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September 25, 1997

VIA FEDERAL EXPRESS

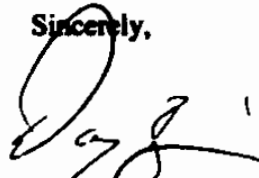
Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32301

**Re: Docket #970002-51
Petition by the Attorney General and the Citizens
of the State of Florida Against Excel Telecommunications, Inc.**

Dear Mrs. Bayó:

I enclose for filing in the referenced docket an original and fifteen copies of Excel Telecommunications, Inc.'s Objections to the Attorney General and the Citizens' First Set of Requests For Production Of Documents. I also enclose an additional copy, which I request that you file-stamp and return to me in the enclosed, stamped envelope.

Sincerely,



Don W. Blevins

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AFA _____
APP 1
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of Robert A. Butterworth,)
Attorney General, and the Citizens of the)
State of Florida, by and through the Office)
of Public Counsel, for initiation of formal)
proceedings pursuant to Section 120.57(1),)
Florida Statutes, to investigate the practice)
of "slamming," i.e. the unauthorized change)
of a customer's presubscribed carrier, and to)
determine the appropriate remedial measures)

Docket 970882-TI
Filed: September 25, 1997

**EXCEL TELECOMMUNICATIONS, INC.'S OBJECTIONS TO FIRST
SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
BY THE ATTORNEY GENERAL AND THE CITIZENS**

Pursuant to the Commission's September 12, 1997 Order Granting Petition by the Attorney General and Office of Public Counsel and Establishing Procedure, No. PSC-97-1071-PCO-TI (the "Initiating Order"), Excel Telecommunications, Inc. ("Excel"), through its undersigned counsel, submits its objections to the First Set of Requests for Production of Documents by the Attorney General and the Citizens (the "Requests"). In submitting these objections, Excel in no way seeks to intervene in this proceeding, but to the contrary expressly objects to any attempt to impose intervention and related obligations on Excel without Excel's consent.

GENERAL OBJECTIONS

I. Excel objects to the Requests on the ground that Excel is not a party to this proceeding. When the Requests were filed on September 11, 1997, the Commission had not yet ruled on the July 15, 1997 Joint Petition for the Initiation of Formal Proceedings Pursuant to Section 120.57, Florida Statutes, to Investigate the Practice of Slamming and to Determine the Appropriate Remedial Measures (the "Joint Petition"). The Joint Petition states that it is

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"essential that the Commission join as necessary parties all affected telecommunications companies, including but not limited to, those involved in previous slamming complaints." Joint Petition at 7, ¶ 14. Since the filing of the Requests, the Commission issued its Initiating Order. The Initiating Order grants the Petition only in part, and *does not* join as parties all affected telephone companies.¹

The Requests appear to have been filed in anticipation of a Commission order joining Excel and other telephone companies as parties to this Docket. The authority for discovery cited in the Requests (Section 350.0611(a), *Fla. Stat.* (1995), Rules 25-22.34 and 25.22.35, F.A.C. and Rule 1.350, F.R.C.P.) applies only to discovery against parties. Specifically, Rule 25-22.34, F.A.C., provides that parties may obtain discovery "through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure." Similarly, Rule 25-22.35(3), F.A.C., provides: "Generally, the Florida Rules of Civil Procedure shall govern in

¹ Indeed, in light of the numerous other state proceedings that have addressed the issue of slamming without imposing the broad participation and discovery requirements contemplated by the Petition, it hardly seems the case that such an imposition is "essential" in this docket. See *Proposed Amendment of Chapter 515-12-1 Telephone Service Rules to Add a New Section 515-12-1-32 Entitled Rules for Changing a Telecommunication Customers Preferred Local/Long Distance Carrier*, Docket No. 6872-U, Georgia Public Service Commission, (Issued December 5, 1996); *In re: Proposed Generic Regulations for Interexchange Carriers, including Slamming and Bonding Requirements for Debit Card Providers*, Docket No. U-22219, Louisiana Public Service Commission, (Issued December 2, 1996); *In the Matter of Rules for Changing a Consumer's Communications Service, Order Instituting Rulemaking and Requesting Comments*, Docket No. P-100, Sub 139, North Carolina Utilities Commission, (Issued June 10, 1997); *In the Matter of a Rulemaking by the Oklahoma Corporation Commission Amending and Establishing Certain Rules Governing resellers Interexchange Telecommunications Services, OAC 156:56.*, Notice Soliciting Comments, Cause No. RM 970000015, Oklahoma Corporation Commission, (Issued March 5, 1997); *Proposed Permanent Rule 4.700 re: "Slamming."* Notice Soliciting Comments, Vermont Public Service Board, (Issued April 1, 1997).

proceedings before the Commission under this part” Rule 1.350, F.R.C.P., provides for discovery only against *parties* to a proceeding. Thus: “Any party may request any other party (1) to produce and permit the party making the request . . . to inspect and copy any designated documents” The Requests cite no rule --because there is none -- authorizing a party to an administrative proceeding to obtain discovery from a non-party.²

The Attorney General has participated in numerous proceedings involving broad discovery in connection with an investigation into alleged slamming activities.³ The burdens

² Commission Rule 25-22.045 provides for the issuance of subpoenas by the Hearing Officer for discovery against third parties. That rule permits parties to apply in writing for the issuance of subpoenas. Rule 25-22.045, F.A.C. The Attorney General did not follow those procedures in this instance, and indeed its Requests are too broad and burdensome to warrant issuance of such a subpoena. See *Naples Community Hosp., Inc. v. State Agency For Health Care Admn.*, 687 So.2d 62 (Fla. Dist Ct. App. 1997) (party seeking discovery failed to explain adequately how proceeding at bar justified delving into financial aspects of the eighteen non-party corporations); see also *Jerry's South, Inc. v. Morran*, 582 So.2d 803, 804 (Fla. Dist. Ct. App. 1991) (granting a protective order against discovery against non-party where information sought was overbroad); *Dade County Med. Assoc. v. Hlis*, 372 So.2d 117, 121 (Fla. Dist. Ct. App. 1979) (non-party medical association not required to comply with a discovery order in which the interests of maintaining the confidentiality of records greatly outweighed the grounds for discovery).

See *In Re: Initiation of Show Cause Proceeding against LDM Systems, Inc. for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection*, Docket No. 960841-TI, Order No. PSC-96-1297-FOF-TI, (Issued Oct. 21, 1996); *In Re: Initiation of Show Cause Proceedings against Phone Calls, Inc. for violations of Rules 25-4.043, F.A.C., Response to Commission Staff Inquiries, 25-4.118, F.A.C., Interexchange Carrier Selection, and 25-24.472, F.A.C., Improper Use of a Certificate*, Docket No. 961479-TI, Order No. PSC-97-0124-FOF-TI, (Issued Feb. 4, 1997); *In re: Initiation of Show Cause Proceedings against Combined Companies, Inc. for violation of Rules 25-4.118, Interexchange Carrier Selection, and 25 24.470, F.A.C., Certificate of Public Convenience and Necessity Required*, Docket No. 961458, Order No. PSC-97-0179-FOF-TI, (Issued Feb. 18, 1997); *In Re: Initiation of Show Cause Proceeding against Integrated TeleServices, Inc. for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection*, Docket No. 970097-TI, Order No. PSC-97-0512-FOF-TI, (Issued May 5, 1997).

associated with discovery in those cases were perhaps appropriate in light of allegations of wrongdoing relating to a specific carrier. Absent such justification, however, it would be highly abusive to impose such obligations on carriers indiscriminately. Thus, as reflected by the absence from the Order of any provision naming Excel as a party, Excel should not be subject to the burdens imposed by these Requests.

Because Excel is not subject to party discovery in this proceeding, it objects to the Requests in their entirety.

SPECIFIC OBJECTIONS

Without waiving its general objections, Excel provides the following additional objections to specific document requests.

- 1. Please provide all internal analyses, studies, reports, papers, or other documents performed by Excel or performed at the request of Excel regarding:**
 - a. slamming or unauthorized PIC changes,**
 - b. the level of or amount of slamming incidents that have been identified by Excel,**
 - c. potential changes to rules or practices regarding changing primary interexchange carriers,**
 - d. the effect of slamming on customers,**
 - e. the effect of slamming either on Excel, the local exchange industry, or the interexchange industry, or**
 - f. the effect of slamming on competition.**

Excel objects to Request No. 1 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Excel further objects to Request No. 1 to the extent that it seeks disclosure

of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

2. Please provide all memos, correspondence, or e-mail in your possession, custody or control, between people at Excel or any affiliate, regarding slamming.

Excel objects to Request No. 2 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Excel further objects to Request No. 2 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

3. Please provide each document in your possession, custody or control showing the name, address and telephone number of every customer that has complained to your company of slamming or unauthorized PIC changes during the past 12 months.

Excel objects to Request No. 3 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Excel further objects to Request No. 3 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

4. Please provide copies of your current training materials and directives to business office or marketing personnel dealing with handling of slamming complaints.

Excel objects to Request No. 4 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Excel further objects to Request No. 4 to the extent that it seeks disclosure

of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

5. Please provide copies of all letters or other forms currently used to confirm sales to customers.

Excel objects to Request No. 5 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Excel further objects to Request No. 5 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

6. Please provide copies of all company practices regarding the handling of customers who claim to have been subjected to "slamming" or unauthorized PIC changes.

Excel objects to Request No. 6 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Excel further objects to Request No. 6 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

7. Please provide letters, directives, correspondence, and other documents in your possession, custody or control relating to slamming or unauthorized PIC changes, when the customer originally belonged to your company and was slammed by another company.

Excel objects to Request No. 7 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Excel further objects to Request No. 7 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret

privilege, or any other applicable privilege.

8. Please provide all letters, directives, correspondence, and other documents in your possession, custody or control relating to slamming or unauthorized PIC changes, when your company has been accused of "slamming" or unauthorized PIC changes.

Excel objects to Request No. 8 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Excel further objects to Request No. 8 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

9. Please provide copies of all forms currently used by Excel to solicit new customers.

Excel objects to Request No. 9 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Excel further objects to Request No. 9 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

10. Please provide copies of all PIC change orders processed by your company since January 1, 1996, when the reason for the change was due to slamming.

Excel objects to Request No. 10 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Excel further objects to Request No. 10 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

11. Please provide copies of all company practices regarding the handling of customers who claim to have been subjected to "slamming" or unauthorized PIC change.

Excel objects to Request No. 11 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Excel further objects to Request No. 11 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

12. Please provide each document in your possession, custody or control commenting on or evaluating the policies or practices of the Florida Public Service Commission or its staff regarding slamming.

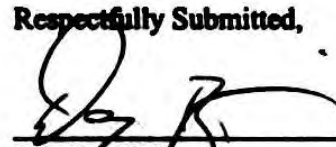
Excel objects to Request No. 12 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Excel further objects to Request No. 12 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

13. Please provide all documents in your possession, custody or control relating to complaints received from the Florida Public Commission or its staff since January 1, 1996, regarding any complaint about slamming.

Excel objects to Request No. 13 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Excel further objects to Request No. 13 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

For the foregoing reasons, Excel respectfully objects to the Requests in their entirety.

Respectfully Submitted,



Ky E.B. Kirby

Warren A. Fitch

Don W. Blevins

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(202) 424-7500

Counsel for Excel Telecommunications, Inc.

**CERTIFICATE OF SERVICE
DOCKET NO. 970882-TI**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal

Express this 25th day of September, 1997 to the following:

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