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ARIZONA CORPORATION COMMISSION
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Transcript Exhibit(s)

Docket #(s): T-04308A-12-0118

Exhibit #: A1-A7, S1

Arizona Corporation Commission

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MAR 29 2013

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ORIGINAL

NEW APPLICATION

MILLER
ISAR INC.
TRUSTED ADVISORS

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ANDREW O. ISAR

4423 POINT FOSDICK DRIVE, NW
SUITE 306

GIG HARBOR, WA 98335
TELEPHONE: 253.851.6700
FACSIMILE: 866.474.3630
WWW.MILLERISAR.COM

2012 MAR 29 P 4: 13

CORP COMMISSION
DOCKET CONTROL

Via Overnight Delivery

March 27, 2012

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street, Room 108
Phoenix, Arizona 85007-2996

T-04308A-12-0118

Re: Application for Certificate of Convenience and Necessity

Dear Sir/Madam:

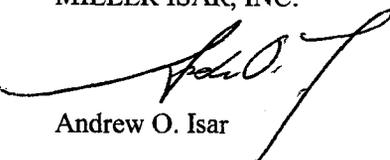
Enclosed for filing with the Arizona Corporation Commission are an original and thirteen (13) copies of Preferred Long Distance, Inc.'s ("Preferred") *Application for Certificate of Convenience and Necessity* ("Application"). By this Application, Preferred requests authority to provide facilities-based and resale competitive local exchange services in the former Qwest Corporation (nka CenturyLink) service territory in Arizona, and resale interexchange telecommunications services statewide.

Please acknowledge receipt of this filing by file-stamping and returning the additional copy of this Application and transmittal letter in the self-addressed, postage-paid envelope provided for this purpose.

Questions may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.

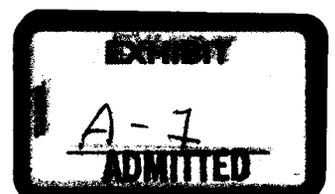

Andrew O. Isar

Regulatory Consultants to
Preferred Long Distance, Inc.

Enclosures

Arizona Corporation Commission
DOCKETED
MAR 29 2012

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ORIGINAL

NEW APPLICATION

**APPLICATION FOR
CERTIFICATE OF CONVENIENCE & NECESSITY**

If the Applicant wants to provide any type of Non-Customer Owned Pay Telephone ("COPT") telecommunications services in Arizona, provide the Arizona Corporation Commission ("Commission") with information being requested.

Remember that information submitted for a Certificate of Convenience and Necessity ("CC&N") will be made part of the public record (including financial statements). Any information designated as confidential will not be accepted by Docket Control. Mail your original CC&N application plus thirteen (13) copies to Arizona Corporation Commission, Docket Control, 1200 W. Washington Street, Phoenix, AZ 85007-2927.

Make sure you use the Application form dated May 24, 2010. Also, make sure you answer each numbered item and part of the item in each section of the Application form. If you do not use the correct Application form and/or do not completely answer the numbered item(s), Staff will request the Applicant to re-submit the Application form and/or complete any of the numbered item(s) and part of the item in a data request. In order for Staff to review your Application, complete the following form. Thank you.

T-04308A-12-0118

AZ CORP COMMISSION
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(A-3) The d/b/a ("Doing Business As") name if the Applicant is doing business under a name different from that listed in Item (A-2):

Company does not currently utilize a fictitious name or DBA.

(A-4) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Management Contact:

**Keith Nussbaum
Executive Vice President
16830 Ventura Boulevard, Suite 350
Encino, California 91436
Telephone: 818.380.9090
Facsimile: 818.380.9099
Email: keith [at] preferredlongdistance [dot] com**

(A-5) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Attorney and/or Consultant:

**Andrew O. Isar
Miller Isar, Inc.
4423 Point Fosdick Drive NW, Suite 306
Gig Harbor, Washington 98335
Telephone: 253.851.6700
Facsimile: 866.474.3530
Email: aisar [at] millerisar [dot] com**

(A-6) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Complaint Contact Person:

**Keith Nussbaum
Executive Vice President
16830 Ventura Boulevard, Suite 350
Encino, California 91436
Telephone: 818.380.9090
Facsimile: 818.380.9099
Email: keith [at] preferredlongdistance [dot] com**

(A-7) What type of legal entity is the Applicant? Mark the appropriate box(s) and category.

- Sole proprietorship
- Partnership: _____ Limited, _____ General, _____ Arizona, _____ Foreign
- Limited Liability Company: _____ Arizona, X Foreign
- Corporation: X "S", _____ "C", _____ Non-profit
- Other, specify: _____

(A-8) Please include "Attachment A":

Attachment "A" must include the following information:

1. A copy of the Applicant's Certificate of Good Standing as a domestic or foreign corporation, LLC, or other entity in Arizona.
2. A list of the names of all owners, partners, limited liability company managers (or if a member managed LLC, all members), or corporation officers and directors (specify).
3. Indicate percentages of ownership of each person listed in A-8.2.

Please refer to Attachment A.

(A-9) Include your Tariff as "Attachment B".

Your Tariff must include the following information:

1. Proposed Rates and Charges for each service offered (reference by Tariff page number).
2. Tariff Maximum Rate and Prices to be charged (reference by Tariff page number).
3. Terms and Conditions Applicable to provision of Service (reference by Tariff page number).
4. Deposits, Advances, and/or Prepayments Applicable to provision of Service (reference by Tariff page number).
5. The proposed fee that will be charged for returned checks (reference by Tariff page number).

Please refer to Attachment B.

(A-10) Indicate the geographic market to be served:

- Statewide. (Applicant adopts statewide map of Arizona provided with this application).
- Other. Describe and provide a detailed map depicting the area.

Applicant proposes to provide local exchange services only in those local exchange services served by Qwest Corporation. Applicant proposes to provide interexchange services statewide.

(A-11) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any formal or informal complaint proceedings before any state or federal regulatory commission, administrative agency, or law enforcement agency.

Describe in detail any such involvement. Please make sure you provide the following information:

1. States in which the Applicant has been or is involved in proceedings.
2. Detailed explanations of the Substance of the Complaints.
3. Commission Orders that resolved any and all Complaints.
4. Actions taken by the Applicant to remedy and/or prevent the Complaints from re-occurring.

Nether Applicant or any of its officers, directors, partners, or managers have been or are currently involved in any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency, or law enforcement agency.

(A-12) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any civil or criminal investigation, or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

Describe in detail any such judgments or convictions. Please make sure you provide the following information:

1. States involved in the judgments and/or convictions.
2. Reasons for the investigation and/or judgment.
3. Copy of the Court order, if applicable.

Neither the Applicant or any of its officers, directors, partners, or managers have been or are currently involved in any civil or criminal investigation, or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

(A-13) Indicate if the Applicant's customers will be able to access alternative toll service providers or resellers via 1+101XXXX access.

Yes

No

(A-14) Is Applicant willing to post a Performance Bond? Please check appropriate box(s).

For Long Distance Resellers, a \$10,000 bond will be recommended for those resellers who collect advances, prepayments or deposits.

Yes

No

If "No", continue to question (A-15).

For Local Exchange Resellers, a \$25,000 bond will be recommended.

Yes

No

If "No", continue to question (A-15).

For Facilities-Based Providers of Long Distance, a \$100,000 bond will be recommended.

Yes

No

If "No", continue to question (A-15).

For Facilities-Based Providers of Local Exchange, a \$100,000 bond will be recommended.

Yes

No

If any box in (A-14) is marked "No", continue to question (A-15).

Note: Amounts are cumulative if the Applicant is applying for more than one type of service.

(A-15) If any box in (A-14) is marked "No", provide the following information. Clarify and explain the Applicant's deposit policy (reference by tariff page number). Provide a detailed explanation of why the Applicant's superior financial position limits any risk to Arizona consumers.

Although Applicant is aware of the Commission's policy of requiring financial surety of new applicants for certificate of public convenience and necessity, applicant maintains that surety is not required as a prerequisite for Applicant to provide service in Arizona. Applicant is profitable, as demonstrated by its financial statements attached as Attachment D. Applicant does not plan to accept customer deposits, and imposes no financial risks to the public and does not warrant imposition of any financial surety.

(A-16) Submit copies of affidavits of publication that the Applicant has, as required, published legal notice of the Application in all counties where the Applicant is requesting authority to provide service.

Note: For Resellers, the Applicant must complete and submit an Affidavit of Publication Form as Attachment "C" before Staff prepares and issues its report. Refer to the Commission's website for Legal Notice Material (Newspaper Information, Sample Legal Notice and Affidavit of Publication). For Facilities-Based Service Providers, the Hearing Division will advise the Applicant of the date of the hearing and the publication of legal notice. Do not publish legal notice or file affidavits of publication until you are advised to do so by the Hearing Division.

Please refer to draft publication Notice, attached as Attachment C.

(A-17) Indicate if the Applicant is a switchless reseller of the type of telecommunications services that the Applicant will or intends to resell in Arizona:

Yes

No

If "Yes", provide the name of the company or companies whose telecommunications services the Applicant resells.

Applicant proposes to provide local exchange services and interexchange services utilizing one or more of the following means: 1) utilizing combinations of network elements, ancillary functions and features leased from CenturyLink (formerly Qwest Communications Corporation ("Qwest")); 2) under a commercial agreement with CenturyLink; or 3) via resale, utilizing the networks of its underlying carrier(s). Applicant has no plans to purchase or construct its own facilities for the provision of service in the near future.

(A-18) List the States in which the Applicant has had an application approved or denied to offer telecommunications services similar to those that the Applicant will or intends to offer in Arizona:

Note: If the Applicant is currently approved to provide telecommunications services that the Applicant intends to provide in Arizona in less than six states, excluding Arizona, list the Public Utility Commission ("PUC") of each state that granted the authorization. For each PUC listed provide the name of the contact person, their phone number, mailing address including zip code, and e-mail address.

Applicant currently maintains competitive local exchange authority in eighteen states: the States of California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Minnesota, Missouri, New Mexico, Nevada, North Carolina, Ohio, Oregon, Texas, Utah, Washington and Wisconsin.

In no instance has Applicant had an application to provide services similar to those proposed in the instant Application denied.

(A-19) List the States in which the Applicant currently offers telecommunications services similar to those that the Applicant will or intends to offer in Arizona.

Note: If the Applicant currently provides telecommunication services that the Applicant intends to provide in Arizona in six or more states, excluding Arizona, list the states. If the Applicant does not currently provide telecommunications services that the Applicant intends to provide in Arizona in five or less states, list the key personnel employed by the Applicant. Indicate each employee's name, title, position, description of their work experience, and years of service in the telecommunications services industry.

Applicant is currently providing competitive local exchange telecommunications services in the States of California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Minnesota, Missouri, New Mexico, Nevada, North Carolina, Ohio, Oregon, Texas, Utah, Washington and Wisconsin. A listing of key personnel employed by Applicant is attached at Attachment E. The Company has invested in developing and supporting its customer service organization with new technology, and highly-qualified and trained representatives that are fully responsive to customer needs. Applicant's customer service support to Arizona subscribers represents an extension of the functions performed by its customer service organization, scaled to serve additional subscribers in Arizona. Applicant plans to serve its Arizona subscribers from its California customer service centers. The Company does not plan to maintain employees in Arizona.

(A-20) List the names and addresses of any alternative providers of the service that are also affiliates of the telecommunications company, as defined in R14-2-801.

Applicant is not affiliated with any entity, as defined in R14-2-801 that provides services provided by applicant.

(A-21) Check here if you wish to adopt as your petition a statement that the service has already been classified as competitive by Commission Decision:

- Decision # 64178 Resold Long Distance
- Decision # 64178 Resold LEC
- Decision # 64178 Facilities Based Long Distance
- Decision # 64178 Facilities Based LEC

B. FINANCIAL INFORMATION

(B-1) Indicate if the Applicant has financial statements for the two (2) most recent years.

Yes

No

If "No," explain why and give the date on which the Applicant began operations.

(B-2) Include "Attachment D".

Provide the Applicant's financial information for the two (2) most recent years.

1. A copy of the Applicant's balance sheet.
2. A copy of the Applicant's income statement.
3. A copy of the Applicant's audit report.
4. A copy of the Applicant's retained earnings balance.
5. A copy of all related notes to the financial statements and information.

Note: Make sure "most recent years" includes current calendar year or current year reporting period.

Please refer to Attachment D.

(B-3) Indicate if the Applicant will rely on the financial resources of its Parent Company, if applicable.

Applicant is not a subsidiary of any parent company and will not rely on the financial resources of a parent corporation, accordingly.

(B-4) The Applicant must provide the following information.

1. Provide the projected total revenue expected to be generated by the provision of telecommunications services to Arizona customers for the first twelve months following certification, adjusted to reflect the maximum rates for which the Applicant requested approval. Adjusted revenues may be calculated as the number of units sold times the maximum charge per unit.

Applicant projects total revenue generated by the provision of telecommunications services generated from Arizona for the first twelve months following certification to be \$60,000.00.

2. Provide the operating expenses expected to be incurred during the first twelve months of providing telecommunications services to Arizona customers following certification.

Applicant projects operating expenses to be incurred during the first twelve months of providing telecommunications to be a minimum of \$32,000.00.

3. Provide the net book value (original cost less accumulated depreciation) of all Arizona jurisdictional assets expected to be used in the provision of telecommunications service to Arizona customers at the end of the first twelve months of operation. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list.

Applicant does not require network to serve Arizona subscribers and will maintain no assets located in the State of Arizona for the first twelve months of operation.

(B-4) The Applicant must provide the following information. (continued)

4. If the projected value of all assets is zero, please specifically state this in your response.

Applicant's projected value of all Arizona assets will be zero for the first twelve months.

5. If the projected fair value of the assets is different than the projected net book value, also provide the corresponding projected fair value amounts.

Inapplicable.

C. RESOLD AND/OR FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

(C-1) Indicate if the Applicant has a resale agreement in operation,

Yes No

If "Yes", please reference the resale agreement by Commission Docket Number or Commission Decision Number.

Applicant has entered into an interconnection agreement with Qwest Communications Corporation, filed with the Commission on January 28, 2005, under Docket No. T-01051B-05-0050.

D. FACILITIES-BASED LONG DISTANCE AND/OR FACILITIES BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

(D-1) Indicate if the Applicant is currently selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in Arizona. This item applies to an Applicant requesting a geographic expansion of their CC&N:

Yes No

If "Yes," provide the following information:

1. The date or approximate date that the Applicant began selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in Arizona.
2. Identify the types of facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services that the Applicant sells in Arizona.

If "No," indicate the date when the Applicant will begin to sell facilities-based long distance telecommunications AND/OR facilities-based local exchange telecommunications services in Arizona.

Applicant's current plans are to begin to sell facilities-based local exchange telecommunications services in the State of Arizona within 30 days of approval.

E. FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

(E-1) Indicate whether the Applicant will abide by the quality of service standards that were approved by the Commission in Commission Decision Number 59421:

Yes No

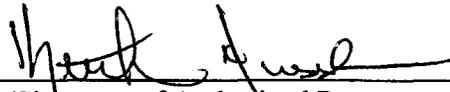
(E-2) Indicate whether the Applicant will provide all customers with 911 and E911 service, where available, and will coordinate with incumbent local exchange carriers ("ILECs") and emergency service providers to provide this service:

Yes No

(E-3) Indicate that the Applicant's switch is "fully equal access capable" (i.e., would provide equal access to facilities-based long distance companies) pursuant to A.A.C. R14-2-1111 (A):

Yes No

I certify that if the applicant is an Arizona corporation, a current copy of the Articles of Incorporation is on file with the Arizona Corporation Commission and the applicant holds a Certificate of Good Standing from the Commission. If the company is a foreign corporation or partnership, I certify that the company has authority to transact business in Arizona. I certify that all appropriate city, county, and/or State agency approvals have been obtained. Upon signing of this application, I attest that I have read the Commission's rules and regulations relating to the regulations of telecommunications services (A.A.C. Title 14, Chapter 2, Article 11) and that the company will abide by Arizona state law including the Arizona Corporation Commission Rules. I agree that the Commission's rules apply in the event there is a conflict between those rules and the company's tariff, unless otherwise ordered by the Commission. I certify that to the best of my knowledge the information provided in this Application and Petition is true and correct.



(Signature of Authorized Representative)

March 26, 2012

(Date)

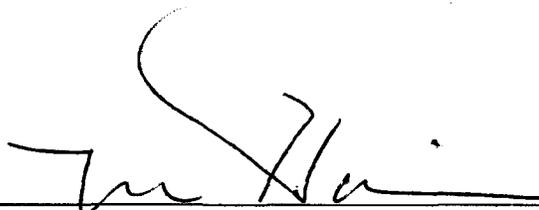
Keith Nussbaum

(Print Name of Authorized Representative)

Executive Vice President

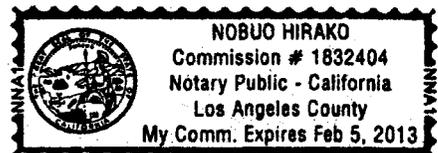
(Title)

SUBSCRIBED AND SWORN to before me this 26 day of March, 2012.



NOTARY PUBLIC

My Commission Expires FEB 5 2013



ARIZONA CORPORATION COMMISSION

**Application and Petition for Certificate of Convenience and Necessity to Provide
Intrastate Telecommunications Services
Of
Preferred Long Distance, Inc.**

ATTACHMENT A

A copy of the Applicant's Certificate of Good Standing as a domestic or foreign corporation, LLC, or other entity in the State of Arizona.

A copy of Applicant's Certificate of Good Standing as a Foreign Corporation is attached.

A list of the names of all owners, partners, limited liability company managers (or if a member managed LLC, all members), or corporation officers and directors (specify).

The names and titles of Applicant's officers and directors are:

PRESENT DIRECTORS

Jerome Nussbaum Chief Executive Officer, Chief Financial Officer and Secretary
Claudia Nussbaum Director
Keith Nussbaum Executive Vice President

PRESENT OFFICERS

Jerome Nussbaum Chief Executive Officer, Chief Financial Officer and Secretary
Keith Nussbaum Executive Vice President

Percentages of ownership of Jerome Nussbaum and Claudia Nussbaum - 100 percent joint ownership.

STATE OF ARIZONA



Office of the
CORPORATION COMMISSION
CERTIFICATE OF GOOD STANDING

To all to whom these presents shall come, greeting:

I, Ernest G. Johnson, Executive Director of the Arizona Corporation Commission, do hereby certify that

*****PREFERRED LONG DISTANCE, INC.*****

a foreign corporation organized under the laws of California did obtain authority to transact business in the State of Arizona on the 17th day of December 2004.

I further certify that according to the records of the Arizona Corporation Commission, as of the date set forth hereunder, the said corporation has not had its authority revoked for failure to comply with the provisions of the Arizona Business Corporation Act; and that its most recent Annual Report, subject to the provisions of A.R.S. sections 10-122, 10-123, 10-125 & 10-1622, has been delivered to the Arizona Corporation Commission for filing; and that the said corporation has not filed an Application for Withdrawal as of the date of this certificate.

This certificate relates only to the legal authority of the above named entity as of the date issued. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's condition or business activities and practices.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission. Done at Phoenix, the Capital, this 21st Day of July, 2011, A. D.




Executive Director

By: _____ 642789

ARIZONA CORPORATION COMMISSION

**Application and Petition for Certificate of Convenience and Necessity to Provide
Intrastate Telecommunications Services
Of
Preferred Long Distance, Inc.**

ATTACHMENT B

Applicant's combined local exchange and interexchange tariff is attached.

Proposed Rates and Charges for each service offered appear in Applicant's proposed Effective Rate Schedule No. 1.

Tariff Maximum Rate and Prices to be charged appear beginning at tariff Sheet No. 79.

Terms and Conditions Applicable to provision of Service appear beginning at tariff Sheet No. 12.

Deposits, Advances, and/or Prepayments Applicable to provision of Service appear at tariff Sheet No. 34 to 36.

The proposed fee that will be charged for returned checks appears beginning at tariff Sheet Nos. 79, and effective rate schedule Sheet No. 1.

The maximum and minimum rate structure established in Preferred's tariff is based on a fixed percentage multiplied by the existing rate, then added to, or subtracted from, the existing competitively priced rate to develop the maximum or minimum rates, respectively. The calculated maximum or minimum rates are then rounded to the nearest five-dollar amount above the maximum, or below the minimum.

Preferred's proposed Arizona rates are designed to be competitive with those of other competitive local exchange and interexchange carriers in Arizona, as well as with those of incumbent local exchange carriers. As a new market entrant, Preferred could not successfully attract and retain subscribers unless its rates were competitive with larger, more established competitors. Yet Preferred does not have market power to control pricing and could not sustain unreasonably low, anti-competitive service rates through service subsidies in Arizona or elsewhere. Preferred's Arizona rates are consistent with those charged by other competitive local exchange and interexchange carriers operating under Commission-approved tariffs. Preferred's proposed rates should be considered fair, just, and reasonable, accordingly.

Preferred's rates reflect the Company's underlying costs and a reasonable return, while enabling the Company to remain competitive and attract and retain subscribers in Arizona's highly competitive local exchange and interexchange markets.

Preferred does not collect advances, deposits or prepayments at this time, but reserves the right to do so in the future, contingent on the company's compliance with the ACC's bond requirements.

Tariff Schedule Applicable To
LOCAL EXCHANGE AND INTEREXCHANGE TELECOMMUNICATION SERVICES
Within the State of
ARIZONA

Preferred Long Distance, Inc.

16830 Ventura Blvd., Ste 350
Encino, CA 91436

This Tariff ("Tariff") contains the descriptions, regulations, and rates applicable to the provision of local exchange and interexchange telecommunications Services provided by Preferred Long Distance, Inc. ("Company"), with principal offices at 16830 Ventura Blvd., Ste 350, Encino, CA 91436, for Services furnished within the State of Arizona. This Tariff is on file with the Arizona Corporation Commission ("Commission"), and copies may be inspected, during normal business hours, at the Company's principal place of business.

Issued: March 28, 2012

Effective:

Issued By:

Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

TABLE OF CONTENTS

Table of Contents1
Check Page.....3
Explanation of Symbols.....4
Application of Tariff.....5
Tariff Format.....6
Section 1 – Definitions7
Section 2 – Regulations.....12
 2.1. Undertaking of the Company.....12
 2.2. Prohibited Uses24
 2.3. Obligations of the Customer25
 2.4. Customer Equipment and Channels.....28
 2.5. Payment Arrangements.....31
 2.6. Allowances for Interruptions In Service46
 2.7. Use of Customer’s Service by Others49
 2.8. Cancellation of Service/Termination Liability50
 2.9. Transfers and Assignments51
 2.10 Customer Liability for Unauthorized Use of the Network52
 2.11. Notices and Communications53
 2.12. Taxes, Fees and Surcharges53
 2.13. Miscellaneous Provisions.....54

Issued: March 28, 2012

Effective:

Issued By:

Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

TABLE OF CONTENTS, Continued

Section 3 – Description of Service.....55

- 3.1. Application of Rates55
- 3.2. Basic Local Service.....58
- 3.3. Service Features60
- 3.4. Other Services69
- 3.5. Directory Services.....70

Section 4 – Minimum and Maximum Rates and Charges.....79

- 4.1. Local Exchange Service.....79
- 4.2. Service Features80
- 4.3. Other Services83
- 4.4. Directory Services and Listings83

Section 5 – Service Packages84

- 5.1. Local Service Package84

Section 6 – Long Distance Services.....85

- 6.1. Long Distance Service85

Effective Rate Schedule

Issued: March 28, 2012

Effective:

Issued By:

Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

CHECK PAGE

Pages of this Tariff are effective as of the date shown at the bottom of the respective Page(s). Original and revised pages as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this Page. An asterisk (*) appearing next to the page version denotes changes from the original made with the current filing.

| Page No. | Page Version | Page No. | Page Version | Page No. | Page Version |
|----------|--------------|----------|--------------|-------------------------|--------------|
| Title | Original | 34 | Original | 68 | Original |
| 1 | Original | 35 | Original | 69 | Original |
| 2 | Original | 36 | Original | 70 | Original |
| 3 | Original | 37 | Original | 71 | Original |
| 4 | Original | 38 | Original | 72 | Original |
| 5 | Original | 39 | Original | 73 | Original |
| 6 | Original | 40 | Original | 74 | Original |
| 7 | Original | 41 | Original | 75 | Original |
| 8 | Original | 42 | Original | 76 | Original |
| 9 | Original | 43 | Original | 77 | Original |
| 10 | Original | 44 | Original | 78 | Original |
| 11 | Original | 45 | Original | 79 | Original |
| 12 | Original | 46 | Original | 80 | Original |
| 13 | Original | 47 | Original | 81 | Original |
| 14 | Original | 48 | Original | 82 | Original |
| 15 | Original | 49 | Original | 83 | Original |
| 16 | Original | 50 | Original | 84 | Original |
| 17 | Original | 51 | Original | 85 | Original |
| 18 | Original | 52 | Original | | |
| 19 | Original | 53 | Original | | |
| 20 | Original | 54 | Original | | |
| 21 | Original | 55 | Original | Effective Rate Schedule | |
| 22 | Original | 56 | Original | 1 | Original |
| 23 | Original | 57 | Original | 2 | Original |
| 24 | Original | 58 | Original | 3 | Original |
| 25 | Original | 59 | Original | 4 | Original |
| 26 | Original | 60 | Original | 5 | Original |
| 27 | Original | 61 | Original | | |
| 28 | Original | 62 | Original | | |
| 29 | Original | 63 | Original | | |
| 30 | Original | 64 | Original | | |
| 31 | Original | 65 | Original | | |
| 32 | Original | 66 | Original | | |
| 33 | Original | 67 | Original | | |

Issued: March 28, 2012

Effective:

Issued By:

Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

EXPLANATION OF SYMBOLS

The following symbols shall be used in this Tariff for the purpose indicated below:

- (C) To signify a changed regulation.
- (D) To signify a discontinued rate or regulation.
- (I) To signify an increased rate.
- (M) To signify a move in the location of text.
- (N) To signify new rate or regulation.
- (R) To signify reduced rate.
- (T) To signify a change in text but no change in rate or regulation.

Issued: March 28, 2012

Effective:

Issued By:

Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

APPLICATION OF TARIFF

- A. This Tariff schedule sets forth the Service offerings, rates, terms and conditions applicable to the furnishing of competing local exchange Services offered by Company to Customers in the State of Arizona, subject to availability.
- B. The Company's exchanges and local calling areas are the same as those shown in the tariffs of Qwest Corporation that serve the same exchanges as the Company. The Company shall provide service in the exchanges where facilities are available. The Company concurs with the maps filed by Qwest Corporation. See: http://tariffs.qwest.com:8000/idc/groups/public/documents/tariff/htmltoc_az_exch_m aps.htm
- C. The rates and regulations contained in this Tariff apply only to the intrastate telecommunications Services furnished by Company and do not apply, unless otherwise specified, to the lines, facilities, or the Services provided by a Local Exchange Carrier or other common Carrier for use in accessing the Services of Company. This Tariff does not cover any information service or other unregulated service offered by Company.
- D. Company may not be deemed to have waived or impaired any right, power, requirement or option reserved by this Tariff (including, but not limited to, the right to demand exact compliance with every term and condition herein), by virtue of any custom or practice of Company at variance with the terms hereof, or any failure, refusal or neglect of Company to exercise any right under this Tariff or to insist upon exact compliance with its terms, or any waiver, forbearance, delay, failure or omission by Company to exercise any right, power or option hereunder.
- E. The rates, rules, terms and conditions contained herein are subject to change pursuant to the rules and regulations of the Commission.
- F. This Tariff is governed and interpreted according to the Laws of Arizona.
- G. This Tariff is on file with the Arizona Corporation Commission. In addition, this Tariff is available for review at the main office of Preferred Long Distance, Inc. at 16830 Ventura Boulevard, Suite 350, Encino, California 91436.

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TARIFF FORMAT

- A. Page Numbering** - Page numbers appear in the upper right corner of the Page. Pages are numbered sequentially. However, new Pages are occasionally added to the Tariff. When a new Page is added between Pages already in effect, a decimal is added. For example, a new Page added between Pages 14 and 15 would be 14.1.
- B. Page Revision Numbers** - Revision numbers also appear in the upper right corner of each Page. These numbers are used to determine the most current Page version on file with the Commission. Because of various suspension periods, deferrals, etc., the most current Page number on file with the Commission is not always the Tariff Page in effect. Consult the Check Page for the Page currently in effect.
- C. Paragraph Numbering Sequence** - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:
- 2.
 - 2.1.
 - 2.1.1.
 - 2.1.1.A.
 - 2.1.1.A.1.
 - 2.1.1.A.1.(a).
 - 2.1.1.A.1.(a).I.
 - 2.1.1.A.1.(a).I.(i).
 - 2.1.1.A.1.(a).I.(i).(1).
- D. Check Pages** - When a Tariff filing is made with the Commission, an updated Check Page accompanies the Tariff filing. The Check Page lists the Pages contained in the Tariff, with a cross-reference to the current revision number. When new Pages are added, the Check Page is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this Page if these are the only changes made to it (i.e., the format, etc. remain the same, just revised revision levels on some Pages.) The Tariff User should refer to the latest Check Page to find out if a particular Page is the most current on file with the Commission.

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SECTION 1 – DEFINITIONS

Access Line: An arrangement from a local Exchange Telephone Company or other Common Carrier, using either dedicated or switched access, which connects a Customer's location to Carrier's location or switching center.

Advance Payment: Part or all of a payment required before the start of Service.

Applicant: Any entity or individual who applies for Service offered under this Tariff.

Authorized User: A person, firm or corporation authorized by the Customer to be an end-User of the Service of the Customer.

Business Customer: A Customer that uses a Business Service Offering as set forth in this Tariff.

Central Office: A local exchange switching unit that is used to interconnect Exchange Access Lines within a specified area.

Channel or Circuit: A path for transmission between two (2) or more points having a bandwidth and termination of Customer's own choosing.

Commission: The Arizona Corporation Commission

Common Carrier: An authorized company or entity providing telecommunications services to the public.

Company: Preferred Long Distance, Inc., the issuer of this Tariff.

Contract: An agreement between Customer and Company in which the two (2) parties agree upon specifications, terms, pricing, and other conditions of Service. The Contract may or may not accompany an associated Service Order.

Customer: The person, firm, partnership, corporation, municipality, cooperative organization, governmental agency, etc., that is provided Service and that is responsible for the payment of charges and compliance with the terms and conditions of this Tariff.

Customer Premises: A location designated by the Customer for the purposes of connecting to the Company's Services.

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SECTION 1 – DEFINITIONS, Continued

Deposit: Refers to a cash or equivalent of cash security held as a guarantee for payment of the charges for Services.

Directory Assistance Service: A Service whereby Customers may dial a special directory assistance code or telephone number to reach an operator or automatic Interactive Voice System (“IVS”) that will provide available, published directory listings.

E-911/911: An emergency Service whereby a Customer dials a 911 emergency code or other emergency number and is then connected to an emergency agency responsible for the dispatch of emergency assistance. E911 and 911 are used interchangeably to refer to any emergency dialing arrangement.

Exchange Access Lines: Central Office equipment and related facilities, including the Network interface, which provide access to and from the telecommunications Network.

Exchange Area: A geographically defined area described through the use of maps or legal descriptions to specify areas where individual telephone exchange companies hold themselves out to provide local communications services.

Exchange Telephone Company or Telephone Company: Denotes any individual, partnership, association, joint-stock company, trust, or corporation authorized by the appropriate regulatory bodies to engage in providing public switched communication service throughout an Exchange Area, and between Exchange Areas within the LATA.

FCC: Federal Communications Commission.

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SECTION 1 – DEFINITIONS, Continued

Individual Case Basis (“ICB”): A Service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer.

Interexchange Carrier (IXC): A long distance telecommunications services provider.

Interruption: The inability to complete calls due to equipment malfunctions or human errors. Interruption shall not include, and no allowance shall be given for Service difficulties such as slow dial tone, Circuits busy or other network and/or switching capability shortages. Nor shall Interruption include the failure of any service or facilities provided by a Common Carrier or other entity other than the Company. Any Interruption allowance provided within this Tariff by the Company shall not apply where Service is Interrupted by the negligence or willful act of the Customer, or where the Company, pursuant to the terms of this Tariff, terminates Service because of non-payment of bills, unlawful or improper use of the Carrier’s facilities or service, or any other reason covered by this Tariff or by applicable law.

Local Exchange Carrier (“LEC”): A provider of local telephone service.

Local Calling Area: The area within which a Subscriber for local exchange Service may make telephone calls without incurring a long distance charge.

Local Access and Transport Area (LATA): A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the National Exchange Carrier Association, Inc. Tariff F.C.C. No. 4, or its successor tariff(s).

Monthly Recurring Charges (MRC): The monthly charges to the Customer for Services, facilities and equipment, which continue for the agreed upon duration of the Service.

Non-recurring Charge (NRC): The initial charge, usually assessed on a one-time basis, to initiate and establish Service. NRC includes, but is not limited to, charges for construction, installation, or special fees for which the Customer becomes liable at the time the Service Order is executed.

Person-to-Person: A call for which the person originating the call specifies to the operator a particular person, department or extension to be reached. Person-to-Person charges only apply when the call is completed to the requested party, department, or extension or when the calling party agrees to talk to another person.

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SECTION 1 – DEFINITIONS, Continued

PBX: Private Branch Exchange.

Premises: Denotes a building, a portion of a building in a multi-tenant building, or buildings on contiguous property (except railroad rights-of-way, etc.) not separated by a public thoroughfare.

Recurring Charges: Monthly charges to the Customer for Services, and equipment, which continues for the agreed upon duration of the Service.

Residential Customer: A Customer that uses a Residential Service Offering as set forth in this Tariff.

Service: Any means of Service offered herein or any combination thereof.

Service Area: The area in which the Company provides Service.

Service Order: The written request for Company Services executed by the Customer and the Company in the format devised by the Company. The signing of a Service Order Form by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this Tariff.

Station: The network control signaling unit and any other equipment provided at the Customer's Premises which enables the Customer to establish communications connections and to effect communications through such connections.

Station-to-Station: Any operator handled call where the person originating the call does not specify a particular person to be reached, or a particular station, room number, department, or office to be reached through a PBX attendant.

Subscriber: The person, firm, partnership, corporation, or other entity who orders telecommunications Service from Preferred Long Distance. Service may be ordered by, or on behalf of, those who own, lease or otherwise manage the pay telephone, PBX, or other switch vehicle from which an End User places a call utilizing the Services of the Company.

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SECTION 1 – DEFINITIONS, Continued

Telecommunications Relay Service (“TRS”): Enables deaf, hard-of-hearing or speech-impaired persons who use a text telephone or similar devices, to communicate freely with the hearing population not using text telephone and visa versa.

Terminal Equipment: Any telecommunications equipment other than the transmission or receiving equipment installed at a Company location.

Termination of Service: Discontinuance of both incoming and outgoing Service.

Third Number Billing: A billing option that allows a call to be billed to an account different from that of the calling or called party.

Trunk: A communications path, connecting two (2) switching systems in a network, used in the establishment of an end-to-end connection.

Two-Way: A Service attribute that includes dial capabilities for outbound calls and can also be used to carry inbound calls to a central point for further processing.

Usage Charges: Charges for minutes or messages traversing over local exchange facilities.

User or End User: A Customer, joint User, or any other person authorized by a Customer to use Service provided under this Tariff.

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SECTION 2 – REGULATIONS

2.1. UNDERTAKING OF THE COMPANY

2.1.1. Scope

The Company undertakes to furnish communications Service pursuant to the terms of this Tariff in connection with two-way information transmission between points within the State of Arizona.

The Company is responsible under this Tariff only for the Services and facilities provided hereunder, and it assumes no responsibility for any service provided by any other entity that purchases access to the Company network in order to originate or terminate its own services, or to communicate with its own customers.

2.1.2. Shortage of Equipment or Facilities

- A. The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control.
- B. The furnishing of Service under this Tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish Service from time to time as required at the sole discretion of the Company.

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SECTION 2 – REGULATIONS, Continued

2.1. UNDERTAKING OF THE COMPANY, Continued

2.1.3. Terms and Conditions

- A. Service is provided on the basis of a minimum period of at least thirty (30) days, 24-hours per day. For the purpose of computing charges in this Tariff, a month is considered to have 30 days.
- B. Except as otherwise stated in this Tariff, Customers may be required to enter into written Service Orders which shall contain or reference a specific description of the Service ordered, the rates to be charged, the duration of the Services, and the terms and conditions in this Tariff. Customers will also be required to execute any other documents as may be reasonably requested by the Company.
- C. At the expiration of the initial term specified in each Service Order, or in any extension thereof, Service shall continue on a month-to-month basis at the then current rates unless terminated by either party upon notice. Any termination shall not relieve the Customer of its obligation to pay any charges incurred under the Service Order and this Tariff prior to termination. The rights and obligations which by their nature extend beyond the termination of the term of the Service Order shall survive such termination.
- D. In any action between the parties to enforce any provision of this Tariff, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.
- E. Service may be disconnected upon written notice to the Customer pursuant to the provisions of R14-2-509(C).
- F. This Tariff shall be interpreted and governed by the laws of the State of Arizona regardless of its choice of laws provision.

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SECTION 2 – REGULATIONS, Continued

2.1. UNDERTAKING OF THE COMPANY, Continued

2.1.3. Terms and Conditions, Continued

- G. Any other Telephone Company may not interfere with the right of any person or entity to obtain Service directly from the Company. No person or entity shall be required to make any payment, incur any penalty, monetary or otherwise, or purchase any services in order to have the right to obtain Service directly from the Company.

- H. To the extent that either the Company or any other Telephone Company exercises control over available cable pairs, conduit, duct space, raceways, or other facilities needed by the other to reach a person or entity, the party exercising such control shall make them available to the other on terms equivalent to those under which the Company makes similar facilities under its control available to its Customers. At the reasonable request of either party, the Company and the other Telephone Company shall join the attempt to obtain from the owner of the property access for the other party to serve a person or entity.

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SECTION 2 – REGULATIONS, Continued

2.1. UNDERTAKING OF THE COMPANY, Continued

2.1.4. Limitations on Liability

- A. Except as otherwise stated in this section, the liability of the Company for damages arising out of either: (1) the furnishing of its Services, including but not limited to mistakes, omissions, Interruptions, delays, or errors, or other defects, representations, or use of these Services or (2) the failure to furnish its Service, whether caused by acts or omission, shall be limited to the extension of allowances to the Customer for Interruptions in Service as set forth in Section 2.6.

- B. Except for the extension of allowances to the Customer for Interruptions in Service as set forth in Section 2.6, the Company shall not be liable to a Customer or third party for any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages, including, but not limited to, loss of revenue or profits, for any reason whatsoever, including, but not limited to, any act or omission, failure to perform, delay, Interruption, failure to provide any Service or any failure in or breakdown of facilities associated with the Service.

- C. The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and Service has been discontinued, to a refund of the amount erroneously billed.

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SECTION 2 – REGULATIONS, Continued

2.1. UNDERTAKING OF THE COMPANY, Continued

2.1.4. Limitations on Liability, Continued

- D. The Company shall be indemnified and saved harmless by the Customer from and against all loss, liability, damage and expense, including reasonable counsel fees, due to:
1. Any act or omission of: (a) the Customer, (b) any other entity furnishing service, equipment or facilities for use in conjunction with services or facilities provided by the Company; or (c) Common Carriers or warehousemen, except as contracted by the Company;
 2. Any delay or failure of performance or equipment due to causes beyond the Company's control, including but not limited to, acts of God, fires, floods, earthquakes, hurricanes, or other catastrophes; national emergencies, insurrections, riots, wars or other civil commotions; strikes, lockouts, work stoppages or other labor difficulties; criminal actions taken against the Company; unavailability, failure or malfunction of equipment or facilities provided by the Customer or third parties; and any law, order, regulation or other action of any governing authority or agency thereof;
 3. Any unlawful or unauthorized use of the Company's facilities and Services;
 4. Libel, slander, invasion of privacy or infringement of patents, trade secrets, or copyrights arising from or in connection with the material transmitted by means of Company-provided facilities or Services; or by means of the combination of Company-provided facilities or Services;
 5. Breach in the privacy or security of communications transmitted over the Company's facilities;

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SECTION 2 – REGULATIONS, Continued

2.1. UNDERTAKING OF THE COMPANY, Continued

2.1.4. Limitations on Liability, Continued

D. Continued

6. Changes in any of the facilities, operations or procedures of the Company that render any equipment, facilities or services provided by the Customer obsolete, or require modification or alteration of such equipment, facilities or services, or otherwise affect their use or performance, except where reasonable notice is required by the Company and is not provided to the Customer, in which event the Company's liability is limited as set forth in paragraph A of this Section 2.1.4.
7. Defacement of or damage to Customer Premises resulting from the furnishing of Services or equipment on such Premises or the installation or removal thereof;
8. Injury to property or injury or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any act or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected, or to be connected to the Company's facilities;
9. Any non-completion of calls due to network busy conditions;
10. Any calls not actually attempted to be completed during any period that Service is unavailable;
11. And any other claim resulting from any act or omission of the Customer or patron(s) of the Customer relating to the use of the Company's Services or facilities.

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SECTION 2 – REGULATIONS, Continued

2.1. UNDERTAKING OF THE COMPANY, Continued

2.1.4. Limitations on Liability, Continued

- E. The Company does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere.
- F. The Company makes no warranties or representations, EXPRESS OR IMPLIED, either in fact or by operation of law, statutory or otherwise, including warranties of merchantability or fitness for a particular use, except those expressly set forth herein.
- G. Failure by the Company to assert its rights pursuant to one provision of this Tariff does not preclude the Company from asserting its rights under other provisions.
- H. Directory Errors - In the absence of gross negligence or willful misconduct, no liability for damages arising from errors or mistakes in or omissions of directory listings, or errors or mistakes in or omissions of listing obtainable from the directory assistance operator, including errors in the reporting thereof, shall attach to the Company. An allowance for errors or mistakes in or omissions of published directory listings or for errors or mistakes in or omissions of listing obtainable from the directory assistance operator shall be at the monthly Tariff rate for each listing, or in the case of a free or no-charge directory listing, credit shall equal two times the monthly Tariff rate for an additional listing, for the life of the directory or the charge period during which the error, mistake or omission occurs.

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SECTION 2 – REGULATIONS, Continued

2.1. UNDERTAKING OF THE COMPANY, Continued

2.1.4. Limitations on Liability, Continued

I. With respect to Emergency Number 911 Service:

1. This Service is offered solely as an aid in handling assistance calls in connection with fire, police and other emergencies. The Company is not responsible for any losses, claims, demands, suits or any liability whatsoever, whether suffered, made instituted or asserted by the Customer or by any other party or person for any personal injury or death of any person or persons, and for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused by: (1) mistakes, omissions, Interruptions, delays, errors or other defects in the provision of Service, or (2) installation, operation, failure to operate, maintenance, removal, presence, condition, location or use of any equipment and facilities furnishing this Service.
2. Neither is the Company responsible for any infringement, nor invasion of the right of privacy of any person or persons, caused or claimed to have been caused directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, occasion or use of emergency 911 Service features and the equipment associated therewith, or by any Services furnished by the Company, including, but not limited to the identification of the telephone number, address or name associated with the telephone used by the party or parties accessing emergency 911 Service, and which arise out of the negligence or other wrongful act of the Company, the Customer, its Users, agencies or municipalities, or the employees or agents of any one of them.

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SECTION 2 – REGULATIONS, Continued

2.1. UNDERTAKING OF THE COMPANY, Continued

2.1.4. Limitations on Liability, Continued

I. With respect to Emergency Number 911 Service, Continued

3. When a Customer with a non-published telephone number, as defined herein, places a call to the emergency 911 Service, the Company will release the name and address of the calling party, where such information can be determined, to the appropriate local governmental authority responsible for emergency 911 Service upon request of such governmental authority. By subscribing to Service under this Tariff, the Customer acknowledges and agrees with the release of information as described above.

J. **Limitations of Damages and of Period for Bringing Claims** - The entire liability of Company for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid to Company by the Customer for the specific Services giving rise to the claim, and no action or proceeding against Company shall be commenced more than one (1) year after the Service related to the claim is rendered. Claims applicable to overbilling against Company shall be commenced no more than two (2) years after the Service related to the claim is rendered pursuant to Section 415, U.S. Code, 47 U.S.C. §415.

2.1.5. Notification of Service-Affecting Activities

The Company will provide the Customer reasonable notification of Service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' Services. No specific advance notification period is applicable to all Service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned Service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

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SECTION 2 – REGULATIONS, Continued

2.1. UNDERTAKING OF THE COMPANY, Continued

2.1.6. Provision of Equipment and Facilities

- A. The Company shall use reasonable efforts to make available Services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with, the regulations contained in this Tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing Service to any Customer.
- B. The Company shall use reasonable efforts to maintain only the facilities and equipment that it furnishes to the Customer. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.
- C. The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the Service provided the Customer.
- D. Equipment the Company provides or installs at the Customer Premises for use in connection with the Services the Company offers shall not be used for any purpose other than that for which it was provided.
- E. The Customer shall be responsible for the payment of Service charges as set forth herein for visits by the Company's agents or employees to the Premises of the Customer when the Service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

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SECTION 2 – REGULATIONS, Continued

2.1. UNDERTAKING OF THE COMPANY, Continued

2.1.6. Provision of Equipment and Facilities, Continued

F. The Company shall not be responsible for the installation, operation, or maintenance of any Customer-provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this Tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this Tariff and to the maintenance and operation of such facilities. Subject to this responsibility, the Company shall not be responsible for:

1. the transmission of signals by Customer-provided equipment or for the quality of, or defects in, such transmission; or
2. the reception of signals by Customer-provided equipment.

2.1.7. Non-routine Installation

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours. In that case, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, Holidays, and/or night hours, additional charges may apply.

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SECTION 2 – REGULATIONS, Continued

2.1. UNDERTAKING OF THE COMPANY, Continued

2.1.8. Special Construction

Subject to the agreement of the Company and to all of the regulations contained in this Tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken:

- A. where facilities are not presently available, and there is no other requirement for the facilities so constructed;
- B. of a type other than that which the Company would normally utilize in the furnishing of its Services;
- C. over a route other than that which the Company would normally utilize in the furnishing of its Services;
- D. in a quantity greater than that which the Company would normally construct;
- E. on an expedited basis;
- F. on a temporary basis until permanent facilities are available;
- G. involving abnormal costs; or
- H. in advance of its normal construction.

2.1.9. Ownership of Facilities

Title to all facilities provided in accordance with this Tariff remains in the Company, its partners, agents, contractors or suppliers.

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SECTION 2 – REGULATIONS, Continued

2.2. PROHIBITED USES

- 2.2.1** The Services the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.2.2.** The Company may require Applicants for Service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and Commission regulations, policies, orders, and decisions.
- 2.2.3.** The Company may block any signals being transmitted over its Network by Customers which cause interference to the Company or other Users. Customer shall be relieved of all obligations to make payments for charges relating to any blocked Service and shall indemnify the Company for any claim, judgment or liability resulting from such blockage.
- 2.2.4.** A Customer, joint User, or Authorized User may not assign, or transfer in any manner, the Service or any rights associated with the Service without the written consent of the Company. The Company will permit a Customer to transfer its existing Service to another entity if the existing Customer has paid all charges owed to the Company for regulated communications Services. Such a transfer will be treated as a disconnection of existing Service and installation of new Service, and non-recurring installation charges as stated in this Tariff will apply.

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SECTION 2 – REGULATIONS, Continued

2.3. OBLIGATIONS OF THE CUSTOMER

2.3.1. General

The Customer is responsible for making proper application for Service; placing any necessary order, complying with Tariff regulations; payment of charges for Services provided. Specific Customer responsibilities include, but are not limited to the following:

- A. the payment of all applicable charges pursuant to this Tariff;
- B. damage to or loss of the Company's facilities or equipment caused by the acts or omissions of the Customer; or the noncompliance by the Customer, with these regulations; or by fire or theft or other casualty on the Customer Premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company;
- C. providing at no charge, as specified from time to time by the Company, any needed personnel, equipment space and power to operate Company facilities and equipment installed on the Premises of the Customer, and the level of heating and air conditioning necessary to maintain the proper operating environment on such Premises;
- D. obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduits necessary for installation of fiber optic cable and associated equipment used to provide Communication Services to the Customer from the cable building entrance or property line to the location of the equipment space described in Section 2.3.1.C. Any and all costs associated with obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of the Company-provided facilities, shall be borne entirely by, or may be charged by the Company to, the Customer. The Company may require the Customer to demonstrate its compliance with this section prior to accepting an order for Service;

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SECTION 2 – REGULATIONS, Continued

2.3. OBLIGATIONS OF THE CUSTOMER, Continued

2.3.1. General, Continued

- E. providing a safe place to work and complying with all laws and regulations regarding the working conditions on the Premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company's employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing and disposing of any hazardous material (e.g. asbestos) prior to any construction or installation work;
- F. complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as may be required with respect to, the location of Company facilities and equipment in any Customer Premises or the rights-of-way for which Customer is responsible under Section 2.3.1.D; and granting or obtaining permission for Company agents or employees to enter the Premises of the Customer at any time for the purpose of installing, inspecting, maintaining, repairing, or upon Termination Of Service as stated herein, removing the facilities or equipment of the Company;
- G. not creating, or allowing to be placed, any liens or other encumbrances on the Company's equipment or facilities; and
- H. making Company facilities and equipment available periodically for maintenance purposes at a time agreeable to both the Company and the Customer. No allowance will be made for the period during which Service is interrupted for such purposes.

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SECTION 2 – REGULATIONS, Continued

2.3. OBLIGATIONS OF THE CUSTOMER, Continued

2.3.2. Liability of the Customer

- A. The Customer will be liable for damages to the facilities of the Company and for all incidental and consequential damages caused by the negligent or intentional acts or omissions of the Customer, its officers, employees, agents, invites, or contractors where such acts or omissions are not the direct result of the Company's negligence or intentional misconduct.
- B. To the extent caused by any negligent or intentional act of the Customer as described in Subsection A, preceding, the Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees, for (1) any loss, destruction or damage to property of any third party, and (2) any liability incurred by the Company to any third party pursuant to this or any other rate page of the Company, or otherwise, for any Interruption of, interference to, or other defect in any Service provided by the Company to such third party.
- C. The Customer shall not assert any claim against any other Customer or User of the Company's Services for damages resulting in whole or in part from or arising in connection with the furnishing of Service under this Tariff including but not limited to mistakes, omissions, Interruptions, delays, errors or other defects or misrepresentations, whether or not such other Customer or User contributed in any way to the occurrence of the damages, unless such damages were caused solely by the negligent or intentional act or omission of the other Customer or User and not by any act or omission of the Company. Nothing in this Tariff is intended either to limit or to expand Customer's right to assert any claims against third parties for damages of any nature other than those described in the preceding sentence.

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SECTION 2 – REGULATIONS, Continued

2.4. CUSTOMER EQUIPMENT AND CHANNELS

2.4.1. General

A User may transmit or receive information or signals via the facilities of the Company. The Company's Services are designed primarily for the transmission of voice-grade telephonic signals, except as otherwise stated in this Tariff. A User may transmit any form of signal that is compatible with the Company's equipment, but the Company does not guarantee that its Services will be suitable for purposes other than voice-grade telephonic communication except as specifically stated in this Tariff.

2.4.2. Station Equipment

- A. Terminal Equipment on the User's Premises and the electric power consumed by such equipment shall be provided by and maintained at the expense of the User. The User is responsible for the provision of wiring or cable to connect its Terminal Equipment to the Company Point of Connection.

- B. The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense, subject to prior Customer approval of the equipment expense.

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SECTION 2 – REGULATIONS, Continued

2.4. CUSTOMER EQUIPMENT AND CHANNELS, Continued

2.4.3. Interconnection of Facilities

- A. Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Communication Services and the Channels, facilities, or equipment of others shall be provided at the Customer's expense.
- B. Communication Services may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers that are applicable to such connections.
- C. Facilities furnished under this Tariff may be connected to Customer-provided Terminal Equipment in accordance with the provisions of this Tariff. All such Terminal Equipment shall be registered by the FCC pursuant to Part 68 of Title 47, Code of Federal Regulations; and all User-provided wiring shall be installed and maintained in compliance with those regulations.
- D. Users may interconnect communications facilities that are used in whole or in part for interstate communications to Services provided under this Tariff only to the extent that the User is an "End User", as defined in Section 69.2(m), Title 47, Code of Federal Regulations (1992 edition).

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SECTION 2 – REGULATIONS, Continued

2.4. CUSTOMER EQUIPMENT AND CHANNELS, Continued

2.4.4 Inspections

- A. Upon suitable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in Section 2.4.2.A for the installation, operation, and maintenance of Customer-provided facilities, equipment, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment.

- B. If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the Customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of Service, to protect its facilities, equipment and personnel from harm.

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SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS

2.5.1. Payment for Service

- A. The Customer is responsible for the payment of all charges for facilities and Services furnished by the Company to the Customer and to all Authorized Users by the Customer, regardless of whether those Services are used by the Customer itself or are resold to or shared with other persons.
- B. The Customer is responsible for payment of any sales, use, gross receipts, excise, access or other local, state, federal and 911 taxes, charges or surcharges (however designated) (excluding taxes on Company's net income) imposed on or based upon the provision, sale or use of Network Services.
- C. The security of the Customer's PIN is the responsibility of the Customer. All calls placed using a PIN shall be billed to and shall be the obligation of the Customer. The Customer shall not be responsible for charges in connection with the unauthorized use of PINs arising after the Customer notifies the Company of the loss, theft, or other breach of security of such PINs.
- D. Customers will only be charged once, on either an interstate or intrastate basis, for any nonrecurring or usage based charges.

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SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.2. Billing and Collection of Charges

The Customer is responsible for payment of all charges incurred by the Customer or other Authorized Users for Services and facilities furnished to the Customer by the Company.

A. Billing Format and Billing Terms

The Company will comply with the provisions of R14-2-508(B) and (C) with respect to billing format and billing terms.

B. Nonrecurring charges are due and payable within twenty-two (22) days after the invoice date, unless otherwise agreed to in advance.

C. The Company shall present invoices for Recurring Charges monthly to the Customer, in advance of the month in which Service is provided, and Recurring Charges shall be due and payable within twenty-two (22) days after the invoice date. When billing is based on Customer usage, charges will be billed monthly for the preceding billing periods.

D. When Service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which Service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have thirty (30) days.

E. Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day on which the Service or facility becomes available for use. The Service Commencement Date may be postponed by mutual agreement of the parties, or if the Service or facility does not conform to standards set forth in this Tariff or the Service Order. Billing accrues through and includes the day that the Service, Circuit, arrangement or component is discontinued.

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Encino, CA 91436

SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.2. Billing and Collection of Charges, Continued

- F. If any portion of the payment is not received by the Company, or if any portion of the payment is received by the Company in funds that are not immediately available, within twenty-two (22) days of the mail date on the bill, then a late payment penalty shall be due the Company. The late payment penalty shall be that portion of the payment not received by the date due multiplied by 1.5%.
- G. The Customer will be assessed a charge of twenty five dollars (\$25.00) for each check submitted by the Customer to the Company that a financial institution refuses to honor.
- I. If Service is disconnected by the Company in accordance with Section 2.5.8 following, then the Company may reconnect service upon the Customer's payment of the past due balance and all applicable installation charges.

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Encino, CA 91436

SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.3. Disputed Bills

Customer inquiries or complaints regarding Service or accounting may be made in writing or by telephone to the Company at:

Preferred Long Distance, Inc.
16830 Ventura Blvd., Ste 350
Encino, CA 91436

Telephone: (888) 235-2026

Any objection to billed charges should be reported promptly to the Company. If after investigation and review by the Company, a disagreement remains as to the disputed amount, the Customer may file an appropriate complaint with:

Arizona Corporation Commission
Consumer Services Section
1200 West Washington Street
Phoenix, Arizona 85007

Telephone number: 602.542.4251

Toll Free: 800.222.7000

Web Site: <http://www.azcc.gov/divisions/utilities/consumerservices.asp>

2.5.4. Advance Payments

Should the Company elect to collect Advance Payments, and meets Commission requirements for the collection of a bond, the Company may require the Customer to make an Advance Payment before Services and facilities are furnished to safeguard its interests. The amount of the Advance Payment will be determined on a case-by-case basis and will conform to the applicable Commission regulations.

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SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.5. Deposits

- A. Should the Company elect to collect Deposits, and it meets Commission requirements for the collection of a bond, the following provisions will apply to Deposits as provided in R14-2-503(B).
- B. The Company will not require a Deposit from a new Applicant for residential Service if the Applicant is able to meet any of the following requirements:
 - 1. The Applicant has had continuous telephone Service of a comparable nature with the Company at another service location within the past two years and was not delinquent in payment more than once during the last 12 consecutive months or disconnected for nonpayment.
 - 2. The Applicant can produce a letter regarding credit or verification from a telephone utility where service of a comparable nature was last received which states:
 - (a) Applicant had a timely payment history at time of service discontinuation.
 - (b) Applicant has no outstanding liability from prior service.
- C. In lieu of a Deposit, a new Applicant may provide a Letter of Guarantee from an existing Customer with Service who is acceptable to the Company or a surety bond as security for the Company. The Company will review and release an existing Customer as a guarantor for the new Applicant after 12 consecutive months if no obligations are delinquent and has maintained a timely payment history.
- D. The Company will issue a nonnegotiable receipt to the Applicant for the Deposit. The inability of the Customer to produce such a receipt will in no way impair his right to receive a refund of the Deposit which is reflected in the Company's records.

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Encino, CA 91436

SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.5. Deposits, Continued

- E. Residential Deposits and accrued interest are to be refunded after 12 months of Service if the Customer has not been delinquent in the payment of utility bills or to be applied to the closing bill upon discontinuance of Service.
- F. The Company may require a Residential Customer to establish a Deposit if the customer becomes delinquent in the payment of two or more bills within a 12-consecutive-month period or has been disconnected for Service during the last twelve (12) months.
- G. The amount of a Deposit required by the Company will be determined according to the following terms:
 - 1. Residential Customer Deposits will not exceed 2 times that Customer's estimated average monthly bill or the average monthly bill for the Customer class for that Customer whichever is greater.
 - 2. Business Customer Deposits will not exceed 2 1/2 times that Customer's estimated maximum monthly bill.
- H. The Company may review the Customer's usage after Service has been connected and adjust the Deposit amount based upon the Customer's actual usage.
- I. Interest rates applied to Customer Deposits held by Company are prescribed by the Commission.

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SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.6. Establishment of Credit

- A. In order to assure the proper payment of all Customer-incurred charges for service, the Company will require applicants for service and Customers to establish and maintain acceptable credit.
- B. The establishment or re-establishment of credit by an applicant or Customer will not relieve the applicant or Customer from compliance with other responsibilities, including the payment advance payments or bills, and in no way modify the provisions concerning disconnection and termination of service for failure to pay Customer-incurred charges for service rendered by the Company.
- C. The Company may refuse to furnish service to an applicant that has not paid charges for service of the same classification (residential or business) previously furnished by any telephone company until, at the option of the Company, the applicant pays any past due bill and/or makes deposit arrangements suitable to the Company.
- D. Applicants for residential service may establish credit by one of the following methods:
 - 1. If the applicant has verifiable previous service with any telephone company for at least twelve (12) months and the payment record on the account was satisfactory, the applicant may obtain service without a deposit; or
 - 2. If the applicant had not paid for prior service, or the prior service had been disconnected for nonpayment within the past twelve (12) months, the Company may require a deposit prior to the connection of telephone service; or
 - 3. If the applicant does not have verifiable service, or if the applicant had previous service for less than twelve (12) months, the applicant will be asked to provide further credit information. The applicant will be requested to provide proof of:
 - (a) home ownership;
 - (b) employment of two (2) years or more with the current employer;
 - (c) major oil company credit card;
 - (d) major credit company;
 - (e) checking account;
 - (f) savings account;
 - (g) age of 50 years or more.

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SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.6. Establishment of Credit, Continued

- E. If the applicant is unable to provide affirmative responses to two of these credit criteria in section 2.5.6.D., the Company may request the applicant to furnish a deposit prior to connection of telephone service.
- F. Applicants for business service may establish credit by submitting a business credit evaluation plan.
- G. If verification of an applicant's credit is required, the Company will provide service if the applicant furnishes advance payment of both the applicable charges for connection of service and the estimated charges for the first thirty (30) days of service.
- H. If the verification of credit results in unsatisfactory credit information, the applicant will be informed of the reason or reasons for denial of credit, after which the Company may refuse to provide or continue service until the Customer provides a deposit, pursuant to section 2.5.5.
- I. An existing Customer may be required to reestablish credit by the payment or increase of a cash deposit, pursuant to section 2.5.5, when any of the following conditions occur:
 - 1. During the first twelve (12) months that a customer receives service, the Customer pays late three (3) times or has service disconnected by the Company for nonpayment two (2) times; or
 - 2. After the first twelve (12) months that the Customer has received service, the Customer has had service disconnected two (2) times by the Company or the Company provides evidence that the Customer used a device or scheme to obtain service without payment; or
 - 3. After the first twelve (12) months that a business Customer has received service, the business Customer pays late at least three (3) times during any twelve (12) month period.

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Encino, CA 91436

SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.6. Establishment of Credit, Continued

- J. Payment by a Customer of past-due bills will not, of itself, relieve the Customer from the obligation of establishing credit.
- K. A Customer may be required to reestablish credit when the nature of service furnished or the basis on which credit was established has significantly changed.
- L. If a Customer fails to reestablish credit as required by the Company, service may be disconnected no sooner than five (5) days after delivery, or eight (8) days after mailing, of written notice of intention to disconnect.

2.5.7. Refusal to Provide Service

Pursuant to R14-2-503(C), the Company may refuse to provide Service at one or more of the same Customers' Premises for the following reasons:

- A. The Applicant has an outstanding amount due for similar Services and the Applicant is unwilling to make acceptable arrangements with the Company for payment.
- B. A condition exists which in the Company's judgment is unsafe or hazardous to the Applicant, the general population, or the Company's personnel or facilities.
- C. Refusal by the Applicant to provide the Company with a Deposit when the Customer has failed to meet the credit criteria for waiver of Deposit requirements.
- D. Customer is known to be in violation of the Company's tariffs filed with the Commission.
- E. Failure of the Customer to furnish such funds, suitable facilities, and/or rights-of-way necessary to serve the Customer and which have been specified by the Company as a condition for providing Service.
- F. Applicant falsifies his or her identity for the purpose of obtaining Service.

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Encino, CA 91436

SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.8. Cancellation of Application for Service

- A. Applications for Service cannot be canceled without the Company's agreement. Where the Company permits a Customer to cancel an application for Service prior to the start of Service or prior to any special construction, no charges will be imposed except for those specified below.
- B. Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the Service or in preparing to install the Service that it otherwise would not have incurred, a charge equal to the costs incurred by the Company, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of Services ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had Service commenced (all discounted to present value at six percent).
- C. Where the Company incurs any expense in connection with special construction, or where special arrangements of facilities or equipment have begun, before the Company receives a cancellation notice, a charge equal to the costs incurred by the Company, less net salvage, applies. In such cases, the charge will be based on such elements as the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.
- D. The special charges described in 2.5.7 A through 2.5.7 C will be calculated and applied on a case-by-case basis.

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SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.9. Cancellation of Service by Company

A Nonpermissible Reasons to Disconnect Service

Pursuant to R14-2-509(A), the Company may not disconnect Service for any of the reasons stated below:

1. Delinquency in payment for Services rendered to a prior Customer at the Premises where Service is being provided, except in the instance where the prior Customer continues to reside on the Premises.
2. Failure of the Customer to pay for Services or equipment which are not regulated by the Commission.
3. Residential Service may not be disconnected due to nonpayment of a bill related to another class of Service.
4. Failure to pay for a bill to correct a billing error if the Customer agrees to pay over a reasonable period of time.
5. Failure to pay the bill of another Customer as guarantor thereof unless guarantor does not make acceptable payment arrangements.
6. Disputed bills where the Customer has complied with the Commission's rules on complaints.

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SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.9. Cancellation of Service by Company, Continued

B. Disconnection of Service Without Notice

Pursuant to the provisions of R14-2-509(B), the Company may terminate the Service of Customers without notice under the following circumstances:

1. The existence of an obvious hazard to the safety or health of the consumer or the general population or the Company's personnel or facilities; or
2. The Company has evidence of tampering or evidence of fraud.

The Company will not be required to restore Service until the conditions that resulted in the termination have been corrected to the Company's satisfaction.

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SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.9. Cancellation of Service by Company, Continued

C. Disconnection of Service With Notice

The Company may disconnect a Customer's Service upon five (5) days written notice according to the provisions of R14-2-509(C), below:

1. The Company may disconnect Service to any Customer for any reason stated below provided the Company has met the notice requirements established by the Commission:
 - (a) Customer violation of any of the Company's tariffs filed with the Commission and/or violation of the Commission's rules and regulations.
 - (b) Failure of the Customer to pay a bill for Service.
 - (c) Failure to meet or maintain the Company's credit and Deposit requirements.
 - (d) Failure of the Customer to provide the Company reasonable access to its equipment and property.
 - (e) Customer breach of Contract for Service between the Company and Customer.
 - (f) When necessary for the Company to comply with an order of any governmental agency having such jurisdiction.
 - (g) Unauthorized resale of equipment or Service.

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SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.9. Cancellation of Service by Company, Continued

D. Termination Notice Requirements

1. The Company will not terminate Service to any of its Customers without providing advance written notice to the Customer of the Company's intent to disconnect Service, except under those conditions specified where advance written notice is not required.
2. Pursuant to the provisions of R14-2-509(D), such advance written notice will contain, at a minimum, the following information:
 - (a) The name of the person whose Service is to be terminated and the telephone number where Service is being rendered.
 - (b) The Company rule or regulation that was violated and explanation thereof or the amount of the bill which the Customer has failed to pay in accordance with the payment policy of the Company, if applicable.
 - (c) The date on or after which Service may be terminated.
 - (d) A statement advising the Customer to contact the Company at a specific phone number for information regarding any deferred billing or other procedures which the Company may offer or to work out some other mutually agreeable solution to avoid termination of the Customer's Service.

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SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.9. Cancellation of Service by Company, Continued

E. Timing of Terminations with Notice

1. Termination notice shall be considered to be given to the Customer when a copy thereof is left with the Customer or posted first class in the United States mail, addressed to the Customer's last known address.
2. If after the period of time allowed by the notice has elapsed and the delinquent account has not been paid nor arrangements made with the Company for the payment thereof, or in the case of a violation of the Company's rules, the Customer has not satisfied the Company that such violation has ceased, the Company may then terminate Service on or after the day specified in the notice without giving further notice.
3. The Company may terminate Service on a temporary basis by discontinuing the Customer's line access at the Central Office.

The Company has the right (but not the obligation) to remove any or all of its property installed on the Customer's Premises upon the Termination Of Service.

2.5.10. Changes in Service Requested

If the Customer makes or requests material changes in Circuit engineering, equipment specifications, Service parameters, Premises locations, or otherwise materially modifies any provision of the application for Service, the Customer's installation fee shall be adjusted accordingly.

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SECTION 2 – REGULATIONS, Continued**2.6. ALLOWANCES FOR INTERRUPTIONS IN SERVICE**

Interruptions in Service that are not due to the negligence of, or noncompliance with, the provisions of this Tariff by the Customer, or the operation or malfunction of the facilities, power or equipment provided by the Customer, will be credited to the Customer as set forth below for the part of the Service that the Interruption affects.

2.6.1. General

- A. A credit allowance will be given when Service is interrupted, except as specified below. A Service is interrupted when it becomes inoperative to the Customer, e.g., the Customer is unable to transmit or receive, because of a failure of a component furnished by the Company under this Tariff.
- B. An Interruption period begins when the Customer reports a Service, facility or Circuit to be inoperative and, if necessary, releases it for testing and repair. An Interruption period ends when the Service, facility or Circuit is operative.
- C. If the Customer reports a Service, facility or Circuit to be interrupted but declines to release it for testing and repair, or refuses access to its Premises for test and repair by the Company, the Service, facility or Circuit is considered to be impaired but not interrupted. No credit allowances will be made for a Service, facility or Circuit considered by the Company to be impaired.
- D. A Service will not be deemed to be interrupted if a Customer continues to voluntarily make use of such Service. If the Service is interrupted, the Customer can get a Service credit, use another means of communications provided by the Company (pursuant to Section 2.6.3), or utilize another service provider.
- E. The Customer shall be responsible for the payment of Service charges as set forth herein for visits by the Company's agents or employees to the Premises of the Customer when the Service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

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Encino, CA 91436

SECTION 2 – REGULATIONS

2.6. ALLOWANCES FOR INTERRUPTIONS IN SERVICE, Continued

2.6.2. Limitations of Allowances

No credit allowance will be made for any Interruption in Service:

- A. Due to the negligence of or noncompliance with the provisions of this Tariff by any person or entity other than the Company, including but not limited to the Customer;
- B. Due to the failure of power, equipment, systems, connections or services not provided by the Company;
- C. Due to circumstances or causes beyond the reasonable control of the Company;
- D. During any period in which the Company is not given full and free access to its facilities and equipment for the purposes of investigating and correcting Interruptions;
- E. During any period when the Customer has released Service to the Company for maintenance purposes or for implementation of a Customer order for a change in Service arrangements;
- F. That occurs or continues due to the Customer's failure to authorize replacement of any element of special construction; and
- G. That was not reported to the Company within thirty (30) days of the date that Service was affected.

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Encino, CA 91436

SECTION 2 – REGULATIONS, Continued

2.6. ALLOWANCES FOR INTERRUPTIONS IN SERVICE, Continued

2.6.3. Use of Another Means of Communications

If the Customer elects to use another means of communications during the period of Interruption, the Customer must pay the charges for the alternative service used.

2.6.4. Application of Credits for Interruptions in Service

- A. Credits for Interruptions in Service that is provided and billed on a flat rate basis for a minimum period of at least one month, beginning on the date that billing becomes effective, shall in no event exceed an amount equivalent to the proportionate charge to the Customer for the period of Service during which the event that gave rise to the claim for a credit occurred. A credit allowance is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the Interruption. Only those facilities on the interrupted portion of the Circuit will receive a credit.
- B. For calculating credit allowances, every month is considered to have thirty (30) days.
- C. No credit allowance will be given for Interruptions of less than 24 hours. A one (1) day credit allowance will be provided for each 24-hour period of Interruption.

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Encino, CA 91436

SECTION 2 – REGULATIONS, Continued

2.7. USE OF CUSTOMER'S SERVICE BY OTHERS

2.7.1. Joint Use Arrangements

Joint use arrangements will be permitted for all Services provided under this Tariff. From each joint use arrangement, one member will be designated as the Customer responsible for the manner in which the joint use of the Service will be allocated. The Company will accept orders to start, rearrange, relocate, or discontinue Service only from the designated Customer. Without affecting the Customer's ultimate responsibility for payment of all charges for the Service, each joint User shall be responsible for the payment of the charges billed to it.

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16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 2 – REGULATIONS, Continued

2.8. CANCELLATION OF SERVICE/TERMINATION LIABILITY

2.8.1. General

If a Customer cancels a Service Order or terminates Services before the completion of the term for any reason whatsoever other than a Service Interruption (as defined in Section 2.6.1 above), the Customer agrees to pay to the Company termination liability charges, as defined below. These charges shall become due as of the effective date of the cancellation or termination and be payable within the period set forth in Section 2.5.2.

2.8.2. Termination Liability

The Customer's termination liability for cancellation of Service shall be equal to:

- A. all unpaid Non-recurring Charges reasonably expended by the Company to establish Service to the Customer; plus
- B. any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by the Company on behalf of the Customer; plus
- C. all Recurring Charges specified in the applicable Service Order Tariff for the balance of the then-current term discounted at the prime rate announced in the *Wall Street Journal* on the third business day following the date of cancellation;
- D. minus a reasonable allowance for costs avoided by the Company as a direct result of the Customer's cancellation.

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Encino, CA 91436

SECTION 2 – REGULATIONS, Continued

2.9. TRANSFERS AND ASSIGNMENTS

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the Services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties:

- to any subsidiary, parent company or affiliate of the Company; or
- pursuant to any sale or transfer of substantially all the assets of the Company; or
- pursuant to any financing, merger or reorganization of the Company.

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16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 2 – REGULATIONS

2.10 CUSTOMER LIABILITY FOR UNAUTHORIZED USE OF THE NETWORK

Unauthorized use of the network occurs when a person or entity that does not have actual, apparent, or implied authority to use the network, obtains the Company's Services provided under this Tariff.

2.10.1. Customer Liability for Fraud and Unauthorized Use of the Network

- A. The Customer is liable for the unauthorized use of the network obtained through the fraudulent use of a Company calling card, if such a card is offered by the Company, or an accepted credit card, provided that the unauthorized use occurs before the Company has been notified.
- B. A company calling card is a telephone calling card issued by the Company at the Customer's request, which enables the Customer or User(s) authorized by the Customer to place calls over the Network and to have the charges for such calls billed to the Customer's account.

An accepted credit card is any credit card that a cardholder has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with this paragraph is an accepted credit card when received by the cardholder.

- C. The Customer must give the Company written or oral notice that an unauthorized use of a Company calling card or an accepted credit card has occurred or may occur as a result of loss, and/or theft.
- D. The Customer is responsible for payment of all charges for calling card Services furnished to the Customer or to Users authorized by the Customer to use Service provided under this Tariff, unless due to the negligence of the Company. This responsibility is not changed due to any use, misuse, or abuse of the Customer's Service or Customer-provided equipment by third parties, the Customer's employees, or the public.

The liability of the Customer for unauthorized use of the Network by credit card fraud will not exceed the lesser of fifty dollars (\$50.00) or the amount of money, property, labor, or Services obtained by the unauthorized User before notification to the Company.

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Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 2 – REGULATIONS

2.11. NOTICES AND COMMUNICATIONS

- 2.11.1.** The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that the Customer may also designate a separate address to which the Company's bills for Service shall be mailed.
- 2.11.2.** The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that Company may designate a separate address on each bill for Service to which the Customer shall mail payment on that bill.
- 2.11.3.** Except as otherwise stated in this Tariff, all notices or other communications required to be given pursuant to this Tariff will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following placement of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 2.11.4.** The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

2.12. TAXES, FEES AND SURCHARGES

The Company reserves the right to bill any and all applicable taxes, fees and surcharges in addition to normal rates and charges for Services provided to the Customer. Taxes and fees include, but are not limited to, Federal Universal Service Fund surcharge, State Universal Service Fund surcharge, Federal Access Charge, Carrier Access Charge, Federal Excise Tax, State Sales Tax, and Municipal Tax, E911, telecommunications relay and Local Number Portability surcharges. Unless otherwise specified in this Tariff, such taxes, fees and surcharges are in addition to rates as quoted in this Tariff and will be itemized separately in Customer invoices.

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Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 2 – REGULATIONS

2.13. MISCELLANEOUS PROVISIONS

2.13.1. Telephone Number Changes

Whenever any Customer's telephone number is changed after a directory is published, the Company shall, upon Customer's request, intercept all calls to the former number for the time requested by the Customer and give the calling party the new number, provided existing Central Office equipment will permit and the Customer so desires.

When Service in an existing location is continued for a new Customer, the existing telephone number may be retained by the new Customer only if the former Customer consents in writing, and if all charges against the account are paid or assumed by the new Customer.

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Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE

3.1. APPLICATION OF RATES

3.1.1. Types of Charges

A. One Time Fees

1. Installation, Service Changes, Maintenance and Other Charges

(a) Line Installation Fee

The installation fee is a nonrecurring charge that applies to the installation of a new line or transfer of an existing Service to a different location.

(b) Feature Installation Fee

The addition of a vertical Service to existing equipment and/or Service at one location. Charge is per each new feature.

(c) Temporary Disconnections & Reactivation Charge

This charge applies to the restoration of service and facilities that have been suspended because of nonpayment of bills and is payable at the time that the restoration of the suspended service and facilities is arranged. The restoration charge does not apply when, after permanent discontinuance of service, service is later reconnected. In the event of permanent discontinuance of service, other charges apply as set forth elsewhere in this Tariff. (See Section 2.5.2.I.)

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16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.1. APPLICATION OF RATES, Continued

3.1.1. Types of Charges, Continued

B. Payment (Accounting) Fees

1. Check by Phone
2. Late Fee
3. Return Check Fee

C. Taxes and Surcharges

1. Customer Liability for Taxes and Fees

Telephone usage is subject to all federal, state, local taxes, surcharges and mandated regulatory fees including but not limited to universal service fund, universal service fund carrier cost recovery fee and Access Line fees.

2. Local Service Surcharges

The following taxes are only charged if the Customer subscribes to local Service.

- (a) Federal Regulatory Fee (FCC)
- (b) Local Number Portability (LNP)
- (c) Federal Line Charge (EUCL)

3. Long Distance Service Surcharges

The following taxes are only charged if the Customer subscribes to long distance Service.

- (a) Federal Access Fee (PICC)

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Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.1. APPLICATION OF RATES, Continued

3.1.2. Call Timing for Usage Sensitive Services

Where charges for a Service are specified based on the duration of use, such as the duration of a telephone call, the following rules apply:

- A. Calls are measured in durational increments identified for each Service. All calls which are fractions of a measurement increment are rounded-up to the next whole unit.
- B. Timing on completed calls begins when the call is answered by the called party. Answering is determined by hardware answer supervision in all cases where this signaling is provided by the terminating local carrier and any intermediate carrier(s).
- C. Timing terminates on all calls when the calling party hangs up or the Company's network receives an off-hook signal from the terminating carrier.

3.1.3. Promotions

The Company may, from time to time, offer Services in this Tariff at special promotional rates and/or terms. Such promotional arrangements shall be filed with the Commission when so required. All rates and terms contained in this Tariff shall continue to apply unless specifically addressed in the promotional agreements.

3.1.4. Individual Case Basis Arrangements

When the Company furnishes a facility or Service for which a rate or charge is not specified in the Company's Tariff, or when the Company offers rates or charges which may vary from Tariff arrangements, rates and charges will be determined on an Individual Case Basis (ICB). The rates and charges for ICBs will be specified by contract between the Company and the Customer.

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Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.2. BASIC LOCAL SERVICE

3.2.1. Generally

The Company provides Service within the service territory of Qwest Corporation. The Company concurs in and hereby incorporates by this reference all current and effective service territory and local exchange boundary maps filed with the Commission by Qwest Corporation.

3.2.2. Local Exchange Access Lines and Trunks

A. General

Local Exchange Access Lines and Trunks provide a Customer with analog, voice-grade telephonic communications Channels which can be used to place or receive one call at a time. Local Exchange Access Lines and Trunks provide a Customer with the ability to connect to the Company switching network which enables the Customer to:

1. place or receive calls to any calling station in the Local Calling Area;
2. access 911 and/or Enhanced 911 Emergency Service;
3. access the Interexchange Carrier selected by the Customer for interLATA, intraLATA, interstate or international calling;
4. access operator assisted Services for the Local Calling Area;
5. access directory assistance for the Local Calling Area;
6. place or receive calls to toll-free (e.g., 800, 8XX) telephone numbers;
7. access Telephone Relay Services; and
8. entitle the Customer to a directory listing of the main telephone number.

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Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.2. BASIC LOCAL SERVICE, Continued

3.2.2. Local Exchange Access Lines and Trunks, Continued

- B. For incoming Service, an optional hunting feature is available for multiline or multitrunk Customers which routes a call to an idle line or Trunk in a prearranged group when the called line or Trunk is busy. Where facilities permit, more than one type of optional hunting arrangement may be provided.
- C. Local Exchange Access Lines and Trunks are provided for the connection of Customer-provided wiring and FCC Part 68 approved devices.
- D. Local Exchange Access Lines and Trunks are provided on a single party (individual) basis only. No multi-party Service is offered.
- E. Service is available on a flat rate, message or measured rate basis depending on the type of Service selected by the Customer. Not all Service types (flat, message, measured) will be available in all areas.
- F. **RECURRING CHARGES FOR LOCAL EXCHANGE SERVICE ARE BILLED MONTHLY IN ADVANCE. USAGE CHARGES, IF APPLICABLE ARE BILLED IN ARREARS. USAGE CHARGES MAY APPLY FOR CALLS OR MINUTES PLACED FROM THE CUSTOMER'S LINES OR TRUNKS. NO USAGE CHARGES WILL APPLY TO CALLS RECEIVED BY THE CUSTOMER. NON-RECURRING CHARGES FOR INSTALLATION OR REARRANGEMENT OF SERVICE ARE BILLED ON THE NEXT BILL IMMEDIATELY FOLLOWING WORK PERFORMED BY THE COMPANY.**

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16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE, Continued**3.3. SERVICE FEATURES****3.3.1. General**

All of the Service features below are available to Customers either on a subscription or per use basis. All features are provided subject to availability. Transmission levels for calls forwarded or calls placed or received using optional calling features may not be acceptable for all uses in some cases.

3.3.2. Features**A. Features Descriptions**

1. *Additional Message Capacity-50/100 Residence and Business* – Optional mailbox feature that increases the number of messages a mailbox will hold by 50 or 100.
2. *Anonymous Call Rejection* – Allows Customer to reject incoming calls marked private or anonymous. Must be used in conjunction with Caller ID. If Customer wants to deactivate, can do so by their phone (dialing *87 from each phone to deactivate & *77 to activate if have touchtone phones; if no touchtone phones, 1188 to deactivate & 1177 to activate.)
3. *Billed Number Screening/Toll Restriction* – Allows Customer the capability of restricting collect and/or Third Number Billing to their telephone number.
4. *Business Complete-A-Call* – Connects a caller to the Intra Local Access and Transport Area (IntraLATA) telephone number that they requested from Directory Assistance (DA).
5. *Business Voice Messaging Service Choice* – Voice Mail Mailbox for Business only. Includes choice of Call Forwarding Busy Line/Don't Answer OR Call Forwarding Don't Answer. Includes choice of Message Waiting Indication-Audible OR Message Waiting Indication OR Audible /Visual.

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Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.3. SERVICE FEATURES, Continued

3.3.2. Features, Continued

A. Features Descriptions, Continued

6. *Call Curfew* – Through the use of a six-digit administrative security code, the Customer can establish screening schedules that will be used to block incoming and outgoing calls for specific time periods.
7. *Call Forwarding Busy Line/Alternate Answer* – Automatically forwards incoming calls encountering a busy condition to a predetermined, programmed telephone number inside or outside the system.
8. *Call Forwarding Busy Line/Don't Answer Expanded* – Allows the Customer to forward calls outside the Customer's switch type.
9. *Call Forwarding Busy Line/Don't Answer IntraOffice* – Allows the Customer to forward calls within the same switch type. Calls can only forward to a single Call Forwarding number in either a busy line or don't answer condition.
10. *Call Forwarding Customer Programmable* – Allows the Customer to program the Call Forward Number at any time by dialing an access code.
11. *Call Forwarding Don't Answer/Alternate Answer* – Automatically forwards incoming calls encountering a don't answer condition to a predetermined, programmed telephone number inside or outside the system.
12. *Call Forwarding Variable* – Permits the Customer to program a number to send all incoming calls to "forward" to. May be activated by dialing *72 or #72 from a touchtone telephone (72 from a rotary telephone). Customer listens for a second dial tone and dials the call forwarding number.
13. *Call Hold* – Allows an Customer to "hold" any call in progress by pressing the switchhook and dialing a Call Hold access code.

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Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.3. SERVICE FEATURES, Continued

3.3.2. Features, Continued

A. Features Descriptions, Continued

14. *Call Park* – Allows you to hold or “park” a call by dialing an access code.
15. *Call Pickup* – Allows an Customer to answer calls incoming to another station within a predetermined call pickup group by dialing a Call Pickup access code.
16. *Call Queuing* – Ability to offer caller, who would normally reach a busy signal or voice mail, the opportunity to stay on the line (the queue) and have their call answered in person. Each Call Queuing unit is provisioned with two queue slots. This allows two incoming calls to be held in queue.
17. *Call Rejection* – Allows you to establish an “unwanted callers” list of up to 15 telephone numbers for calls you do not want to receive.
18. *Call Routing- Business only* – Allows Customers to automatically direct their incoming calls into a minimum of two or a maximum of nine mailboxes or routers using a touchtone telephone. Callers will only be routed to mailboxes or routers and not to telephone numbers.
19. *Call Routing To Number- Business only* – Allows Customers to automatically direct their incoming calls to predetermined destinations using a touchtone telephone.
20. *Call Trace* – Enables an Customer to trace their last incoming call whether it was answered or not using an automated trace system rather than a manual trace. Press *57.
21. *Call Trace Blocking* – Blocks the ability to trace calls.
22. *Call Transfer* – Permits the Customer to transfer an incoming call to any telephone number that can be directly dialed, including long distance, and hang up without disconnecting the call.

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Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.3. SERVICE FEATURES, Continued

3.3.2. Features, Continued

A. Features Descriptions, Continued

23. *Call Waiting* - A brief tone alerts the Customer that another call is waiting to be answered.
24. *Call Waiting ID* - Provides information of an incoming Call Waiting using a Caller ID Display.
25. *Caller ID* - Caller ID displays the name or number of the calling party on a Caller ID Display.
26. *Caller ID Blocking* - Prevents the telephone number from being delivered to the Caller ID subscriber.
27. *Caller ID with Privacy+SM* – Screens incoming Caller ID calls that are marked “Private” or “Unavailable.”
28. *Carrier Access Code Blocking* – Restricts attempts to place 1+ calls over another LD Provider.
29. *Complete-A-Call* – DA operator or the DA audio response system offers Customers local and local long distance call completion to requested numbers.
30. *Continuous Redial* – Continuously redials a busy number until it is free. Once call gets through, special ring will announce.
31. *Continuous Redial Blocking* – Blocks the ability to have continuous redial.

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Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.3. SERVICE FEATURES, Continued

3.3.2. Features, Continued

A. Features Descriptions, Continued

32. *Custom Number Services* – Customer requests a specific telephone number other than those offered.
33. *CustomNet®* – Provides screening options that restrict certain types of outgoing operator assisted toll calls.
34. *Custom Ringing Service* - Provides the Customer with up to three additional telephone numbers on one line, in one location, without installing any additional lines. Each number has a unique ringing pattern, allowing Customers to determine in advance of answering a call which telephone number was dialed.⁷
35. *Dial Call Waiting/Distinctive Alert* – When a line equipped with Dial Call Waiting calls a line equipped with Distinctive Alert, the Customer on the line with Distinctive Alert will hear one of the following: a distinctive ring signal on the called line when it is not in use or a distinctive call waiting signal on the called line when it is in use.
36. *Dial Lock®* – Through the use of an administrative password, an end-User can determine what type of outgoing calls will be permitted from the line(s) Dial Lock is provisioned. The blocking can include local and long distance outgoing calls. Different blocking parameters can be established on a per line basis.
37. *Directed Call Pickup* – Allows a line to pick up an incoming call which is ringing or has already been answered on another line.
38. *Do Not Disturb* – Blocks incoming calls during designated times.
39. *Easy Access* – Designed to dial the retrieval number of the Customer's Voice Mail Response Unit.

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16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.3. SERVICE FEATURES, Continued

3.3.2. Features, Continued

A. Features Descriptions, Continued

40. *Extension Mailbox- Residence & Business* – Allows one mailbox to be divided into a maximum of four compartments- three extensions and one main mailbox.
41. *I-CalledSM Pay Per Use* – Allows callers, who encounter a ring no answer condition, to record their name and telephone number for future delivery to the called party.
42. *I-CalledSM Originating Blocking* – Prevents I-Called from being offered as an option from the called from number.
43. *I-CalledSM Terminating Blocking* – Terminating Blocking prevents I-Called messages from being delivered to the called to number.
44. *International Blocking* – International Blocking prevents completion of outgoing 011+ and 101xxxx011+ International Direct-Dialed calls.
45. *Intracall®/Home Intercom* – System on a single line that has multiple telephone sets.
46. *Last Call Return* – Provides the telephone number of the last incoming call before the prompt to return the call.
47. *Last Call Return Blocking* - Blocks the ability to use last call return.
48. *Listen Only Mailbox- Business only* – Ability to prerecord announcements and/or informational messages that may be heard by incoming callers. Listen Only Mailbox does not allow callers to leave messages.
49. *Long Distance Alert* - Provides a distinctive ring and a distinctive call waiting tone for long distance calls.

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Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.3. SERVICE FEATURES, Continued

3.3.2. Features, Continued

A. Features Descriptions, Continued

50. *Long Distance Restriction* – Restricts Customers from placing most 1+ calls and all 0+ outgoing calls (including access to 900/976 pay-per-call services).
51. *Mailbox Only- Residence only* – Allows the Customer to customize their mailbox arrangement.
52. *Message Notification- Residence and Business* – Notifies a Customer of new messages in their mailbox by calling another number.
53. *Message Waiting Indication-Business* – Provides an audible or visual or audible/visual indication of messages waiting.
54. *Message Waiting Indication-Residence* – Provides an audible or visual or audible/visual indication of messages waiting.
55. *Multi-Line Hunting* – Allows inbound calls to “hunt” multiple lines in sequence to find an idle line avoiding busy lines.
56. *No Solicitation®* – Screens all incoming calls to the Customer’s telephone number with a greeting from 8:00 AM until 9:00 PM, seven days a week.
57. *One Number Service* – Allows Customers to integrate one wireline telephone number with one wireless telephone number.
58. *Pay Per Call Restriction* – If Customers dial a 976 or 900 number they will get a recording announcing the call cannot be completed.
59. *Remote Access Forwarding (Call Following)* – Allows Customer to route all incoming calls to another destination and may be activated, deactivated, or changed from the Customer’s Premises or from any remote location.

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16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.3. SERVICE FEATURES, Continued

3.3.2. Features, Continued

A. Features Descriptions, Continued

60. *Route to Other Number – Business only* – Allows Customers to automatically direct their incoming calls into a minimum of two or a maximum of nine mailboxes or routers using a touchtone telephone. Callers will only be routed to mailboxes or routers and not telephone numbers.
61. *Remote Call Forward (Market Expansion Line®)* – Provides the Customer a local telephone number without having a physical location.
62. *Scheduled Forwarding* – Allows an Customer to route all incoming calls to another destination and may be activated, deactivated, or changed from the Customer's Premises or from any remote location.
63. *Scheduled Greetings- Business only* – Allows an Customer to record two different greetings; one during open hours and one during closed hours.
64. *Security ScreenSM* – Allows Customers to have Private/Anonymous and Out of Area/Unknown callers identify themselves before the call is delivered, using a Caller ID display unit.
65. *Selective Call Forwarding* – Allows Customers to forward only those calls from telephone numbers on their Selective Call Forwarding list.
66. *Selective Call Waiting* – Allows you to establish and modify a privileged caller list of up to 25 telephone numbers that will trigger the call waiting tone when the line is in use. Selective Call Waiting limits the calls that can interrupt a call in progress. Calls from telephone numbers not on the list or from unidentified callers will either hear a busy tone or be routed to voicemail.

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Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.3. SERVICE FEATURES, Continued

3.3.2. Features, Continued

A. Features Descriptions, Continued

- 67. *Series Hunting* – Starts with the dialed telephone number and tests for busy on each line in a prearranged order until either an idle line is found or the end of the list is reached.
- 68. *Speed Calling* – Allows a Customer to dial frequently called telephone numbers by dialing a 1 or 2-digit code in place of the entire telephone number.
- 69. *Talking Call Waiting* – Provides an audible announcement of the incoming caller's name.
- 70. *Three Way Calling* – Allows a Customer to add a third party to an existing call
- 71. *Three Way Calling Blocking* – Blocks the ability to make 3 way calls.
- 72. *Transfer Mailbox- Residence and Business* – Transfers calls from a line that does not have Voice Messaging Service to a mailbox associated with another line.
- 73. *Voice Mail Mailbox- Business only* – Answers incoming calls when the line is busy or unanswered.
- 74. *Voice Messaging Service Residence only* – Answers incoming calls when the line is busy or unanswered.

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16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.4. OTHER SERVICES

3.4.1. Calling Cards

Calling Card Service permits the caller to charge the principal presubscribed location for a call while the caller is away from the principal location. The Customer may place calls from any touch-tone phone in the Continental United States by dialing a toll free number and entering a personal identification code, followed by the desired telephone number. Calling Card calls appear on the Customer's monthly long-distance bill

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SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.5. DIRECTORY SERVICES

3.5.1. Listing Services

A. Description

The alphabetical directory is a list of names of Customers, joint Users, and others for whom directory listings are provided. Alphabetical listings include information which is essential to the identification of the listed party and facilitates the use of the directory. The Company reserves the right to refuse to publish listings which, in the judgment of the Company, are considered inappropriate.

B. Terms and Conditions

1. Dual name listings may be provided for two Customers subscribing to residence service who may or may not share the same surname but who share the same service and reside at the same address, or for women whose husbands are deceased, and persons known by more than one name. Dual name listings are defined as listings, which contain the names or initials of two persons or listings, which identify one person who may be known or referred to by two names. Appropriate rates and charges are applicable to changes associated with dual name listings.
2. The Company, in accepting listings as prescribed by applicants or Customers, will not assume responsibility for the result of the publication of such listing in its directory, nor will the Company be a party to controversies arising between Customers or others as a result of such publication.
3. The Company has the right to limit the length of any listing in the directory by the use of abbreviations when, in its judgment, the clarity of the listing or the identification of the Customer is not impaired thereby.
4. Listings are regularly provided in connection with most classes of exchange service.

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SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.5. DIRECTORY SERVICES, Continued

3.5.1. Listing Services, Continued

C. Primary Listings

One listing, the Primary Listing, is provided without charge for:

1. Each exchange access line. Where two or more exchange access lines are served on a hunting service basis, only one Primary Listing for the group will be provided.

2. Each Joint User Service

Joint user's primary listed number may be that of the primary Customer facility or a *DID* number to which the primary Customer has subscribed. Each PBX, *CENTRON* - 300 or *CENTRON* - Custom System, with the following exceptions:

- Where a Customer has PBX Service served by trunks from different exchanges, a Primary Listing may be provided in the directory of each of the exchanges to which the trunks are connected.
- In connection with residence PBX Service, where the Customer has 2 nonconsecutive trunks or trunk groups, 1 of which is for family use and the other for business use, 2 Primary Listings may be provided without charge.

3. In those cases in which the business of the Customer is so conducted, the Primary Listing may be the trade name of an article or service, provided the Customer is the authorized agent or representative for the particular article or service.

4. At the request of the Customer, the Primary Listing may be omitted from the directory (nonlisted service) or from both the directory and the information records (nonpublished service). Nonlisted and nonpublished services are furnished subject to the terms and conditions, charges and rates specified herein.

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SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.6. DIRECTORY SERVICES, Continued

3.6.1. Listing Services, Continued

C. Primary Listings, Continued

5. When an alphabetical directory of Customer listings is published in two sections, one section containing a list of individual names and the other section consisting of a list of business names, primary and regular additional listings of business service Customers consisting of the names of individuals will be published in both alphabetical sections without additional charge. Primary and regular additional listings of residential service Customers will be published in both alphabetical sections without additional charge if the listings are indented under business listings consisting of names of individuals.
6. When the Company publishes a separate section in its directories of telephone numbers for government offices, the primary or additional listing of the government office may be placed in this section. Regular additional listings may be purchased by the government office in the alphabetical section in which business listings regularly appear.
7. The Company will not be liable for damage arising out of errors or omissions in the makeup or printing of listings of government offices where the listing is without charge and included for the purpose of assisting calling parties to place telephone calls.

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SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.6. DIRECTORY SERVICES, Continued

3.6.1. Listing Services, Continued

D. Premium Listings

1. Additional Listings

- (a) Residential and Business Additional Listings consists of: The name, a designation or title, if appropriate, address (unless omitted) and telephone number.
- (b) Residential Additional Listings may be the listings of Individual names of those entitled to the use of the Customer's service under the provisions of Qwest's New Mexico tariff, Section 2.2.1.C. A dual name listing (as specified in Subsection B.1. above) may be provided wherein the second name in the Primary Listing will appear first in the Additional Listing with the Additional Listing alphabetized accordingly in the directory.
- (c) Additional Listings and Joint User Services

Where the listing appears in the current directory, charges to the end of the directory period will apply except that the charges will cease at the time:

- The contract for the main service is terminated.
- The listed party or joint user becomes a Customer to a class of exchange service.
- The listed party or joint user dies or moves to a new location at which the Customer's service with which he is listed is not available.

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SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.6. DIRECTORY SERVICES, Continued

3.6.1. Listing Services, Continued

E. Nonpublished Service

1. Description

- (a) The telephone numbers of Nonpublished Service are not listed in the telephone directory or in the information records available to the general public.
- (b) Nonpublished information may be released to emergency service providers, to Customers who subscribe to Company offerings which require the information to provide service and/or bill their clients, or, to telephone Customers who are billed for calls placed to or from nonpublished numbers and to entities which collect for the billed services. Nonpublished names and/or telephone numbers may also be delivered to Customers on a call-by-call basis.

2. Terms And Conditions

- (a) Incoming calls to Nonpublished Service will be completed only when the calling party places the call by telephone number. The Company will adhere to this regulation notwithstanding any claim made by the calling party.
- (b) No liability for damages arising from publishing the telephone number of Nonpublished Service in the telephone directory or disclosing the telephone number to any person shall attach to the Company. Where such number is published in the telephone directory, the Company's liability shall be limited to a refund of any monthly charges assessed by the Company for the Nonpublished Service.

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SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.6. DIRECTORY SERVICES, Continued

3.6.1. Listing Services, Continued

E. Nonpublished Service, Continued

2. Terms And Conditions, Continued

- (c) The Customer indemnifies and holds the Company harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly, by refusing to disclose a nonpublished telephone number upon request or by the publication of the number of Nonpublished Service in the telephone directory or disclosing such number to any person.
- (d) The monthly rate and nonrecurring charge for Nonpublished Service do not apply to:
- PAL Service.
 - FX service where the Customer also is furnished regularly listed exchange service from the normal exchange.
 - Additional service furnished to the same Customer at the same address when the primary listing is published.

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SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.6. DIRECTORY SERVICES, Continued

3.6.1. Listing Services, Continued

F. Nonlisted Service

1. Description

At the request of the Customer, any one or all of the Customer's listings associated with the same or different CO line or trunk normally published in the alphabetical directory will be omitted from the directory but listed in the information records available to the general public.

2. Terms and Conditions

The Customer indemnifies and holds the Company harmless against any and all claims for damages caused, or claimed to have been caused directly or indirectly by the publication of a listing, which the Customer has requested to be omitted from the telephone directory or the disclosing of such a listing to any person. Where such a listing is published in the telephone directory, the Company's liability shall be limited to a refund of any monthly charges assessed by the Company for the particular Nonlisted Service.

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SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.6. DIRECTORY SERVICES, Continued

3.6.2. Directory Assistance Service

A. Description

The Company furnishes Directory Assistance Service whereby Customers may request assistance in determining telephone numbers within or outside this state.

B. Terms and Conditions

1. If a Customer abuses or fraudulently uses Directory Assistance Service, the appropriate directory assistance charges may be assessed on that Customer's telephone account.
2. A caller may request a maximum of two telephone numbers for each call to Directory Assistance.
3. There are no call allowances for Directory Assistance Service.
4. Customers whose physical or visual handicaps prevent them from using the telephone directory are excluded from charges upon presentation of a certificate signed by any physician or issued by any agency recognized by the state as having the authority to certify such handicaps.
5. A nonrecurring charge does not apply to establish or remove Directory Assistance Service exemption.
6. Call completion may be provided without additional charge for calls within the LATA. However, intraLATA long distance or local message charges apply if applicable. Call completion is provided on Public Access Lines where facilities permit.

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SECTION 3 – DESCRIPTION OF SERVICE, Continued

3.6. DIRECTORY SERVICES, Continued

3.6.2. Directory Assistance Service, Continued

C. Charges

In locations, including Public Access Lines, where the Customer has the capability to direct-dial Directory Assistance but chooses to place the call as a mechanized calling card or operator-assisted station-to-station call, the appropriate charge applies, as may be specified elsewhere in this Tariff, in addition to the Directory Assistance charge.

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SECTION 4 – MINIMUM AND MAXIMUM RATES AND CHARGES

4.1. LOCAL EXCHANGE SERVICE

| | | Non-recurring | | Monthly | |
|---------------|---|----------------------|-------------|----------------|-------------|
| | | Min. | Max. | Min. | Max. |
| 4.1.1. | One Time Fees | | | | |
| | Installation Fee for first new line | \$25.00 | \$100.00 | | |
| | Installation Fee per each new feature | \$2.50 | \$15.00 | | |
| | Maintenance and Repair ¹ , Per Instance | \$75.00 | \$300.00 | | |
| 4.1.2. | Local Line | | | | |
| | Monthly Recurring Fee, | | | \$10.00 | \$50.00 |
| 4.1.3. | Payment (Accounting Fees) | | | | |
| | Check by Phone | \$0.50 | \$5.00 | | |
| | Return Check Fee | \$7.50 | \$35.00 | | |
| | Late Fee, per each overdue payment, per month | | 1.0% | | \$3.0% |
| | Temporary Disconnections & Reactivations (per line for local Customers only) | \$20.00 | \$80.00 | | |
| 4.1.4. | Primary Interexchange Carrier Change Charge | | | | |
| | Per Instance | \$4.00 | \$20.00 | | |

¹ Customers that do not subscribe to the WMP.

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SECTION 4 – MINIMUM AND MAXIMUM RATES AND CHARGES, Continued**4.2. SERVICE FEATURES**

| | Per Use | | Monthly | |
|---|---------|------|---------|---------|
| | Min. | Max. | Min. | Max. |
| Additional Message Capacity, Residence and Business: | | | | |
| 50 Additional Message Capacity | | | \$3.00 | \$12.00 |
| 100 Additional Message Capacity | | | \$5.00 | \$25.00 |
| Anonymous Call Rejection | | | \$0.00 | \$25.00 |
| Billed Number Screening/Toll Restriction | | | \$0.00 | \$25.00 |
| Business Complete-A-Call | | | \$0.00 | \$25.00 |
| Business Voice Messaging Service Choice | | | \$8.00 | \$40.00 |
| Call Curfew | | | \$3.00 | \$12.00 |
| Call Forwarding Busy Line/ Alternate Answer | | | \$1.75 | \$7.00 |
| Call Forwarding Busy Line/ Don't Answer Expanded | | | \$1.75 | \$7.00 |
| Call Forwarding Busy Line/ Don't Answer IntraOffice | | | \$1.75 | \$7.00 |
| Call Forwarding Customer Programmable | | | \$1.75 | \$7.00 |
| Call Forwarding Don't Answer/ Alternate Answer | | | \$1.75 | \$7.00 |
| Call Forwarding Variable | | | \$1.75 | \$7.00 |
| Call Hold | | | \$1.00 | \$7.00 |
| Call Park | | | \$1.00 | \$7.00 |
| Call Pickup | | | \$1.00 | \$7.00 |
| Call Queueing | | | \$10.00 | \$40.00 |
| Call Rejection | | | \$1.75 | \$7.00 |
| Call Routing- Business only | | | \$4.00 | \$20.00 |
| Call Routing To Number- Business only | | | \$6.00 | \$25.00 |
| Call Trace | | | \$1.75 | \$7.00 |
| Call Trace Blocking | | | \$0.00 | \$25.00 |
| Call Transfer | | | \$1.75 | \$7.00 |
| Call Waiting | | | \$1.75 | \$7.00 |
| Call Waiting ID | | | \$1.75 | \$7.00 |
| Caller ID | | | \$1.75 | \$7.00 |
| Caller ID Blocking | | | \$1.75 | \$7.00 |
| Caller ID with Privacy+ SM | | | \$5.00 | \$25.00 |

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SECTION 4 – MINIMUM AND MAXIMUM RATES AND CHARGES, Continued**4.2. SERVICE FEATURES, Continued**

| | Per Use | | Monthly | |
|--|---------|--------|----------|----------|
| | Min. | Max. | Min. | Max. |
| Carrier Access Code Blocking | | | \$0.00 | \$25.00 |
| Complete-A-Call, per use | \$0.75 | \$3.00 | | |
| Continuous Redial, per use | \$0.25 | \$1.00 | | |
| Continuous Redial Blocking | | | \$0.00 | \$25.00 |
| Custom Number Services | | | \$150.00 | \$600.00 |
| CustomNet® | | | \$0.00 | \$25.00 |
| Custom Ringing Service | | | \$1.75 | \$7.00 |
| Dial Call Waiting/Distinctive Alert | | | \$1.75 | \$7.00 |
| Dial Lock® | | | \$2.00 | \$10.00 |
| Directed Call Pickup | | | \$1.00 | \$5.00 |
| Do Not Disturb | | | \$3.00 | \$10.00 |
| Easy Access | | | \$1.00 | \$5.00 |
| Extension Mailbox- Residence & Business | | | \$3.00 | \$15.00 |
| I-Called SM Pay Per Use | \$1.00 | \$5.00 | | |
| I-Called SM Originating Blocking | | | \$0.00 | \$25.00 |
| I-Called SM Terminating Blocking | | | \$0.00 | \$25.00 |
| International Blocking | | | \$0.00 | \$25.00 |
| Intracall®/Home Intercom | | | \$1.75 | \$7.00 |
| Last Call Return, per use | \$0.30 | \$1.50 | \$0.00 | \$0.00 |
| Last Call Return Blocking | | | \$0.00 | \$25.00 |
| Listen Only Mailbox- Business only | | | \$10.00 | \$50.00 |
| Long Distance Alert | | | \$1.75 | \$7.00 |
| Long Distance Restriction | | | \$0.00 | \$25.00 |
| Mailbox Only- Residence only | | | \$3.00 | \$20.00 |
| Message Notification- Residence and Business | | | \$3.00 | \$15.00 |
| Message Waiting Indication-Business | | | \$0.00 | \$25.00 |
| Message Waiting Indication-Residence | | | \$0.00 | \$25.00 |
| Multi-Line Hunting | | | \$1.75 | \$7.00 |
| No Solicitation® | | | \$3.00 | \$20.00 |
| One Number Service | | | \$2.00 | \$10.00 |
| Pay Per Call Restriction | | | \$0.00 | \$25.00 |
| Remote Access Forwarding (Call Following) | | | \$2.00 | \$15.00 |
| Route to Other Number- Business only | | | \$6.00 | \$24.00 |
| Remote Call Forward (Market Expansion Line) | | | \$8.00 | \$32.00 |

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SECTION 4 – MINIMUM AND MAXIMUM RATES AND CHARGES, Continued**4.2. SERVICE FEATURES, Continued**

| | Per Use | | Monthly | |
|--|---------|------|---------|---------|
| | Min. | Max. | Min. | Max. |
| Scheduled Forwarding | | | \$3.00 | \$15.00 |
| Scheduled Greetings- Business only | | | \$3.00 | \$15.00 |
| Security Screen SM | | | \$1. | \$10.00 |
| Selective Call Forwarding | | | \$1.75 | \$7.00 |
| Selective Call Waiting | | | \$3.00 | \$13.00 |
| Series Hunting | | | \$1.75 | \$7.00 |
| Speed Calling | | | \$1.75 | \$7.00 |
| Talking Call Waiting | | | \$1.75 | \$7.00 |
| Three Way Calling | | | \$1.75 | \$7.00 |
| Three Way Calling Blocking | | | \$0.00 | \$25.00 |
| Transfer Mailbox- Residence and Business | | | \$0.00 | \$25.00 |
| Voice Mail Mailbox- Business only | | | \$9.00 | \$40.00 |
| Voice Messaging Service Residence only | | | \$3.00 | \$15.00 |

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SECTION 4 – MINIMUM AND MAXIMUM RATES AND CHARGES, Continued**4.3. OTHER SERVICES**

| | Charge | | Monthly | |
|-----------------------------|---------------|-------------|----------------|-------------|
| | Min. | Max. | Min. | Max. |
| 4.3.1. Calling Cards | | | | |
| Per minute of use | \$0.10 | \$0.75 | | |
| Per call connection | \$0.25 | \$1.50 | | |

4.4. DIRECTORY SERVICES AND LISTINGS

| | | | | |
|--------------------------------|--------|--------|--------|--------|
| Directory Assistance, per call | \$0.50 | \$3.00 | | |
| Directory Listing | | | \$0.50 | \$2.00 |
| Non-listed Number | | | \$0.50 | \$2.00 |
| Additional Directory Listing | | | \$1.50 | \$8.00 |

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SECTION 5 – SERVICE PACKAGES

5.1. LOCAL SERVICE PACKAGE

Local Service Package including 3 features excluding Voice Mail or Just Voicemail but excludes Directory Listing and Wire Maintenance plus federal, state, and local taxes, Universal Service Fund, USF Carrier Cost Recovery fees, and mandated regulatory fees and surcharges.

| | Min. | Max. |
|--------------|-------------|-------------|
| Monthly rate | \$10.00 | \$60.00 |

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SECTION 6 – LONG DISTANCE SERVICES

6.1. LONG DISTANCE SERVICE

| Per Minute | | Monthly | |
|-------------------|-------------|----------------|-------------|
| Min. | Max. | Min. | Max. |

A. Stand Alone Long Distance Service, Only

The Company's stand-alone intrastate long distance service is provided to subscribers at a monthly rate plus the per minute rate for intrastate long distance calls set forth below.

| | | | | |
|--|---------|--------|--------|---------|
| Per Account, Monthly | | | \$0.00 | \$20.00 |
| 1 Plus Intrastate Long Distance | | | | |
| Instate IntraLATA & InterLATA ² | \$0.020 | \$0.25 | | |

B. Inbound 800 Intrastate Long Distance Service

| | | | | |
|--|---------|--------|--------|--------|
| Per Toll Free Number, Monthly | | | \$1.00 | \$8.00 |
| Instate IntraLATA and InterLATA ² | \$0.040 | \$0.25 | | |

² Rounded to the whole minute and dollar

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EFFECTIVE RATE SCHEDULE**1.1. LOCAL EXCHANGE SERVICE**

| | Non-recurring | Per Month |
|---|---------------|-----------|
| 1.1.1. One Time Fees | | |
| Installation Fee for first new line | \$49.99 | |
| Installation Fee per each new feature | \$7.95 | |
| Maintenance and Repair ³ , Per Instance | \$149.00 | |
| 1.1.2. Local Line | | |
| Monthly Recurring Fee, | | \$25.95 |
| 1.1.3. Payment (Accounting Fees) | | |
| Check by Phone | \$2.00 | |
| Return Check Fee | \$25.00 | |
| Late Fee, per each overdue payment, per month | 1.5% | |
| Temporary Disconnections & Reactivations (per line for local Customers only) | \$49.99 | |
| 1.1.4. Local Service Taxes | | |
| Federal Regulatory Fee FCC, monthly | | \$0.23 |
| Local Number Portability LNP, monthly | | \$0.43 |
| Federal Line Charge SLC/EUCL, Residence, Single Line and Multiline Business | | \$6.50 |
| 1.1.5. Primary Interexchange Carrier Change Charge | | |
| Per Instance | \$6.50 | |

³ Customers that do not subscribe to the WMP.

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EFFECTIVE RATE SCHEDULE, Continued

| 1.2. SERVICE FEATURES | Per Use | Per Month |
|---|---------|-----------|
| Additional Message Capacity, Residence and Business | | |
| 50 Additional Message Capacity | | \$5.95 |
| 100 Additional Message Capacity | | \$10.95 |
| Anonymous Call Rejection | | No Charge |
| Billed Number Screening/Toll Restriction | | No Charge |
| Business Complete-A-Call | | No Charge |
| Business Voice Messaging Service Choice | | \$18.95 |
| Call Curfew | | \$5.95 |
| Call Forwarding Busy Line/Alternate Answer | | \$5.50 |
| Call Forwarding Busy Line/Don't Answer Expanded | | \$5.50 |
| Call Forwarding Busy Line/Don't Answer IntraOffice | | \$5.50 |
| Call Forwarding Customer Programmable | | \$5.50 |
| Call Forwarding Don't Answer/Alternate Answer | | \$5.50 |
| Call Forwarding Variable | | \$5.50 |
| Call Hold | | \$1.95 |
| Call Park | | \$1.95 |
| Call Pickup | | \$1.95 |
| Call Queueing | | \$19.95 |
| Call Rejection | | \$5.50 |
| Call Routing- Business only | | \$9.95 |
| Call Routing To Number- Business only | | \$12.00 |
| Call Trace | | \$5.50 |
| Call Trace Blocking | | No Charge |
| Call Transfer | | \$5.50 |
| Call Waiting | | \$5.50 |
| Call Waiting ID | | \$5.50 |
| Caller ID | | \$5.50 |
| Caller ID Blocking | | \$5.50 |
| Caller ID with Privacy+ SM | | \$10.95 |
| Carrier Access Code Blocking | | No Charge |
| Complete-A-Call, per use | \$1.50 | |
| Continuous Redial, per use | \$0.50 | |
| Continuous Redial Blocking | | No Charge |
| Custom Number Services | | \$300.00 |
| CustomNet® | | No Charge |
| Custom Ringing Service | | \$5.50 |
| Dial Call Waiting/Distinctive Alert | | \$5.50 |
| Dial Lock® | | \$4.95 |

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EFFECTIVE RATE SCHEDULE, Continued

| 1.2. SERVICE FEATURES, Continued | Per Use | Per Month |
|--|---------|-----------|
| Directed Call Pickup | | \$1.95 |
| Do Not Disturb | | \$4.95 |
| Easy Access | | \$1.95 |
| Extension Mailbox- Residence & Business | | \$6.95 |
| I-Called SM Pay Per Use | \$1.95 | |
| I-Called SM Originating Blocking | | No Charge |
| I-Called SM Terminating Blocking | | No Charge |
| International Blocking | | No Charge |
| Intracall [®] /Home Intercom | | \$5.50 |
| Last Call Return, per use | \$0.65 | |
| Last Call Return Blocking | | No Charge |
| Listen Only Mailbox- Business only | | \$19.95 |
| Long Distance Alert | | \$5.50 |
| Long Distance Restriction | | No Charge |
| Mailbox Only- Residence only | | \$7.95 |
| Message Notification- Residence and Business | | \$5.95 |
| Message Waiting Indication-Business | | No Charge |
| Message Waiting Indication-Residence | | No Charge |
| Multi-Line Hunting | | \$5.50 |
| No Solicitation [®] | | \$7.95 |
| One Number Service | | \$4.95 |
| Pay Per Call Restriction | | No Charge |
| Remote Access Forwarding (Call Following) | | \$5.95 |
| Route to Other Number- Business only | | \$12.00 |
| Remote Call Forward (Market Expansion Line) | | \$16.00 |
| Scheduled Forwarding | | \$6.95 |
| Scheduled Greetings- Business only | | \$6.95 |
| Security Screen SM | | \$3.95 |
| Selective Call Forwarding | | \$3.50 |
| Selective Call Waiting | | \$6.50 |
| Series Hunting | | \$5.50 |
| Speed Calling | | \$5.50 |
| Talking Call Waiting | | \$5.50 |
| Three Way Calling | | \$5.50 |
| Three Way Calling Blocking | | No Charge |
| Transfer Mailbox- Residence and Business | | No Charge |
| Voice Mail Mailbox- Business only | | \$18.95 |
| Voice Messaging Service Residence only | | \$6.95 |

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EFFECTIVE RATE SCHEDULE, Continued

| | Per Use | Per Month |
|---|----------------|------------------|
| 1.3. OTHER SERVICES | | |
| 1.3.1. Calling Cards | | |
| Per minute of use | \$0.27 | |
| Per call connection | \$0.65 | |
| 1.3.2. Wire Maintenance | | |
| Per line | | \$2.75 |
| 1.4. DIRECTORY SERVICES AND LISTINGS | | |
| Directory Assistance, per call | \$1.35 | |
| Directory Listing | | \$0.99 |
| Non-listed Number | | \$0.99 |
| Additional Directory Listing | | \$3.95 |
| 1.5. SERVICE PACKAGES | | |
| Local Service Package, monthly rate | | \$25.99 |

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Issued By:

Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

EFFECTIVE RATE SCHEDULE, Continued**1.6. LONG DISTANCE SERVICE AND TAXES****1.6.1. Long Distance Service**

| | Per Minute | Per Month |
|---|-------------------|------------------|
| A. Stand Alone Long Distance Service | | |
| Per Account, Monthly | | \$7.95 |
| 1 Plus Intrastate Long Distance Instate, IntraLATA and InterLATA ⁴ | \$0.079 | |
| B. Inbound 800 Intrastate Long Distance | | |
| Per Toll Free Number, Monthly Intrastate, InterLATA and interLATA ⁴ | \$0.089 | \$2.00 |
| 1.6.2. Long Distance Taxes | | |
| Federal Access Fee (PICC) | \$4.48 | |

⁴ Rounded to the whole minute and dollar

Issued: March 28, 2012

Effective:

Issued By:

Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

ARIZONA CORPORATION COMMISSION

**Application and Petition for Certificate of Convenience and Necessity to Provide
Intrastate Telecommunications Services**

Of

Preferred Long Distance, Inc.

ATTACHMENT C

**Draft Publication Notice
(Attached)**

IN THE MATTER OF THE APPLICATION OF PREFERRED LONG DISTANCE, INC.
FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD LONG DISTANCE, RESOLD LOCAL
EXCHANGE AND FACILITIES-BASED LOCAL EXCHANGE
TELECOMMUNICATION SERVICES.
(DOCKET NO. T-NNNNA-11-NNNN)

On [date], Preferred Long Distance, Inc. ("Preferred" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for approval of a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance, resold local exchange, and facilities-based local exchange telecommunication services in Arizona. Preferred's application also requests a determination that its proposed services are competitive within the State of Arizona. The Commission's Utilities Division ("Staff") has recommended approval of Preferred's application, subject to certain conditions. The Commission will issue a Decision following consideration of testimony and evidence presented at an evidentiary hearing. The Commission is not bound by the proposals made by Preferred, Staff, or any intervenors. Preferred will be required to provide service under the rates, charges, terms, and conditions established by the Commission. Copies of the application, the Staff Report, and any written objections to the Staff Report filed by Preferred or intervenor(s) will be available at Preferred's offices 16830 Ventura Blvd., Suite 350, Encino, CA 91436 at the Commission's Docket Control Center at 1200 West Washington, Phoenix, Arizona; and on the Internet via the Commission website (www.azcc.gov) using the e-Docket function.

The Commission will hold a hearing on Preferred's application on [date] at the Commission's offices, 1200 West Washington Street, Room 100, Phoenix, Arizona. Public comments will be taken on the first day of the hearing. Written public comments may be submitted via email (for instructions go to <http://www.azcc.gov/Divisions/Utilities/consumerservices.asp>) or by mailing a letter referencing Docket No. T-NNNNA-11-0NNN to: Arizona Corporation Commission, Consumer Services Section, 1200 West Washington Street, Phoenix, AZ 85007. If you require assistance, you may contact the Consumer Services Section at 1-800-222-7000 or 602-542-4251.

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Any person or entity entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene. If you would like to intervene, you must file a written motion to intervene with the Commission, and you must send copies of the motion to Preferred or its counsel and to all parties of record in the case. Your motion to intervene must contain the following:

1. The name, address and telephone number of the proposed intervenor and of any person upon whom service of documents is to be made if different from the intervenor;
2. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of the Company, a shareholder of the Company, etc.); and

3. A statement certifying that a copy of the motion to intervene has been mailed to the Company or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before [date]. The granting of intervention, among other things, entitles a party to present sworn evidence at the hearing and to cross examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and making a statement on their own behalf. If representation by counsel is required by Arizona Supreme Court Rule 31, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting the ADA Coordinator, Shaylin Bernal, at SBernal@azcc.gov, voice phone number 602-542-3931. Requests should be made as early as possible to allow time to arrange the accommodation.

ARIZONA CORPORATION COMMISSION

**Application and Petition for Certificate of Convenience and Necessity to Provide
Intrastate Telecommunications Services
Of
Preferred Long Distance, Inc.**

ATTACHMENT D

Applicant's financial information for the two (2) most recent years is attached. Applicant has not engaged in an audit of its financial statements, nor has it been required to engage in such audit by any regulatory agency, Audited financial statements are not included, accordingly.

Retained cash balance as of December 31, 2011 was \$1,241,815.00

INCOME STATEMENT

FOR THE 12 PERIODS ENDED DECEMBER 31, 2011

| | YEAR TO DATE | |
|---|----------------------|--------------|
| | ACTUAL | PERCENT |
| REVENUE | | |
| Revenue | \$23,881,330.96 | 100.0 % |
| TOTAL REVENUE | 23,881,330.96 | 100.0 |
| COST OF SALES | | |
| Carrier Cost | 8,798,876.15 | 36.8 |
| Billing Costs | 2,631,864.68 | 11.0 |
| TOTAL COST OF SALES | 11,430,740.83 | 47.9 |
| GROSS PROFIT | 12,450,590.13 | 52.1 |
| OPERATING EXPENSES | | |
| Accounting | 3,604.95 | .0 |
| Telemarketing Leads | 91,050.00 | .4 |
| Bank Fees | 37,230.90 | .2 |
| Business Licenses and Fees | 31,500.15 | .1 |
| Credit Card Merchant Fees | 117,717.30 | .5 |
| Conference Fees | 3,398.86 | .0 |
| Consulting Fees | 262,600.96 | 1.1 |
| Agents Commissions | 7,060,908.66 | 29.6 |
| Dues and Subscriptions | 9,889.00 | .0 |
| Equipment Rental | 10,174.98 | .0 |
| Insurance, General | 214,710.48 | .9 |
| Legal Fees | 29,748.03 | .1 |
| Office Supplies | 38,275.14 | .2 |
| Payroll, General | 3,582,865.48 | 15.0 |
| Employee Savings Plan | 58,471.56 | .2 |
| Postage, General | 50,116.18 | .2 |
| Printing | 20,646.37 | .1 |
| Rent | 238,365.95 | 1.0 |
| Taxes, Payroll | 211,845.87 | .9 |
| Telephone | 77,387.20 | .3 |
| Verifications | 261,914.28 | 1.1 |
| TOTAL OPERATING EXPENSES | 12,412,422.30 | 52.0 |
| NET INCOME FROM OPERATIONS | 38,167.83 | .2 |
| OTHER INCOME & EXPENSE | | |
| INTEREST INCOME | 2,832.95 | .0 |
| TOTAL OTHER INCOME & EXPENSE | 2,832.95 | .0 |
| EARNINGS BEFORE INCOME TAX | 41,000.78 | .2 |
| NET INCOME (LOSS) | \$41,000.78 | .2 % |

BALANCE SHEET

DECEMBER 31, 2011

ASSETS

CURRENT ASSETS

| | |
|------------------------|--------------|
| Cash, Checking | \$105,455.17 |
| Cash, Checking | 239,519.97 |
| Short Term Investments | 213,026.43 |
| Savings Account | 276,952.76 |
| CUB General Checking | 406,860.85 |

| | | |
|----------------------|--|--------------|
| TOTAL CURRENT ASSETS | | 1,241,815.18 |
|----------------------|--|--------------|

FIXED ASSETS

| | |
|-------------------------|-------------|
| Computer Equipment | 28,838.27 |
| Accum. Depr., Computers | (27,838.27) |

| | | |
|--------------------|--|----------|
| TOTAL FIXED ASSETS | | 1,000.00 |
|--------------------|--|----------|

OTHER ASSETS

| | |
|----------|-----------|
| Deposits | 15,262.50 |
|----------|-----------|

| | | |
|--------------------|--|-----------|
| TOTAL OTHER ASSETS | | 15,262.50 |
|--------------------|--|-----------|

| | | |
|--------------|--|-----------------------|
| TOTAL ASSETS | | <u>\$1,258,077.68</u> |
|--------------|--|-----------------------|

LIABILITIES AND EQUITY

CURRENT LIABILITIES

| | |
|--------------------------|------------|
| Taxes Payable, Phone Tax | 880,232.33 |
|--------------------------|------------|

| | | |
|---------------------------|--|------------|
| TOTAL CURRENT LIABILITIES | | 880,232.33 |
|---------------------------|--|------------|

| | | |
|-------------------|--|------------|
| TOTAL LIABILITIES | | 880,232.33 |
|-------------------|--|------------|

EQUITY

| | |
|--------------------------------|------------|
| Common Stock | 25,000.00 |
| Retained Earnings | 311,844.57 |
| RETAINED EARNINGS-CURRENT YEAR | 41,000.78 |

| | | |
|--------------|--|------------|
| TOTAL EQUITY | | 377,845.35 |
|--------------|--|------------|

| | | |
|------------------------------|--|-----------------------|
| TOTAL LIABILITIES AND EQUITY | | <u>\$1,258,077.68</u> |
|------------------------------|--|-----------------------|

COME STATEMENT

Preferred Long Distance, Inc.

FOR THE 12 PERIODS ENDED DECEMBER 31, 2010

| | YEAR TO DATE | | | |
|-----------------------------------|----------------------|--------------|----------------------|--------------|
| | ACTUAL | PERCENT | PRIOR YEAR | PERCENT |
| VENUE | | | | |
| Revenue | \$22,862,272.53 | 100.0 % | 20,846,143.07 | 100.0 |
| TOTAL REVENUE | 22,862,272.53 | 100.0 | 20,846,143.07 | 100.0 |
| COST OF SALES | | | | |
| Carrier Cost | 9,085,649.84 | 39.7 | 8,604,348.96 | 41.3 |
| Billing Costs | 2,307,312.09 | 10.1 | 2,206,464.92 | 10.6 |
| TOTAL COST OF SALES | 11,392,961.93 | 49.8 | 10,810,813.88 | 51.9 |
| GROSS PROFIT | 11,469,310.60 | 50.2 | 10,035,329.19 | 48.1 |
| OPERATING EXPENSES | | | | |
| Accounting | 3,600.00 | .0 | 5,100.00 | .0 |
| Advertising and Promotion | 2,418.00 | .0 | 13,168.00 | .1 |
| telemarketing Leads | 97,383.76 | .4 | 67,752.08 | .3 |
| Bank Fees | 33,285.35 | .1 | 22,081.71 | .1 |
| Business Licenses and Fees | 32,028.55 | .1 | 16,700.61 | .1 |
| Credit Card Merchant Fees | 128,082.37 | .6 | 103,312.02 | .5 |
| Conference Fees | 4,096.75 | .0 | 4,158.39 | .0 |
| Consulting Fees | 183,714.50 | .8 | 299,826.19 | 1.4 |
| Commissions | 5,522,910.26 | 24.2 | 5,107,877.37 | 24.5 |
| Phones and Subscriptions | 15,395.22 | .1 | 8,168.00 | .0 |
| Equipment Rental | 14,550.39 | .1 | 9,809.59 | .0 |
| Insurance, General | 189,470.71 | .8 | 174,538.06 | .8 |
| Legal Fees | 35,931.74 | .2 | 27,530.74 | .1 |
| Office Supplies | 50,788.00 | .2 | 33,192.53 | .2 |
| Overnight and Courier Costs | 2,187.28 | .0 | 1,419.78 | .0 |
| Payroll, General | 4,302,689.32 | 18.8 | 3,290,127.08 | 15.8 |
| Employee Savings Plan | 55,637.09 | .2 | 48,206.75 | .2 |
| Postage, General | 32,689.62 | .1 | 29,835.81 | .1 |
| Printing | 14,262.35 | .1 | 11,609.96 | .1 |
| Rent | 236,570.93 | 1.0 | 292,072.38 | 1.4 |
| Taxes, Franchise | 1,600.00 | .0 | 2,656.00 | .0 |
| Taxes, Payroll | 220,118.67 | 1.0 | 184,127.08 | .9 |
| Telephone | 69,664.16 | .3 | 46,183.43 | .2 |
| Utilities | .00 | .0 | 651.28 | .0 |
| Travel | 4,628.03 | .0 | .00 | .0 |
| Verifications | 168,169.67 | .7 | 151,129.81 | .7 |
| TOTAL OPERATING EXPENSES | 11,421,872.72 | 50.0 | 9,951,234.65 | 47.7 |
| NET INCOME FROM OPERATIONS | 47,437.88 | .2 | 84,094.54 | .4 |
| OTHER INCOME & EXPENSE | | | | |
| INTEREST INCOME | 8,018.97 | .0 | 6,730.91 | .0 |

INCOME STATEMENT

FOR THE 12 PERIODS ENDED DECEMBER 31, 2010

| | YEAR TO DATE | | | |
|------------------------------|--------------|---------|------------|---------|
| | ACTUAL | PERCENT | PRIOR YEAR | PERCENT |
| TOTAL OTHER INCOME & EXPENSE | \$8,018.97 | .0 % | 6,730.91 | .0 |
| EARNINGS BEFORE INCOME TAX | 55,456.85 | .2 | 90,825.45 | .4 |
| NET INCOME (LOSS) | \$55,456.85 | .2 % | 90,825.45 | .4 |

DECEMBER 31, 2010

| | CURRENT YEAR-TO-DATE | PRIOR YEAR-END |
|---------------------------------------|-------------------------|---------------------|
| ASSETS | | |
| CURRENT ASSETS | | |
| Cash, Checking | \$59,145.98 | 64,651.90 |
| Cash, Checking | 135,386.35 | 192,298.30 |
| First Commerce Bank-Wires | 1,942.22 | 2,254.82 |
| First Commerce Bank-Tax | 2,492.75 | 19,066.31 |
| Short Term Investments | 77,289.88 | 606,052.09 |
| Savings Account | 1,149,909.58 | 299,643.95 |
| TOTAL CURRENT ASSETS | 1,426,166.76 | 1,183,967.37 |
| FIXED ASSETS | | |
| Computer Equipment | 28,838.27 | 28,838.27 |
| Accum. Depr., Computers | (27,838.27) | (27,838.27) |
| TOTAL FIXED ASSETS | 1,000.00 | 1,000.00 |
| OTHER ASSETS | | |
| Deposits | 15,262.50 | 15,262.50 |
| TOTAL OTHER ASSETS | 15,262.50 | 15,262.50 |
| TOTAL ASSETS | \$1,442,429.26 | 1,200,229.87 |
| LIABILITIES AND EQUITY | | |
| CURRENT LIABILITIES | | |
| Taxes Payable, Phone Tax | 1,051,584.69 | 864,842.15 |
| TOTAL CURRENT LIABILITIES | 1,051,584.69 | 864,842.15 |
| TOTAL LIABILITIES | 1,051,584.69 | 864,842.15 |
| EQUITY | | |
| Common Stock | 25,000.00 | 25,000.00 |
| Retained Earnings | 310,387.72 | 219,562.27 |
| RETAINED EARNINGS-CURRENT YEAR | 55,456.85 | 90,825.45 |
| TOTAL EQUITY | 390,844.57 | 335,387.72 |
| TOTAL LIABILITIES AND EQUITY | \$1,442,429.26 | 1,200,229.87 |

ARIZONA CORPORATION COMMISSION

**Application and Petition for Certificate of Convenience and Necessity to Provide
Intrastate Telecommunications Services
Of
Preferred Long Distance, Inc.**

ATTACHMENT E

Listing of Key Personnel Employed by Applicant

1995-Present

Jerome Nussbaum, Chief Executive Officer, Chief Financial Officer and Secretary

Mr. Nussbaum has been in the telecommunications industry since 1988. From 1988 to 1991, he was Vice Chairman and Chief Financial Officer for Data Line Service Company. During his tenure there, he was responsible for telecommunications data networks for more than 100 financial institutions in California. From 1991 to 1994, Mr. Nussbaum was Chief Executive Officer of Interactive Communications, Inc. He was responsible for the start-up of the company, which provides a switch-based telecommunications network for residential and commercial customers across the United States. Mr. Nussbaum served as Chief Financial Officer for Addtel Communications, Inc., a switchless based reseller of long distance telephone services to small commercial and residential customers in California, Arizona and Nevada until founding Preferred in 1995.

1997 - Present

Keith Nussbaum, Executive Vice President

Mr. Nussbaum has served as Executive Vice President of Preferred Long Distance, Inc. since 1997. Prior to joining the company he served as Director of Music Business Affairs for Universal Television from 1996 to 1997 where he was responsible for legal affairs involving music in all television programs produced by Universal Studios. Mr. Nussbaum has also worked as an Associate litigator for various law firms in Southern California prior to joining Universal Television. Mr. Nussbaum earned his J.D. in 1993 at the University of San Diego School of Law.

Company employees maintain an average of four years of telecommunications experience.

ORIGINAL

MILLER ISAR
INC.
TRUSTED ADVISORS

4423 POINT FOSDICK DRIVE, NW
SUITE 306
GIG HARBOR, WA 98335
TELEPHONE: 253.851.6700
FACSIMILE: 866.474.3630
WWW.MILLERISAR.COM

ANDREW O. ISAR

Arizona Corporation Commission
DOCKETED

MAY 29 2012

DOCKETED BY *IM*

Via Overnight Delivery

May 24, 2012

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street, Room 108
Phoenix, Arizona 85007-2996

Re: Staff's First Set of Data Requests to Preferred Long Distance, Inc., Docket No. T-04308A-12-0118

Dear Sir/Madam:

Pursuant to Staff's May 21, 2012 First Set of Data Requests in the above-referenced matter, Preferred Long Distance, Inc. ("Preferred" or the "Company"), hereby provides the attached responses. An original and thirteen (13) copies of this letter and attachments are enclosed.

Please acknowledge receipt of this filing by file-stamping and returning the additional copy of this Application and transmittal letter in the self-addressed, postage-paid envelope provided for this purpose. Questions may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.

Andrew O. Isar

Attachments

Regulatory Consultants to
Preferred Long Distance, Inc.

cc: Ms. Pam Genung via electronic delivery (PGenung@azcc.gov)

RECEIVED
2012 MAY 29 P 12:21
CORP COMMISSION
DOCKET CONTROL

EXHIBIT
A-2
ADMITTED

STAFF'S FIRST SET OF DATA REQUESTS TO
PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

Each of the following responses was prepared by:

Andrew O. Isar,
Miller Isar, Inc.
4423 Point Fosdick Drive, NW
Gig Harbor, Washington 98335
Telephone: 253.851.6700

Regulatory Consultants to
Preferred Long Distance, Inc.

PJG 1.1 Please specify the number of years of telecommunications experience of Director/Owner Claudia Nussbaum identified in Attachment A of Preferred Long Distance's Application.

Response: Ms. Nussbaum has 17 years of telecommunications experience. Ms. Nussbaum is co-founder of the Company and has been involved in the Company's operations since its inception in May 1995.

PJD. 1.2. In reference to Preferred Long Distance's proposed Arizona C.C. Tariff No. 1, on Original Page No. 34, at 2.5.3 Disputed Bills, please modify and/or add the following contact information and file the proposed replacement tariff page:

Phoenix Office: 602-452-4251 or (800)222-7000
Tucson Office: 520-628-6550 or (800)535-0148

Response: The requested amendments have been incorporated into the Company's Arizona C.C. Tariff No. 1, on Original Page No. 34, at 2.5.3 Disputed Bills. A copy of the amended page is attached.

PJG 1.3 In reference to Preferred Long Distance's proposed Arizona C.C. Tariff No. 1, on Original Page No. 37, at 2.5.6 Establishment of Credit, at D.(3), please explain how item (g) has a bearing on a person's creditworthiness.

Response: 2.5.6.D.(3)(g) contained an inadvertent error. This section has been amended to read, "age of 18 years or more." A copy of the amended page is attached.

STAFF'S FIRST SET OF DATA REQUESTS TO
PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

PJG 1.4 In reference to Preferred Long Distance's proposed Arizona C.C. Tariff No. 1, on Original Page No. 79, at 4.1.3, a minimum and maximum late fee is listed. On Original Page No. 33, at 2.5.2 (F) Preferred Long Distance already has the standard late fee of 1.5% listed, which is the maximum allowed by the Commission. The late fee on Original Page No. 79 appears to be a duplication of the late fee on Original Page No. 33. Please file a replacement tariff page removing the late fee listed on Original Page No. 79 as a Company is only allowed to charge one late fee per month, if applicable.

Response: The late fee range appearing at Original Page 79 has been removed. A copy of the amended page is attached.

PJG 1.5 In reference to Preferred Long Distance's proposed Arizona C.C. Tariff No. 1, on Original Page No. 82, at 4.2 Service Features, the minimum monthly fee for Security Screen appears to have digits missing. Please file a replacement tariff page correcting the minimum charge.

Response: The Security Screen minimum rate has been added. A copy of the amended page is attached.

STAFF'S FIRST SET OF DATA REQUESTS TO
PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

PJG 1.6

Please indicate why Preferred Long Distance believes that its range of rates is just and reasonable using a competitive market analysis. The analysis should contain publicly available examples of tariff rates and charges charged by the incumbent and other carriers for similar services. Please provide actual tariff pages and use the attached matrix format to show Preferred Long Distance's actual or proposed tariff rates and charges. Then show each competitor's tariff rates and charges for comparable telecommunications services. At a minimum, show tariff information of CenturyLink/Qwest and two other competitors in Arizona. The material you provide should enable Staff to determine whether the tariff rates and charges of the Applicant are just and reasonable compared to other competitors offering the same or similar telecommunications services in Arizona. (See Attachments A & B – By Competitor) (For the Applicant's ease, an excel file can be provided by contacting Pamela Genung at pgenung@azcc.gov).

Response:

Preferred's rates reflect the Company's underlying costs and a reasonable return, while enabling the Company to remain competitive and attract and retain subscribers in Arizona's highly competitive local exchange and interexchange markets.

The Company's proposed Arizona rates are designed to be competitive with those of other competitive local exchange and interexchange carriers in Arizona, as well as with those of incumbent local exchange carriers.

As a new market entrant, Preferred could not successfully attract and retain subscribers unless its rates were competitive with larger, more established competitors. Yet Preferred does not have market power to control pricing and could not sustain unreasonably low, anti-competitive service rates through service subsidies in Arizona or elsewhere. Preferred's Arizona rates are consistent with those charged by other competitive local exchange and interexchange carriers operating under Commission-approved tariffs. Preferred's proposed rates should be considered fair, just, and reasonable, accordingly.

A comparative rate analysis is attached.

STAFF'S FIRST SET OF DATA REQUESTS TO
PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

PJD 1.7 Please specify the rates that Preferred Long Distance will charge or charges for similar services in the other states/jurisdictions in which Preferred Long Distance has been approved to provide service. If there is a difference between the rates that Preferred Long Distance will charge in Arizona and the rates that it will charge in the other states/jurisdictions for similar service, please identify and indicate the amount of the difference and explain why you are charging different rates in Arizona. (See Attachments C & D – By State) (For the Applicant's ease, an excel file can be provided by contacting Pamela Genung at pgenung@azcc.gov).

Response: The rates listed in Preferred Long Distance, Inc.'s the Effective Rate Section of the Company's proposed Arizona C.C. Tariff No. 1, are the same as those in other states where the Company operates.

PJD 1.8 In reference to Preferred Long Distance's response to item (A-11) of its Application, regarding past or present formal or informal complaint proceedings, please explain why the following items were not disclosed:

- a. Federal Communications Commission, DA 10-1637, Released August 31, 2010, *In the Matter of Preferred Long Distance, Inc. Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*; and
- b. Federal Communications Commission, DA 09-1689, Released July 31, 2009, *In the Matter of Preferred Long Distance, Inc. Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*.

Response: Both incidents entailed isolated inquiries regarding the Company's alleged failure to have confirmed an account transfer, consistent with similar inquiries received periodically by all telecommunications services providers. These two inquiries were immediately resolved and were not deemed dispositive of any company failure to comply with federal (or state) regulation. Preferred did not interpret section A-11 of the Application as requiring an exhaustive listing of every possible informal inquiry, but rather a listing of substantive inquiries and or complaints that reflected on the Company's regulatory compliance.

STAFF'S FIRST SET OF DATA REQUESTS TO
PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

PJD 1.9 Please be aware that Staff does not recommend local exchange CC&N approval for companies who will service only affiliates or non-affiliates, such as Voice over the Internet Protocol ("VoIP") providers. Does Preferred Long Distance intend to provide local exchange service directly to end-users? If yes, is Preferred Long Distance willing to accept the following condition for Commission approval – "That Preferred Long Distance's Application be approved based upon its representation to the Commission that Preferred Long Distance will be providing local exchange service directly to end-users in Arizona. Should Preferred Long Distance not provide service directly to end-user customers, it shall notify the Commission and file for cancellation of its CC&N."

Response: Preferred Long Distance intends to provide local exchange service directly to end-users. Preferred Long Distance accepts the following condition for Commission approval – "That Preferred Long Distance's Application be approved based upon its representation to the Commission that Preferred Long Distance will be providing local exchange service directly to end-users in Arizona. Should Preferred Long Distance not provide service directly to end-user customers, it shall notify the Commission and file for cancellation of its CC&N."

ATTACHMENT B
BY COMPETITOR

| Business Maximum Rate Comparison of Telecommunications Services provided by Competitor's in Arizona | Applicant's Arizona Tariff Arizona C.C. Tariff No. 1 | | | Competitor #1 Arizona Tariff Cox | | |
|--|---|----------------|-------------|-------------------------------------|----------------|-------------|
| | Charges & Rates (\$) | Section Number | Page Number | Charges & Rates (\$) | Section Number | Page Number |
| Product/Services | | | | | | |
| Basic Local Service | 25.95 | 4.1.1 | 79 | \$30.00 | 3.1.2.(d.1) | 62.3 |
| Service Connect Fee | 49.99 | 4.1.1 | 79 | | | |
| Dispatch Call & Trouble isolated on cust. equip. | 199 | 4.1.1 | 79 | \$50.00 | 3.1.2.a | 60 |
| Feature Change Order | 7.95 | 4.1.1 | 79 | * | | |
| Toll Restriction Fee Order | 0 | 4.2 | 81 | \$10.00 | 3.1.2.(a) | 60 |
| Transfer of Service (move order) | 49.99 | 4.1.1 | 79 | \$25.00 | 7.1.2 | 106 |
| Restoration of Service | 49.99 | 4.1.3 | 79 | \$25.00 | 3.1.2.a | 60 |
| Directory Assistance | 1.35 | 4.4 | 83 | \$2.00 | 3.2.1 | 93 |
| Miscellaneous Services & Rates | | | | | | |
| Returned Check Charge (NSF) | 25 | 4.1.1. | 79 | | | |
| Listings | | | | | | |
| Directory Listing Service - Primary Listing | 0.99 | 4.4 | 83 | \$0.00 | 3.4.6 | 99 |
| Directory Listing Service - Non-Published | 0.99 | 4.4 | 83 | \$5.00 | 3.4.6 | 99 |
| Primary Rate Interface (DS0) Service | | | | | | |
| Month-to-month | | | | | | |
| 12 Months | | | | | | |
| 24 Months | | | | | | |
| 36 Months | | | | | | |
| Long Distance | | | | | | |
| Direct Dialed Station-to-Station (include all relevant billing elements used to make the comparison) | .079 per minute | 6.1 | 85 | \$0.15 | 3.1.6 | 92.0.1 |

| Business Maximum Rate Comparison of Telecommunications Services provided by Competitor's in Arizona | Competitor #2 Arizona Tariff Qwest | | | Competitor #3 Arizona Tariff DPI-Teleconnect | | |
|--|---------------------------------------|----------------|-------------|---|----------------|-------------|
| | Charges & Rates (\$) | Section Number | Page Number | Charges & Rates (\$) | Section Number | Page Number |
| Product/Services | | | | | | |
| Basic Local Service | \$85.00 | 5.2.4.A.2 | 2 | \$107.00 | 3.1.1.c.1.b | 30 |
| Service Connect Fee | \$200.00 | 5.2.5.A[1]3.c | 4 | * | | |
| Dispatch Call & Trouble isolated on cust. equip. | \$190.00 | 13.2.D.4 | 14 | \$80.00 | 3.1.1.c.1.a | 30 |
| Feature Change Order | \$24.00 | 3.1.9.D.3 | 2 | * | | |
| Toll Restriction Fee Order | \$6.00 | 110.4.2.B | 2 | \$25.00 | 3.1.1.c.2.a | 30 |
| Transfer of Service (move order) | * | | | * | | |
| Restoration of Service | * | | | \$80.00 | 3.1.1.c.1.a | 30 |
| Directory Assistance | \$1.15 | 6.2.4B.3.b | 23 | \$4.00 | 3.1.1.c.1.a | 30 |
| Miscellaneous Services & Rates | | | | | | |
| Returned Check Charge (NSF) | | | | \$2.25 | 3.1.1.c.1.b | 31 |
| Listings | | | | | | |
| Directory Listing Service - Primary Listing | | | | \$0.00 | 3.2.6 | 31 |
| Directory Listing Service - Non-Published | | | | \$10.00 | 3.1.1.c.2.b | 31 |
| Primary Rate Interface (DS0) Service | | | | | | |
| Month-to-month | | | | | | |
| 12 Months | | | | | | |
| 24 Months | | | | | | |
| 36 Months | | | | | | |
| Long Distance | | | | | | |
| Direct Dialed Station-to-Station (include all relevant billing elements used to make the comparison) | | | | | | |

SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.3. Disputed Bills

Customer inquiries or complaints regarding Service or accounting may be made in writing or by telephone to the Company at:

Preferred Long Distance, Inc.
16830 Ventura Blvd., Ste 350
Encino, CA 91436

Telephone: (888) 235-2026

Any objection to billed charges should be reported promptly to the Company. If after investigation and review by the Company, a disagreement remains as to the disputed amount, the Customer may file an appropriate complaint with:

Arizona Corporation Commission
Consumer Services Section
1200 West Washington Street
Phoenix, Arizona 85007

Phoenix Office: 602-452-4251 or (800)222-7000

Tucson Office: 520-628-6550 or (800)535-0148

Toll Free: 800.222.7000

Web Site: <http://www.azcc.gov/divisions/utilities/consumerservices.asp>

2.5.4. Advance Payments

Should the Company elect to collect Advance Payments, and meets Commission requirements for the collection of a bond, the Company may require the Customer to make an Advance Payment before Services and facilities are furnished to safeguard its interests. The amount of the Advance Payment will be determined on a case-by-case basis and will conform to the applicable Commission regulations.

Issued: March 28, 2012

Effective:

Issued By:

Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 2 – REGULATIONS, Continued

2.5. PAYMENT ARRANGEMENTS, Continued

2.5.6. Establishment of Credit

- A. In order to assure the proper payment of all Customer-incurred charges for service, the Company will require applicants for service and Customers to establish and maintain acceptable credit.
- B. The establishment or re-establishment of credit by an applicant or Customer will not relieve the applicant or Customer from compliance with other responsibilities, including the payment advance payments or bills, and in no way modify the provisions concerning disconnection and termination of service for failure to pay Customer-incurred charges for service rendered by the Company.
- C. The Company may refuse to furnish service to an applicant that has not paid charges for service of the same classification (residential or business) previously furnished by any telephone company until, at the option of the Company, the applicant pays any past due bill and/or makes deposit arrangements suitable to the Company.
- D. Applicants for residential service may establish credit by one of the following methods:
 - 1. If the applicant has verifiable previous service with any telephone company for at least twelve (12) months and the payment record on the account was satisfactory, the applicant may obtain service without a deposit; or
 - 2. If the applicant had not paid for prior service, or the prior service had been disconnected for nonpayment within the past twelve (12) months, the Company may require a deposit prior to the connection of telephone service; or
 - 3. If the applicant does not have verifiable service, or if the applicant had previous service for less than twelve (12) months, the applicant will be asked to provide further credit information. The applicant will be requested to provide proof of:
 - (a) home ownership;
 - (b) employment of two (2) years or more with the current employer;
 - (c) major oil company credit card;
 - (d) major credit company;
 - (e) checking account;
 - (f) savings account;
 - (g) age of 18 years or more.

Issued: March 28, 2012

Effective:

Issued By:

Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 4 – MINIMUM AND MAXIMUM RATES AND CHARGES

| 4.1. LOCAL EXCHANGE SERVICE | Non-recurring | | Monthly | |
|---|----------------------|-------------|----------------|-------------|
| | Min. | Max. | Min. | Max. |
| 4.1.1. One Time Fees | | | | |
| Installation Fee for first new line | \$25.00 | \$100.00 | | |
| Installation Fee per each new feature | \$2.50 | \$15.00 | | |
| Maintenance and Repair ¹ , Per Instance | \$75.00 | \$300.00 | | |
| 4.1.2. Local Line | | | | |
| Monthly Recurring Fee, | | | \$10.00 | \$50.00 |
| 4.1.3. Payment (Accounting Fees) | | | | |
| Check by Phone | \$0.50 | \$5.00 | | |
| Return Check Fee | \$7.50 | \$35.00 | | |
| Temporary Disconnections & Reactivations (per line for local Customers only) | \$20.00 | \$80.00 | | |
| 4.1.4. Primary Interexchange Carrier Change Charge | | | | |
| Per Instance | \$4.00 | \$20.00 | | |

¹ Customers that do not subscribe to the WMP.

Issued: March 28, 2012

Effective:

Issued By:

Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

SECTION 4 – MINIMUM AND MAXIMUM RATES AND CHARGES, Continued**4.2. SERVICE FEATURES, Continued**

| | Per Use | | Monthly | |
|--|---------|------|---------|---------|
| | Min. | Max. | Min. | Max. |
| Scheduled Forwarding | | | \$3.00 | \$15.00 |
| Scheduled Greetings- Business only | | | \$3.00 | \$15.00 |
| Security Screen SM | | | \$1.00 | \$10.00 |
| Selective Call Forwarding | | | \$1.75 | \$7.00 |
| Selective Call Waiting | | | \$3.00 | \$13.00 |
| Series Hunting | | | \$1.75 | \$7.00 |
| Speed Calling | | | \$1.75 | \$7.00 |
| Talking Call Waiting | | | \$1.75 | \$7.00 |
| Three Way Calling | | | \$1.75 | \$7.00 |
| Three Way Calling Blocking | | | \$0.00 | \$25.00 |
| Transfer Mailbox- Residence and Business | | | \$0.00 | \$25.00 |
| Voice Mail Mailbox- Business only | | | \$9.00 | \$40.00 |
| Voice Messaging Service Residence only | | | \$3.00 | \$15.00 |

Issued: March 28, 2012

Effective:

Issued By:

Jerome Nussbaum, President
16830 Ventura Blvd., Suite 350
Encino, CA 91436

ORIGINAL

RECEIVED

MILLER ISAR INC.
TRUSTED ADVISORS

2012 JUL 17 P 3:34

4423 POINT FOSDICK DRIVE, NW
SUITE 306
GIG HARBOR, WA 98335
TELEPHONE: 253.851.6700
FACSIMILE: 866.474.3630
WWW.MILLERISAR.COM

ANDREW O. ISAR
ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Via Overnight Delivery

July 17, 2012

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street, Room 108
Phoenix, Arizona 85007-2996

Re: Staff's Second Set of Data Requests to Preferred Long Distance, Inc., Docket No. T-04308A-12-0118

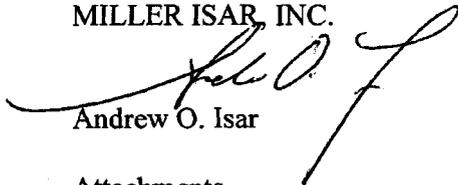
Dear Sir/Madam:

Pursuant to Staff's June 29, 2012 Second Set of Data Requests in the above-referenced matter, Preferred Long Distance, Inc. ("Preferred" or the "Company"), provides the attached responses. An original and thirteen (13) copies of this letter and attachments are enclosed.

Please acknowledge receipt of this filing by file-stamping and returning the additional copy of this Application and transmittal letter in the self-addressed, postage-paid envelope provided for this purpose. Questions may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.



Andrew O. Isar

Attachments

Regulatory Consultants to
Preferred Long Distance, Inc.

cc: Ms. Pam Genung via electronic delivery (PGenung@azcc.gov)

Arizona Corporation Commission
DOCKETED
JUL 17 2012

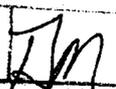
DOCKETED BY 

EXHIBIT
A-3
ADMITTED

STAFF'S SECOND SET OF DATA REQUESTS TO
PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

Each of the following responses was prepared by:

Keith Nussbaum
Executive Vice President
Preferred Long Distance, Inc.
16830 Ventura Boulevard, Suite 350
Encino, California 91436
Telephone: 818.380.9090

and

Andrew O. Isar,
Miller Isar, Inc.
4423 Point Fosdick Drive, NW
Gig Harbor, Washington 98335
Telephone: 253.851.6700

Regulatory Consultants to
Preferred Long Distance, Inc. ("Preferred")

PJG 2.1 In reference to Preferred Long Distance's response to item (A-19) in its Application, please identify how Preferred Long Distance intends to provide customer service to its facilities-based Arizona customers. (e.g. any maintenance and repair issues will be addressed by CenturyLink and coordinated with Preferred Long Distance's qualified technical staff based in California)

Response: Preferred's "facilities-based" local exchange service refers to service provided through leased unbundled network elements ("UNEs"), provisioned through, and maintained by, Qwest Corporation dba CenturyLink QC ("CenturyLink").¹ Preferred maintains a dedicated in-house customer service organization to support all subscribers, and employs trained and experienced individuals responsible for direct coordination with CenturyLink for resolution of technical issues.

¹ Preferred is not a "facilities-based" carrier in the sense that it has deployed and maintains its own physical network in Arizona or elsewhere.

STAFF'S SECOND SET OF DATA REQUESTS TO
PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

PJG 2.2 In reference to Preferred Long Distance's response to item (A-11) of its Application, regarding past or present formal or informal complaint proceedings, please provide the following information 1.) Why the following items were not disclosed; 2.) A status on any complaints that remain unresolved; 3.) Any change in operations of Preferred Long Distance resulting from the following complaints:

- a. In Wisconsin, 4 slamming related complaints (3 long distance and 1 local service) over the last 12 months;
- b. In Oregon, 14 complaints for unauthorized switch of service (slamming) over the last 12 months, 2 of the 14 complaints are still open;
- c. In Indiana, 19 complaints, (16 slamming related and 3 "high bill" related) over the last 12 months.

Response: Preferred interpreted the term "proceedings" in Application item A-11 as entailing an actionable regulatory matter. Preferred acknowledges that despite its constant, affirmative scrutiny of independent third party verifications and compliant account transfer procedures, there are instances where inquiries and complaints do occur, consistent with the experience of all telecommunications service providers. Preferred is not immune. In each of the aforementioned matters, all issues were resolved and no further regulatory inquiry or action was taken or deemed necessary. Preferred is one of the few carriers employing live, rather than automated, independent third party verification and voluntarily imposes an obligation on to its third party verifier to place an immediate callback to the customer. This extra procedure is costly and time sensitive, but has dramatically reduced unauthorized account transfers allegations. A review of the matters raised by individuals and the Company's account transfer procedures has confirmed the viability of the Company's current procedures, though Preferred strives to ensure that customer communications remain clear and understandable. Preferred notes that the number of inquiries and complaints has decreased dramatically in 2012 as a result of its continued efforts to mitigate the potential for complaints.

STAFF'S SECOND SET OF DATA REQUESTS TO
PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

PJG 2.3 Please provide the name, address, and telephone number of each marketing organization that Preferred Long Distance has hired or plans to hire to sell/market its services in Arizona.

Response: Preferred has no immediate intention to hire an outside marketing organization, relying instead on its in-house sales and marketing team. To the extent that Preferred determines that it may become more effective to engage an outside marketing organization in Arizona once it gains Arizona operating experience, it may pursue reputable entities.

PJG 2.4 Please provide a copy of the current script used by Preferred Long Distance's Sales/Marketing group to solicit Preferred Long Distance's services to customers.

Response: Please see attached.

PJG 2.5 Please provide the name address, and telephone number of Preferred Long Distance's Third-Party Verification Vendor.

Response: Preferred's third-party verification vendors are DCC Solutions, LLC, dba Capitol Verification; 69 N. 28th Street, Suite 200, Superior, WI 54880; telephone (715) 392-7253 and BSG TPV, LLC dba VoiceLog; 7411 John Smith Drive, Suite 1500, San Antonio, TX 78229; telephone (888) 505-9871

PJG 2.6 Please provide a copy of the current script used by Preferred Long Distance's Third- Party Verification Vendor when validating orders to change a customer's long distance carrier.

Response: Please see attached.

Response to PJG 2.4
Sales/Marketing Script

Hi (customers name), my name is _____, I am calling on behalf of Preferred Long Distance, Inc., one of the fastest growing telecommunications companies in the country, to quickly tell you how Preferred Long Distance can provide you with better, more cost-effective local and long distance calling and to give you an opportunity to experience for yourself.

Before I tell you about the benefits of switching to Preferred, can I get your name and your title within the company?

And are you authorized to make changes to the phone account?

Are you over the age of 18?

Thank you.

Preferred offers highly competitive rates, U.S.-based Customer Service with trained and experienced representative, and an easy to read bill. Preferred is a growing business like yours with a passion for helping other growing companies succeed.

Switching to Preferred provides benefits of keeping your same phone number(s), without interrupting your current phone service or the service quality of service you have today. Yet you can enjoy additional benefits of lower pricing, more immediate and personal customer service, and ongoing support.

We also offer alternative affordable price plans that small and medium size businesses can benefit from. **(Agent quotes rates)**

If you don't like the service for any reason you may switch away at any time without any penalty or switch fees from Preferred.

Do you have any questions so far on how this works? If no, then ask:

Would you like to try the service... If yes, then state:

Alright, to get you started with Preferred it is required for us to go through a quick independent third party verification of your decision to join thousands of subscribers that have switched to Preferred. The verifier will ask a few questions to make sure you are the authorized decision maker; that I have given you the correct prices; and, you understand that my company is in no way, shape, or form, a branch, division or a subsidiary of CenturyLink. You do understand all of this, correct?

Great, hang on and I will transfer you to a third party verifier to complete your order?

Response to PJG 2.6
PREFERRED LD VERIFICATION SCRIPT
FOR LOCAL AND LD SERVICE
CALL IN NUMBER IS (210) 418-7891

REP WILL USE THEIR TOUCH TONE KEY PAD TO INPUT THE CUSTOMER'S TELEPHONE NUMBER:

”

(REP MUST give the following information in order)

1. My Rep. ID# is ____ with **(state your room name)**
2. *My Product Code is xxx B-AZ*
3. *I have (contact's first and last name) on line with us.*

VERIFIER NOW ASKS THE FOLLOWING QUESTIONS TO THE REPRESENTATIVE:

Representative please state the full name of the customer's business ____ (Enter Name)

How many total lines are at this location? ____ (Enter# in box)

Are there any Existing Toll Free Numbers? ____ (If Yes, mark box)

Does the customer have or want VOICEMAIL SERVICE?

Are there any Additional Locations: (up to 4) Repeat question 1-4 for each additional location.

Thank you, Representative you may now clear the line (REP IS NOT ALLOWED TO SPEAK AFTER THIS POINT OR CALL WILL BE TERMINATED).

Hello, Mr./Mrs. _____. My name is _____ with Voicelog. We are an independent third party retained to verify Preferred Long Distance, Inc. orders. This conversation is being recorded to avoid any unauthorized changes to your phone service.

Today's date is (date). If anything I ask is different than what the representative discussed with you, please feel free to stop me at any time, OK?. (Yes/No)

Is your main billing telephone number (STATE THE BTN)? (YES OR NO)
What is your business name and address?

Do you understand the representative has called you on behalf of PREFERRED LONG DISTANCE, Inc. and not your local phone company and PREFERRED LONG DISTANCE, Inc. and your local phone company are not affiliated in any way and are SEPARATE companies COMPETING with each other? (YES OR NO).

Do you authorize Preferred Long Distance Inc. to switch your local telephone service for all your numbers? (yes or no)?

And your in-state local toll service (yes or no)?

your instate long distance service (yes or no)?

your state to state long distance service (yes or no)?

and your international service, if used? (yes or no)

Great, I show you have chosen the following price plan: Your local calling plan will now be \$xx.xx per line with unlimited local calling. Each feature and directory listing is \$x5.xx (if requesting VOICE MAIL THEN ADD "along with VOICEMAIL for \$xx.xx per month?). Quality Control may call you back later for you to decide which features you want to keep and pay for. Your first 100 minutes of domestic long distance calling is free and then your rate is x.x cents for all state to state calls and x.x cents for all in-state long distance and local toll calls, plus taxes and surcharges. There are no minimums or penalties. Is all of this correct? (YES OR NO

And to confirm you are over 18 years old and authorized to choose Preferred Long Distance, Inc. as your new local, and long distance provider for all lines associated with your business please state your position with your company and your date of birth? (Customer States Title /Reject and date of birth MM/DD/YY)

Thank you for choosing Preferred Long Distance. I'll need to call you right back to complete the verification process may I reach you at ###-###-####,(if NO, then the Verifier must get the number the customer is at) ?

Thank you sir/mamm, you may now disconnect and I will call you right back.

Hello, Mr/Ms__this is __ with Voicelog, calling you back.

Would you please confirm Preferred Long Distance, Inc. will now provide local service as well, as long distance service for all lines associated with your business. (YES or NO)

Thank you for your order. A written confirmation will be mailed to you shortly. Please remember that PREFERRED LONG DISTANCE, Inc. is not affiliated with your local phone company but they are separate companies competing with each other.

A Quality Control Representative may contact you if they have questions about your order. If you have any future questions please call customer service at 1-888-235-2026. Thank you and have a nice day. Good-bye.

(if customer doesn't disconnect then Verifier will say: "Customer you may disconnect now".

ORIGINAL

**MILLER
ISAR** INC.
TRUSTED ADVISORS

4423 POINT FOSDICK DRIVE, NW
SUITE 306

GIG HARBOR, WA 98335
TELEPHONE: 253.851.6700
FACSIMILE: 866.474.3630
WWW.MILLERISAR.COM

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

2012 SEP 13 PM 12 24

ANDREW O. ISAR

Arizona Corporation Commission
DOCKETED
SEP 13 2012

DOCKETED BY
JM

Via Overnight Delivery

September 12, 2012

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street, Room 108
Phoenix, Arizona 85007-2996

Re: Staff's Third Set of Data Requests to Preferred Long Distance, Inc., Docket No. T-04308A-12-0118

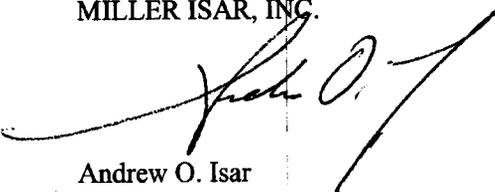
Dear Sir/Madam:

Pursuant to Staff's August 8, 2012 Third Set of Data Requests in the above-referenced matter, Preferred Long Distance, Inc. ("Preferred" or the "Company"), provides the attached responses. Preferred's responses are timely filed following a ten day response period extension, until September 17, 2012, granted by staff. An original and thirteen (13) copies of this letter and attachments are enclosed.

Please acknowledge receipt of this filing by file-stamping and returning the additional copy of this Application and transmittal letter in the self-addressed, postage-paid envelope provided for this purpose. Questions may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.


Andrew O. Isar

Attachments

Regulatory Consultants to
Preferred Long Distance, Inc.

cc: Ms. Pam Genung via electronic delivery (PGenung@azcc.gov)

EXHIBIT
A-4
ADMITTED

STAFF'S THIRD SET OF DATA REQUESTS TO
PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

Each of the following responses was prepared by:

Keith Nussbaum
Executive Vice President
Preferred Long Distance, Inc.
16830 Ventura Boulevard, Suite 350
Encino, California 91436
Telephone: 818.380.9090

and

Andrew O. Isar
Miller Isar, Inc.
4423 Point Fosdick Drive, NW
Gig Harbor, Washington 98335
Telephone: 253.851.6700

Regulatory Consultants to
Preferred Long Distance, Inc. ("Preferred")

PJG 1.1 Most recently, the Federal Communications Commission ("FCC") has issued Orders addressing several slamming complaints filed against Preferred Long Distance. Please provide the following information related to the complaints addressed in the FCC Orders listed below 1.) an explanation for these slamming complaints; 2.) the total monetary penalty imposed on Preferred Long Distance related to these complaints:

Response: Preferred Long Distance, Inc. ("PLD") has, since beginning operations in 1995, provided local exchange and interexchange services to thousands of subscribers throughout its authorized operating territories. In each instance, PLD has verified each account transfer through use of an independent third party verification ("TPV") pursuant to 47 C.F.R. §64.1120(c)(3), and has taken great care to monitor all verifications through a rigorous live verification process, including a callback procedure not required by any regulation, and separately communicates with all new subscribers following their subscription with a Quality Control or Welcome Call and Welcome and Confirmation letter.

The recent FCC Orders, addressed in detail below and in the attached spreadsheet, are in several cases unfounded (DAs 12-1241, 12-1242, and 12-1255), were mis-categorized as slamming complaints (DA 12-1242 and 12-1255), or entail interpretive matters that the Orders now clarify (DAs 1253, 1254 and 1255). In no instance do these citations suggest that the Company intentionally transferred accounts without authorization, or otherwise mislead subscribers. Rather, these complaints are based on technical interpretations which Preferred has subsequently corrected. The citations constitute an exceptionally negligible percentage of the total number of

STAFF'S THIRD SET OF DATA REQUESTS TO
PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

successful account transfers PLD performs each year, and are believed consistent with the number of citations typically received by virtually all local exchange and interexchange carriers.

PLD acknowledges the FCC's stated interpretation of information to be given to prospective subscribers when transfers are verified, and has made immediate changes in the information provided to prospective subscribers and applicable operations. Yet PLD also maintains that these citations do not reflect the Company's commitment to, and successful provision of, responsible, reliable, and compliant telecommunications services to the public.

The FCC's findings in paragraph 4 of each Order are replicated below with Preferred's discussion. A summary of each complaint, and the financial total monetary penalty associated with the complaint, where applicable, appears in the attached spreadsheet.

- a. FCC, DA 12-1254, Released August 3, 2012, *In the Matter of Preferred Long Distance, Inc. Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier* (addresses a total of 21 complaints, 1 filed in 2010, 10 filed in 2011, and 10 filed in 2012); and
- d. FCC, DA 12-1253, Released August 3, 2012, *In the Matter of Preferred Long Distance, Inc. Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier* (addresses 2 complaints filed in 2011); and

Response: According to the FCC Orders,

PLD states that authorizations were received and confirmed through third party verifications (TPVs). We have reviewed the TPVs that PLD submitted with its response. In each case, during the course of the TPV, the verifier recited a telephone number presumably associated with the business. However, our rules require that the TPV specifically elicit the "telephone numbers to be switched," rather than merely verifying numbers associated with a business or residence, or for what purpose the numbers are used.¹

In pertinent part, Section 64.1120(C)(iii), Requirements for content and format of third party verification, states, "Any description of the carrier change transaction by a third party verifier must not be misleading, and all third party verification methods shall elicit, at a minimum... the telephone numbers to be switched..." The FCC's Orders make clear that "the telephone numbers to be switched" means each telephone number associated with the switched account. PLD has amended its TPV

¹ See 47 C.F.R. § 64.1120 (c)(3)(iii).

STAFF'S THIRD SET OF DATA REQUESTS TO
PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

script to now capture each telephone number associated with a prospective account transfer, in these two instances, the Company subsequently determined that it had not ascertained all of the telephone numbers associated with the account at the time of verification but afterward.²

Customer Proprietary Network Information restrictions set forth in 47 C.F.R. §§64.2011 *et seq.* and Section 64.2005 specifically, have in limited instances made it difficult for the Company to obtain *every* telephone number associated with a commercial account at the time of verification. In other instances, the individual authorized to make the election to transfer accounts does not have the listing of all telephone numbers available, requiring after the fact verification.

In light of the foregoing, PLD has changed its procedures to obtain full account information from the customer during initial contact up to and including telephone bills in all cases, that are then used in making the TPV.

- b. FCC, DA 12-1255, Released August 3, 2012, *In the Matter of Preferred Long Distance, Inc. Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier* (addresses a total of 6 complaints, 2 filed in 2010, 3 filed in 2011, and 1 filed in 2012); and

Response: According to the FCC Order,

We have reviewed the TPVs PLD filed with its responses, and we find that, in each case, PLD's verifier failed to obtain separate authorization for each service being sold, as required by our rules.³ We find that PLD has failed to produce clear and convincing evidence of a valid authorized carrier change by Complainant.⁴ Therefore, we find that PLD's actions did result in an unauthorized change in Complainant's telecommunications service and we discuss PLD's liability below.⁵

Pursuant to Section 64.1120(b) of the FCC's rules, 47 C.F.R. § 64.1120(b), "Where a telecommunications carrier is selling more than one type of telecommunications service (e.g., local exchange, intraLATA toll, and interLATA toll), **that carrier must obtain separate authorization from the subscriber for each service sold,**

² The failing came to light because the subscribers elected to switch back to their former providers and became disgruntled by the time it took PLD and the former provider to transfer the account back, giving rise to the complaint.

³ See 47 C.F.R. § 64.1120(c)(3)(iii).

⁴ See 47 C.F.R. § 64.1150(d).

⁵ If such Complainant is unsatisfied with the resolution of this complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See 47 C.F.R. § 1.719.

STAFF'S THIRD SET OF DATA REQUESTS TO
PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

although the authorizations may be obtained within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this part [emphasis supplied].” In this instance, PLD had verified the subscriber’s local exchange service in one question and their local toll and in-state and state to state long distance service and international service in another question. PLD thought it was compliant by asking for each service and obtaining separate authorizations for local service and then another for interexchange service. PLD has since amended its scripting policies by specifically verifying election of each service separately to ensure compliance. No change in Company procedures is warranted because the change in procedures was addressed in April, 2012.

- c. FCC, DA 12-1242, Released August 2, 2012, *In the Matter of Preferred Long Distance, Inc. Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier* (addresses 4 complaints filed in 2011); and

Response: According to the Order, “PLD has not submitted third party verifications or letters of agency, as required by our rules.⁶ We find that PLD has failed to produce clear and convincing evidence that Complainants authorized a carrier change.”⁷ PLD has carefully reviewed its mail log and found no record of receipt of this FCC inquiry as a slamming complaint. The Company made an inquiry with the Commission and determined that the complaints had pertained to cramming allegations, that did not require a TPV. It is unclear why the Commission subsequently re-classified the complaints as slamming and concluded that insufficient evidence had been provided in the absence of a TPV.

- d. FCC, DA 12-1241, Released August 2, 2012, *In the Matter of Preferred Long Distance, Inc. Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier* (addresses 1 complaint filed in 2012).

Response: According to the FCC’s Order, “PLD states that authorization was obtained by third party verification (TPV). We have reviewed the TPV that PLD submitted with its response. We find that PLD’s verifier, however, failed to confirm authorization regarding the switch of interLATA service, as required by our rules.⁸” This complaint involved the transfer of local service only. No interLATA service was involved in the transfer, which is why no mention was made of interLATA account transfers in the TPV.

⁶See 47 C.F.R § 64.1120-64.1130.

⁷See 47 C.F.R. § 64.1150(d).

⁸See 47 C.F.R § 64.1120(c)(3)(iii).

STAFF'S THIRD SET OF DATA REQUESTS TO
PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

PJG 1.2 Please identify any other pending complaints filed against Preferred Long Distance at the FCC which have not yet been addressed by the FCC.

Response: On July 16, 2012 PLD responded to 12-S3435878. Also, PLD will be responding to 12-S003465; 12-S3454906; 12-S003483; 12-S003459. PLD recognizes the TPV's for these accounts do not meet the technical expectations of the rules since they were conducted prior to amendment of the Company's verification procedures.

PJG 1.3 Please provide any actions or changes in operations that Preferred Long Distance intends to put in place to alleviate the number of slamming complaints it has been receiving at the federal level.

Response: As noted above, the federal complaints not otherwise misclassified or inaccurate as to the Company's compliance have focused on the clarity of the TPVs with regard to telephone numbers being transferred and the nature of services which are to be provided by PLD. Though slamming complaints have constituted isolated occurrences, the recent spate of FCC orders dating back to 2010 has caused the Company to review its TPV and associated practices governing collection of all telephone numbers in all instances before the TPV is conducted to make amendments in these practices. The Company has adopted changes in both to maintain the strictest compliance with FCC rules. Scripts have been amended to ensure compliance. Additional processes have been put in place to avoid transferring service for any telephone number that is not explicitly verified accurately. And measures have been addressed with Customer Service supervisors and staff to accommodate customers where they are disputing the transfer of service, including playing the TPV recording as soon as it is available and investigating the true nature of the complaint.

| ORDER# | IC NO. | ACCT# | DID CUSTOMER PAY | IF PAID HOW MUCH | COMMENTS |
|------------|--------------|-----------|---------------------|---------------------|---|
| DA 12-1241 | 12-S3353245 | I - 73257 | N | \$ - | CLAIMS WE FAILED TO ASK INTERLATA SERVICE BUT WE NEVER PROVIDED INTERLATA SERVICE B/C IT WAS A LOCAL ONLY CUSTOMER |
| DA 12-1242 | 11-S3106034 | I - 63890 | Y | \$ 285.29 | WE DIDN'T GET A SLAMMING COMPLAINT WITH THIS IC#. THE COMPLAINT WE RECEIVED WAS A CRAMMING COMPLAINT 11-C00281819-1, WHICH DOESN'T REQUIRE A TPV BE PROVIDED |
| DA 12-1242 | 11S3218877 | I - 72515 | Y | \$ 99.17 | WE DIDN'T GET A SLAMMING COMPLAINT WITH THIS IC#. THE COMPLAINT WE RECEIVED WAS A CRAMMING COMPLAINT 11-C00320409-1, WHICH DOESN'T REQUIRE A TPV BE PROVIDED |
| DA 12-1242 | 11S3247492 | I - 74652 | Y | \$ 176.88 | WE DIDN'T BELIEVE IT WAS REQUIRED B/C WE SETTLED THE MATTER WITH THE CUSTOMER AND APPLIED CREDITS TO THEIR ACCOUNT; ALSO, THE NATURE OF THEIR CLAIM DID NOT INVOLVE SLAMMING BUT WAS SIMPLY UPSET B/C WE TURNED OUT TO BE HIGHER THAN THEIR PREVIOUS CARRIER |
| DA 12-1242 | 11S3259759 | I - 76220 | N | \$ - | WE DIDN'T BELIEVE A TPV WAS NECESSARY IN SUPPORT OF OUR POSITION. THE NATURE OF THE COMPLAINT REVOLVED AROUND A DISPUTE OF PORT OUT DATES AND THEN TAKING BACK THE LINES, SINCE NONE OF THESE FACTS WERE ACCURATE WE DID NOT BELIEVE A TPV WAS NECESSARY AND NONE WAS AVAILABLE B/C WE NEVER TOOK BACK THE LINES AS ALLEGED. THE INITIAL SWITCH WAS NEVER IN QSTN. WE THOUGHT WE WERE COMPLAINT BY ASKING EACH SERVICE ALTHOUGH ONLY AS TWO QUESTIONS, 1 FOR LOCAL AND 1 FOR LONG DISTANCE. |
| DA 12-1255 | 10-R2658295S | I - 57654 | N | \$ - | AS OF APRIL, 2012 WE HAVE IMPLEMENTED SEPARATE QUESTIONS FOR EACH SERVICE |
| DA 12-1255 | 10-S2726918 | I - 55877 | Y | \$ 114.26 | QSTN. WE THOUGHT WE WERE COMPLAINT BY ASKING EACH SERVICE, ALTHOUGH ONLY AS TWO QUESTIONS, 1 FOR LOCAL AND 1 FOR LONG DISTANCE. AS OF APRIL, 2012 WE HAVE IMPLEMENTED SEPARATE QUESTIONS FOR EACH SERVICE |
| DA 12-1255 | 11-S3134372 | I - 68892 | N | \$ - | QSTN. WE THOUGHT WE WERE COMPLAINT BY ASKING EACH SERVICE, ALTHOUGH ONLY AS TWO QUESTIONS, 1 FOR LOCAL AND 1 FOR LONG DISTANCE. AS OF APRIL, 2012 WE HAVE IMPLEMENTED SEPARATE QUESTIONS FOR EACH SERVICE |
| DA 12-1255 | 11-S3150573 | I - 71308 | N | \$ - | QSTN. WE THOUGHT WE WERE COMPLAINT BY ASKING EACH SERVICE, ALTHOUGH ONLY AS TWO QUESTIONS, 1 FOR LOCAL AND 1 FOR LONG DISTANCE. AS OF APRIL, 2012 WE HAVE IMPLEMENTED SEPARATE QUESTIONS FOR EACH SERVICE |
| DA 12-1255 | 11-S3218915 | I - 72817 | Y | \$ 403.82 | WE FAILED TO ASK EACH SERVICE AS A SEPARATE QSTN BUT THIS WAS NOT SENT TO US AS A SLAMMING COMPLAINT UNDER THIS IC NO., IT WAS SENT AS A CRAMMING COMPLAINT WITH IC NO. 11-C00317631-1 WHICH DOES NOT REQUIRE A TPV BE SENT WITH IT AND WE DIDN'T SEND ONE WITH THIS RESPOSNE |

| | | | | | | |
|------------|-------------|------------|---|----|--------|---|
| DA 12-1255 | 12-S3353014 | I - 83371 | Y | \$ | 115.59 | WE FAILED TO ASK EACH SERVICE AS A SEPARATE QSTN. WE THOUGHT WE WERE COMPLAINT BY ASKING EACH SERVICE, ALTHOUGH ONLY AS TWO QUESTIONS, 1 FOR LOCAL AND 1 FOR LONG DISTANCE. AS OF APRIL, 2012 WE HAVE IMPLEMENTED SEPARATE QUESTIONS FOR EACH SERVICE |
| DA 12-1253 | 11-S3114711 | P - 162456 | Y | \$ | 269.52 | WE FAILED TO STATE EACH NUMBER SEPARATELY WE FAILED TO STATE EACH NUMBER SEPARATELY BUT WE NEVER SUBMITTED ANY TPV ON THIS RESPONSE B/C WE DID NOT RECEIVE A SLAMMING COMPLAINT WITH THIS IC NO. WE RECEIVED A CRAMMING COMPLAINT WITH IC NO 11-C00319601-1, WHICH DOES NOT REQUIRE A TPV BE SUBMITTED |
| DA 12-1253 | 11-S3218818 | I - 74135 | Y | \$ | 137.23 | DOES NOT REQUIRE A TPV BE SUBMITTED |
| | | | | | | UNKNOWN B/C CUSTOMER WAS ON US OVER 2 YEARS AGO AND USAGE RECORDS HAVE BEEN PURGED. BUT CUSTOMER WAS ONLY ON US FOR 19 DAYS |
| DA 12-1254 | 10-S2749689 | P - 155922 | Y | \$ | - | WE FAILED TO STATE EACH NUMBER SEPARATELY. THIS WAS NOT SENT TO US AS A SLAMMING COMPLAINT UNDER THIS IC NO., IT WAS SENT AS A CRAMMING COMPLAINT IC NO. 10-C00238666-1 |
| DA 12-1254 | 11-S003135 | P - 163303 | Y | \$ | 204.65 | WE FAILED TO STATE EACH NUMBER SEPARATELY WE FAILED TO STATE EACH NUMBER SEPARATELY BUT WE SHOULD NOT HAVE BEEN SENT THIS COMPLAINT B/C THE COMPLAINT WAS FOR THEIR ILLINOIS LOCATION WHICH WE NEVER PROVIDED SERVICE FOR, NOT THE N.M. LOCATION, WHICH WAS NEVER IN DISPUTE |
| DA 12-1254 | 11-S003178 | I - 71991 | N | \$ | - | DISPUTE |
| | | | | | | WE FAILED TO ASK EACH SERVICE AS A SEPARATE QSTN, BUT WE NEVER SUBMITTED ANY TPV ON THIS RESPONSE B/C WE DID NOT RECEIVE A SLAMMING COMPLAINT WITH THIS IC NO. WE RECEIVED A CRAMMING COMPLAINT WITH IC NO. 11-C00279651-1 WHICH DOES NOT REQUIRE A TPV BE SUBMITTED |
| DA 12-1254 | 11-S3105915 | I - 64462 | N | \$ | - | WE FAILED TO ASK EACH NUMBER SEPARATELY. THE CUSTOMER WAS NEVER COMPLAINING ABOUT OUR LD CHARGES, SHE WAS COMPLAINING ABOUT CHARGES FROM SILV COMMUNICATIONS. |
| DA 12-1254 | 11-S3197859 | P - 16133 | Y | \$ | 201.68 | WE FAILED TO ASK EACH NUMBER SEPARATELY, BUT THIS WAS NOT A SLAMMING COMPLAINT WITH THIS IC NO., BUT A CRAMMING COMPLAINT WITH IC NO 11-C00320260-1. WE DID NOT PROVIDE A TPV WITH OUR RESPONSE |
| DA 12-1254 | 11-S3218846 | P - 169274 | Y | \$ | 100.80 | WE FAILED TO ASK EACH NUMBER SEPARATELY, BUT THIS WAS NOT A SLAMMING COMPLAINT WITH THIS IC NO., BUT A CRAMMING COMPLAINT WITH IC NO 11-C00321996. WE DID NOT PROVIDE A TPV WITH OUR RESPONSE |
| DA 12-1254 | 11-S3218864 | P - 162464 | Y | \$ | 202.07 | RESPONSE |

| | | | | | |
|------------|-------------|------------|---|-------------|--|
| | | | | | WE FAILED TO ASK EACH NUMBER SEPARATELY, BUT THIS WAS NOT A SLAMMING COMPLAINT WITH THIS IC NO., BUT A CRAMMING COMPLAINT WITH IC NO 11-C00320128-1. WE DID NOT PROVIDE A TPV WITH OUR RESPONSE |
| DA 12-1254 | 11-S3218890 | P - 165643 | Y | \$ 178.15 | |
| DA 12-1254 | 11-S3227030 | P - 173125 | Y | \$ 106.47 | WE FAILED TO STATE EACH NUMBER SEPARATELY SAYS WE FAILED TO STATE EACH NUMBER SEPARATELY, BUT WE ONLY SWITCHED THE ONE NUMBER STATED THAT THE CUSTOMER HAD SAYS WE FAILED TO STATE EACH NUMBER SEPARATELY, BUT CUSTOMER ONLY HAS 1 NUMBER & IT WAS STATED IN TPV, PLUS HE LATER SIGNED AN LOA CONTRACT & IS STILL ACTIVE |
| DA 12-1254 | 11-S3286476 | I - 79311 | N | \$ - | |
| DA 12-1254 | 11-S3287268 | I - 78236 | Y | \$ 727.59 | |
| DA 12-1254 | 12-S003307 | I - 82109 | Y | \$ 260.00 | WE FAILED TO STATE EACH NUMBER SEPARATELY |
| DA 12-1254 | 12-S003308 | I - 81571 | Y | \$ 353.73 | WE FAILED TO STATE EACH NUMBER SEPARATELY |
| DA 12-1254 | 12-S3309576 | I - 79731 | N | \$ - | WE FAILED TO STATE EACH NUMBER SEPARATELY WE FAILED TO STATE EACH NUMBER SEPARATELY, BUT THEY ONLY HAVE ONE NUMBER AND WE AUTHORIZED IT IN TPV |
| DA 12-1254 | 12-S3321288 | I - 82826 | Y | \$ 35.00 | WE FAILED TO STATE EACH NUMBER SEPARATELY, BUT THEY ONLY HAVE ONE NUMBER AND WE AUTHORIZED IT IN TPV |
| DA 12-1254 | 12-S3327086 | P - 17056 | Y | \$ 323.99 | |
| DA 12-1254 | 12-S3334393 | I - 81518 | Y | \$ 313.52 | WE FAILED TO STATE EACH NUMBER SEPARATELY |
| DA 12-1254 | 12-S3373425 | I - 84597 | Y | \$ 616.27 | WE FAILED TO STATE EACH NUMBER SEPARATELY |
| DA 12-1254 | 12-S3399206 | I - 84119 | N | \$ - | WE FAILED TO STATE EACH NUMBER SEPARATELY |
| DA 12-1254 | 12-S3409767 | I - 83060 | N | \$ - | WE FAILED TO STATE EACH NUMBER SEPARATELY |
| DA 12-1254 | 12-S3413396 | I - 86916 | Y | \$ 267.30 | WE FAILED TO STATE EACH NUMBER SEPARATELY |
| | | | | \$ 5,492.98 | |

ORIGINAL

MILLER ISAR INC.
TRUSTED ADVISORS

4423 POINT FOSDICK DRIVE, NW
SUITE 306
GIG HARBOR, WA 98335
TELEPHONE: 253.851.6700
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WWW.MILLERISAR.COM

ANDREW O. ISAR

Arizona Corporation Commission
DOCKETED

JAN 08 2013

Via Overnight Delivery

January 7, 2013

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street, Room 108
Phoenix, Arizona 85007-2996

DOCKETED BY 

Re: Supplemental Response to Staff's Third Set of Data Requests to Preferred Long Distance, Inc., Docket No. T-04308A-12-0118

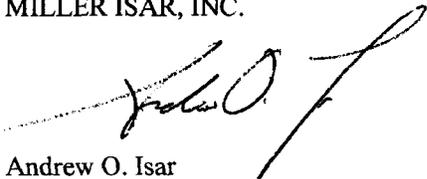
Dear Sir/Madam:

Preferred Long Distance, Inc. ("Preferred") provides the following supplement to its responses to Staff's August 8, 2012 Third Set of Data Requests in the above-referenced matter. Preferred advises the Arizona Corporation Commission of recent relevant developments following submission of the Company's responses. An original and thirteen (13) copies of this letter and attachment are enclosed.

Please acknowledge receipt of this filing by file-stamping and returning the additional copy of this Application and transmittal letter in the self-addressed, postage-paid envelope provided for this purpose. Questions may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.



Andrew O. Isar

Regulatory Consultants to
Preferred Long Distance, Inc.

Attachments

cc: Ms. Pam Genung via electronic delivery (PGenung@azcc.gov)

2013 JAN 8 8 47 AM

DOCKET CONTROL CENTER
AZ CORP COM

EXHIBIT
A-5
ADMITTED

PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

Preferred Long Distance, Inc. ("Preferred" or the "Company") provides the following supplement to information provided in its response to Staff's August 8, 2012 Third Set of Data Requests in Docket No. T-04308A-12-0118 ("Data Requests").

On December 20, 2012, the Federal Communications Commission ("FCC") released a *Notice of Apparent Liability for Forfeiture* ("NAL") to Preferred.¹ The FCC found that Preferred, "apparently willfully and repeatedly violated Sections 201(b) and 258 of the Communications Act of 1934, as amended (Communications Act or Act), and Section 64.1120 of the Commission's rules."² According to the FCC, "Preferred appears to have effectuated the carrier change by making misrepresentations to consumers that Preferred's telemarketer was calling from or on behalf of the consumer's own carrier", to have violated rules requiring it meet certain technical requirements in the third party verification script; and, proposed a significant monetary forfeiture.³

Preferred was unaware of the FCC's investigation until release of the NAL. No FCC notice or inquiry had preceded release of the NAL which is normal industry procedure. Nevertheless, the NAL is not altogether surprising in light of the consumer complaints which precipitated the NAL and on which the NAL is based (these underlying complaints are the same complaints previously identified in this ACC docket). Preferred has faithfully and accurately addressed each of these consumer complaints and its resolution of the causes resulting in these complaints in its response to staff's data requests in this proceeding, including, but not limited, amendment of sales and third party verification (TPV) scripts and enhancement of its independent, post TPV quality control account transfer verification procedures. Preferred is preparing its NAL response, and is engaging in direct discussion with the FCC Enforcement Bureau.

Where appropriate, Preferred assumes full responsibility for the actions of its agents, though maintains that the Company has endeavored to – and will continue to – fully comply with applicable account transfer regulations.

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¹ See, *In the Matter of Preferred Long Distance, Inc. Apparent Liability for Forfeiture*, File No. EB-TCD-12-00003409, NAL/Acct. No. 201332170008, FRN: 0003757473, FCC 12-159 (rel. December 20, 2012) ["NAL"].

² *Id.* at 1.

³ *Ibid.*

ORIGINAL

MILLER ISAR

TRUSTED ADVISORS

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

ANDREW O. ISAR

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2013 JAN 11 AM 11 58

Via Priority Delivery

January 9, 2013

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street, Room 108
Phoenix, Arizona 85007-2996

Re: Supplemental Response to Staff's Third Set of Data Requests to Preferred Long Distance, Inc., Docket No. T-04308A-12-0118

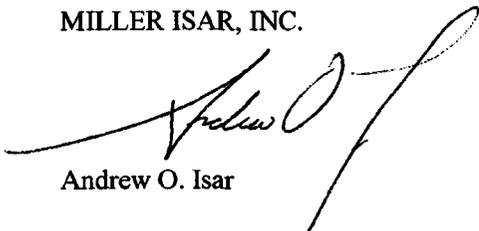
Dear Sir/Madam:

On January 7, 2013, Preferred Long Distance, Inc. ("Preferred") submitted a supplement to its responses to Staff's August 8, 2012 Third Set of Data Requests in the above-referenced matter, advising the Arizona Corporation Commission of recent relevant developments pertaining to a Federal Communications Commission Notice of Apparent Liability ("NAL") following submission of the Company's original responses to these Data Requests. Preferred now submits an original and thirteen (13) copies of the NAL into the record in this proceeding.

Please acknowledge receipt of this filing by file-stamping and returning the additional copy of this Application and transmittal letter in the self-addressed, postage-paid envelope provided for this purpose. Questions may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.



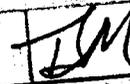
Andrew O. Isar

Regulatory Consultants to
Preferred Long Distance, Inc.

Attachments

cc: Ms. Pam Genung via electronic delivery (PGenung@azcc.gov)

Arizona Corporation Commission
DOCKETED
JAN 11 2013

DOCKETED BY 

SECRET
A-6
ADMITTED

**Before the
Federal Communications Commission
Washington, DC 20554**

| | | |
|-----------------------------------|---|------------------------------|
| In the Matter of |) | File No.: EB-TCD-12-00003409 |
| |) | |
| Preferred Long Distance, Inc. |) | NAL/Acct. No.: 201332170008 |
| |) | |
| Apparent Liability for Forfeiture |) | FRN: 0003757473 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 19, 2012

Released: December 20, 2012

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Preferred Long Distance, Inc. (Preferred or Company)¹ apparently willfully and repeatedly violated Sections 201(b) and 258 of the Communications Act of 1934, as amended (Communications Act or Act),² and Section 64.1120 of the Commission's rules.³ As discussed in more detail below, we find that Preferred has apparently changed the preferred telecommunications service providers of a number of consumers without their authorization, a practice commonly known as "slamming."⁴ The conduct here is especially egregious because in 11 of the instances of slamming on which this NAL is based, Preferred appears to have effectuated the carrier change by making misrepresentations to consumers that Preferred's telemarketer was calling from or on behalf of the consumer's own carrier. Based on our review of the facts and circumstances surrounding these apparent violations, we propose a monetary forfeiture of one million four hundred forty thousand dollars (\$1,440,000).

II. BACKGROUND

2. Preferred is a non-facilities-based interexchange carrier based in Encino, California. The Commission has received numerous slamming complaints against Preferred. Pursuant to standard Commission processes,⁵ the agency's Consumer & Governmental Affairs Bureau (CGB) served these complaints on Preferred and directed it to respond to the allegations and provide evidence of an authorized change in the subscriber's selection of a telecommunications service provider. Recently, CGB issued orders granting consumer complaints against Preferred, finding that the Company failed to provide

¹ According to the Commission's records and publicly available information, Preferred's offices are located at 16830 Ventura Boulevard, Suite 350, Encino CA 91436.

² 47 U.S.C. §§ 201(b), 258.

³ 47 C.F.R. § 64.1120.

⁴ The Appendix to this NAL identifies the consumers on whose complaints it is based, along with the dates each instance of slamming occurred and apparent violations involved.

⁵ See 47 C.F.R. § 64.1150(c), (d).

evidence of an authorized carrier change.⁶ The Enforcement Bureau (Bureau) initiated an investigation after reviewing complaints involving Preferred.⁷

III. DISCUSSION

A. Apparent Violations of Section 201(b)

3. Section 201(b) of the Act states, in pertinent part, that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.”⁸ The Commission has found that unfair and deceptive marketing practices by interstate common carriers constitute unjust and unreasonable practices under Section 201(b) of the Act.⁹ In particular, the Commission has found that a carrier violates Section 201(b) by effectuating a change to a consumer’s preferred carrier through deception about its identity, or the nature of its service.¹⁰

4. We find that Preferred apparently violated Section 201(b) by engaging in deceptive practices in connection with changes to the preferred carriers of 11 consumers. Preferred’s telemarketer apparently misrepresented its identity and the nature of the transactions in which it sought to engage 11 consumers. The telemarketer claimed to be, or be affiliated with, the complainant’s current long distance carrier. We find that these deceptive, fraudulent practices are unjust and unreasonable practices that apparently violate Section 201(b) of the Act.

5. In 11 of the violations on which this NAL is based, the complainants allege that Preferred’s telemarketer claimed to be, or be affiliated with, the consumer’s current long distance carrier. For example, Complainant Slotnick observed that “[t]his company stated and reiterated multiple times

⁶ See, e.g., *Preferred Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, DA 12-1900 (rel. Nov. 28, 2012) (granting slamming complaints filed by G. Busch, B. Littmann, and J. Dyer); *Preferred Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 27 FCC Rcd 13381 (CGB 2012) (granting slamming complaint filed by M. Tice); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 27 FCC Rcd 13333 (CGB 2012) (granting two slamming complaints, including the complaint filed by W. Legler); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 27 FCC Rcd 13328 (CGB 2012) (granting slamming complaints filed by B. Schneider, J. Ariza, and P. Almon); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 27 FCC Rcd 9026 (CGB 2012) (granting six slamming complaints, including the complaint filed by A. Russo); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 27 FCC Rcd 9021 (CGB 2012) (granting 21 slamming complaints including the complaints filed by A. Burton, D. Smith, J. Slotnick, F. Littleton, and D. Williams).

⁷ See Appendix.

⁸ 47 U.S.C. § 201(b).

⁹ See, e.g., *Business Discount Plan, Inc., Order of Forfeiture*, 15 FCC Rcd 14461 (2000) (*BDP Forfeiture Order*) (finding that the company violated Section 201(b) by using unjust and unreasonable telemarketing practices such as misrepresenting the nature of its service offerings); *Telecommunications Research & Action Center & Consumer Action*, Memorandum Opinion and Order, 4 FCC Rcd 2157 (Com.Car.Bur. 1989) (*TRAC*) (recognizing that Section 201(b) provides a cause of action against carriers for failing to convey sufficient information about their rates, practices, and range of services).

¹⁰ See *Silv Communication Inc., Notice of Apparent Liability for Forfeiture*, 25 FCC Rcd 5178 (2010) (*Silv NAL*).

that they were partnered with AT&T.”¹¹ Complainant Russo stated that she “was [c]alled by [Preferred] Long Distance who claimed they were now the authorized billing agent for [AT&T].”¹² Complainant Tice explained that the Preferred telemarketer “stated that they were a sub-division of AT&T.”¹³ The telemarketer told her that “during the verification process the [verifier] would say that [Preferred] is an independent company not affiliated with AT&T . . . [and] this was true only in the fact that they were separate yet still part of AT&T—a sub-department—and that this was just a technicality required by the FCC.”¹⁴ Other complainants allege similar instances of misrepresentation.¹⁵

6. The Commission has ruled that carriers are responsible for the conduct of third parties acting on the carrier’s behalf, including third party marketers.¹⁶ The Commission has held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors, and consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations.¹⁷ Preferred has not provided any evidence that its third party telemarketer was acting outside the scope of its engagement or employment. Thus, pursuant to Section 217 of the Act, we find the acts of Preferred’s third party telemarketer to be the acts of Preferred.

7. Preferred has not produced credible evidence that any of these complainants in fact authorized a change in his or her provider. Thus, based on the above, we conclude that Preferred apparently violated Section 201(b) of the Act by changing the preferred carriers of 11 complainants identified in the Appendix through making material misrepresentations about Preferred’s identity and/or the purpose of its calls, and therefore without cognizable authorization from such complainants.

¹¹ Complaint from J. Slotnick.

¹² Complaint from A. Russo.

¹³ Complaint from M. Tice.

¹⁴ *Id.*

¹⁵ See Complaint from P. Almon (“This company represented themselves as our carrier, AT&T.”); Complaint from A. Burton (“A representative called saying she was with AT&T and since we only had one line they had a separate company called Preferred that would be taking over small business accounts with less than 45 lines.”); Complaint from G. Busch (“Carrier deceived me by misstating their association with AT&T.”); Complaint from J. Dyer (“Preferred called and said they were a division of AT&T.”); Complaint from W. Legler (Telemarketer said they were “associated with AT&T.”); Complaint from B. Schneider (“Preferred Long Distance called on behalf of AT&T.”); Complaint from D. Smith (“I received a phone call on February 28, 2012 from a representative of Preferred Long Distance, Inc. He identified himself as representing AT&T.”); Complaint from D. Williams (“I was told by Preferred that they were with AT&T.”). Section 503(b)(6) empowers the Commission to propose a forfeiture penalty for violations that occurred within one year preceding the issuance of an NAL. Thus, this NAL is based on the complaints of consumers, identified in the Appendix, who allege to have been slammed within the past year. The Commission has reviewed similar complaints during the course of this investigation. See, e.g., Complaint from M. Carter (“Preferred Long Distance called to offer discounts to [my] phone bill. Caller identified himself as Jason with AT&T . . . I asked many times ‘You’re with AT&T’ and Jason replied ‘Yes.’”); Complaint from B. Jellinek (Telemarketer “stated they were chosen by AT&T to be [her] local & long distance provider.”).

¹⁶ See *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3300, para. 9 (2000); 47 U.S.C. § 217.

¹⁷ See *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-21864, para. 7 (2002) (citing *American Paging, Inc. of Virginia*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420, para. 11 (Wireless Bur., Enf. and Cons. Inf. Div., 1997), quoting *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244, para. 21 (1984)).

B. Apparent Violations of Section 258 of the Act and Section 64.1120 of the Commission's Rules

8. In addition to the Section 201(b) violations, we find that Preferred apparently violated Section 258 of the Act and Section 64.1120 of the Commission's rules. Section 258 of the Act makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."¹⁸ Pursuant to Section 258, the Commission has adopted implementing rules. Section 64.1120(c) provides that a carrier must verify a change in one of three ways: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130;¹⁹ (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically;²⁰ or (3) utilize an independent third party to verify²¹ the subscriber's order in accordance with certain requirements.²²

9. Section 64.1120(c)(3) sets forth detailed procedures that carriers who choose to use third party verification must follow. Among other specific requirements, the carrier's verifier must confirm "the telephone numbers to be switched," and must ensure that "any description of interLATA service . . . convey[s] that it encompasses both international and state-to-state calls, as well as some intrastate calls where applicable."²³ The requirements were adopted to ensure that consumers understand precisely the service changes they are approving and to increase consumer confidence, decrease the administrative costs for carriers, and alleviate the enforcement burden on the Commission.²⁴

10. We have reviewed the TPV recordings for 14 changes that Preferred provided, and find that they do not satisfy the requirements of the rule. For example, Complainant Russo's TPV failed to

¹⁸ 47 U.S.C. § 258(a). The Commission has found that a submitting carrier violates Section 258 of the Act when it effectuates a change in a consumer's preferred carrier through engaging in deceptive practices, such as misrepresentations about its identity, designed to prevent the consumer from understanding that the submitting carrier is, in fact, seeking to change the consumer's preferred carrier. *See BDP Forfeiture Order*, 15 FCC Rcd at 14467, para. 12 (the Commission found that "BDP knew, or should have known, that consumers acting reasonably under these circumstances would be misled or confused by BDP's telemarketing calls and that therefore, consumers were not authorizing a PIC change.").

¹⁹ 47 C.F.R. § 64.1120(c)(1).

²⁰ 47 C.F.R. § 64.1120(c)(2).

²¹ Third party verification or TPV, is one of the methods a carrier may use to verify and record a consumer's authorization to change his or her preferred long distance carrier. In general, the TPV procedures involve verification of a consumer's oral authorization to change preferred carriers by an independent third party and must strictly comply with Section 64.1120(c)(3) of the Commission's rules, 47 C.F.R. § 64.1120(c)(3).

²² 47 C.F.R. § 64.1120(c)(3).

²³ 47 C.F.R. § 64.1120(c)(3)(iii). A local access and transport area, or LATA, can cross over state boundaries. Some states have more than one LATA. LATAs can exist in multiple area codes and an area code can be in more than one LATA. An intrastate call can be an interLATA toll call.

²⁴ *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Fourth Report and Order, 23 FCC Rcd 493, 493, para. 1 (2008) (*Fourth Report and Order*). *See also Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order on Reconsideration, 27 FCC Rcd 5340, 5341-42, para. 5 (CGB 2012) (reiterating that any description of the carrier change transaction must not be misleading).

obtain separate authorizations for each service sold;²⁵ Complainant Williams' TPV included only the call-back portion of the recording, but failed to include any form of verification of the switch;²⁶ and 13 TPVs failed to confirm the telephone numbers to be switched.²⁷ Our rules require that the TPV specifically elicit the "telephone numbers to be switched," rather than merely verifying numbers associated with a business or residence, or for what purpose the numbers are used.²⁸ Thus, these verifications failed to comply with Section 64.1120 of our rules.²⁹ We find that especially where consumers contend that they did not intend to change carriers at all, and that Preferred in fact misled them, enforcement of these rules is crucial to protect consumers.³⁰

11. We also note that one of the complainants also contends that the person with whom Preferred's telemarketer spoke specifically stated that he did *not* have authority to change the company's long distance carrier. Complainant Littleton stated that "[i]n January of 2012 this company called. They were told that the person answering the phone was not authorized to make changes as the owner was out of town."³¹ Preferred's response to this allegation was nonsensical, asserting that if the consumer "lied by saying she has the authority then she committed fraud on our company."³²

²⁵ Complaint from A. Russo; *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 9026 (CGB 2012). See 47 C.F.R. § 64.1120(c)(3)(iii).

²⁶ Complaint from D. Williams.

²⁷ Complaint from P. Almon; Complaint from J. Ariza; Complaint from A. Burton; Complaint from G. Busch; Complaint from J. Dyer; Complaint from W. Legler; Complaint from F. Littleton; Complaint from B. Littmann; Complaint from B. Schneider; Complaint from J. Slotnick; Complaint from D. Smith; Complaint from M. Tice; Complaint from D. Williams. See *Preferred Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscribers' Telecommunications Carrier*, Order, DA 12-1900 (rel. Nov. 28, 2012); *Preferred Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 13381 (CGB 2012); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 13333 (CGB 2012); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 13328 (CGB 2012); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 9021 (CGB 2012).

²⁸ 47 C.F.R. § 64.1120(c)(3)(iii).

²⁹ See 47 C.F.R. § 64.1120(c)(3).

³⁰ See *Silv NAL*, 25 FCC Rcd at 5184, para. 12.

³¹ Complaint from F. Littleton. Bureau staff is aware of additional situations where the complainants argue that Preferred was specifically told by the person who purportedly authorized the carrier change switch that such person, in fact, was *not* authorized to make the switch. See, e.g., Complaint from L. Sakuma ("the employee . . . stated that he . . . was just a worker . . ." and has no authority to make any decisions). The Bureau staff reviewed the TPV for the Sakuma complaint. The TPV contains the statement from the employee that he was a cashier and does not have an affirmative response—or any response at all—to the specific question asked by the telemarketer to the employee as to whether the employee had the authority to agree to the carrier change.

³² See Letter from Keith Nussbaum, Regulatory Contact, Preferred Long Distance, Inc., to the FCC Consumer & Governmental Affairs Bureau (June 5, 2012) regarding the Complaint from F. Littleton.

12. We conclude that Preferred apparently violated Section 258(a) of the Act and Section 64.1120(c)(3) of the Commission's rules by failing to follow all of the Commission's third party verification requirements with respect to all 14 complainants.³³

IV. PROPOSED FORFEITURE

13. Section 503(b)(1) of the Act states that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.³⁴ Section 503(b)(2)(B) of the Act empowers the Commission to assess a forfeiture of up to \$150,000 for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.³⁵ For a violation to be willful, it need not be intentional.³⁶ In exercising our forfeiture authority, we are required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."³⁷ In addition, the Commission has established forfeiture guidelines, which set forth base penalties for certain violations, and identify criteria that we consider in exercising our discretion to adjust the base upward or downward.³⁸ Pursuant to the guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.³⁹

14. The Commission's forfeiture guidelines currently establish a base forfeiture amount of \$40,000 for violations of our slamming rules and orders.⁴⁰ In prior enforcement actions, the Commission has warned carriers that misrepresentations such as the ones in the instant case are serious and that future violations may receive significant upward adjustments. For example, most recently, in the *Silv NAL*, the Commission stated that "[c]arriers should be on notice that the Commission considers violations such as the ones discussed herein to be serious and that future violations may receive significant upward adjustments."⁴¹ The Commission must take swift and decisive enforcement action, including the imposition of substantial monetary forfeitures, against Preferred and any other carrier found to have engaged in misrepresentations to consumers.

³³ See, e.g., *New Century Telecom, Inc., Complaints regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 5911, 5913, para. 4 (CGB 2010) (finding that TPV recordings did not include references to intrastate interLATA service and concluding that verifier did not obtain authorization to switch interLATA service); *United Telecom, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 5758 (CGB 2012).

³⁴ 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(2).

³⁵ 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2). See *Amendment of Section 1.80 of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845, 9847 (2008) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,300,000 to \$150,000/\$1,500,000).

³⁶ *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

³⁷ See 47 U.S.C. § 503(b)(2)(E); see also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, Report and Order, 12 FCC Rcd 17087, 17100-01, para. 27 (1997) (*Forfeiture Policy Statement*).

³⁸ 47 C.F.R. § 1.80(b)(8).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Silv NAL*, 25 FCC Rcd at 5186, para. 16.

15. Applying the \$40,000 base forfeiture to each of the 14 apparent slamming violations upon which this NAL is based would result in a forfeiture of \$560,000. In this case, however, Preferred's conduct was particularly egregious, as demonstrated by our conclusion that the company also violated Section 201(b) of the Act in 11 of the 14 cases at issue by misleading consumers into believing that Preferred was calling on behalf of their current carrier. We therefore find that a significant upward adjustment is appropriate here.⁴² In light of Preferred's repeated egregious conduct, and given that we specifically addressed in the *Silv* NAL two years ago the very kind of misrepresentation at issue here, we propose to triple the base forfeiture of \$40,000 for each of the 11 apparent egregious violations at issue in this NAL—the unauthorized changes involving misrepresentations—making the penalty for each such violation \$120,000. We recognize that this adjustment is greater than that the Commission has imposed in other cases involving similar conduct, but we find that an overall penalty of this magnitude is appropriate given our prior warnings, and the apparently egregious and repeated violations at issue here. Thus, the total forfeiture we propose for Preferred's conduct is \$1,440,000.⁴³

V. CONCLUSION

16. Based on the facts and record before us, we have determined that Preferred Long Distance, Inc. has apparently willfully and repeatedly violated Sections 201(b) and 258 of the Communications Act and Section 64.1120 of the Commission's rules.

VI. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Preferred Long Distance, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of one million four hundred forty thousand dollars (\$1,440,000) for willful and repeated violations of Sections 201(b) and 258 of the Act, 47 U.S.C. §§ 201(b), 258, and Section 64.1120 of the Commission's rules, 47 C.F.R. § 64.1120.

18. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission's rules,⁴⁴ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Preferred Long Distance, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

19. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Preferred Long Distance, Inc. shall send electronic notification of payment to Johnny Drake at johnny.drake@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁴⁵ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A

⁴² 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17117, Appendix A, Section II.

⁴³ BDP's telemarketer represented that it was affiliated with the customers' existing carriers. *BDP*, 15 FCC Rcd at 14468, para. 15. The Commission found that the telemarketer repeatedly deceived consumers as to BDP's identity and the nature of its service, and imposed a \$40,000 forfeiture for each instance of slamming and an additional \$40,000 forfeiture for each instance in which BDP engaged in an unjust and unreasonable telemarketing practice.

⁴⁴ 47 C.F.R. § 1.80.

⁴⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

(payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to US Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to US Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.⁴⁶ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

20. The response, if any, must be mailed both to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau—Telecommunications Consumers Division, and to Richard A. Hindman, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption.

21. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

⁴⁶ See 47 C.F.R. § 1.1914.

22. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class Mail to the Company at 16830 Ventura Blvd, Suite 350, Encino, CA 91436.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

| Complainant | Date of slam | Violation(s) |
|-----------------------------|--------------|-------------------------|
| A. Burton 12-S3321288 | 1/9/12 | Sections 201(b) and 258 |
| F. Littleton 12-S3409767 | 1/16/12 | Section 258 |
| A. Russo 12-S3353014 | 1/30/12 | Sections 201(b) and 258 |
| J. Slotnick 12-S3399206 | 2/7/12 | Sections 201(b) and 258 |
| D. Smith 12-S3373425 | 2/20/12 | Sections 201(b) and 258 |
| W. Legler 12-S003492 | 3/30/12 | Sections 201(b) and 258 |
| G. Busch 12-S3473516 | 4/27/12 | Sections 201(b) and 258 |
| P. Almon 12-S3454906 | 5/11/12 | Sections 201(b) and 258 |
| D. Williams 12-S3413396 | 6/1/12 | Sections 201(b) and 258 |
| J. Dyer 12-S3488150 | 7/13/12 | Sections 201(b) and 258 |
| B. Schneider 12-S003459 | 7/23/12 | Sections 201(b) and 258 |
| J. Ariza 12-S003483 | 6/14/12 | Section 258 |
| B. Littmann 12-S3486508 | 8/6/12 | Section 258 |
| M. Tice 12-S003505 | 8/14/12 | Sections 201(b) and 258 |

**Before the
Federal Communications Commission
Washington, DC 20554**

| | | |
|-----------------------------------|---|------------------------------|
| In the Matter of |) | File No.: EB-TCD-12-00003409 |
| |) | |
| Preferred Long Distance, Inc. |) | NAL/Acct. No.: 20133217008 |
| |) | |
| Apparent Liability for Forfeiture |) | FRN: 0003757473 |

**RESPONSE OF PREFERRED LONG DISTANCE, INC.
TO NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

February 22, 2013

Respectfully submitted,

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TABLE OF CONTENTS

Introduction and Summary1

Discussion.....6

I. PREFERRED LONG DISTANCE HAS A HISTORY AND CULTURE OF LEGAL COMPLIANCE AND CONSUMER PROTECTION.....6

A. Preferred’s Ownership And History6

B. Preferred’s Provision Of Service And Culture Of Compliance7

1. Preferred’s marketing approach8

2. Preferred’s telemarketing safeguards.....9

3. Preferred’s independent checks on telemarketers.....11

II. THE NAL FAILS TO DEMONSTRATE THAT PREFERRED VIOLATED THE ACT OR THE COMMISSION’S RULES, AND THUS SHOULD BE RESCINDED OR CANCELLED15

A. Preferred Has Not Violated Section 201(b)15

1. Neither Preferred nor anyone acting on Preferred’s behalf made misrepresentations to consumers16

2. The NAL fails to state a claim for a Section 201(b) violation21

B. Preferred Has Not Violated Section 258 or Rule 64.112025

III. IN THE ALTERNATIVE, THE COMMISSION SHOULD RADICALLY REDUCE THE PROPOSED FORFEITURE AMOUNT29

Conclusion30

TABLE OF AUTHORITIES

Cases

| | |
|---|------|
| <i>Action for Children’s Television v. F.C.C.</i> , 827 F. Supp. 4 (D.D.C. 1993)..... | 22 |
| <i>AT&T Corp. v. F.C.C.</i> , 323 F.3d 1081 (D.C. Cir. 2003)..... | 28 |
| <i>Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc.</i> , 550 U.S. 45 (2007)..... | 3,23 |
| <i>Marcus v. AT & T Corp.</i> 938 F. Supp. 1158 (S.D.N.Y. 1996)..... | 23 |
| <i>North County Commc’ns Corp. v. California Catalog & Tech.</i> , 594 F.3d 1149 (9th Cir. 2010) | 23 |
| <i>Touche Ross & Co. v. Redington</i> , 442 U.S. 560 (1979)..... | 23 |
| <i>Weinberg v. Sprint Corp.</i> , 165 F.R.D. 431 (D.N.J. 1996)..... | 23 |

Administrative Proceedings

| | |
|---|----------------|
| <i>Business Discount Plan, Inc.</i> , Order of Forfeiture, 15 FCC Rcd 14461 (2000)..... | 21, 22, 23, 24 |
| <i>In the Matter of AT&T Commc’ns</i> , Apparent Liability for Forfeiture and Order to Show Cause, 19 FCC Rcd. 848, 850 ¶5 (2004) | 15 |
| <i>In the Matter of Gaston Coll.</i> , 25 FCC Rcd. 982 (2010)..... | 22 |
| <i>In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996</i> , Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd. 15,996, 16,016 ¶ 40 (2000)..... | 26 |
| <i>In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996</i> , 23 FCC Rcd. 493, ¶ 1 (2008)..... | 27 |
| <i>In the Matter of Preferred Long Distance, Inc., Apparent Liability for Forfeiture</i> , Notice of Apparent Liability for Forfeiture, File No.: EB-TCD-12-00003409; NAL/Acct. No: 20133217008; FRN: 0003757472 (rel: Dec. 20, 2012) | <i>passim</i> |
| <i>In Re Nos Communications, Inc.</i> , Order of Forfeiture, 16 FCC Rcd. 8133 (2001)..... | 24 |

| | |
|--|------------------------------|
| <i>Preferred Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscribers' Telecommunications Carrier, Order, DA 12-1900 (rel. Nov. 28, 2012)</i> | 4 |
| <i>Preferred Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, Order, 27 FCC Rcd 13381, ¶ 4 (CGB 2012)</i> | 4 |
| <i>Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers' Telecommunications Carrier, Order, 27 FCC Rcd 13333, ¶ 4 (CGB 2012)</i> | 4 |
| <i>Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers' Telecommunications Carrier, Order, 27 FCC Rcd 13328, ¶ 4 (CGB 2012)</i> | 4 |
| <i>Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers' Telecommunications Carrier, Order, 27 FCC Rcd 9021, ¶ 4 (CGB 2012)</i> | 4 |
| <i>Silv. Communications Inc., Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178 (2010)</i> | 21, 22 |
| <i>Telecommunications Research & Action Center & Consumer Action, Memorandum Opinion and Order, 4 FCC Rcd 2157 (Com.Car.Bur. 1989)</i> | 21, 22 |
| <u>Statutes and Rules</u> | |
| 47 U.S.C. § 201(b)..... | 2, 3, 15, 21, 22, 23, 24, 29 |
| 47 U.S.C. § 258..... | 15, 25, 29 |
| 47 C.F.R. § 64.1120 | 15, 25, 26, 29 |

**Before the
Federal Communications Commission
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| In the Matter of |) | File No.: EB-TCD-12-00003409 |
| |) | |
| Preferred Long Distance, Inc. |) | NAL/Acct. No.: 20133217008 |
| |) | |
| Apparent Liability for Forfeiture |) | FRN: 0003757473 |

**RESPONSE OF PREFERRED LONG DISTANCE, INC.
TO NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Preferred Long Distance, Inc. (“Preferred”), through counsel, hereby responds to the Commission’s December 20, 2012 Notice of Apparent Liability for Forfeiture in the above referenced proceeding.¹

Introduction and Summary

Preferred denies that it, or any entity operating on Preferred’s behalf, changed the preferred telecommunications service provider of any consumer without their authorization.² In other words, neither Preferred nor any entity operating on Preferred’s behalf “slammed” any customer.³ Preferred also categorically denies that it, or anyone operating within the scope of their authority on Preferred’s behalf, “made misrepresentations to consumers that [Preferred’s] telemarketer was calling on behalf of the consumer’s own carrier.”⁴ Accordingly, Preferred

¹ *In the Matter of Preferred Long Distance, Inc., Apparent Liability for Forfeiture*, Notice of Apparent Liability for Forfeiture, File No.: EB-TCD-12-00003409; NAL/Acct. No: 20133217008; FRN: 0003757472 (rel: Dec. 20, 2012) (“NAL”).

² *Cf.* NAL at ¶1.

³ *Id.*

⁴ *Id.* The consumer’s “own carrier” in each of the 14 instances that are the subject of the NAL was AT&T, and as set forth in greater detail below, AT&T’s “winback” marketing group has been aggressively encouraging consumers to file complaints against competing carriers in an effort to prevent AT&T account loss. Tellingly, although Preferred uses essentially similar

submits that the Commission should rescind the NAL, and conclude that Preferred has not violated the Communications Act or any Commission rule regarding the matters set forth in the NAL.

Preferred has been successfully engaged in the competitive telecommunications business for over seventeen years. Service offerings delivered by Preferred have saved consumers hundreds of thousands, if not millions, of dollars since Preferred first began providing service. Moreover, competition brought by Preferred has brought market pressure to other telecommunications providers, resulting in higher quality and lower cost service available across the board to consumers everywhere. In order to sustain a successful business for such a long period of time, Preferred has implemented and maintained a culture of compliance with federal and state laws and regulations and fairness towards consumers. As a result, Preferred has never before been the subject of a Commission Notice of Apparent Liability, and Preferred has virtually never been the subject of similar types of enforcement actions by other federal or state governing body.⁵

Regarding the specific allegations in the NAL, Preferred has not violated Section 201(b) of the Act for at least two reasons.⁶ First, as a matter of law a carrier may only be said to violate Section 201(b) of the Act when it has violated a Commission rule or engaged in a specific

telemarketing scripts throughout its footprint, the few complaints that have arisen have come solely from former AT&T customers – all of whom appear to have been guided by AT&T “winback” personnel.

⁵ Preferred acknowledges that it has received a modest number of consumer complaints over the course of its many years in business. However, that is true of all carriers, and it certainly cannot be said that Preferred has ever been accused of any pattern of noncompliance with government regulations or misdeeds towards consumers or its customers.

⁶ *Cf.* NAL at ¶ 3.

activity previously determined by the Commission to constitute a Section 201(b) violation.⁷

Here, the Commission cites no such rule, order, or other authority concluding that a third-party telemarketer's practices can result in Section 201(b) liability for a carrier. Second, the alleged "deceptive" action of the telemarketer, if it happened at all, was outside of the scope of action authorized by Preferred, and no such *ultra vires* action by a third-party telemarketer can result in Section 201(b) liability for a carrier. Thus, as a matter of law, no Section 201(b) liability exists for the alleged, but unsupported, claim that Preferred's third-party telemarketing companies engaged in "deceptive marketing practices."

In any event, the facts simply do not support a finding that Preferred engaged in any deceptive practices, and the NAL presents no reasonable evidence to the contrary. Preferred's telemarketing scripts, compliance plans, and third-party verification ("TPV") recordings demonstrate that it would be virtually impossible for a consumer to form a belief that Preferred is in any way affiliated with AT&T or any other telecommunications provider. Indeed, the TPVs demonstrate that each of the 14 consumers that are the subject of the NAL were repeatedly told that AT&T and Preferred are separate, unrelated, unaffiliated companies.

Preferred's TPV providers always record the very first instruction to the customer that "if anything I ask is different than what the representative discussed with you please feel free to stop me at anytime, OK?" The customer must agree to this instruction before the verification will proceed. Significantly, the relevant TPVs unequivocally demonstrate that none of the consumers that are the subject of the NAL expressed any sentiment that they were being told something different by the TPV provider than they were told by the telemarketer. Accordingly,

⁷ See, e.g., *Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc.*, 550 U.S. 45, 47-48 (2007) (discussing that specific behavior, codified by rule or order, must be found to create a statutory cause of action before one can be said to have violated the statute).

there is no credible evidence – only a small number of uncorroborated informal consumer complaints – that Preferred or its telemarketer engaged in any deceptive practice.

The underlying Consumer & Government Affairs Bureau (“Bureau”) orders resolving the consumer complaints similarly bear this out. In each of those orders, the Bureau based its findings on alleged highly technical violations of ambiguous Commission rules (Preferred disagrees with these findings), and not on allegations of deception. Indeed, in five of the six Bureau orders, the Bureau based its action on a purported technical violation: that Preferred had failed to identify the “‘telephone numbers to be switched’ rather than merely verifying the number associated with a business or residence, or for what purposes the numbers are to be used.”⁸ Regardless of the accuracy of this finding, it is not indicative of “deception.” Indeed, nowhere in any of the orders is a claim of “deceptive marketing practices” identified, because neither Preferred nor its third-party telemarketers deceived the consumers at issue.

As for the allegations that Preferred violated the Commission’s verification rules, these claims are wholly unrelated to the actual substance (allegations of deception) of the consumer complaints. In no instance do any of the complaints at issue match up with the alleged technical rule violation identified by the Commission. Rather, the Bureau, apparently recognizing that the TPVs submitted by Preferred in response to the informal complaints undermined the allegations of deceptive practices, took the opportunity to independently review

⁸ *Preferred Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, at ¶ 4, DA 12-1900 (rel. Nov. 28, 2012); *see also Preferred Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 27 FCC Rcd 13381, ¶ 4 (CGB 2012); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 27 FCC Rcd 13333, ¶ 4 (CGB 2012); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 27 FCC Rcd 13328, ¶ 4 (CGB 2012); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 27 FCC Rcd 9021, ¶ 4 (CGB 2012).

the content of Preferred's TPVs in order to find some other rule violation wholly unrelated to the complaints. The fact that the Bureau, and now the Commission, is unable to base its alleged technical rule violation claims in the consumer's actual complaints is not surprising because Preferred's practices are in material compliance with the relevant rules, the NAL's allegations to the contrary notwithstanding. The TPVs make very clear that the service changes made were authorized by the consumers and there simply is no objective evidence that Preferred, telemarketers, or the TPV company violated any rule, much less engaged in deception.

Though consumers have filed a nominal number of complaints against Preferred and a fraction of those purported to have been "misled" into believing that somehow Preferred and AT&T are "affiliated" companies, the TPVs provided by Preferred demonstrate that no such actual customer confusion existed at the time of the service change.⁹ Indeed, Preferred's internal investigation has revealed that AT&T's customer "winback" group is unlawfully disparaging Preferred and wrongfully encouraging consumers to file FCC complaints against Preferred alleging "deceptive" practices. Once again, however, the approved marketing scripts utilized by Preferred, along with TPV recordings independently verifying the consumers' desire to switch service providers, objectively demonstrate that no customer confusion existed for any of the alleged "slams" at issue here.

For all of these reasons, the Commission should rescind or cancel the NAL, and exonerate Preferred.

⁹ Preferred provisions over 2,500 new customer accounts each month. The 14 customer complaints during a one year period equates to .00046% of the total customers that Preferred provisions in a single year. See Affidavit of Keith Nussbaum at ¶ 27 and attached hereto as **Exhibit A**.

Discussion

I. PREFERRED LONG DISTANCE HAS A HISTORY AND CULTURE OF LEGAL COMPLIANCE AND CONSUMER PROTECTION

Preferred is a small, family-owned competitive local exchange and interexchange carrier based in Encino, California. As demonstrated below, Preferred has a history and culture of legal compliance and consumer protection.

A. Preferred's Ownership And History

Preferred was founded in 1995 by Jerry Nussbaum, who, together with his wife Claudia, are its sole shareholders.¹⁰ Before founding Preferred, Mr. Nussbaum served, from 1988 to 1991, as Vice Chairman and Chief Financial Officer for Data Line Service Company, which specialized in providing data network services to financial institutions in California. Then, from 1991 to 1994, Mr. Nussbaum was the Chief Executive Officer of Interactive Communications, Inc., a newly-established, switched-based carrier serving business and residential customers in California. For the three-year period immediately prior to founding Preferred, Mr. Nussbaum was the Chief Financial Officer of Addtel Communications, Inc., a switchless reseller providing service to customers in California, Arizona, and Washington.

Preferred commenced operations in September, 1995, after having received appropriate operating authority, including a certificate of public convenience and necessity from the California Public Utilities Commission to provide intraLATA and interLATA interexchange service issued pursuant to Decision 95-09-014, and Section 214 authorization from the Commission to resell international switched services, issued under File No. ITC-95-367.¹¹

¹⁰ Affidavit of Keith Nussbaum at ¶ 3.

¹¹ *Id.* at ¶ 4.

Preferred's initial operations consisted of the provision of long distance telephone service to California business customers.

Following several years of successful interexchange operations, Preferred began, in 2004, a gradual expansion of operations into other states and expanded the scope of its services to include local exchange services and related services, such as voicemail and DSL-based Internet access service.¹² Preferred obtained authorization to provide service in the states of Minnesota, Oregon, and Washington in 2004; Colorado, Iowa, New Mexico, and Utah in 2005; Texas in 2006; Illinois in 2007; and Florida, Georgia, Indiana, Missouri, North Carolina, Ohio, and Wisconsin in 2008.¹³ Currently, Preferred serves approximately 30,000 customers, all of whom are small to mid-size businesses.¹⁴ A little less than half of Preferred's customers receive both local and long distance service from Preferred, and the remainder subscribe only to Preferred's long distance LEC-billed service.¹⁵

B. Preferred's Provision Of Service And Culture Of Compliance

Preferred provides its services exclusively through resale of services and facilities acquired on a wholesale basis from other carriers.¹⁶ Its underlying local exchange carriers include the Qwest (now CenturyLink) and AT&T incumbent local exchange affiliates, and its underlying interexchange carrier is Qwest/CenturyLink.¹⁷ Since its inception, Preferred has

¹² *Id.* at ¶ 5.

¹³ *Id.* at ¶ 6.

¹⁴ *Id.* at ¶ 7.

¹⁵ *Id.*

¹⁶ *Id.* at ¶ 8.

¹⁷ *Id.*

relied almost exclusively on third-party telemarketing firms to solicit orders for its services, except for a short period of time between February 2010 and August 2011, when Preferred experimented with an in-house telemarketing operation.¹⁸

1. Preferred's marketing approach

For a company of Preferred's size, telemarketing is the only realistic way that Preferred can reach out to offer its high-quality, affordably-priced services across its broad regional service areas.¹⁹ Preferred is not alone in this regard; telemarketing is a common industry practice in telecommunications and in many other business. That said, Preferred has always understood that telemarketing is a difficult undertaking and that there is significant inherent potential for misunderstanding and misrepresentation to occur during the sales process.²⁰ Therefore, Preferred has been conscientious in its efforts to ensure that its customers have fully authorized Preferred to serve them before any changes are made to their existing service providers.²¹

Preferred recognizes that there is no value in misleading customers to gain their business or otherwise attempting to serve customers who do not want to receive service from Preferred.²² The cost of acquiring customers and provisioning service is far too high for such schemes to be profitable, even absent regulatory penalties.²³ Plus, those accounts would only

¹⁸ *Id.* at ¶ 9.

¹⁹ *Id.* at ¶ 10.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at ¶ 11.

²³ *Id.*

end up either not paying Preferred or being charged back by the LEC, neither of which would be profitable or in the best business interest of Preferred.²⁴ Thus, Preferred has taken pains to prevent such circumstances from occurring. In fact, Preferred was among the first companies to implement TPVs before they were even required.²⁵ It is still one of the few companies employing live verifiers rather than automated ones, although it is more expensive to do so.²⁶ And, it was one of the first companies to innovate the TPV callback by the verifier to ensure proper authorization, again at significant cost to Preferred.²⁷

2. Preferred's telemarketing safeguards

Preferred's telemarketing safeguards begin with the contractual arrangements Preferred has with its telemarketers.²⁸ Preferred is diligent in its efforts to engage only professional and experienced telemarketing firms with excellent reputations and thoroughly memorializes its expectations in writing. Attached as **Exhibit B** is Preferred's standard telemarketing contract ("Contract"), the provisions of which have been in place for over a decade. The consumer-protection provisions of Preferred's Contracts are clear and strong.

First, the Contract prohibits the telemarketer from misrepresenting Preferred's relationship with customers' existing carriers, including "direct or indirect statements to customers allowing them to believe that Preferred and their current local carrier are part of the same company, that Preferred is the new long distance service provided by their current local

²⁴ *Id.*

²⁵ *Id.* at ¶ 12.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at ¶ 13.

carrier, [or] that any rates or line charges they are receiving from their current local telephone carrier will be reduced....”²⁹ This provision is reinforced by a requirement on the part of the telemarketer to comply with Preferred’s Anti-Slamming Policy Statement (“Policy Statement”), a copy of which is attached as **Exhibit C**. This Policy Statement, the current form of which has been in effect for at least 10 years, is clear and specific in requiring that “[t]he customer must have a clear understanding that he or she is dealing with Preferred Long Distance and that we are not affiliated in any way with their current local provider, but that we are a separate competing company and they must know what our prices are for the service they are being sold.”³⁰ Further, the Contract, together with the Policy Statement requires monitoring and supervision of telemarketing sales personnel and prescribes a “zero-tolerance” policy for violations.³¹ In addition, the Contract imposes a penalty for each incident of alleged slamming, over and above a charge-back of any commission payment for the subject sale.³²

Thus, by contract, Preferred tightly controls the activity of independent telemarketers. Telemarketers are obligated to be clear and honest with consumers and follow all existing law and regulation. To the extent any telemarketer is misleading a consumer or breaking a law or regulation, that telemarketer is operating outside of the scope of their relationship with Preferred. And in no way can such an individual be said to be operating on

²⁹ **Exhibit B**, Contract at Section 5(a); *see also* Affidavit of K. Nussbaum at ¶ 14.

³⁰ **Exhibit C**, Policy Statement at 1; *see also* Affidavit of K. Nussbaum at ¶ 15.

³¹ **Exhibit B**, Contract at Section 5(a); **Exhibit C**, Policy Statement at 1, 2; *see also* Affidavit of K. Nussbaum at ¶ 16.

³² **Exhibit B**, Contract at Sections 4(b) and 5(b); *see also* Affidavit of K. Nussbaum at ¶ 17.

“behalf” of Preferred.³³ Indeed, such a telemarketer would be acting *ultra vires*, well beyond the scope of the relationship established by Preferred’s contracts.

3. Preferred’s independent checks on telemarketers

Preferred does not solely rely on its contracts with telemarketers to ensure legal compliance. Preferred makes affirmative efforts to preclude misrepresentations and misunderstandings during the initial solicitation and to counter any confusion that may have arisen during the sales process.³⁴ Beginning with the TPV, Preferred repeatedly acts to ensure that the customer understands that, upon acceptance of the customer’s order, the customer’s service will be switched to Preferred.³⁵

Preferred’s TPV scripts have evolved over time as the industry has evolved and Preferred has attempted to comply with regulatory changes and to address other issues. Preferred has continuously sought affirmative assurance from each customer that the customer understands that Preferred is a separate entity not affiliated with, but competing against, the customer’s existing provider.³⁶ This is confirmed at the beginning of the TPV and the verifier repeats this information at the end of the TPV.³⁷ Then, after the TPV is completed, the customer is notified, again, of Preferred’s separate, competitive relationship with the Customer’s existing

³³ Cf., NAL at ¶ 6.

³⁴ Affidavit of K. Nussbaum at ¶ 18.

³⁵ *Id.* at ¶ 19.

³⁶ A transcribed copy of an illustrative TPV is attached hereto as **Exhibit D**. Preferred also has included TPV recordings of each of the 14 alleged “slams” that are the subject of the NAL as **Exhibit E**.

³⁷ Affidavit of K. Nussbaum at ¶ 19.

carrier through Preferred's unique, affirmative call-back process.³⁸ Following every TPV, the TPV agent calls back the customer to confirm *again* the customer's election to switch to Preferred's service.³⁹ During these calls, the TPV agent specifically asks the customer to confirm his or her understanding that Preferred is a separate company that is competing with the customer's existing provider.⁴⁰

Preferred's efforts do not stop with TPV and affirmative call-back order confirmation (which in and of itself goes beyond legal requirements). In all instances, Preferred follows up all sales with a written order confirmation and welcome letter, which are sent out the same day as the order is provisioned.⁴¹ This letter informs the customer again, in bold type font, that Preferred is not affiliated with any other carrier. The Order Confirmation envelope is written with "Order Confirmation" so the customer will not confuse this letter with any others.⁴² These letters confirm the change to Preferred's service, including identification of each telephone number affected, state the basic terms of service, and provide the customer with the customer's service contact number and other information needed to help ensure a satisfactory and quality experience.⁴³ As an additional safeguard, Preferred also discloses on its website that it is "not affiliated with any local telephone company" in order to avoid any consumer

³⁸ *Id.* at ¶ 20.

³⁹ *Id.*

⁴⁰ A sample of recent TPV scripts is attached hereto as **Exhibit F**.

⁴¹ A copy of an Order Confirmation letter is attached hereto as **Exhibit G**.

⁴² Affidavit of K. Nussbaum at ¶ 21.

⁴³ *Id.*

confusion.⁴⁴ Likewise, Preferred has a video on its website home page that touts Preferred's benefits as a competitor with the large telephone carriers.⁴⁵

In many other cases, customers also receive a pre-provisioning "quality assurance" call from Preferred.⁴⁶ This process occurs whenever a potential provisioning issue is detected, such as a discrepancy between the sales order and the existing customer service record ("CSR") with regard to features, served telephone numbers, or billing and service addresses, or if the CSR identifies a type of service that Preferred may be unable to provide, or if the customer will have to take action to set up a service.⁴⁷ The latter occurs, for example, whenever voicemail is included in an order, which is fairly common; in such case, the customer will need instructions on how to set the voicemail answering message and how to access stored voice mails.

Because of Preferred's diligence in following up service orders in this manner, Preferred actually discontinues the provisioning process midstream for about 10% of the orders it receives.⁴⁸ In most cases, orders do not proceed to completion for technical reasons relating to Preferred's ability to furnish the ordered service, but, as noted above, processing is also discontinued in any case where the customer expresses confusion or the customer's authorization is brought into question.⁴⁹ Preferred's number one goal is to provide service of the highest quality at an affordable price. Serving customers without clear authorization is completely

⁴⁴ *Id.* at ¶ 22.

⁴⁵ *Id.*

⁴⁶ *Id.* at ¶ 23.

⁴⁷ *Id.*

⁴⁸ *Id.* at ¶ 24.

⁴⁹ *Id.*

inconsistent with that goal and antithetical to Preferred's longstanding business policies and strategy.

By the time a customer is provisioned, they have not only spoken with a sales agent, they have twice spoken with a live verifier and then a quality control agent. That is four calls with the consumer before their service is switched.⁵⁰ If anything, Preferred should be accused of overkill or praised as an outstanding example in the industry for its extensive efforts. It is unlikely any other industry carrier goes to as great lengths as Preferred to prevent slamming. Plus, a confirmation letter is sent after provisioning to follow up. These measures are lengthy, involve intensive personnel training and time, and are costly.⁵¹ Preferred would not go to such great lengths and internal controls if it were condoning misrepresentation of consumers. These measures reflect conduct by a company who strives to diligently ensure full understanding of its competitive relationship with the LEC.

Preferred recognizes that it must constantly be vigilant to prevent customers from being switched to its service without valid authorization, and Preferred strives to improve alleged technical shortcomings in Preferred's TPV scripts as they are identified.⁵² As a result, Preferred receives only a modest number of complaints given the number of accounts it provisions, which average approximately over 2,500 accounts per month.⁵³ Since Preferred's most recent update to

⁵⁰ *Id.* at ¶ 25.

⁵¹ *Id.* at ¶ 26.

⁵² *Id.* at ¶ 27.

⁵³ *Id.*

its TPV scripts, Preferred has received only one slamming complaint over the past five and a half months.⁵⁴

II. THE NAL FAILS TO DEMONSTRATE THAT PREFERRED VIOLATED THE ACT OR THE COMMISSION'S RULES, AND THUS SHOULD BE RESCINDED OR CANCELLED

In order to convert the NAL to a forfeiture order and penalty, the Commission must find by a preponderance of the evidence that Preferred has willfully or repeatedly violated the Act or a Commission rule.⁵⁵ Based on the record of this proceeding, there is no basis for the Commission to find that Preferred has violated Section 201(b) of the Act, Section 258 of the Act, or Section 64.1120 of the Commission's rules. Accordingly, the Commission should cancel or rescind the NAL.

A. Preferred Has Not Violated Section 201(b)

The NAL contends that Preferred violated Section 201(b) of the Act "by engaging in deceptive practices in connection with changes to the preferred carriers of 11 consumers."⁵⁶ Specifically, the Commission claims that Preferred's telemarketers "apparently misrepresented its identity and the nature of the transactions" and "claimed to be, or be affiliated with, the complainant's long distance carriers."⁵⁷ But, setting aside the veracity of these claims, Preferred cannot be said to have violated Section 201(b) for two reasons. First, there is no reliable evidence that Preferred or anyone acting on Preferred's behalf made misrepresentations to consumers. Second, as a matter of law Section 201(b) does not provide the Commission with

⁵⁴ *Id.*

⁵⁵ *In the Matter of AT&T Communications, Apparent Liability for Forfeiture and Order to Show Cause*, 19 FCC Rcd. 848, 850 ¶5 (2004) (cancelling NAL against AT&T because AT&T factual assertions supported by affidavits were unchallenged).

⁵⁶ NAL at ¶ 4.

⁵⁷ *Id.*

generic authority over marketing activity; rather the Commission may only enforce the Act and the Commission's own rules, none of which encompass "deceptive marketing practices" or were otherwise violated by Preferred.

1. Neither Preferred nor anyone acting on Preferred's behalf made misrepresentations to consumers

The NAL claims that Preferred engaged in "deceptive practices in connection with changes to the preferred carriers of 11 consumers."⁵⁸ Specifically, the NAL alleges without citation that "Preferred's telemarketers apparently misrepresented the identity and the nature of the transactions in which it sought to engage the 11 customers."⁵⁹ Further, the NAL alleges – again, without citation – that Preferred's "telemarketer claimed to be, or be affiliated with, the complainant's current long distance carrier."⁶⁰ These NAL assertions are belied by the facts and should be rescinded by the Commission.

For each of these 11 customers, Preferred provided to the Commission TPVs demonstrating without question that the customers were well informed that they were agreeing to have their service provider changed to Preferred and that Preferred is a separate company that competed with the consumer's pre-existing telecommunications carrier.⁶¹ No customer expressed any confusion during the TPV process, despite the fact that each was instructed by the TPV at the outset to alert the TPV if anything the TPV asked was different than what the

⁵⁸ NAL at ¶ 4.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *See Exhibits D and E* (TPV transcript and recordings).

telemarketer discussed with them.⁶² And furthermore, no customer expressed any confusion in response to Preferred's affirmative call-back process or order confirmation welcome letter.⁶³

Taking all of these facts together, it is clear that the "deceptive practices" alleged in the NAL are based upon nothing more than sheer uncorroborated – and now contradicted – allegations in a handful of consumer complaints.

The NAL suggests that Preferred's telemarketers engaged in deceptive acts and that Preferred "has not provided any evidence that its third party telemarketer was acting outside of the scope of its engagement or employment."⁶⁴ That simply is not the case. Preferred provided the Bureau with the relevant TPVs, which standing alone directly rebut the allegations of deception made in the informal complaints, demonstrating that the customers understood that they were changing their service provider, and that Preferred is a company separate and unaffiliated with the consumer's existing service provider.⁶⁵ But to the extent any question could remain, the attached Affidavit of K. Nussbaum, Preferred's telemarketing contracts, telemarketing scripts, and related materials all demonstrate that Preferred's telemarketers are required to comply with the Act, the Commission's rules, and sound consumer protection practices.

While it is conceivable that an individual telemarketer could act *ultra vires* by going "off script," Preferred's TPV, call-back, and pre-provisioning Quality Control call are designed to affirmatively police such a potential *before* a consumer's service is switched. Of

⁶² NAL at ¶ 4.

⁶³ *Id.*

⁶⁴ NAL at ¶ 5 and n.15.

⁶⁵ *See Exhibits D and E* (TPV transcripts and recordings).

course, as the Commission acknowledges in the NAL, Preferred is only responsible for the actions of its agents if those agents are acting within the scope of their authority, not outside of the scope of that authority.⁶⁶ And, as Preferred's telemarketing contracts, telemarketing scripts, and related materials all demonstrate, to the extent any individual telemarketer may have veered from their contractual obligations, such actions cannot be attributed to Preferred.

The only "evidence" relied upon by the Commission is the untested and untestable statements made by consumers in their complaints that Preferred's telemarketer claimed to be "with AT&T."⁶⁷ No corroboration exists, and the TPVs standing alone refute these claims. Indeed, the Consumer Bureau, in resolving these customer complaints, made no finding that Preferred engaged in a deceptive practice; as such a claim is simply unsupported by the record.

Finally, Preferred notes that in conducting its internal investigation in response to the Commission's inquiry, it has become apparent that each of the 11 complaints involving "deceptive practices" occurred only *after* AT&T engaged in "winback" activities, and it appears that AT&T – and no other carrier – has a practice of encouraging consumers to file complaints with the Commission alleging "misrepresentation" in order to get refunds.⁶⁸ Indeed, Preferred has discovered that of the 14 complaints cited by the Commission, Preferred actually spoke with 12 of those customers before they filed their complaints. In nine of the 12 cases, the customer did not raise a single issue related to deceptive marketing practices or claim that he or she had

⁶⁶ NAL at ¶ 6.

⁶⁷ See **Exhibits D and E** (TPV transcripts and recordings).

⁶⁸ Affidavit of K. Nussbaum at ¶ 28.

otherwise been misled regarding the relationship between Preferred and AT&T.⁶⁹ In the remaining three instances, the customer had already been in contact with AT&T's "winback" group.⁷⁰ The remaining two instances never contacted Preferred and therefore, they too had likely spoken with AT&T's "winback" group prior to filing their complaints.⁷¹ That these customers were in contact with AT&T "winback" likely explains the roughly 60 to 90 day lag time between the alleged slamming and the actual filing of the informal complaints.⁷²

It is also significant to note that roughly 20% of Preferred's customer base emanates in the CenturyLink LEC footprint.⁷³ Yet, none of these 14 slamming complaints emanate from the CenturyLink footprint.⁷⁴ If Preferred were condoning any kind of misrepresentation then the complaints would reflect a pattern consistent with those numbers. Instead, the numbers reflect a picture inconsistent with widespread misrepresentation.

Also, important to note is that in the AT&T region, particularly the Midwest territory, AT&T will charge Preferred and all other LEC-billed wholesale customers a \$150.00

⁶⁹ *Id.* at ¶¶ 28-32. Five disputed authorizing the transfer by themselves or their employees. One wanted to cancel because they changed their mind but service was already partially converted. One was confused about pro-rate and bill in advance. One was confused because Preferred did not switch the DSL line share line and did not understand why AT&T was still billing them. One had charges that were unknown to them by another third party on their AT&T bill.

⁷⁰ *Id.* at ¶ 31.

⁷¹ *Id.* at ¶ 32.

⁷² *Id.* at ¶ 33.

⁷³ *Id.* at ¶ 34.

⁷⁴ *Id.*

fee for certain categories of customer complaints.⁷⁵ These fees are charged back to Preferred along with other usage charges originally issued to the customers.⁷⁶ Preferred denied any wrongdoing and AT&T agreed to institute a process whereby it would reverse the \$150.00 fee if Preferred was successful in having the customer call AT&T and have their account notated that it denied the complaint – a tall order.⁷⁷ Yet, each month Preferred successfully has a majority of those customers contact AT&T and notate their account to reverse the complaint.⁷⁸ They confirm having no knowledge a complaint was on their account.⁷⁹ These customers were all a result of AT&T “winback” and they instruct AT&T to notate a reversal.⁸⁰ This practice only further suggests that both AT&T and the “winback” customers understand that Preferred is not at fault for deceptive practices. The agreement by AT&T to refund the fees to Preferred acknowledges AT&T is using this deceptive practice against Preferred (and other carriers); and, AT&T refuses to discontinue such misrepresentation.

At bottom, there is no evidence other than bare allegations in a modest number of consumer complaints that Preferred made any misrepresentation to any consumer. The complaint allegations are refuted by Preferred’s telemarketing scripts, TPV recordings, TPV call backs, Quality Control/Welcome calls, and order confirmation welcome letters. To the extent any “misrepresentation” by a telemarketer occurred, that individual telemarketer was acting ultra

⁷⁵ *Id.* at ¶ 35.

⁷⁶ *Id.*

⁷⁷ *Id.* at ¶ 36.

⁷⁸ *Id.* at ¶ 37.

⁷⁹ *Id.*

⁸⁰ *Id.*

vires, well outside of the scope of their employment and any contract with Preferred. The Commission further should recognize that all allegations of “misrepresentation” appear to emanate from an aggressive campaign by AT&T to “winback” customers lost to competitors, such as Preferred.

2. The NAL fails to state a claim for a Section 201(b) violation

As demonstrated above, Preferred denies categorically that it or any entity acting on Preferred’s behalf made misrepresentations to the 11 consumers at issue.⁸¹ Even if it could be said – which it cannot – that Preferred’s marketing practices do not adequately protect consumers, none of Preferred’s marketing practices violate the Act or a Commission rule, and therefore no Section 201(b) liability exists.

In the NAL, the Commission makes the sweeping claim that it can declare, absent a current rule or other regulation, that a marketing practice violates Section 201(b) if the Commission determines the practice to be “unfair” or “deceptive.”⁸² The Commission cites no court precedent in support of this proposition, and instead invokes a single forfeiture order,⁸³ a Common Carrier Bureau (“CCB”) order,⁸⁴ and a notice of apparent liability.⁸⁵ None of these cited “authorities” is persuasive; nor are they binding precedent.

⁸¹ NAL at ¶ 7.

⁸² NAL at ¶ 3.

⁸³ *Business Discount Plan, Inc.*, Order of Forfeiture, 15 FCC Rcd 14461 (2000) (“*BDP Forfeiture Order*”).

⁸⁴ *Telecommunications Research & Action Center & Consumer Action*, Memorandum Opinion and Order, 4 FCC Rcd 2157 (Com.Car.Bur. 1989) (“*TRAC*”).

⁸⁵ *Silv. Communications Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178 (2010) (“*Silv NAL*”).

Beginning with the *Silv NAL* cited by the Commission, it simply has no precedential value at all. It is not an order; rather it is merely a *notice*. As such, an NAL does not represent a final determination, but is only a “preliminary notice issued by the Commission, or by Bureaus/Offices under delegated authority, alleging the violation of the Commission's rules and requesting payment from the alleged violator.”⁸⁶

Similarly, in the case of the *TRAC* order, it is an order of the CCB, not an order adopted by the entire Commission through its voting process. As such, it does not even represent binding precedent for the Consumer & Governmental Affairs Bureau, much less for the full Commission⁸⁷ – and certainly cannot now be used as a stand in for a properly adopted rule or regulation the violation of which results in Section 201(b) liability. In any event, the *TRAC* order is easily distinguishable from the facts in this case in that it concerns the reasonableness of rate disclosures, which, unlike marketing practices, falls squarely within the Commission’s authority to determine whether rates are just and reasonable.

Which leaves the *BDP Forfeiture Order* as the sole authority cited in the NAL that may fairly be described as Commission precedent. Yet, the *BDP Forfeiture Order* is unavailing for a host of reasons. First, binding federal court jurisprudence has not supported the Commission’s determination in the *BDP Forfeiture Order* either before it was issued or since. At the time it was issued, the *BDP Forfeiture Order* contradicted a number of federal court cases finding the Communications Act did not provide the Commission with authority to regulate

⁸⁶ *Action for Children’s Television v. F.C.C.*, 827 F. Supp. 4, 7 (D.D.C. 1993) *aff’d sub nom. Action for Children's Television v. F.C.C.*, 59 F.3d 1249 (D.C. Cir. 1995).

⁸⁷ *See, e.g. In the Matter of Gaston Coll.*, 25 FCC Rcd. 982, 985 (2010) (finding that one Bureau is not bound by, and may decline to follow, another Bureau's decisions).

carriers' marketing practices.⁸⁸ Meanwhile, federal courts have long moved past the Commission's holdings in the *BDP Forfeiture Order*, with the United States Supreme Court more recently making clear that not just any action may be said to constitute a Section 201(b) violation; rather, the Commission must adopt a rule or regulation in the first instance declaring that the conduct at issue violates a provision of the Act or a rule of the Commission before it can hold a carrier liable under 201(b).⁸⁹ Yet, here the Commission has failed to adopt a rule or regulation of broad import, as contemplated by the Supreme Court in *Global Crossing* that would make the "unfair" or "deceptive" conduct the Commission alleges in its NAL a violation of Section 201(b). Accordingly, because none of the alleged conduct that the Commission deems "unfair" or "deceptive" is codified or otherwise outlined in a Commission rule or regulation, no section 201(b) liability may be found.

Second, the *BDP Foreiture Order* is easily distinguished from this case. There, the FCC had processed "thousands of written consumer complaints alleging slamming by BDP."⁹⁰ Furthermore, unlike Preferred, BDP produced "no evidence or information, including tape recordings, to counter the complainant's allegations of unjust and unreasonable

⁸⁸ See *Weinberg v. Sprint Corp.*, 165 F.R.D. 431, 438 (D.N.J. 1996) ("Section[] 201 . . . of the Communications Act impose[s] no duty on common carriers to make accurate and authentic representations in their promotional practices"); *Marcus v. AT & T Corp.*, 938 F. Supp. 1158, 1173 (S.D.N.Y. 1996) (finding that there is no cause of action under the Communications Act for deceptive advertising) *aff'd sub nom. Marcus v. AT&T Corp.*, 138 F.3d 46 (2d Cir. 1998).

⁸⁹ See, e.g., *Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc.*, 550 U.S. 45, 53 (2007) ("History . . . makes clear that the FCC has long implemented § 201(b) through the issuance of rules and regulations."); see also *Cort v. Ash*, 422 U.S. 66 (1975); *Touche Ross & Co. v. Redington*, 442 U.S. 560 (1979); *North County Commc'ns Corp. v. California Catalog & Tech.*, 594 F.3d 1149, 1158-61 (9th Cir. 2010).

⁹⁰ *BDP Forfeiture Order* at ¶ 2.

telemarketing practices.”⁹¹ Here, by contrast the Commission has received a very small number of complaints against Preferred, which seem likely to have resulted from AT&T “winback” marketing efforts. Moreover, Preferred has produced TPV recordings for each account at issue, and these recordings uniformly demonstrate that each consumer was fully informed about the nature of each transaction, that Preferred is a separate entity in competition with AT&T, and that each consumer authorized the switch.⁹²

Third, even when the Commission first adopted the *BDP Forfeiture Order*, Commissioner Furtchtgott-Roth dissented regarding the Commission’s Section 201(b) claim, noting that Section 201(b) “does not provide an independent basis for punishing carriers based on their marketing practices.”⁹³ He went on to explain that “[i]f Congress wanted the FCC to take on these types of claims, it would have given [the FCC] express authority to do so.”⁹⁴

Thus, even if it were applicable to the case at hand, the *BDP Forfeiture Order* is not now, nor has it ever been persuasive law, and the Commission should use this opportunity to abandon it. Subsequent Supreme Court precedent has now made clear that an action or omission

⁹¹ *Id.* ¶ 19.

⁹² As discussed more fully herein, Preferred has also presented ample evidence that none of the consumers alleged any deceptive practices until **after** speaking with AT&T’s “winback” marketing group. And, because none of the complaints emanate from the CenturyLink region, any insinuation that Preferred has engaged in a practice of widespread misconduct simply does not hold water.

⁹³ *BDP Forfeiture Order* at 14475 (Statement of Commissioner Harold Furtchtgott-Roth Concurring in Part, Dissenting in Part); see also *In Re Nos Communications, Inc.*, 16 F.C.C.R. 8133, 8147 (2001) (Dissenting Statement of Commissioner Furtchtgott-Roth) (Section 201(b) “by its plain language, does *not* authorize the Commission to define the scope of a common carrier’s section 201(b) obligations through ad hoc adjudicatory proceedings.” (emphasis in original)).

⁹⁴ *BDP Forfeiture Order* at 14476 (citation omitted).

can only be said to violate Section 201(b) in cases where the statute or an express Commission regulation is violated. No such violation exists here, and accordingly no Section 201(b) liability may attach to Preferred.

B. Preferred Has Not Violated Section 258 or Rule 64.1120

The Commission claims that Preferred has violated Section 258 and 47 C.F.R. § 64.1120(c)(3). Yet, the Commission, like the Bureau orders before it, does not base these allegations on the actual substance of the 14 consumer complaints. The consumer complaints all allege some form of deception or confusion over whether Preferred is or is not in some way affiliated with AT&T, as discussed and rebutted above. Instead, the Commission bases its NAL allegations on an independent review of “the TPV recordings for the 14 changes that Preferred provided” in response to the informal complaints.⁹⁵ Specifically, the Commission claims that, based on its *sua sponte* review of the TPVs: “Complainant Russo’s TPV failed to obtain separate authorizations for each service sold;”⁹⁶ “Complainant Williams TPV included only the call-back portion of the recording;”⁹⁷ and that the “13 TPVs” provided by Preferred allegedly “failed to confirm the telephone numbers to be switched.”⁹⁸

But, not a single consumer complaint that forms the basis of the Commission’s NAL mentions confusion over the type of service or which telephone number(s) were being switched. Thus, not only do these allegations have no basis in the actual consumer complaints, but they are also less than accurate. Basing a \$1.440 million forfeiture on alleged technical rule

⁹⁵ NAL at ¶ 10.

⁹⁶ *Id.*

⁹⁷ *Id.* A copy of the TPV recording and the call-back is included as part of **Exhibit E**. Preferred believed that it had provided the complete TPV in response to the informal complaint.

⁹⁸ NAL at ¶ 10.

violations that were not even raised by the consumers allegedly being protected and where the carrier has materially complied with the ambiguous rule in question is the epitome of arbitrary and capricious. The Commission's allegations appear to be little more than a solution in search of a problem.

The TPV's and other documents provided demonstrate that Preferred verified the customers' telephone numbers and delineated each separate service to be switched to Preferred.⁹⁹ All of the customers verified the telephone numbers to be switched and the service offerings to be switched. That is what the 47 C.F.R. § 64.1120(c)(3) requires, and Preferred complied with that rule. Nothing in Rule 64.1120(c)(3) sets forth any particular method of telephone number or service verification, and indeed, nothing in the Commission's order adopting Rule 64.1120(c)(3) suggests any particular method of compliance. The Commission's order adopting the rule merely requires that TPV agents identify "the telephone numbers to be switched" and "the types of service involved."¹⁰⁰ Preferred, through its TPV vendor, reasonably complied with all Commission regulations, including 64.1120(c)(3).

Moreover, a hyper-technical reading of the verification rules, like the one advanced by the Commission, that manufactures an issue where none existed and that leads to heavy forfeiture penalties though no consumer has complained that they were confused would seem to run counter to the goal and purpose of those rules. The Commission's order implementing the verification rules, for instance, makes clear that the verification rules are meant

⁹⁹ Each TPV identifies the telephone numbers to be switched as well as the service to be switched. The TPV recordings are attached hereto at **Exhibit E**.

¹⁰⁰ *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd. 15,996, 16,016 ¶ 40 (2000).

“to ensure that consumers better comprehend precisely what service changes they are approving”¹⁰¹ and that “these measures are appropriate and necessary to protect . . . consumers.”¹⁰² Thus, the better reading of the verification rules would be one that keeps the end result top of mind: whether a consumer understands what changes are being made to their service and, if they do, case closed. Imposing hefty forfeiture penalties for alleged technical violations of an otherwise ambiguous rule, especially where consumers have not even complained of confusion, is both arbitrary and capricious.

Indeed, the informal complaints themselves bear out Preferred’s material compliance with the rules. Not one of the complaints suggests that Preferred failed to identify a telephone number or a service offering to be switched, nor did they claim that they were confused as to which numbers or services were at issue. Though the complainants seek to have their service switched back to AT&T, there is no suggestion that Preferred misidentified a service offering or a telephone number in making the customer change. This is not surprising because Preferred reviews each order with the customer’s Customer Service Record to ensure that each customer’s phone numbers are accurately switched and to prevent slamming. Then, Preferred follows up by listing each number in the Welcome Letter it sends to customers.

As it relates to the Littleton complaint in particular, the Commission’s NAL not only appears to misunderstand the chronology of events, but is also directly undermined by relevant case law. First, the NAL adopts whole cloth the complainant’s version of events despite the fact Preferred’s response to the complaint included a detailed, date-by-date recitation of what actually transpired, along with the actual TPV recording in support of its position. Taken

¹⁰¹ *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, 23 FCC Rcd. 493, ¶ 1 (2008).

¹⁰² *Id.* at ¶ 27 (emphasis added).

together, the facts presented by Preferred clearly show that Valerie Montavy authorized the service switch – and claimed that she had the authority to do so – on January 13, 2012. It was not until over two months later that Frank Littleton claimed that Ms. Montavy was not authorized to make the service changes. Thus, at the time Ms. Montavy gave her authorization Preferred had no reason to believe otherwise.

Second, the D.C. Circuit Court of Appeals in *AT&T Corp. v. F.C.C.*¹⁰³ has directly addressed this issue and found that requiring a carrier to guarantee that the person granting authorization for a service change is, in fact, authorized to do so is not only “impossible,” but also exceeds the Commission’s statutory authority. There the Court recognized that “[c]arriers . . . generally have no way of knowing whom subscribers may have authorized to make changes on their behalf. . . . [C]arriers seeking new customers via telemarketing have little choice but to depend on the veracity of the person answering the phone.”¹⁰⁴ The court went on to find that any such “actual-authorization requirement charges carriers that engage in telemarketing with a virtually impossible task: guaranteeing that the person who answers the telephone is in fact authorized to make changes to that telephone line.”¹⁰⁵ Combined with the facts as provided in response to the Littleton complaint, *AT&T Corp.* makes abundantly clear that Preferred did not violate the Commission’s rules by relying on Ms. Montavy’s representations.

Moreover, three of the underlying complaints regard consumers who only had one line. One of these consumers only had one type of service (local only). Therefore, in each of

¹⁰³ *AT&T Corp. v. F.C.C.*, 323 F.3d 1081 (D.C. Cir. 2003).

¹⁰⁴ *Id.* at 1086.

¹⁰⁵ *Id.*

these three instances, Preferred has met the rules as they are being interpreted by the Commission in this instance and never should have been found in violation of the technicalities of the rule.

It bears repeating that Preferred engages in substantial consumer protection efforts even after the TPV is conducted. For instance, Preferred makes a second call back to each customer to ensure that they intended to have their service switched.¹⁰⁶ Finally, Preferred conducts a quality control review of the consumers Customer Service Record to ensure that service changes are made correctly.¹⁰⁷

For all of these reasons, it simply cannot reasonably be said that Preferred violated Section 258 of the Act or Section 64.1120 of the Commission's rule. The Commission should rescind or cancel the NAL.

III. IN THE ALTERNATIVE, THE COMMISSION SHOULD RADICALLY REDUCE THE PROPOSED FORFEITURE AMOUNT

As demonstrated above, Preferred has not engaged in "deceptive" or "misleading" conduct towards its customers, regardless of whether such conduct could constitute a violation of Section 201(b) of the Act. Further, Preferred obtained proper TPVs for each of the 14 allegedly inappropriate carrier changes identified in the NAL, and therefore, Preferred has not violated Section 258 of the Act or the Commission's rules. Preferred has produced ample, verifiable evidence in support of its defense, and no credible contrary evidence exists. Accordingly, the NAL should be rescinded or cancelled.

In the alternative and at a minimum, however, the Commission should radically reduce any proposed forfeiture to the extent the Commission truly believes that Preferred has

¹⁰⁶ Affidavit of K. Nussbaum at ¶ 20.

¹⁰⁷ *Id.* at ¶ 23.

inappropriately changed a consumer's service (which it has not). As demonstrated herein, Preferred goes to great lengths to comply with the Commission's rules and to ensure consumers have the best possible experience with Preferred. As a result, Preferred has been the subject of only a very modest level of consumer complaints. The Commission should engage with Preferred and the industry to the extent improvements are necessary, or ambiguities need to be clarified.

Under no circumstances should Preferred face a material forfeiture that would serve to penalize a good company for its affirmative compliance efforts. Accordingly, to the extent the Commission believes that any forfeiture amount is appropriate (and it is not), the Commission should radically reduce any such amount taking into account Preferred's history and culture of compliance with the Commission's rules and protecting consumers.

Conclusion

Consistent with the foregoing, the Commission should rescind or cancel the NAL. In the alternative, the Commission should radically reduce any proposed forfeiture from Preferred in light of its history and on-going compliance and consumer protection efforts.

Dated: February 22, 2013

Respectfully submitted,

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Counsel to Preferred Long Distance, Inc.

EXHIBIT A

Affidavit of Keith Nussbaum

**Before the
Federal Communications Commission
Washington, DC 20554**

| | | |
|-----------------------------------|---|------------------------------|
| In the Matter of |) | File No.: EB-TCD-12-00003409 |
| |) | |
| Preferred Long Distance, Inc. |) | NAL/Acct. No.: 20133217008 |
| |) | |
| Apparent Liability for Forfeiture |) | FRN: 0003757473 |

**AFFIDAVIT OF KEITH NUSSBAUM IN SUPPORT OF
PREFERRED LONG DISTANCE, INC.'S RESPONSE TO
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**I, Keith Nussbaum, being of full age and duly sworn according to law, do hereby
depose and state as follows:**

1. My name is Keith Nussbaum. I am the Executive Vice President of Preferred Long Distance, Inc. ("Preferred") and I have personal knowledge of each and all the facts stated herein.
2. Preferred is a small, family-owned competitive local exchange and interexchange carrier based in Encino, California, with a history and culture of legal compliance and consumer protection.
3. Preferred was founded in 1995 by Jerry Nussbaum, who, together with his wife Claudia, are its sole shareholders.
4. Preferred commenced operations in September, 1995, after having received appropriate operating authority, including a certificate of public convenience and necessity from the California Public Utilities Commission to provide intraLATA and interLATA interexchange service issued pursuant to Decision 95-09-014, and Section 214 authorization from the Commission to resell international switched services, issued under File No. ITC-95-367.

5. Following several years of successful interexchange operations, Preferred began, in 2004, a gradual expansion of operations into other states and expanded the scope of its services to include local exchange services and related services, such as voicemail and DSL-based Internet access service.

6. Preferred received authorization to provide service in the states of Minnesota, Oregon, and Washington in 2004; Colorado, Iowa, New Mexico, and Utah in 2005; Texas in 2006; Illinois in 2007; and Florida, Georgia, Indiana, Missouri, North Carolina, Ohio, and Wisconsin in 2008.

7. Currently, Preferred serves approximately 30,000 customers, all of whom are small to mid-size businesses. A little less than half of Preferred's customers receive both local and long distance service from Preferred, and the remainder subscribe only to Preferred's long distance LEC-billed service.

8. Preferred provides its services exclusively through resale of services and facilities acquired on a wholesale basis from other carriers. Its underlying local exchange carriers include the Qwest (now CenturyLink) and AT&T incumbent local exchange affiliates, and its underlying interexchange carrier is Qwest/CenturyLink.

9. Since its inception, Preferred has relied almost exclusively on third-party telemarketing firms to solicit orders for its services, except for a short period of time between February 2010 and August 2011, when Preferred experimented with an in-house telemarketing operation.

10. For a company of Preferred's size, telemarketing is the only realistic way that Preferred can reach out to offer its high-quality, affordably-priced services across its broad regional service areas. Preferred has always understood that telemarketing is a difficult

undertaking and that there is significant inherent potential for misunderstanding and misrepresentation to occur during the sales process. Therefore, Preferred has been conscientious in its efforts to ensure that its customers have fully authorized Preferred to serve them before any changes are made to their existing service providers.

11. Preferred recognizes that there is no value in misleading customers to gain their business or otherwise attempting to serve customers who do not want to receive service from Preferred. The cost of acquiring customers and provisioning service is far too high for such schemes to be profitable, even absent regulatory penalties. Plus, those accounts would only end up either not paying Preferred or being charged back by the LEC, neither of which would be profitable or in the best business interest of Preferred.

12. Preferred has taken pains to prevent such circumstances from occurring. In fact, Preferred was among the first companies to implement third-party verifications (“TPVs”) before they were even required. It is still one of the few companies employing live verifiers rather than automated ones, although it is more expensive to do so. And, it was one of the first companies to innovate the TPV callback by the verifier to ensure proper authorization, again at significant cost to Preferred.

13. Preferred’s telemarketing safeguards begin with the contractual arrangements Preferred has with its telemarketers through its standard telemarketing contract (“Contract”), a copy of which is attached as **Exhibit B** to Preferred’s Response. Preferred is diligent in its efforts to engage only professional and experienced telemarketing firms with excellent reputations and thoroughly memorializes its expectations in writing. The consumer-protection provisions of Preferred’s Contract are clear and strong.

14. The Contract prohibits the telemarketer from misrepresenting Preferred's relationship with customers' existing carriers, including Section 5(a) which prohibits "direct or indirect statements to customers allowing them to believe that Preferred and their current local carrier are part of the same company, that Preferred is the new long distance service provided by their current local carrier, [or] that any rates or line charges they are receiving from their current local telephone carrier will be reduced...."

15. The Contract provisions are reinforced by a requirement on the part of the telemarketer to comply with Preferred's Anti-Slamming Policy Statement ("Policy Statement"), a copy of which is attached as **Exhibit C** to Preferred's Response. This Policy Statement, the current form of which has been in effect for at least 10 years, is clear and specific in requiring that "[t]he customer must have a clear understanding that he or she is dealing with Preferred Long Distance and that we are not affiliated in any way with their current local provider, but that we are a separate competing company and they must know what our prices are for the service they are being sold."

16. The Contract and the Policy Statement together requires monitoring and supervision of telemarketing sales personnel and prescribes a "zero-tolerance" policy for violations.

17. Sections 4(b) and 5(b) of the Contract imposes a penalty for each incident of alleged slamming, over and above a charge-back of any commission payment for the subject sale.

18. Preferred does not solely rely on its contracts with telemarketers to ensure legal compliance. Preferred also takes affirmative efforts to preclude misrepresentations and

misunderstandings during the initial solicitation and to counter any confusion that may have arisen during the sales process.

19. Beginning with the TPV, Preferred repeatedly acts to ensure that the customer understands that, upon acceptance of the customer's order, the customer's service will be switched to Preferred. Preferred's TPV scripts have evolved over time as the industry has evolved and Preferred has attempted to comply with regulatory changes and to address other issues. Preferred has continuously sought affirmative assurance from each customer that the customer understands that Preferred is a separate entity not affiliated with, but competing against, the customer's existing provider. This is confirmed at the beginning of the TPV and the verifier repeats this information at the end of the TPV.

20. After the TPV is completed, the customer is notified, again, of Preferred's separate, competitive relationship with the Customer's existing carrier through Preferred's unique, affirmative call-back process. Following every TPV, the TPV agent calls back the customer to confirm again the customer's election to switch to Preferred's service. During these calls, the TPV agent specifically asks the customer to confirm his or her understanding that Preferred is a separate company that is competing with the customer's existing provider.

21. Preferred also follows up all sales with a written order confirmation and welcome letter, which are sent out the same day as the order is provisioned. This letter informs the customer again, in bold type font, that Preferred is not affiliated with any other carrier. The Order Confirmation envelope is written with "Order Confirmation" so the customer will not confuse this letter with any others. These letters confirm the change to Preferred's service, including identification of each telephone number affected, state the basic terms of service, and

provide the customer with the customer's service contact number and other information needed to help ensure a satisfactory and quality experience.

22. As an additional safeguard, Preferred also discloses on its website that it is "not affiliated with any local telephone company" in order to avoid any consumer confusion. Likewise, Preferred has a video on its website home page that touts Preferred's benefits as a competitor with the large telephone carriers.

23. In many other cases, customers also receive a pre-provisioning "quality assurance" call from Preferred. This process occurs whenever a potential provisioning issue is detected, such as a discrepancy between the sales order and the existing customer service record ("CSR") with regard to features, served telephone numbers, or billing and service addresses, or if the CSR identifies a type of service that Preferred may be unable to provide, or if the customer will have to take action to set up a service.

24. Because of Preferred's diligence in following up service orders, Preferred actually discontinues the provisioning process midstream for about 10% of the orders it receives. In most cases, orders do not proceed to completion for technical reasons relating to Preferred's ability to furnish the ordered service, but, as noted above, processing is also discontinued in any case where the customer expresses confusion or the customer's authorization is brought into question.

25. By the time a customer is provisioned, they have not only spoken with a sales agent, they have twice spoken with a live verifier and then a quality control agent. That is four calls with the consumer before their service is switched.

26. Preferred's anti-slamming policies and consumer protection practices are lengthy, involve intensive personnel training and time, and are costly.

27. Preferred recognizes that it must constantly be vigilant to prevent customers from being switched to its service without valid authorization, and Preferred strives to improve alleged technical shortcomings in Preferred's TPV scripts as they are identified. As a result, Preferred receives only a modest number of complaints given the number of accounts it provisions, which average approximately over 2,500 accounts per month. The 14 customer complaints during a one year period equates to .00046% of the total customers that Preferred provisions in a single year. Since Preferred's most recent update to its TPV scripts, Preferred has received only one slamming complaint over the past five and a half months.

28. As part of its response to the customer complaints and the NAL, Preferred conducted its own internal investigations. As a result of that investigation, it has become apparent that each of the 11 complaints involving "deceptive practices" occurred only *after* AT&T engaged in "winback" activities, and it appears that AT&T – and no other carrier – has a practice of encouraging consumers to file complaints with the Commission alleging "misrepresentation" in order to get refunds.

29. Indeed, Preferred has discovered that of the 14 complaints cited by the Commission, Preferred actually spoke with 12 of those customers before they filed their complaints. In nine of the 12 cases, the customer did not raise a single issue related to deceptive marketing practices or claim that he or she had otherwise been misled regarding the relationship between Preferred and AT&T.

30. Specifically, five disputed authorizing the transfer by themselves or their employees. One wanted to cancel because they changed their mind but service was already partially converted. One was confused about pro-rate and bill in advance. One was confused because Preferred did not switch the DSL line share line and did not understand why AT&T was

still billing them. One had charges that were unknown to them by another third party on their AT&T bill.

31. In the remaining three instances, the customer had already been in contact with AT&T's "winback" group.

32. The remaining two instances where the customer never contacted Preferred, it appears that they too had spoken with AT&T's "winback" group prior to filing their complaints.

33. That these customers were in contact with AT&T "winback" likely explains the roughly 60 to 90 day lag time between the alleged slamming and the actual filing of the informal complaints.

34. Roughly 20% of Preferred's customer base emanates in the CenturyLink LEC footprint. Yet, none of these 14 slamming complaints emanate from the CenturyLink footprint.

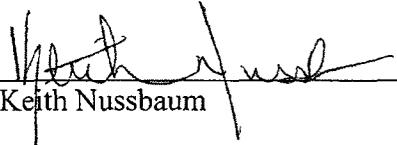
35. In the AT&T region, particularly the Midwest territory, AT&T charges Preferred and all other LEC-billed wholesale customers a \$150.00 fee for certain categories of customer complaints. These fees are charged back to Preferred along with other usage charges originally issued to the customers.

36. Preferred denied any wrongdoing regarding these customer complaints and as a result AT&T agreed to institute a process whereby it would reverse the \$150.00 fee if Preferred was successful in having the customer call AT&T and have their account notated that it denied the complaint.

37. Each month Preferred successfully has a majority of those customers contact AT&T and notate their account to reverse the complaint. They confirm having no knowledge a complaint was on their account. These customers were all a result of AT&T "winback" and they instruct AT&T to notate a reversal.

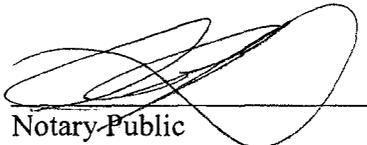
38. Accordingly, on behalf of Preferred, I respectfully request that the Commission rescind or otherwise cancel its NAL for forfeiture.

Further Affiant sayeth not.



Keith Nussbaum

Subscribed and sworn to before me
this 20 day of February 2013.



Notary Public

My Commission expires: May 27, 2013

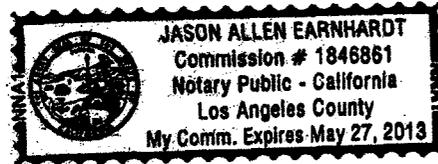


EXHIBIT B

Preferred Long Distance, Inc.'s Standard Telemarketing Contract

TELEMARKETING AGREEMENT

This Telemarketing Agreement ("Agreement") dated this 1st day of July, 2010, by and between [REDACTED] and between Preferred Long Distance, Inc. ("Preferred"), a California corporation, having its principal place of business at 16830 Ventura Blvd., Suite 350, Encino, California 91436.

RECITALS

- A. TM is in the business of providing telemarketing services to local and or long distance carriers and broadband carriers.
- B. Preferred is a local and long distance carrier in the business of providing local and long distance telephone services and broadband services to non-residential customers.
- C. Preferred desires to retain TM to provide customers to Preferred, and TM desires to be so retained on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing, and the respective representations, warranties and covenants set forth herein, the parties agree as follows:

1. Relationship of the Parties.

(a) Engagement of TM. Preferred hereby engages TM in a non-exclusive "at-will" manner to solicit customers for the use of Preferred's telephone services, and TM hereby accepts such engagement, all on the terms and subject to the conditions set forth in this Agreement.

(b) TM as Independent Contractor. TM acknowledges that pursuant to the terms and conditions of this Agreement it is an independent contractor, that Preferred is not an employer of TM or any of TM's employees and TM is not an employer of Preferred or any of its employees. TM further acknowledges and agrees that it is responsible for its own local, state, and federal taxes and any liabilities as a result of its employees' conduct. Nothing herein shall be deemed to create any partnership, joint venture, co-ownership or any other interest between the parties hereto. TM shall not be authorized in any manner or by any means to incur any obligations or indebtedness (express or implied) for or on behalf of Preferred and Preferred shall not be responsible for any costs, expenses, obligations, liabilities, penalties or fees incurred by TM. Nothing herein shall create any exclusive relationship between the parties, and TM acknowledges that Preferred has the right to enter into agreements with other individuals or entities providing telemarketing services, in Preferred's sole and absolute discretion.

(c) Term and Termination. The term of this Agreement commences on the date that it is executed by both parties and continues until it is terminated as hereinafter set forth. This Agreement may be terminated by either party at any time for any reason upon written notice, with or

without cause. In the event that this Agreement is terminated, TM shall be entitled to all compensation that it has earned through the effective date of termination subject to the terms and conditions herein, but shall be entitled to no additional compensation. THE PARTIES ACKNOWLEDGE AND ACCEPT THE RISKS INHERENT IN THE FOREGOING PROVISION.

2. Services.

(a) Procedures to be Followed by TM. TM will use only the Pre-Verification Script, the Pitch and Rebuttal Script, if any, as provided by Preferred to TM. TM will submit to Preferred for written approval any requested changes to the scripts. TM will sign and comply with Preferred's Anti-Slamming and Do Not Call Policy Statements. TM will sign and comply with Preferred's weekly Do Not Call Policies, Procedures and Requirements.

(b) Customer Criteria. TM agrees and acknowledges to refer to Preferred only non-residential customers meeting the following criteria: (i) the customer is a commercial business account, (ii) customer verifies he/she is eighteen (18) years of age or older and with the authority to approve the transfer of the service to Preferred, (iii) the customer's order is properly confirmed by a third party verification company (selected by Preferred) and (iv) the customer acknowledges its understanding that the telephone service is to be provided by Preferred.

(c) Rates.

(i) Standard Usage Rates. TM may offer to customers meeting the criteria set forth in Section 2(b) the full minute rates included in the verification script provided by Preferred to TM, which may change from time to time upon written notice to TM. All telephone calls will be billed on the customer's local telephone bill. Telephone usage is subject to federal and state taxes, surcharges and mandated regulatory fees, including, but not limited to the "Universal Service Fund" and the "Business Multi-Line Access Fee". International Rates are subject to those set forth on Preferred's International Rate Sheet which will be provided to TM.

(ii) Toll Free Numbers. Preferred will use commercially reasonable efforts to port toll free numbers listed on the "Order Form," as that term is hereinafter defined, but Preferred does not compensate for toll free numbers. Preferred will assign new 888 or 877 toll free numbers (not 800 or 866 or vanity telephone numbers) only at a customer's request. Also, Preferred will only assign a "random" new toll free telephone number. The rate for any toll free number is eight point nine (8.9) cents per minute with full minute billing for calls initiated intrastate and twelve point nine (12.9) cents per minute with full minute billing for calls initiated anywhere else in the United States, to be paid by the customer. Calls initiated from a pay telephone to a toll free number are subject to higher rates and usage fees. Toll free numbers cannot receive calls initiated from outside the United States. There is no monthly fee to set up a toll free number but there is a \$2.00 monthly fee to maintain number.

3. Customers' Orders.

(a) Submission of Order Forms.

(i) Attached hereto as Exhibit A is a sample Customer Sales Order Form ("Order Form") which is to be used by TM for all orders placed with Preferred. TM agrees to fax to Preferred the Customer Sales Order Forms immediately after each order is completed and verified with the independent third party verification company. Preferred will be responsible for any costs owed to the third party verification company, which company shall be selected solely by Preferred. The third party verification company will verify customer orders Monday through Friday from 6:00 a.m. until 6:00 p.m. Pacific Standard Time.

(ii) In no event shall TM submit sales Order Forms later than 9:00 a.m. Pacific Standard Time on the morning following the business day the order is verified through the third party verification company. Order Forms not meeting the deadline may not be accepted by Preferred and will be placed in the cancel or rejected category on the Summary Commission Report.

(b) Processing of Orders.

(i) Preferred will use best efforts to forward a Summary Commission Report to TM within 24 hours from the close of business each business day. The Summary Commission Report will indicate all accepted Customer Orders, rejections, cancellations, chargebacks, and the total amount(s) due TM (if any) for each business day and week. Any cancellation will indicate a reason for cancellation. Preferred will also send a Daily Sales Log report to TM reflecting each order Preferred received by TM. The purpose of this Log report is for TM to reconcile that Preferred has received all of the order TM believes it has sent to Preferred.

(ii) The foregoing notwithstanding, Preferred is under no obligation to accept any customer orders provided by TM and may reject any customer order for any reason. Examples of reasons for rejecting a customer order include, without limitation, the following: (i) an order is rejected by the local telephone company because the number was a "freeze" [as the term is commonly understood in the industry], (ii) the BTN or WTN could not be provisioned because of CLEC, no equal access, the order is suspended or there is a non-payment, or other preventative reasons precluding the provisioning of the order (iii) credit or payment problems exist with the potential customer, (iv) the BTN or WTN could not be located in the local telephone company data base for any reason, (v) the order could not be processed for any reason by the local telephone company, (vi) the customer does not speak fluent English as determined solely by Preferred, (vii) the customer is listed on the state or Federal Do Not Call List, (ix) the customer did not meet any of the other criteria set forth in Section 2(b); or, (x) the Order Form did not include all required information (xi) the customer already receives their services from Preferred (xii) changed mind.

(iii) Preferred reserves the right to contact any customer with a welcome call and make inquiries regarding the customer's calling activities or account discrepancies, prior to

or after accepting or provisioning any customer order. Preferred reserves the right to reject the order for any reason with or without cause, including but not limited to misrepresentation, misunderstanding, fraud of any kind, non-provisionable lines, change of mind by the customer, etc... TM agrees not to callback any customer or potential customer for any reason whatsoever after the order has completed the independent third party verification process and/or the order has been sent to Preferred.

(iv) In no event will TM re-contact any person for an order that has been sent to Preferred, whether or not Preferred has paid or cancelled the order. Failure to abide by terms of this subsection will be deemed a material breach.

4. Compensation.

(a) Timing. Preferred will pay TM on a weekly basis for the successfully provisioned Preferred Accepted Customer Orders submitted during Preferred's weekly billing cycle. Billing cycles for local service may start on a Thursday and end on a Wednesday. Compensation will be calculated in accordance with the Compensation Schedule attached hereto as Exhibit B. Preferred will use best efforts to pay TM two (2) business after the end of each billing cycle. Except as set forth in Section 4(c), within five (5) business days from the completion of each billing cycle, Preferred will pay TM by either wire transfer or check payment in full as stated on the Summary Commission Report. Any carryover orders not processed by close of Preferred's billing schedule that week may be processed the following business week. Preferred is not responsible for late payments beyond its control, including but not limited to carrier strikes, acts of god, natural disasters, acts of terrorism, war, strife and civil unrest.

(b) Chargebacks. Any chargebacks indicated on the Summary Commission Report will be deducted by Preferred from payment to TM each business week. Chargebacks include but are not limited to customer complaints, failure to comply with Section 5 below, breach of this Agreement, or breaching the Federal or state Do Not Call List.

(c) Minimums. Notwithstanding the above, the timing of any monies due TM at the completion of each business week is conditioned upon: (1) the total amount(s) listed in the Summary Commission Report at the completion of each business week exceed one hundred fifty dollars (\$150.00); and, (2) the placement and sale of customer orders by TM to Preferred on a daily and uninterrupted basis during each business week. In the event the total amount of monies due TM as listed in the Summary Commission Report at the completion of each business week equals or is less than one hundred and fifty dollars (\$150.00), and/or Preferred determines in its sole discretion that TM has discontinued or has interrupted the placement or sale of customer orders during a business week for any reason whatsoever. Preferred has the right, but not the duty, to withhold payment to TM until such time as the amount owed TM exceeds one hundred fifty dollars (\$150.00), and/or Preferred determines that TM has resumed the placement or sale of new customer orders to Preferred for a full and continuous business week. Should TM fail to resume sales within five (5) business days, any amounts owed TM hereunder shall be forfeited. TM will immediately notify Preferred of any claim or dispute regarding the failure to timely pay TM and Preferred will have

fifteen (15) business days from the date of notification to commence actions to cure such failure.

5. No Slamming or Misrepresentations.

(a) TM agrees that it will not misrepresent the services of Preferred in any way, (including, but not limited to direct or indirect statements to customers allowing them to believe that Preferred and their current local telephone carrier are part of the same company, that Preferred is the new long distance service provided by their current local telephone carrier, that any rates or line charges they are currently receiving from their current local telephone carrier will be reduced, etc. . .). In addition, TM agrees to comply with Preferred's Anti-Slamming Policy Statement, and all state and Federal No Call Lists. TM will use its best efforts to diligently supervise TM's telemarketing staff to ensure control over the staff in following the script and answers and otherwise complying with this Section. In the event that any representative of TM causes TM to not be in compliance with this Section, TM agrees to remove that representative from the Preferred program. The foregoing notwithstanding, TM agrees that, upon request by Preferred, which request need not specify any reason, TM will remove any designated representative from the Preferred program, no matter how successful that representative's sales history may be. In such instance, TM shall indemnify and hold harmless Preferred as a result of any loss, damage or claim of injury as a result of the removal of that representative from the Preferred program.

(b) Without in any way limiting Preferred's rights and in addition to any rights or claims it may have against TM, TM will be charged an administrative fee of \$125.00 for each response to any regulatory complaint. Upon written request by TM, Preferred will provide TM with documentation of such charges by the customer, or complaints by the PUC, FCC, BBB, a local telephone carrier, or any other governmental agency or regulatory body.

6. Representations and Warranties. TM hereby represents and warrants to Preferred as follows:

(a) TM is duly organized, validly existing and in good standing under the laws of its state of organization, and has the requisite power and authority to enter into and carry out the terms of this Agreement:

(b) This Agreement has been duly executed and delivered by TM and constitutes the legal, valid and binding obligation of TM, enforceable in accordance with its terms (subject to applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally, equitable principles and judicial discretion);

(c) Neither the execution and delivery of this Agreement, nor the performance of its obligations hereunder, has resulted or will result in any violation of, or constitute a default under, the organizational documents of TM or any law, regulation, judgment, decree or order to which TM is a party or by which it is bound;

(d) TM has no conflict of interest relating to this Agreement. Neither the execution and delivery of this Agreement, nor the performance of its obligations hereunder, has

resulted or will result in any breach or violation of any agreement with any third party;

(e) To the best of TM's knowledge, (i) TM has never been engaged or involved in any unauthorized transfers of customers or any other conduct constituting "slamming" as the term is commonly understood in the industry; and (ii) TM has never been sanctioned, warned or alleged by any state, federal or regulatory agency or by any other company or governing body to have engaged in any conduct constituting "slamming"; and

(f) If TM is found at any time to have made any misrepresentation or false statement to Preferred in connection with entering this Agreement, TM will be considered in material breach of this Agreement.

(g) TM has not used any broker, agent or other third party other than AVCI or its principal Erik Amato in entering into this Agreement for which a fee is owed by Preferred.

7. Non-solicitation and Non-Disclosure. For a period of two (2) years following the date of termination of this Agreement, TM agrees not to provide any customer information to a third party and agrees not to solicit for itself or for other third parties, any customer for which Preferred has paid consideration to TM under this Agreement if the purpose of said solicitation is to offer the customer any of the same or similar services provided to that customer by Preferred. If TM provides any customer order information to any third party or solicits such customers it will be in material breach of this Agreement and Preferred may charge back up to the full amount of any compensation previously paid to TM for such customer orders. Further, Preferred shall be entitled to damages for lost profits based upon the loss of each customer. TM agrees and acknowledges such damages or any charge backs under this Agreement will be an account stated.

8. Indemnification. TM agrees to indemnify and hold harmless Preferred and its affiliates and their respective directors, officers, employees, attorneys and other agents (each, an "Indemnified Person"), from and against any losses, claims, damages, judgments, assessments, costs and other liabilities (collectively, "Liabilities"), and will reimburse each Indemnified Person for all fees and expenses (including the reasonable fees and expenses of counsel) (collectively, "Expenses") as they are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation, whether or not in connection with pending or threatened litigation and whether or not any Indemnified Person is a party (collectively, "Actions"), arising out of or in connection with the following:

(a) Any breach by TM of any of its representations, warranties or covenants set forth in this Agreement;

(b) Any claim for fees by a broker, agent, or third party other than by AVCI or its principal Erik Amato relating to this Agreement TM agrees it will be directly responsible for paying any such fees should they be owed;

(c) Any assertion by any third party that Preferred is liable for any "telemarketing

leads” as the terms in commonly understood in the industry, on account of any activities related to this Agreement:

(d) Any claim by any employee, consultant or other representative of TM that is any way related to this Agreement;

(e) Any complaint of misrepresentation by a customer solicited by TM pursuant to this Agreement;

(f) Any claims arising from non-compliance by TM with Section 5 of this Agreement; or

(g) Any other intentional act, omission or misrepresentation by TM or any of its employees which results in any fines, penalties or damages against Preferred.

(h) Any claims or causes of action for Restraint of Trade, Interference with Contractual Relations, Breach of the Covenant of Good Faith and Fair Dealing, any violation of the Unfair Trade Practices Act, Conversion and any claims arising out of Civil Code Section 3294 and Business and Professions Code sections 17000 et seq and 17200 et seq.

(i) Any claim arising out of the removal one or more of TM’s employees from selling the Preferred program;

(j) Any claims arising out of any former employee of TM that then sells for him or herself or for another party the same or similar program offered by Preferred that was sold by TM

9. Miscellaneous Provisions.

(a) Notices. Unless otherwise provided herein, all notices or other communications required or permitted by this Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery if delivered personally to the party to whom notice is given, on the date of actual delivery if sent by confirmed facsimile transmission or on the date of actual delivery if sent by overnight commercial courier or by first-class mail, registered or certified, with postage prepaid and properly addressed to the party at its address set forth below in the initial paragraph of this Agreement, or at any other address that any party may from time to time designate by written notice to the others.

(b) Amendments. The provisions of this Agreement may not be waived, amended or repealed, in whole or in part, except with the written consent of each of the parties hereto. If the parties cannot mutually agree to any amendment then either party may terminate this Agreement subject to paragraph 1(c).

(c) Assignment/Successors and Assigns. Preferred may assign this Agreement to any party without TM’s prior written consent. This Agreement may not be assigned by TM without

the prior written consent of Preferred. Subject to the foregoing, this Agreement shall be binding on, and inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors, transferees and assigns.

(d) Severability. Each provision of this Agreement is intended to be severable. If any term or provision hereof is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement.

(e) Confidentiality. TM is not authorized to fax, mail or otherwise distribute any information regarding Preferred or this program or its telephone number or address without the prior written approval and authorization of Preferred.

(f) Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between the Members. This Agreement supersedes all prior negotiations and agreements of the parties, written or oral, with respect to the subject matter hereof.

(g) Waiver. No consent or waiver, express or implied, by any party to or of any breach or default by any other party in the performance of obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such party. Failure on the part of any party to complain of any act or failure to act by any other party or to declare any other party in default, irrespective of how long such failure continues, shall not constitute a waiver by any party of its rights under this Agreement.

(h) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles.

(i) Arbitration. Any dispute involving the interpretation or application of this Agreement, and any controversy or claim arising out of or relating in any way to this Agreement, or the breach hereof (including as to the validity, scope and enforceability of this agreement to arbitrate), which has not been resolved within thirty (30) days after either party has notified the other in writing of the controversy, shall be submitted for binding arbitration in Los Angeles County in accordance with the Arbitration Rules of the American Arbitration Association (the "Rules") then in effect, except as those Rules are amended by this Section. There shall be a single arbitrator who shall be a retired judge. The decision of the arbitrator shall be consistent with then applicable law and shall include written findings of fact and conclusions of law. THE PARTIES UNDERSTAND AND ACKNOWLEDGE THAT UNDER THIS SECTION, EACH WAIVE THE RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY ARBITRABLE CONTROVERSY OR CLAIM. Judgment on the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. Each party shall be bear their own attorneys fees and costs.

(j) Survival of Certain Provisions. Each and every indemnification obligation of any one or more of the parties hereto shall expressly survive the termination of this Agreement. In addition, the Nonsolicitation provisions set forth in Section 9 of this Agreement survive the termination of this Agreement.

(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first set forth above.

████████████████████

Preferred Long Distance, Inc.

██████████

Signature

Title

Keith Nussbaum
Executive Vice President

Date

████████████████████

EXHIBIT C

Preferred Long Distance, Inc.'s Anti-Slamming Policy Statement

PREFERRED LONG DISTANCE SLAMMING POLICY

AVOIDING INVESTIGATIONS AND LIABILITY

Given the high level of penalties issued by regulators against slamming, slamming has truly become a “zero-tolerance” activity. Carriers operating in today’s regulatory environment must implement systems that will absolutely eliminate slamming lest they face potentially devastating liability that could jeopardize their financial viability. In order to maintain a successful program, Preferred Long Distance requires that each of our telemarketing rooms take the following minimum steps to prevent slamming:

Rules Compliance. In order to comply and avoid liability, you must know the applicable law and rules. FCC and state slamming regulations are constantly in a state of change. For example, the FCC’s regulations were significantly modified in 2004 and are likely to be changed again. Similarly, the slamming regulations of the various states are continually being modified. Moreover, many states have unique requirements that cannot be complied with by following the FCC’s rules alone. For example, Iowa law requires carriers to send a written notice to customers within 30 days of any carrier change. Massachusetts’ rules state that only verification companies registered with the Massachusetts Department of Telecommunications and Energy can be used to confirm carrier changes. Ensure that you have a copy of and understand current state and federal slamming regulations. You must agree to stay abreast and compliant of each state’s rules in which you are selling our program.

Telemarketer Training. For many providers, regulatory enforcement actions and investigations flow directly from overly-aggressive marketing practices which fail to make clear that the Customer’s carrier is being changed or using misleading techniques to convince a customer to change their carrier. The inevitable result is a slamming complaint. Telemarketers should be trained thoroughly regarding slamming laws. The use of both written material and live sessions are strongly encouraged to communicate this.

A particular problem that carriers seem to encounter during telemarketing concerns claims by customers that a representative has led, or allowed, the customer to believe that the representative was calling on behalf of the customer’s existing local or long distance carrier, or that the selling carrier is somehow affiliated with the existing carrier. This can come about through direct misrepresentation or by misleading the customer by failing to fully advise the customer that the services being offered require that the customer voluntarily choose to switch to a different carrier.

These are not the only types of misrepresentations that carriers run into, but they seem to be the most frequent. In order to avoid any confusion, all representatives must know that there are no gray areas when selling our services. **The customer must have a clear understanding that he or she is dealing with Preferred Long Distance and that we are not affiliated in any way with their current local provider, but that we are a separate competing company and they must know what our prices are for the services they are being sold.** Otherwise, our business and your business are at risk.

Therefore, in order to ensure our continued success and long term relationships, existing sales reps and new hires must be made fully aware of our policies at the time they are hired and on an on-going basis thereafter.

Create a Zero-Tolerance Policy for Telemarketers. We have a zero-tolerance policy for misrepresentation and slamming. We suggest that owners of telemarketing rooms should create specific rules for telemarketers that are designed to avoid misleading statements and establish a zero-tolerance policy towards slamming. The written policy should provide that the first instance of deceptive marketing or attempted slamming will result in the employee's termination. Have telemarketers sign employment contracts agreeing to be bound to the policy. Signs should be posted in telemarketing rooms reminding telemarketers of the carrier's policies, including the zero-tolerance policy. If any reported deception or slamming is not dealt with strongly and immediately, we may be forced to end our relationship with your telemarketing room.

PLEASE ACKNOWLEDGE YOUR AGREEMENT TO ENFORCE THIS POLICY BY SIGNING BELOW IN THE SPACE PROVIDED FOR BOTH THE ROOM OWNER AS WELL AS THAT OF THE FLOOR MANAGER FOR YOUR ROOM. FOR THOSE ROOMS WITH MORE THAN ONE LOCATION, PLEASE HAVE THE FLOOR MANAGER AT EACH LOCATION SIGN TOO.

YOUR IMMEDIATE ATTENTION TO THIS MATTER IS GREATLY APPRECIATED.

SINCERELY,

KEITH NUSSBAUM
EXECUTIVE VICE PRESIDENT,
PREFERRED LONG DISTANCE

Print Owner's Name

Print Floor Manager Name

Owner's Signature

Floor Manager Signature

Date

Date

EXHIBIT D

Transcribed Third Party Verification Recording

Verifier states: Verification 3178, May I have your group please?

Rep: Yes, the group is Preferred Long Distance. Long Distance only calling plan. The BTN for this account is 772-231-5554.

Verifier: Rep. ID#?

Rep: My rep ID is 3234 with New Choice. The product choice is 187 A-FL.

Verifier: Repeats back BTN and Rep confirms.

Rep: And the contact name is Anja Fortune (spelled out).

Verifier: Representative please state the full name of the customer's business.

Rep: It is Whitney Guidebeck Legler.

Verifier: Ok. how many total lines are at this location?

Rep: Three lines at this location and there's no additional locations.

Verifier: Thank you representative. You may clear the line.

Verifier: Hello, is this Anja Fortune I'm speaking with?

Anja: Yes.

Verifier: Hi. My name is Alex and I'm with Capitol Verification. We are an independent third party retained to verify Preferred Long Distance, Inc. orders. This conversation is being recorded to avoid any unauthorized changes to your phone service. Today's date is March 30, 2012. If anything I ask is different than what the representative discussed with you, please feel free to stop me at any time, OK?

Anja: OK

Verifier: Is your main billing telephone number 772-231-5554?

Anja: YES.

Verifier: And, what is your business name and address?

Anja: Whitney Guidebeck Legler. We're at 3003 Cardinal Drive, Vero Beach, Florida 32963. Suite A

Verifier: Ok and is your main billing telephone number 772-231-5554?

Anja: YES.

Verifier: And do you understand the representative has called you on behalf of PREFERRED LONG DISTANCE, Inc. and not AT&T and PREFERRED LONG DISTANCE, Inc. and AT&T are two separate companies and are not affiliated?

Anja: YES.

Verifier: Your charges with Preferred Long Distance will now appear on the USBI bill page of your AT&T bill. Your new flat is is 5.9 cents for all state to state calls and 9.9 cents for all in-state local toll and long distance calls and with a low monthly service charge of only \$12.95 per account not per line. Is all of this information correct?

Anja: Correct. YES

Verifier: For recording purposes may I please have a clear yes or no?

Anja: YES

Verifier: And do you understand this will not reduce or change any local charges you currently pay AT&T because this is for long distance usage only?

Anja: YES

Verifier: Do you authorize Preferred Long Distance to provide the following service for all of your numbers - your state to state long distance service?

Anja: YES

Verifier: your intra-lata toll service?

Anja: YES

Verifier: Your in-state long distance service?
Anja: YES
Verifier: And international service, if used?
Anja: YES
Verifier: Thank you for your order. And to confirm you are over 18 years old and authorized to choose Preferred Long Distance, Inc. as your new service provider please state your position with your company and your date of birth?
Anja: Office Assistant. And my birthday is May 11, 1989.
Verifier: (confirms title and DOB).
Anja: Yes
Verifier: And, I'll need to call you right back to complete the verification process may I reach you at 772-231-5554?
Anja: YES.
Verifier: Thank you mamm, you may now disconnect and I will call you right back.
Anja: Thank you. (hangs up).
(silence and then ringing for call back).
Unidentified person: Good afternoon. Thank you for calling Dr. Legler's office.
Verifier: Hi, may I please speak to Ms. Anja Fortune?
Anja: This is her.
Verifier: Hi. This is Alex with Capitol Verification, calling you back to verify you are authorizing Preferred Long Distance to now provide long distance and local service for all numbers associated with 772-231-5554. Is that correct?
Anja: YES
Verifier: And do you understand Preferred Long Distance will bill you on the USBI bill page of your AT&T bill but Preferred Long Distance and AT&T are two separate companies and are not affiliated?
Anja: YES
Verifier: Thank you for your order. A written confirmation will be mailed to you. If you have any future questions please call customer service at 1-888-235-2026. And you have a great day mamm.
Anja: Alright thank you and you too. (hangs up)
Verifier: states for recording information data and hangs up.

EXHIBIT E

Third Party Verification Recordings for the 14 Underlying Complaints

EXHIBIT F

Sample Third Party Verification Script

**PREFERRED LD VERFIFICATION SCRIPT
LONG DISTANCE SERVICE
CALL IN NUMBER IS 715-395-7010**

REP SPEAKS FIRST: *Hello Verification, this order is for Preferred Long Distance: "LONG DISTANCE CALLING PLAN"*

(Verifier asks Rep):

1. What is the main BTN (Billing telephone number)
2. What is your Rep. ID# ?
3. What is your agency **(state your room name)**
4. What is the Product Code? (156 A-CA)
5. What is the contact's first and last name?
6. What is the full name of the customer's business (Enter Name)
7. How many total lines are at this location? ____ (Enter# in box)
8. Please state each additional telephone number including area code.
9. Are there any Additional Locations: (up to 4) Repeat question 1-4 for each additional location.

Thank you, Representative you may now clear the line (REP IS NOT ALLOWED TO SPEAK AFTER THIS POINT OR CALL WILL BE TERMINATED).

1. Hello, is this (state Contact's Name)? (YES or NO).
2. My name is _____ with CAPITOL Verification.
3. Today's date is (date). This conversation is being recorded to avoid any unauthorized changes to your phone service and confirm accurate data.
4. If anything I ask is different than what the representative discussed with you, please feel free to stop me at any time. Is that OK?. (YES or NO or OK)
5. What is the business name and physical address for the account?
6. Do you understand the representative has called you on behalf of PREFERRED LONG DISTANCE, Inc. and not AT&T, and PREFERRED LONG DISTANCE, Inc. and AT&T are two separate companies and are not affiliated? (YES or NO)
7. Do you understand this is not an upgrade to your existing service and that you are authorizing the change of your long distance carrier to Preferred Long Distance, Inc., ? (YES or NO).

8. Your charges with Preferred Long Distance, Inc. will now appear on the USBI page of your LOCAL CARRIER bill. Your new flat rate is 2.9 cents for all state to state calls and 9.9 cents for all in-state local toll and long distance calls, and with a low monthly service charge of only \$9.95 per account, not per line. Is all of this correct?
9. Do you understand this WILL NOT reduce or change any local line charges you currently pay AT&T because this is for long distance usage only? (YES or NO).
10. The telephone numbers you would like to switch are (verifier states all numbers starting with the BTN), is this information correct? (YES or NO).
11. For each number I just listed do you authorize Preferred Long Distance Inc. to switch and become the new provider for the following services:
 - a. your interLata state to state long distance service (yes or no)?
 - b. your intraLATA- toll service (yes or no)?
 - c. your instate long distance service (yes or no)?
 - d. and your international service, if used? (yes or no)
12. Are you over 18 years old and duly authorized by the account holder to make changes to this account? (YES or NO)
13. And to confirm I spoke with you please state your title and your date of birth? (Customer States Title /Reject and date of birth MM/DD/YY)
14. Thank you for choosing Preferred Long Distance. I'll need to call you right back to complete the verification process may I reach you at ###-###-####,(if NO, then the Verifier must get the number the customer is at)?
15. Thank you sir/mamm, you may now disconnect and I will call you right back.

16. Hello, Mr/Ms__this is __ with CAPITOL Verification calling you back.
17. Do you understand PREFERRED LONG DISTANCE, Inc. will bill you on the USBI bill page of your AT&T bill but that PREFERRED LONG DISTANCE, Inc. and AT&T are two separate companies and are not affiliated? (YES/NO)
18. Thank you. Quality Control may contact you if they have questions about your order. Please remember telephone usage is subject to applicable governmental fees. If your carrier charges you a nominal pic change fee then please contact Preferred's Customer Service at 1-888-235-2026. Your order is complete and will be processed today. A written confirmation will be mailed to you shortly. Thank you and have a nice day. Good-bye.
(if customer doesn't disconnect then Verifier will say: "Customer you may disconnect now").

AFTER CUSTOMER DISCONNECTS THEN OFF-LINE VERIFIER REPEATS TO THE REP THE

1. BTN
2. CONFIRMATION NUMBER - BE SURE TO WRITE DOWN 7 DIGITS: CV1234567 -

EXHIBIT G

Sample Order Confirmation Letter

Preferred Long Distance, Inc.
16830 Ventura Boulevard, Suite 350
Encino, California 91436
(888) 235-2026 Fax: (818) 380-9099

ORDER CONFIRMATION

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

*Done
3/5/12*

Preferred Long Distance appreciates the opportunity to provide you with quality local, toll and international long distance telephone service. Preferred Long Distance will now become your local and long distance telephone company.

Preferred will consolidate your billing for local, local toll, intrastate, interstate and international charges for:

() [REDACTED], () [REDACTED], () [REDACTED], () [REDACTED]

Preferred Long Distance will become your primary local and interexchange carrier wherein only one company may be designated for each phone number. Please see the enclosed welcome letter confirming your rates and general terms and conditions. Telephone usage is subject to all federal, state and local taxes, surcharges and mandated regulatory fees such as universal service fund, universal service fund carrier cost recovery fee and federal access line fees.

If you receive a penalty or **Early Termination Fee** from your previous carrier then call our Customer Service Specialists and ask if you qualify for one of our New Customer Promotions before calling your previous carrier.

Please remember that your first invoice may be higher, because in accordance with industry practice, it is pro-rated for the current bill cycle and billed in advance one full cycle. All future invoices will only be for only 1 month of service.

We appreciate the opportunity to provide you with quality telephone service. Preferred Long Distance cares to make a difference for you! Preferred is not affiliated with any other carrier. Please reach out and contact us with any questions at (888) 235-2026.

Sincerely,
Preferred Long Distance

Customer Account Number: [REDACTED]



Preferred
— Long Distance, Inc.

Dear Valued Customer:

We appreciate you choosing *Preferred Long Distance* for your local, long distance, local toll and international phone service. *Preferred Long Distance* will now become your **local and long distance phone company.**

As you know, it is essential to drive down the cost of living expenses! This challenge is extremely difficult when it comes to reducing expenses. *Preferred Long Distance* is trying to help you reduce your telephone costs. Your **local phone service is now \$33.50 per month** per line with unlimited local calls plus the cost of any calling features you ordered, if any, such as voice mail, etc. **Your first 100 minutes of domestic long distance calling are FREE and then your rate is 3.9 cents per minute for all outbound state to state calls and 7.9 cents per minute for all outbound in-state long distance and local toll calls, plus taxes and surcharges.** International rates vary by country so please call if you need a rate for a specific country.

Preferred Long Distance provides competitive rates for domestic long distance service with top quality fiber optic network and customer service. *Preferred Long Distance* may also save you money on your existing "800/888" numbers and we can provide you new "800/888" numbers. **Please call us today if you would like to increase your business by adding an "800/888" line.**

All of these services will be consolidated on our monthly billing. **No longer will you have to endure multiple phone bills every month. Preferred is not affiliated with any other carrier.** Your long distance and toll calls are billed with full minute billing with such usage charges rounded up to the next whole cent. Telephone usage is subject to all federal, state and local taxes, surcharges and mandated regulatory fees such as universal service fund, universal service fund carrier cost recovery fee and federal access line fees. You should notify your former carrier that you canceled service.

Your first bill will be prorated & billed in advance in accordance with industry practice. Although your first bill may be higher because you're being billed for more than a month of service, all future bills will be for just one month of service. In addition, if you've paid your previous carrier in advance, you may be receiving a refund from them, which would offset the difference in your first invoice.

Please reach out and contact us with any questions at (888) 235-2026. *Preferred Long Distance*, cares to make a difference for you! We have enclosed your order confirmation, Customer Service Agreement and general terms and conditions.

Sincerely,

Preferred Long Distance

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ORIGINAL

MEMORANDUM



TO: Docket Control

2012 NOV 20 P 12: 04

FROM: Steven M. Olea
Director
Utilities Division

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DATE: November 20, 2012

RE: IN THE MATTER OF THE APPLICATION OF PREFERRED LONG DISTANCE, INC. FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE, RESOLD LOCAL EXCHANGE AND FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-04308A-12-0118)

Attached is the Staff Report for the above Application requesting approval for a Certificate of Convenience and Necessity ("CC&N") to provide the following services:

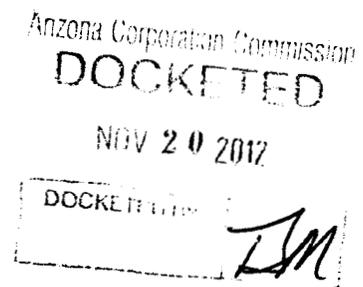
- Resold Long Distance Telecommunications Services
- Resold Local Exchange Telecommunications Services
- Facilities-Based Local Exchange Telecommunications Services

Staff is recommending approval of the Application with conditions.

SMO:PJG:red

Originator: Pamela J. Genung

Attachment: Original and Thirteen copies



SERVICE LIST FOR: PREFERRED LONG DISTANCE, INC.
DOCKET NO. T-04308A-12-0118

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

PREFERRED LONG DISTANCE, INC
DOCKET NO. T-04308A-12-0118

**IN THE MATTER OF THE APPLICATION OF PREFERRED LONG DISTANCE, INC. FOR
APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE
RESOLD LONG DISTANCE, RESOLD LOCAL EXCHANGE AND
FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES**

NOVEMBER 20, 2012

TABLE OF CONTENTS

| | PAGE |
|--|-----------|
| 1. INTRODUCTION..... | 1 |
| 2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES..... | 1 |
| 3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES | 3 |
| 4. ESTABLISHING RATES AND CHARGES | 4 |
| 5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES | 4 |
| 5.1 <i>Number Portability.....</i> | <i>5</i> |
| 5.2 <i>Provision of Basic Telephone Service and Universal Service.....</i> | <i>5</i> |
| 5.3 <i>Quality of Service</i> | <i>5</i> |
| 5.4 <i>Access to Alternative Local Exchange Service Providers</i> | <i>5</i> |
| 5.5 <i>911 Service.....</i> | <i>6</i> |
| 5.6 <i>Custom Local Area Signaling Services.....</i> | <i>6</i> |
| 6. REVIEW OF COMPLAINT INFORMATION..... | 6 |
| 7. COMPETITIVE SERVICES ANALYSIS | 8 |
| 7.1 <i>Competitive Services Analysis for Local Exchange Services</i> | <i>8</i> |
| 7.2 <i>Competitive Services Analysis for Interexchange Services</i> | <i>10</i> |
| 8. RECOMMENDATIONS..... | 11 |
| 8.1 <i>Recommendations on the Application For A CC&N</i> | <i>12</i> |
| 8.2 <i>Recommendation on the Applicant's Petition to Have Its Proposed Services Classified as Competitive.....</i> | <i>14</i> |

ATTACHMENT

| | |
|--|--------------|
| FCC Slamming Complaints Against Preferred Long Distance, Inc. | Attachment 1 |
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STAFF ACKNOWLEDGMENT

The Staff Report for Preferred Long Distance, Inc., Docket No. T-04308A-12-0118, was the responsibility of the Staff member listed below. Pamela J. Genung was responsible for the review and analysis of the Preferred Long Distance, Inc. Application for a Certificate of Convenience and Necessity to provide Resold Long Distance, Resold Local Exchange, and Facilities-Based Local Exchange Telecommunications Services within the State of Arizona, in addition to the petition for a determination that its proposed services should be classified as competitive.



Pamela J. Genung
Public Utilities Analyst V

1. INTRODUCTION

On March 29, 2012, Preferred Long Distance, Inc. (“PLD” or “Applicant” or “Company”) filed an Application for a Certificate of Convenience and Necessity (“CC&N”) to provide resold long distance, resold local exchange, and facilities-based local exchange telecommunications services within the State of Arizona. The Applicant also petitioned the Arizona Corporation Commission (“Commission”) for a determination that its proposed services should be classified as competitive. On March 29, 2012, PLD submitted a proposed tariff for the services it is requesting the authority to provide.

On May 21, 2012, Staff issued its First Set of Data Requests to PLD. Responses to Staff’s First Set of Data Requests and four replacement pages to PLD’s proposed tariff were received from the Applicant on May 29, 2012. On June 29, 2012, Staff issued its Second Set of Data Requests. Responses to Staff’s Second Set of Data Requests were received from PLD on July 17, 2012. On August 7, 2012, Staff issued its Third Set of Data Requests. Responses to Staff’s Third Set of Data Requests were received from PLD on September 13, 2012.

Staff’s review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff’s analysis also considers whether the Applicant’s services should be classified as competitive and if the Applicant’s initial rates are just and reasonable.

2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant is currently providing competitive local exchange and/or interexchange services in eighteen (18)¹ States. Staff contacted the Public Utility Commissions in nine (9) States to determine if PLD is certificated or registered to provide competitive local exchange and interexchange telecommunications services in the States/Jurisdictions listed by the Applicant. Staff also inquired whether there were any consumer complaints filed against the Applicant. The information Staff obtained indicates that PLD is authorized to provide local exchange and interexchange services in at least seven (7) of the States/Jurisdictions contacted by Staff. Staff obtained the following complaint related information during its research:

- The State of Wisconsin reported 4 alleged slamming related complaints (3 concerning long distance service and 1 concerning local service) over the last 12 months. All 4 complaints have now been resolved and closed.
- The State of Oregon reported 14 alleged complaints for unauthorized switch of service (slamming) over the last 12 months. Two of the 14 complaints are still open.
- The State of Indiana reported 19 alleged complaints (16 slamming related and 3

¹ California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Minnesota, Missouri, Nevada, New Mexico, North Carolina, Ohio, Oregon, Texas, Utah, Washington, and Wisconsin.

“high-bill” related) over the last 12 months. All 19 complaints have now been resolved and closed.

In response to Staff Data Request PJG 2.2 regarding the above-mentioned complaints, the Applicant stated that all issues were resolved and no further regulatory inquiry or action was taken or deemed necessary. PLD also acknowledges that despite its constant, affirmative scrutiny of independent third party verifications and compliant account transfer procedures, there are instances where inquiries and complaints do occur, consistent with the experience of all telecommunications service providers.

In its response to Staff Data Request PJG 2.2, the Applicant has also stated the following:

“Preferred is one of the few carriers employing live, rather than automated, independent third party verification and voluntarily imposes an obligation on to its third party verifier to place an immediate callback to the customer. This extra procedure is costly and time sensitive, but has dramatically reduced unauthorized account transfers allegations. Preferred notes that the number of inquiries and complaints has decreased dramatically in 2012 as a result of its continued efforts to mitigate the potential for complaints.”

The three members of the senior management team average over eighteen (18) years experience each in the telecommunications industry. PLD indicated in its Application that its employees maintain an average of four years of telecommunications experience.

In its Application, PLD indicated that it proposes to provide local exchange service and interexchange service using one or more of the following means:

1. Utilizing combinations of network elements, ancillary functions and features leased from CenturyLink;
2. Under a commercial agreement with CenturyLink; or
3. Via resale, utilizing the networks of underlying carriers.

The Applicant also indicated that it has no plans to purchase or construct its own facilities for the provision of service in the near future.

PLD also stated in its Application that it plans to provide customer service to its Arizona subscribers from its California customer service centers. The Applicant does not plan to maintain employees in Arizona. In response to Staff Data Request PJG 2.1, PLD maintains a dedicated in-house customer service organization to support all subscribers. PLD stated that it employs trained and experienced individuals responsible for direct coordination with CenturyLink for resolution of technical issues.

Based on the above information, Staff believes PLD possesses the technical capabilities to provide the services it is requesting the authority to provide in Arizona.

3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant provided unaudited financial statements of Preferred Long Distance, Inc. for the two years ending December 31, 2010 and December 31, 2011. The financial statements for year ending 2010 list total assets of \$1,442,429, total equity of \$390,844 and net income of \$55,456. The financial statements for year ending 2011 list total assets of \$1,258,077, total equity of \$377,845, and net income of \$41,000. The Applicant did not provide notes related to the financial statements.

The Applicant stated in its proposed tariff (reference Sections 2.5.4 and 2.5.5 of PLD's proposed Arizona C.C. Tariff No. 1) that it may require advances, deposits and prepayments from its customers to safeguard its interests or should the customer be unable to meet certain credit requirements representing prior telephone utility service or becomes delinquent in making payments after establishing service.

The Commission's current performance bond or irrevocable sight draft Letter of Credit ("ISDLC") requirements are \$10,000 for resold long distance (for those resellers who collect advances, prepayments, deposits, or are offering prepaid calling services), \$25,000 for resold local exchange, \$100,000 for facilities-based long distance, and \$100,000 for facilities-based local exchange services. Based on the services the Applicant is requesting authority to provide, the minimum recommended performance bond or ISDLC should be \$135,000. The performance bond or ISDLC coverage needs to increase in increments equal to 50 percent of the total minimum performance bond or ISDLC amount when the total amount of the advances, deposits, and prepayments is within 10 percent of the total minimum performance bond or ISDLC amount. Further, measures should be taken to ensure that the Applicant will not discontinue service to its customers without first complying with Arizona Administrative Code ("A.A.C.") R14-2-1107.

Staff recommends that the Applicant procure either a performance bond or an ISDLC equal to \$135,000. The minimum performance bond or ISDLC amount of \$135,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or ISDLC amount should be increased in increments of \$67,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$13,500 of the performance bond or ISDLC amount. If the Applicant desires to discontinue service, it must file an Application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an Application to discontinue service. Failure to meet this requirement could result in forfeiture of the Applicant's performance bond or ISDLC.

Staff further recommends that proof of the above mentioned performance bond or ISDLC be docketed within 90 days of the effective date of a Decision in this matter or 10 days before the first customer is served, whichever comes first. Staff also recommends that the Applicant notify the Commission through a compliance filing when it begins serving customers. The original performance bond or ISDLC should be filed with the Commission's Business Office and copies

of the performance bond or ISDLC with Docket Control, as a compliance item in this docket. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Applicant is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Applicant's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Applicant's customers.

4. ESTABLISHING RATES AND CHARGES

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an initial rate (the actual rate to be charged) and a maximum rate must be listed for each competitive service offered, provided that the rate for the service is not less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company indicating that its fair value rate base is zero. Accordingly, the Company's fair value rate base is too small to be useful in a fair value analysis. PLD has submitted proposed tariff pages reflecting the rates that PLD will be charging for its interexchange and local exchange services. PLD has also provided additional rate comparison information of other competitive local exchange carriers in the State of Arizona. Staff has reviewed the proposed rates and believes they are comparable to the rates charged by competitive local carriers and local incumbent carriers operating in the State of Arizona. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value rate base information provided should not be given substantial weight in this analysis.

5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

Issues related to the provision of Local Exchange service are discussed below.

5.1 Number Portability

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

5.2 Provision of Basic Telephone Service and Universal Service

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

5.3 Quality of Service

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest d/b/a CenturyLink (f/k/a USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

5.4 Access to Alternative Local Exchange Service Providers

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

5.5 911 Service

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission ("FCC") 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

5.6 Custom Local Area Signaling Services

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

6. REVIEW OF COMPLAINT INFORMATION

The Applicant has not had an Application for authority to provide service denied in any state. The Consumer Services Section of the Utilities Division reports that there have been no complaints, inquiries, or opinions filed against PLD through April 10, 2012. In addition, Consumer Services reports that PLD is in good standing with the Corporations Division of the Commission.

The Applicant indicated that none of its officers, directors or partners have been convicted of any criminal acts in the past ten (10) years. The Applicant also indicated that none of its officers, directors or partners have been involved in any civil or criminal investigations, or any informal complaints.

A search of the FCC's website revealed thirty-six (36) informal complaint proceedings for slamming, all of which the FCC granted for the complainants. Attachment 1 is a listing of the FCC complaints and Order numbers. In twenty-three (23) out of the thirty-six (36) complaints, the FCC consistently stated the following:

"We have reviewed the Third Party Verifications ("TPVs") PLD submitted with its responses, and we find that in each case during the course of the TPV, the verifier recited a telephone number presumably associated with the business. However, our rules require that the TPV specifically elicit the "telephone numbers to be switched," rather than merely verifying numbers associated with a business or residence, or for what purpose the numbers are used.² As we emphasized in the Fourth Report and Order, "any description of the carrier

² See 47 C.F.R. § 64.1120(c) (3)(iii).

change transaction...shall not be misleading.”³ We find that PLD has failed to produce clear and convincing evidence that Complainant’s authorized carrier changes.⁴ We find that PLD’s actions resulted in unauthorized changes in Complainant’s telecommunications service providers and we discuss PLD’s liability below.”

Taking into consideration PLD’s TPV compliance issues at the FCC and the complaints identified earlier in this report for the States of Wisconsin, Oregon, and Indiana, Staff requested and PLD provided its marketing and TPV vendor company names, addresses, and telephone numbers.⁵ PLD also stated that it relies on its in-house sales and marketing team. Staff verified the TPV vendor company information, provided by PLD, through an internet search of both companies. In response to Staff’s Third Set of Data Requests, at PJG 1.1, the Applicant stated that it has amended its TPV script to now capture each telephone number associated with a prospective account transfer. PLD also indicated that it has changed its procedures to obtain full account information from the customer during initial contact up to and including telephone bills in all cases that are used in making the TPV.

In twenty-one (21) of the twenty-three (23) complaints, the FCC ordered PLD to remove all charges incurred for service provided to complainants for the thirty (30) days after the alleged unauthorized change in accordance with the FCC’s liability rules.⁶ In the remaining two (2) complaints, the FCC ordered PLD to forward to the authorized carriers an amount equal to 150% of all charges paid by the subscriber to PLD.⁷

In seven (7) additional complaints addressed by the FCC, the FCC found that in each case “PLD’s verifier failed to obtain separate authorization for each service being sold, as required by our rules.”⁸ In all seven complaints, the FCC concluded that PLD failed to produce clear and convincing evidence of a valid authorized carrier change by the complainant. The FCC ordered PLD to remove all charges incurred for service provided to complainants for the thirty (30) days after the alleged unauthorized change in accordance with the FCC’s liability rules.

In response to Staff’s Third Set of Data Requests, at PJG 1.1, PLD stated that it has since amended its scripting policies by specifically verifying election of each service separately to ensure compliance. The Applicant provided detailed explanations concerning its research into the complaints addressed by the FCC. PLD also provided the following explanation of actions that it has taken to alleviate the number of slamming complaints it has been receiving at the federal level:

³ See 47 C.F.R. § 64.1120(c) (3)(iii) and Fourth Report and Order, 23 FCC Rcd 493 (2008).

⁴ See 47 C.F.R. § 64.1150(d).

⁵ Responses to Staff Data Requests PJG 2.3 and PJG 2.5.

⁶ See 47 C.F.R. § 64.1160(b).

⁷ See 47 C.F.R. § 64.1170(b).

⁸ See 47 C.F.R. § 64.1120(b) and 47 C.F.R. § 64.1120(c) (3)(iii).

“Though slamming complaints have constituted isolated occurrences, the recent spate of FCC Orders dating back to 2010 has caused the Company to review its TPV and associated practices governing collection of all telephone numbers in all instances before the TPV is conducted to make amendments in these practices. The Company has adopted changes in both to maintain the strictest compliance with FCC rules. Scripts have been amended to ensure compliance. Additional processes have been put in place to avoid transferring service for any telephone number that is not explicitly verified accurately. And measures have been addressed with Customer Service supervisors and staff to accommodate customers where they are disputing the transfer of service, including playing the TPV recording as soon as it is available and investigating the true nature of the complaint.”⁹

Based on the responses provided by PLD, Staff believes that the actions taken by the Applicant are satisfactory in PLD’s quest to alleviate the recent number of slamming complaints that the Applicant has been receiving at the federal level, in addition to those received at the state level. However, because of the Applicant’s history of slamming and cramming violations in other jurisdictions, Staff believes that as a condition of approval of its CC&N to the extent PLD is found to have engaged in slamming and cramming in Arizona, the Company shall be subject to such sanctions and/or penalties, including fines and/or revocation of its CC&N, as determined appropriate by the Commission, after a hearing if requested by the Company.

7. COMPETITIVE SERVICES ANALYSIS

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

7.1 Competitive Services Analysis for Local Exchange Services

7.1.1 A description of the general economic conditions that exist, which make the relevant market for the service one that is competitive.

The statewide local exchange market that the Applicant seeks to enter is one in which a number of CLECs have been authorized to provide local exchange service in areas previously served only by ILECs. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, will have to compete with those existing companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments. The areas served by CenturyLink that the Applicant seeks to enter are served by wireless carriers and Voice over the

⁹ Response to Staff’s Third Set of Data Requests at PJG 1.3.

Internet Protocol (“VoIP”) service providers. This may also be the case in areas served by independent ILECs.

7.1.2 The number of alternative providers of the service.

CenturyLink and various independent ILECs provide local exchange service in Arizona. CLECs and local exchange resellers are also providing local exchange service. The areas served by CenturyLink that the Applicant seeks to enter are served by wireless carriers and VoIP service providers. This may also be the case in portions of the independent ILECs’ service territories.

7.1.3 The estimated market share held by each alternative provider of the service.

CenturyLink and CLECs are the primary providers of local exchange service in CenturyLink’s Service territories. Independent ILECs are the primary providers of local exchange service in their service territories.

7.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.

PLD does not have any affiliates that are alternative providers of local exchange service in Arizona.

7.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

ILECs have the ability to offer the same services that the Applicant has requested the authority to provide in their respective service territories. Similarly, many of the CLECs, local exchange service resellers, wireless carriers and VoIP service providers also offer substantially the same services.

7.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories. Competition exists in most urban markets, but to a lesser degree in rural areas of Arizona.

- b. One in which new entrants will be dependent upon ILECs and other CLECs:
 - 1. To terminate traffic to customers.
 - 2. To provide essential local exchange service elements until the entrant's own network has been built.
 - 3. For interconnection.
- c. One in which existing ILECs and CLECs have had an existing relationship with their customers that the Applicant will have to overcome if it wants to compete in the market and one in which the Applicant will not have a history in the Arizona local exchange service market.
- d. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

7.2 *Competitive Services Analysis for Interexchange Services*

7.2.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that is competitive.

The statewide interexchange market that the Applicant seeks to enter is one in which numerous facilities-based interexchange carriers and resellers of interexchange service have been authorized to provide service throughout the State. The market the Applicant seeks to enter is also served by wireless carriers and VoIP providers. The Applicant will be a new entrant in this market and, as such, will have to compete with those existing companies in order to obtain customers.

7.2.2 The number of alternative providers of the service.

There are a large number of facilities-based interexchange carriers and resellers providing interexchange service throughout Arizona. The market the Applicant seeks to enter is also served by wireless carriers and VoIP service providers.

7.2.3 The estimated market share held by each alternative provider of the service.

Facilities-based interexchange carriers, interexchange service resellers, independent ILECs, CLECs, wireless carriers and VoIP providers all hold a portion of the interexchange market.

7.2.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.

PLD does not have any affiliates that are alternative providers of interexchange service in Arizona.

7.2.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

Both facilities-based interexchange carriers and interexchange service resellers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly, many of the ILECs and CLECs offer similar interexchange services. The market the Applicant seeks to enter is also served by wireless carriers and VoIP service providers.

7.2.6 Other indicators of market power which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The interexchange service market is:

- a. One with numerous competitors and limited barriers to entry.
- b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market.
- c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.
- d. One in which the share of the market held by wireless carriers has increased over time, while that held by wireline carriers has declined.

8. RECOMMENDATIONS

The following sections contain Staff recommendations on the Application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

8.1 Recommendations on the Application For A CC&N

Staff recommends that Applicant's Application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers and local incumbent carriers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
9. That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;

10. That Preferred Long Distance Inc.'s Application be approved based upon its representation to the Commission that Preferred Long Distance, Inc. will be providing local exchange service directly to end-users in Arizona. Should Preferred Long Distance, Inc. not provide service directly to end-user customers, it shall notify the Commission and file for cancellation of its CC&N; and

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application.
2. The Applicant shall:
 - a. Procure either a performance bond or an ISDLC equal to \$135,000. The minimum performance bond or ISDLC amount of \$135,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or ISDLC amount should be increased in increments of \$67,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$13,500 of the performance bond or ISDLC amount.
 - b. Docket proof of the original performance bond or ISDLC with the Commission's Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 90 days of the effective date of a Decision in this matter or 10 days before the first customer is served, whichever comes first. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Applicant's customers, if the Commission finds, in its discretion, that the Applicant is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Applicant's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Applicant's customers.
 - c. Notify the Commission through a compliance filing when it begins serving customers.

3. Abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).
4. For a period of three (3) years, provide a list of the number of complaints filed against Preferred Long Distance, Inc. in other States/Jurisdictions and at the FCC, and the resolution of those complaints. In addition, the Applicant will provide a detailed explanation of the actions and/or changes in operations that Preferred Long Distance, Inc. has implemented to reduce or eliminate future complaints. The Applicant will begin providing this information six (6) months after it begins serving its first customer in Arizona. This information will be provided on a semi-annual basis as a compliance filing. State laws prohibit unauthorized carrier changes (slamming) and unauthorized carrier charges (cramming). See, e.g. Title 14, Articles 19 and 20 of the Arizona Administrative Code. Both Articles 19 and 20 include provisions subjecting violators to such enforcement actions and penalties as authorized by Arizona law. To the extent Preferred Long Distance, Inc. is found to have slamming and cramming complaints in Arizona and those complaints are resolved in the customers favor, the Company shall be subject to such sanctions and/or penalties, including fines and/or revocation of its CC&N, as determined appropriate by the Commission, after a hearing if requested by the Company.

8.2 Recommendation on the Applicant's Petition to Have Its Proposed Services Classified as Competitive

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange service market where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.

Attachment 1

FCC Slamming Complaints Against Preferred Long Distance, Inc.

| <u>Informal Complaint No.</u> | <u>Date Complaint Filed</u> | <u>FCC Order No.</u> | <u>Order Release Date</u> |
|-------------------------------|-----------------------------|----------------------|---------------------------|
| 09-S0296111 | 05/12/09 | DA 09-1689 | 07/31/09 |
| 10-S0297610 | 03/08/10 | DA 10-1637 | 08/31/10 |
| 11-S3106034 | 04/28/11 | DA 12-1242 | 08/02/12 |
| 11-S3218877 | 07/28/11 | DA 12-1242 | 08/02/12 |
| 11-S3247492 | 09/22/11 | DA 12-1242 | 08/02/12 |
| 11-S3259759 | 10/21/11 | DA 12-1242 | 08/02/12 |
| 12-S3353245 | 03/19/12 | DA 12-1241 | 08/02/12 |
| 10-R2658295S | 06/14/10 | DA 12-1255 | 08/03/12 |
| 10-S2726918 | 07/26/10 | DA 12-1255 | 08/03/12 |
| 11-S3134372 | 06/03/11 | DA 12-1255 | 08/03/12 |
| 11-S3150573 | 07/05/11 | DA 12-1255 | 08/03/12 |
| 11-S3218915 | 07/18/11 | DA 12-1255 | 08/03/12 |
| 12-S3353014 | 03/19/12 | DA 12-1255 | 08/03/12 |
| 10-S2749689 | 08/10/10 | DA 12-1254 | 08/03/12 |
| 11-S003135 | 04/13/11 | DA 12-1254 | 08/03/12 |
| 11-S003178 | 07/13/11 | DA 12-1254 | 08/03/12 |
| 11-S3105915 | 02/11/11 | DA 12-1254 | 08/03/12 |
| 11-S3197859 | 08/11/11 | DA 12-1254 | 08/03/12 |
| 11-S3218846 | 07/27/11 | DA 12-1254 | 08/03/12 |
| 11-S3218864 | 08/02/11 | DA 12-1254 | 08/03/12 |
| 11-S3218890 | 07/20/11 | DA 12-1254 | 08/03/12 |
| 11-S3227030 | 09/14/11 | DA 12-1254 | 08/03/12 |
| 11-S3286476 | 11/28/11 | DA 12-1254 | 08/03/12 |
| 11-S3287268 | 11/16/11 | DA 12-1254 | 08/03/12 |
| 12-S003307 | 01/10/12 | DA 12-1254 | 08/03/12 |
| 12-S003308 | 01/10/12 | DA 12-1254 | 08/03/12 |
| 12-S3309576 | 01/13/12 | DA 12-1254 | 08/03/12 |
| 12-S3321288 | 02/01/12 | DA 12-1254 | 08/03/12 |
| 12-S3327086 | 02/09/12 | DA 12-1254 | 08/03/12 |
| 12-S3334393 | 02/14/12 | DA 12-1254 | 08/03/12 |
| 12-S3373425 | 04/16/12 | DA 12-1254 | 08/03/12 |
| 12-S3399206 | 05/04/12 | DA 12-1254 | 08/03/12 |
| 12-S3409767 | 05/21/12 | DA 12-1254 | 08/03/12 |
| 12-S3413396 | 06/01/12 | DA 12-1254 | 08/03/12 |
| 11-S3114711 | 05/02/11 | DA 12-1253 | 08/03/12 |
| 11-S3218818 | 07/22/11 | DA 12-1253 | 08/03/12 |