

OFFICE OF THRIFT SUPERVISION

Approval of Organization and Acquisition of a Federal De Novo Stock Savings Bank and the Establishment of a Branch Office

Order No. 98-9

Date: February 6, 1998

EXCEL Communications, Inc. (the "Holding Company"), and the various entities and individuals listed in Exhibit A (collectively, "the Applicants"), have applied to the Office of Thrift Supervision ("OTS") to organize and acquire a federal de novo stock savings bank to be known as FirstExcel, FSB, Dallas, Texas ("Institution"), pursuant to Sections 5(e) and 10(e) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. Sections 1464(e) and 1467a(e) and 12 C.F.R. Sections 552.2-1 and 574.3. In addition, the Institution has applied, pursuant to 12 C.F.R. Section 545.92, to establish a branch office at a to-be-constructed building in Addison, Texas. (Collectively, the foregoing are referred to herein as "the Applications.")

The OTS has considered the Applications under the standards set forth at 12 U.S.C. Sections 1464(e) and 1467a(e), and at 12 C.F.R. Sections 543.3, 545.92, 552.2-1 and 574.7 and other applicable statutes and regulations. Also, the OTS has considered the proposed transactions under the Community Reinvestment Act ("CRA"), 12 U.S.C. Section 2901 et seq., and the OTS regulations thereunder at 12 C.F.R. Part 563e. In addition, the OTS has considered the digests prepared by the Midwest Regional Office and Corporate Activities, and a legal opinion from the Business Transactions Division (collectively, the "Staff Memoranda").

For the reasons set forth in the Staff Memoranda, the OTS has concluded that the organization of the Institution and the acquisition of the Institution by the Applicants would be in compliance with all applicable statutes and regulations provided that the following conditions are complied with in a manner satisfactory to the Midwest Regional Director, or his designee ("Regional Director"). Accordingly, the applications are hereby approved subject to the following conditions:

1. The Applicants and the Institution must receive all required regulatory approvals prior to the establishment of the Institution with copies of all such approvals supplied to the Midwest Regional office;
2. On the business day prior to opening for business, the Holding Company must advise the Regional Director, in writing, that there have been no material adverse changes with respect to the information currently before the OTS, including but not limited to directors, proposed shareholders or the business plan; and that no additional information having a material adverse bearing on any feature of the Applications exists;
3. No later than 10 calendar days from the later of receipt of insurance of accounts or opening for business, the officers, organizers and directors must file with the Midwest Regional

Director a certification by legal counsel stating the effective date of the completion of the **organization** of the Institution, and that said completion of the **organization** of the **Institution** has been consummated in accordance with *the* provisions of all applicable laws and regulations (including state and federal securities law requirements), the Applications, and this Order,

4. The Institution **shall** submit independent audit reports to the Midwest **Regional Office** for its **first three fiscal years. These reports shall be in compliance with the audit rules set forth in 12 C.F.R** Section 562.4;
5. **The Institution** shag operate within the parameters **of the** submitted **business** plan. Any proposed major deviations or **material** changes **from** the submitted plan, in particular, changes perking to Internet operations, shall receive the prior **written** approval of the **Regional Director**. The request for approval shag be submitted a minimum of 30 days before the proposed change is anticipated. In the event of a proposed **contractual** change invoking service providers, a revised plan shall be submitted a **minimum of 15 days prior to entering** into the contract;
6. The Institution shall have an initial capitalization of \$7.0 **million**. In the event the Addison Branch is not fully operational and accessible to the general **public** within one year after the Institution opens for business, the Institution **shall** maintain a tangible and core capital ratio of **at least 12 percent until such time the branch is fully operational and accessible to the general public. Thereafter**, for the three year period following the branch opening, the **Institution** shag maintain a tangible and core capital ratio of at **least eight percent**;
7. The Institution's **CRA** plan **shall** be subject to any future changes in requirements contained in regulatory policies or regulations that the OTS, on its own, or acting in concert with other financial institution regulatory agencies, **determines** are appropriate for depository institutions operating through the Internet, telephone or other **non-traditional** channels;
8. **Any changes that the Institution initiates to its CRA plan within the three year period** following approval of the application shall be subject to the approval of the **Regional Director**;
9. The **Institution** shall hire a Chief Lending Officer who **shall** be subject to the approval of the **Regional Director**;
10. **Any contracts or agreements pertaining to transactions with affiliates, not yet submitted to the** OTS for review, shall be provided to the Regional Director at least 30 days prior to execution and shall receive his written non-objection prior to implementation;
11. The Holding Company and the Institution shall be subject to the provisions of 12 **C.F.R.** Section **563.76, Offers and Sales of Securities at an Office of Savings Association, and** related **policy** established in OTS Thrift Bulletins **23-2, InterAgency Statement on Retail Sales of Nondeposit Investment Products (the "InterAgency Statement"), and 23a, Limited Exceptions to Prohibitions on Sales of Savings Institution's Securities, and any additional or**

successor statements of policy or regulations addressing these subjects as if the Institution's premises include the **Internet, personal computers, ATMs, telephone and direct mail.**

Any time period specified herein **may** be extended by **the Regional Director, for good cause,** for up to 120 calendar days.

By order of the Director of the **Office of Thrift Supervision, or her** designee, **effective**



John E. Ryan
Acting Executive Director, Supervision