6.

II. INTERVENTION

The Ohio Consumers' Counsel (OCC) has legislative authority to represent the interests of the residential utility consumers of the State of Ohio. Ohio Rev. Code Chapter 4911. Thus the OCC represents the telephone customers of the local exchange companies with which Excel seeks to compete, and also represents Excel's potential customers. Hence the OCC has a clear interest in whether Excel's certification as a local exchange carrier is proper and necessary for the public convenience. Ohio Rev. Code § 4905.24. This interest includes the determination of whether Excel possesses the financial, technical, and managerial capability to provide the proposed service.

The OCC meets the criteria for intervention set forth in Ohio Revised Code § 4903.221 and Ohio Administrative Code § 4901-1-11(A). The OCC's intervention has been granted in each of the local exchange certification cases heard thus far by this Commission, beginning with *In the Matter of the Application of Time Warner Communications of Ohio, L.P. and Time Warner AxS for a Certificate of Public*

¹ Excel notes that it will not provide service in the territory of incumbent local exchange companies that are granted exemptions or suspensions or modifications pursuant to Sec. 251(f) of the Telecommunications Act of 1996. *Id.* at 6, n.2.

Convenience and Necessity to Provide Direct and Resold Exchange Services, Including Local Exchange and Dialtone Services, Case No. 94-1695-TP-ACE (Time Warner).

III. HEARING

The statute under which Excel seeks its certificate, Ohio Rev. Code § 4905.24, requires a hearing to be held. Thus it should not be necessary for the OCC to request a hearing at which it will be Excel's responsibility to prove that the granting of a certificate is proper and necessary for the public convenience.

The OCC recognizes that in many of the certification cases, beginning with *Time Warner*, the Commission has ordered that intervening parties request a hearing. In this case, as in other prior cases, the OCC thus requests that a hearing be held.²

As further grounds for holding a hearing, the OCC asserts that Excel should specifically be required to demonstrate its managerial capabilities. As this Commission is aware, Excel (in its role as a reseller of long distance service - Application at 5) has been the subject of numerous complaints and inquiries into allegations of "slamming," the unauthorized switching of a customer's service provider. *See, e.g., "FCC finds Heartline, Excel 'apparently liable' for incidents of 'slamming'," Telecommunications Reports* (June 24, 1996) at 42. The Commission has recognized that slamming may be a problem at the local level. 845 Order, Guideline XVIII.C. It is not in the public interest, hence not proper

² The OCC further recognizes that the Commission's generic local competition guidelines provide only that "a hearing may be ordered." *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and other Competitive Issues, Case No. 95-845-TP-COI, Finding and Order* (June 12, 1996), Appendix A at 13 [845 Order, Guideline II.B.6.]. The guidelines also, *inter alia*, require "interested entities" to "show good cause why [the] application should not be granted...." *Id.* This portion of the guidelines is subject to rehearing.


and necessary for the public convenience, to allow a provider that engages in a pattern of slamming to become a participant in the local exchange market.

IV. CONCLUSION

For the reasons set forth herein, the OCC's intervention in this matter should be granted. Further, a hearing should be held on Excel's application.

Respectfully submitted,

ROBERT S. TONGREN
CONSUMERS' COUNSEL

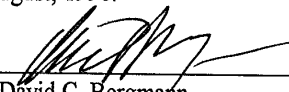


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CERTIFICATE OF SERVICE

I hereby certify that copies of this Motion to Intervene and Request for Hearing have been served by first class U.S. mail, postage prepaid, or hand-delivered to the following parties of record this 26th day of August, 1996.



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