

**ORIGINAL**  
COMMISSIONERS  
BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
DOCKET CONTROL

DATE: APRIL 16, 2013  
DOCKET NO.: T-20686A-09-0306

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

VELOCITY THE GREATEST PHONE COMPANY EVER, INC.  
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

APRIL 25, 2013

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

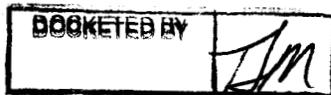
MAY 1, 2013 AND MAY 2, 2013

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

**DOCKETED**

APR 16 2013



*Jodi A. Jerich*  
JODI JERICH  
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SABernal@azcc.gov](mailto:SABernal@azcc.gov).

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 BOB STUMP - Chairman  
4 GARY PIERCE  
5 BRENDA BURNS  
6 BOB BURNS  
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF  
9 VELOCITY THE GREATEST PHONE COMPANY  
10 EVER, INC. FOR A CERTIFICATE OF  
11 CONVENIENCE AND NECESSITY TO PROVIDE  
12 COMPETITIVE RESOLD LONG DISTANCE AND  
13 RESOLD LOCAL EXCHANGE  
14 TELECOMMUNICATIONS SERVICES IN  
15 ARIZONA.

DOCKET NO. T-20686A-09-0306

DECISION NO. \_\_\_\_\_

**ORDER**

11 Open Meeting  
12 May 1 and 2, 2013  
13 Phoenix, Arizona

14 **BY THE COMMISSION:**

15 Having considered the entire record herein and being fully advised in the premises, the  
16 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. On June 8, 2009, Velocity The Greatest Phone Company Ever, Inc. ("Velocity" or  
19 "Company"), filed an application with the Commission for a Certificate of Convenience and  
20 Necessity ("CC&N") to provide resold long distance and resold local exchange telecommunications  
21 services in Arizona and requested that its proposed services be classified as competitive  
22 ("Application").

23 2. On August 31, 2009, the Commission's Utilities Division ("Staff") sent the Company  
24 a Letter of Insufficiency and First Set of Data Requests.

25 3. On September 30, 2009, the Company requested an extension of time to respond to  
26 Staff's Data Requests. Velocity docketed its responses on January 28, 2010.

27 4. On March 3, 2010, Staff issued its Second Set of Data Requests, and the Company  
28 filed responses on March 29, and November 8, 2010.

5. On July 5, 2012, Velocity filed an Affidavit of Publication stating that notice of the

1 Application had been published in *The Arizona Business Gazette* on June 25, 2012.

2 6. On October 10, 2012, Staff filed its Staff Report recommending approval of  
3 Velocity's Application, subject to certain conditions.

4 7. On March 20, 2013, a Procedural Order was docketed requesting that Staff clarify a  
5 statement in the Staff Report by April 1, 2013, and also suspending the time clock.

6 8. Staff filed its Correction to Staff Report on March 29, 2013.

7 9. As of April 15, 2013, Velocity had not filed a response to the corrected Staff Report.

8 **Fitness and Properness to Obtain a CC&N**

9 10. Velocity is a Delaware "C" corporation granted authority by the Commission on  
10 March 17, 2009, to conduct business in Arizona as a foreign corporation.

11 11. Velocity is in good standing with the Commission's Corporations Division.

12 12. The Company indicated that neither Velocity nor any of its officers, directors, partners  
13 or managers have been or are currently involved in any civil or criminal investigations, have had  
14 judgments entered in any civil or criminal matter or levied by any administrative or regulatory  
15 agency, nor have they been convicted of any criminal acts within the past 10 years.

16 13. The Company indicated that neither Velocity, nor any of its officers, directors,  
17 partners or managers have been or currently are involved in any formal or informal complaint  
18 proceedings pending before any state or federal regulatory commission, administrative agency, or law  
19 enforcement agency.

20 14. According to Velocity, it is authorized to provide telecommunications services similar  
21 to those offered in Arizona in seven states, and is currently providing service in five of them. Staff  
22 contacted the state public utility commissions in these jurisdictions and confirmed that Velocity is  
23 certificated or registered to provide telecommunications services. Staff also verified that no customer  
24 complaints about the Company had been filed in those states.

25 15. Staff stated the Consumer Services Section of the Utilities Division reported that no  
26 complaints, inquiries, or opinions have been filed against Velocity through March 29, 2013.

27 16. Staff noted that on June 4, 2012, it learned Velocity has been providing service in  
28

1 Arizona without a CC&N. The Commission addressed a similar situation in a previous Decision.<sup>1</sup> In  
2 that case, the Commission found there were no consumer complaints, inquiries or opinions filed  
3 against the applicant and that it was in good standing with the Corporations Division. Based on these  
4 findings, the Commission granted the CC&N. The Commission put the applicant on notice that if it  
5 provided other telecommunications services in Arizona without first obtaining Commission  
6 authorization, the Commission might impose sanctions.

7 17. Because there are no consumer complaints, inquiries or opinions filed against the  
8 Company and Velocity is in good standing with the Corporations Division, we will not reject the  
9 Application due to the Company's unauthorized provision of service. The Company is put on notice  
10 that if it provides other telecommunications services in Arizona in the future without first obtaining  
11 all required Commission approvals, the Commission may impose sanctions against Velocity,  
12 including the forfeiture of any performance bond or irrevocable sight draft letter of credit.

### 13 **Technical Capabilities**

14 18. Velocity will offer resold telecommunications services obtained from CenturyLink  
15 d/b/a Qwest Communications, Global Crossing and AT&T, among others, to Arizona customers.

16 19. According to the Company, its officers have a combined experience of over 12 years  
17 in the telecommunications industry.

18 20. Velocity has authority to provide, and/or is providing, telecommunications services  
19 similar to those it intends to offer in Arizona in seven states.

20 21. Based on this information, Staff determined that Velocity has sufficient technical  
21 capabilities to provide resold long distance and resold local exchange telecommunications services in  
22 Arizona.

### 23 **Financial Resources**

24 22. Velocity provided Staff with unaudited financial statements for the periods ending  
25 December 31, 2010, and December 31, 2011. According to the Staff Report, the financial statement  
26 for the year ending 2010 lists total assets of \$5,550,003, total equity of \$3,289,956, and net income of  
27

28 <sup>1</sup> Decision No. 73133 (May 1, 2012).

1 \$2,478,921. The financial statement for the year ending 2011 lists total assets of \$5,991,594, total  
2 equity of \$3,404,935, and net income of \$114,978.

3 23. Velocity projected total intrastate revenues generated from provision of  
4 telecommunications services to Arizona customers for the first 12 months of operations to be  
5 \$10,000, with total intrastate operating expenses during that period of \$8,000.

6 24. Velocity stated that the current net book value of all Arizona jurisdictional assets is  
7 zero and the projected value of all Arizona assets after the first 12 months of operations will be \$100.

8 25. If Velocity experienced financial difficulty, it would have only a minimal impact on  
9 its customers because there are many companies in Arizona that provide resold long distance and  
10 resold local exchange telecommunications services. Facilities-based providers are also available.

#### 11 **Proposed Rates and Competitive Services**

12 26. Staff notes that the rates proposed by Velocity are for competitive services. Rates for  
13 competitive telecommunications services are generally not established according to rate-of-return  
14 regulation.

15 27. Staff determined that Velocity's fair value rate base ("FVRB") is zero. Although Staff  
16 evaluated the FVRB information submitted by Velocity, Staff determined that the FVRB information  
17 should not be given substantial weight in its analysis.

18 28. As a reseller of services purchased from other telecommunications companies,  
19 Velocity will have no market power and it will have to compete with other providers to obtain  
20 subscribers to its services.

21 29. In light of this competitive market, Staff believes that Velocity's proposed tariffs are  
22 just and reasonable.

23 30. Staff stated that there are alternatives to Velocity's services, the Company will have to  
24 convince potential customers to purchase its services, and the Company has no ability to adversely  
25 affect the local exchange or interexchange service markets. As such, Staff recommends that the  
26 Company's proposed services be classified as competitive.

27 31. For a telecommunications services reseller, the Commission's current performance  
28 bond or irrevocable sight draft letter of credit requirements are \$10,000 for resold long distance if a

1 company collects advances, prepayments and/or deposits from Arizona customers, and \$25,000 for  
2 an entity providing resold local exchange services.

3 32. Velocity's proposed tariff states that it will not collect advances, deposits, and/or  
4 prepayments from its resold long distance customers. As such, no performance bond or irrevocable  
5 sight draft letter of credit is required for its resold long distance CC&N. Staff recommended that if,  
6 in the future, Velocity wants to collect advances, deposits and/or prepayments from its Arizona  
7 customers, the Company must file an application with the Commission for its approval. The  
8 application must reference this Decision and explain the Company's plans for obtaining the \$10,000  
9 performance bond or irrevocable sight draft letter of credit required by the Commission in these  
10 circumstances.

11 33. In order to protect Velocity's resold local exchange customers, Staff recommended  
12 that the Company should acquire a performance bond or irrevocable sight draft letter of credit equal  
13 to \$25,000. Staff recommended that Velocity file the original performance bond or irrevocable sight  
14 draft letter of credit with the Commission's Business Office and file copies with Docket Control, as a  
15 compliance item in this docket, within 90 days of the effective date this Decision. The performance  
16 bond or irrevocable sight draft letter of credit must remain in effect until further order of the  
17 Commission.

### 18 **Regulatory Requirements**

19 34. If Velocity wishes to discontinue any service in Arizona, it must file an application  
20 with the Commission pursuant to Arizona Administrative Code ("A.A.C.") R14-2-1107. The  
21 Company must notify each of its customers and the Commission 60 days prior to filing an application  
22 to discontinue service. Failure to meet these requirements could result in forfeiture of the Company's  
23 performance bond or irrevocable sight draft letter of credit.

24 35. Consistent with federal laws and rules, and A.A.C. R14-2-1308(A), Velocity shall  
25 make number portability available to facilitate the ability of a customer to switch between authorized  
26 local carriers within a given wire center without changing their telephone number and without  
27 impairment to quality, functionality, reliability or convenience of use.

28 36. Commission rules require Velocity to file a tariff for each competitive service that

1 states the maximum rate as well as the effective (actual) price that will be charged for the service.  
2 Under A.A.C. R14-2-1109(A), the minimum rate for a service must not be below the total service  
3 long-run incremental cost of providing the service. Any change to Velocity's effective price for a  
4 service must comply with A.A.C. R14-2-1109, and any change to the maximum rate for a service in  
5 Velocity's tariff must comply with A.A.C. R14-2-1110.

6 37. A.A.C. R14-2-1204(A) requires all telecommunications service providers that  
7 interconnect to the public switched network to provide funding for the Arizona Universal Service  
8 Fund ("AUSF"). A.A.C. R14-2-1204(B)(3)(a) requires new telecommunications service providers  
9 that begin providing toll service after April 26, 1996, to pay AUSF charges as provided under A.A.C.  
10 R14-2-1204(B)(2).

11 38. In accordance with Federal Communications Commission 47 CFR Sections 64.3001  
12 and 64.3002 and A.A.C. R14-2-1201(6)(d), the Company will provide all customers with 911 and  
13 E911 service, where available, or will coordinate with ILECs and emergency service providers to  
14 provide 911 and E911 service.

15 39. A.A.C. R14-2-1901 *et seq.* establish requirements to protect Arizona consumers from  
16 unauthorized carrier changes ("slamming") and apply to each public service corporation providing  
17 telecommunications services in Arizona and over which the Commission has jurisdiction.

18 40. A.A.C. R14-2-2001 *et seq.* establish requirements to protect Arizona consumers from  
19 unauthorized carrier charges ("cramming") and apply to each public service corporation providing  
20 telecommunications services in Arizona and over which the Commission has jurisdiction.

21 **Staff's Recommendations**

- 22 41. Staff recommends approval of Velocity's Application and further recommends:
- 23 a. That Velocity be ordered to comply with all Commission rules, orders, and
- 24 other requirements relevant to the provision of intrastate telecommunications
- 25 service;
- 26 b. That Velocity be required to notify the Commission immediately upon changes
- 27 to its name, address or telephone number;
- 28 c. That Velocity be ordered to cooperate with Commission investigations,
- including but not limited to customer complaints;
- d. That Velocity be ordered to abide by the quality of service standards that were

1 approved by the Commission for CenturyLink in Docket No. T-01051B-93-  
2 0183;

- 3 e. That Velocity be prohibited from barring access to alternative local exchange  
4 service providers who wish to serve areas where it is the only provider of local  
5 exchange service facilities;
- 6 f. That Velocity's FVRB is zero;
- 7 g. That Velocity's services be classified as competitive;
- 8 h. That Velocity be authorized to discount its rates and service charges to the  
9 marginal cost of providing the services;
- 10 i. That if at some time in the future Velocity wants to collect advances, deposits  
11 and/or prepayments from its resold long distance customers, Velocity be  
12 required to file an application for Commission approval that references this  
13 Decision and explains the Company's plans for procuring its performance  
14 bond or irrevocable sight draft letter of credit;
- 15 j. That Velocity offer Last Call Return service that will not return calls to  
16 telephone numbers that have the privacy indicator activated;
- 17 k. That Velocity offer Caller ID with the capability to toggle between blocking  
18 and unblocking the transmission of the telephone number at no charge; and
- 19 l. That Velocity be ordered to do the following and that its CC&N be rendered  
20 null and void, after due process, if it fails to do the following:
- 21 i. Velocity shall docket conforming tariffs for each service within its  
22 CC&N within 365 days of the effective date of this Decision or 30 days  
23 prior to providing service, whichever comes first. The tariffs submitted  
24 shall coincide with the Application and the tariffs should indicate that  
25 Velocity does not collect advances, deposits and/or prepayments.
- 26 ii. Velocity shall procure either a performance bond or an irrevocable  
27 sight draft letter of credit equal to \$25,000. The minimum performance  
28 bond or irrevocable sight draft letter of credit should be increased if it  
becomes insufficient to cover advances, deposits, and/or prepayments  
collected from the Company's customers. The performance bond or  
irrevocable sight draft letter of credit amount should be increased in  
increments of \$12,500. This increase should occur when the total  
amount of the advances, deposits, and prepayments is within \$2,500 of  
the performance bond or irrevocable sight draft letter of credit.
- iii. Velocity shall file the original performance bond or irrevocable sight  
draft letter of credit with the Commission's Business Office and copies  
of the performance bond or irrevocable sight draft letter of credit with  
Docket Control, as a compliance item in this docket, within 90 days of  
the effective date of the Decision in this matter. The performance bond  
or irrevocable sight draft letter of credit must remain in effect until  
further order of the Commission. The Commission may draw on the  
performance bond or irrevocable sight draft letter of credit, on behalf  
of, and for the sole benefit of, the Company's customers, if the  
Commission, in its discretion, finds that the Company is in default of  
its obligations arising from its Certificate. The Commission may use

1 the performance bond or irrevocable sight draft letter of credit funds, as  
2 appropriate, to protect the Company's customers and the public  
3 interest, and take any and all actions the Commission, in its discretion,  
4 deems necessary, including, but not limited to, returning prepayments  
5 or deposits collected from the Company's customers

- iv. Velocity shall abide by Commission rules regarding the AUSF as stated  
in A.A.C. R14-2-1204(A), and shall make the necessary monthly  
payments as required by A.A.C. R14-2-1204(B).

6 42. Because Velocity is already providing service in Arizona, we believe it is reasonable  
7 to modify Staff's recommendation noted in Finding of Fact No. 41(l)(i) to require Velocity to docket  
8 conforming tariffs for each service within its CC&N within 30 days of the effective date of this  
9 Decision.

10 43. We also find it reasonable to require that:

- 11 a. The maximum rates for Velocity's services shall be the maximum rates  
12 proposed by Velocity in its proposed tariffs;
- 13 b. Velocity's minimum rates for services shall be the total service long-run  
14 incremental costs of providing those services, as set forth in A.A.C. R14-2-  
15 1109;
- 16 c. If Velocity states only one rate for a service in its proposed tariff, that the rate  
17 stated shall be the effective (actual) price to be charged for the service as well  
18 as the service's maximum rate;
- 19 d. Velocity shall maintain its accounts and records as required by the  
20 Commission;
- 21 e. Velocity shall file with the Commission all financial and other reports that the  
22 Commission may require, in a form and at such times as the Commission may  
23 designate;
- 24 f. Velocity shall maintain on file with the Commission all current tariffs and rates  
25 and any service standards that the Commission may require;
- 26 g. Velocity shall comply with the Commission's rules and modify its tariffs to  
27 conform to those rules if it is determined that there is a conflict between  
28 Velocity's tariffs and Commission rules;
- h. Velocity shall comply with federal laws and rules, and A.A.C. R14-2-1308(A),  
regarding number portability;
- i. Velocity shall provide all customers with 911 and E911 service, where  
available, or to coordinate with ILECs and emergency service providers to  
provide these services in accordance with 47 CFR §§ 64.3001 and 64.3002 and  
A.A.C. R14-2-120(6)(d);
- j. If Velocity wishes to discontinue and/or abandon its service area, Velocity  
must provide notice to both its customers and the Commission 60 days prior to

1 filing an application to discontinue service, and the application must be in  
2 accordance with A.A.C. R-14-2-1107. Velocity's failure to do so may result in  
3 forfeiture of the performance bond or irrevocable sight draft letter of credit;  
4 and

5 k. In the future, if Velocity wishes to provide telecommunications services in  
6 Arizona beyond those authorized in this Decision, the Company must obtain  
7 Commission approval to provide those services before offering them to  
8 Arizona customers. If Velocity provides such service without first obtaining  
9 all required Commission approvals, the Commission may impose sanctions  
10 against Velocity, including, but not limited to, the forfeiture of any  
11 performance bond or irrevocable sight draft letter of credit.

12 44. Staff's recommendations in Finding of Fact No. 41, as modified in Finding of Fact  
13 No. 42, and those stated in Finding of Fact No. 43, are reasonable and shall be adopted.

14 **CONCLUSIONS OF LAW**

15 1. Velocity is a public service corporation within the meaning of Article XV of the  
16 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

17 2. The Commission has jurisdiction over Velocity and the subject matter of the  
18 Application.

19 3. A.R.S. § 40-282 allows a telecommunications company to file an application for a  
20 CC&N to provide competitive telecommunications services.

21 4. A.R.S. § 40-282 allows the Commission to grant a CC&N without first conducting a  
22 hearing if the CC&N is for resold telecommunications services.

23 5. Notice of Velocity's Application was given in accordance with Arizona law.

24 6. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes,  
25 it is in the public interest for Velocity to provide the telecommunications services for which it  
26 requested authorization in its Application.

27 7. Velocity is a fit and proper entity to receive a CC&N authorizing it to provide resold  
28 long distance and resold local exchange telecommunications services in Arizona.

8. The telecommunications services that Velocity desires to provide are competitive in  
Arizona.

9. Pursuant to Article XV of the Arizona Constitution and 14 A.A.C. 2, Article 11, it is  
just and reasonable and in the public interest for Velocity to establish rates and charges for

1 competitive services that are not less than Velocity's total service long-run incremental costs of  
2 providing the approved competitive services.

3 10. Velocity's FVRB is not useful in determining just and reasonable rates for the  
4 competitive services it proposes to provide to Arizona customers.

5 11. Velocity's rates, as they appear in its proposed tariffs, are just and reasonable and  
6 should be approved.

7 12. The recommendations stated in Finding of Fact No. 41, as modified in Finding of Fact  
8 No. 42, and Finding of Fact No. 43, are reasonable and should be adopted.

9 **ORDER**

10 IT IS THEREFORE ORDERED that the Application of Velocity The Greatest Phone  
11 Company Ever, Inc. for a Certificate of Convenience and Necessity to provide competitive resold  
12 long distance and resold local exchange telecommunications services in Arizona is granted, subject to  
13 the conditions and recommendations stated in Finding of Fact No. 41, as modified in Finding of Fact  
14 No. 42, and in Finding of Fact No. 43.

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IT IS FURTHER ORDERED that if Velocity The Greatest Phone Company Ever, Inc. fails to meet the conditions outlined in Finding of Fact No. 41(l)(i-iv), as modified by Finding of Fact No. 42, within the stated timeframes, this conditionally granted Certificate of Convenience and Necessity shall become null and void after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

\_\_\_\_\_  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

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SERVICE LIST FOR:

VELOCITY THE GREATEST PHONE COMPANY  
EVER, INC.

DOCKET NO.:

T-20686A-09-0306

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