

OPEN MEETING ITEM

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



ARIZONA CORPORATION COMM



2013 MAY 28 A 10:37

AZ CORP COMMISSION  
DOCKET CONTROL

DATE: MAY 28, 2013  
DOCKET NO.: T-04308A-12-0118

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

PREFERRED LONG DISTANCE, INC.  
(CC&N/RESELLER/FACILITIES-BASED)

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:

JUNE 6, 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:

JUNE 11, 2013 AND JUNE 12, 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**

MAY 28 2013

*Jodi A. Jerich*  
JODI JERICH  
EXECUTIVE DIRECTOR

DOCKETED BY *JM*

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

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

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

OPINION AND ORDER

DATE OF HEARING: March 18, 2013  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey  
APPEARANCES: Mr. Michael W. Patten, ROSHKA, DEWULF & PATTEN, PLC, on behalf of Applicant; and  
Mr. Scott Hesla, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation.

**BY THE COMMISSION:**

On March 29, 2012, 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 within the State of Arizona. Preferred's application also requests a determination that its proposed services are competitive in Arizona.

On May 21, 2012, the Commission's Utilities Division ("Staff") submitted its First Set of Data Requests to the Company.

On May 29, 2012, Preferred filed responses to Staff's First Set of Data Requests.

1 On July 17 and September 13, 2012, Preferred filed responses related to Staff's Data  
2 Requests.

3 On November 20, 2012, Staff filed a Staff Report recommending approval of Preferred's  
4 application, subject to certain conditions.

5 On January 8 and 11, 2013, the Company filed supplements to its application.

6 On January 22, 2013, by Procedural Order, a hearing was scheduled for March 18, 2013, and  
7 other procedural deadlines were established.

8 On February 26, 2013, Preferred filed an Affidavit of Publication, showing that notice of  
9 Preferred's application and the hearing date had been published in the Arizona Republic, a newspaper  
10 of general circulation, on February 4, 2013.

11 On March 18, 2013, a full public hearing was held as scheduled before a duly authorized  
12 Administrative Law Judge of the Commission. Preferred and Staff appeared through counsel and  
13 presented testimony and evidence. No members of the public appeared to give public comments. At  
14 the conclusion of the hearing, the Company was directed to file a late-filed exhibit demonstrating that  
15 noticed had been published in compliance with the January 22, 2013, Procedural Order.

16 On March 20, 2013, Preferred filed its late-filed exhibit demonstrating that its publication had  
17 been published in compliance with the January 22, 2013, Procedural Order.

18 Upon receipt of the late-filed exhibits, the matter was taken under advisement pending  
19 submission of a Recommended Opinion and Order to the Commission.

20 \* \* \* \* \*

21 Having considered the entire record herein and being fully advised in the premises, the  
22 Commission finds, concludes, and orders that:

23 **FINDINGS OF FACT**

24 1. Preferred is an "S" corporation, organized under the laws of California, with its  
25 principal offices located in Encino, California.<sup>1</sup>

26 2. Preferred is authorized to transact business in Arizona and is in good standing with the  
27

28 <sup>1</sup> Exhibit A-1, Attachment A.

1 Commission's Corporations Division.<sup>2</sup>

2 3. Preferred is a family owned business, founded in 1995 and the business is split equally  
3 between providing switchless local exchange and long distance telecommunication services to  
4 primarily business customers.<sup>3</sup>

5 4. Preferred has approximately 30,000 customers.<sup>4</sup>

6 5. On March 29, 2012, Preferred filed an application with the Commission requesting  
7 authority to provide resold long distance, resold local exchange, and facilities-based local exchange  
8 telecommunication services in Arizona. Preferred intends to provide its proposed services to only  
9 small business customers in Arizona.<sup>5</sup>

10 6. Notice of Preferred's application was given in accordance with the law.

11 7. Staff recommends approval of Preferred's application for a CC&N to provide  
12 intrastate telecommunication services in Arizona, subject to the following conditions.

13 8. Staff further recommends that:

14 a. Preferred comply with all Commission Rules, Orders, and other requirements  
15 relevant to the provision of intrastate telecommunications services;

16 b. Preferred comply with federal laws, federal rules and A.A.C. R14-2-1308(A),  
to make number portability available;

17 c. Preferred abides by the quality of service standards that were approved by the  
18 Commission for Qwest in Docket No. T-01051B-93-0183;

19 d. Preferred be prohibited from barring access to alternative local exchange  
20 service providers who wish to serve areas where Preferred is the only local  
provider of local exchange service facilities;

21 e. Preferred provide all customers with 911 and E911 service, where available, or  
22 will coordinate with incumbent local exchange carriers ("ILECs") and  
23 emergency service providers to provide 911 and E911 service in accordance  
with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission 47  
CFR Sections 64.3001 and 64.3002;

24 f. Preferred notify the Commission immediately upon changes to Preferred's  
name, address or telephone number;

25 g. Preferred cooperate with Commission investigations including, but not limited  
26 to customer complaints;

27 <sup>2</sup> Exhibit A-1, Attachment A.

<sup>3</sup> Tr. at 9.

<sup>4</sup> Tr. at 17.

28 <sup>5</sup> Tr. at 9.

- 1           h.     The rates proposed by Staff are for competitive services. In general, rates for  
2 competitive services are not set according to rate of return regulation. Staff  
3 obtained information from Preferred and has determined that its fair value rate  
4 base is zero. Staff has reviewed the rates to be charged by Preferred and  
5 believes they are just and reasonable as they are comparable to other  
6 competitive local carriers, local incumbent carriers and major long distance  
7 companies offering service in Arizona and comparable to the rates Preferred  
8 charges in other jurisdictions. The rate to be ultimately charged by Preferred  
9 will be heavily influenced by the market. Therefore, while Staff considered the  
10 fair value rate base information submitted by the Company, the fair value  
11 information provided was not given substantial weight in Staff's analysis;
- 12           i.     In the event Preferred requests to discontinue and/or abandon its service area, it  
13 must provide notice to both the Commission and its customers. Such notice(s)  
14 shall be in accordance with A.A.C. R14-2-1107;
- 15           j.     Preferred offer Caller ID with the capability to toggle between blocking and  
16 unblocking the transmission of the telephone number at no charge;
- 17           k.     Preferred offer Last Call Return service that will not return calls to telephone  
18 numbers that have the privacy indicator activated; and
- 19           l.     The Commission authorize Preferred to discount its rates and service charges  
20 to the marginal cost of providing the services.

21           9.     Staff further recommends that Preferred's CC&N be considered null and void after  
22 due process if Preferred fails to comply with the following conditions:

- 23           a.     Preferred shall docket conforming tariffs for each service within its CC&N  
24 within 365 days from the date of an Order in this matter or 30 days prior to  
25 providing service, whichever comes first. The tariffs submitted shall coincide  
26 with the application.
- 27           b.     Preferred shall:
- 28           i.     Procure either a performance bond or irrevocable sight draft letter of  
credit ("ISDLC") equal to \$135,000. The minimum bond or ISDLC of  
\$135,000 should be increased if at any time it would be insufficient to  
cover advances, deposits, and/or prepayments collected for Preferred's  
customers. The bond or ISDLC should be increased in increments of  
\$67,500. This increase should occur when the total amount of  
advances, deposits, and/or prepayments is within \$13,500 of the total  
\$135,000 bond or ISDLC amount.
- ii.     File the original performance bond or ISDLC with the Commission's  
Business Office and 13 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 earlier. 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 benefit of the Company's customers, if the  
Commission finds, in its discretion, that the Company is in default of  
its obligations arising from its Certificate. The Commission may use

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

- 6 iii. Preferred shall notify the Commission as a compliance filing when the  
 7 first customer is served.
- 8 iv. Preferred should abide by the Commission adopted rules that address  
 9 Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all  
 10 telecommunications service providers that interconnect into the public  
 11 switched network shall provide funding for the Arizona Universal  
 12 Service Fund ("AUSF"). Preferred will make the necessary monthly  
 13 payments required by the A.A.C. R14-2-1204(B).
- 14 v. For a period of three (3) years, provide a list of the number of  
 15 complaints filed against Preferred in all states/jurisdictions and at the  
 16 Federal Communication's Commission ("FCC"), and the resolution of  
 17 those complaints. In addition, Preferred will provide a detailed  
 18 explanation of the actions and/or changes in operations that Preferred  
 19 has implemented to reduce or eliminate future complaints. Preferred  
 20 will begin providing this information six (6) months after it begins  
 21 serving its first customer in Arizona. This information will be provided  
 22 on a semi-annual basis as a compliance filing. State laws prohibit  
 23 unauthorized carrier changes (slamming) and unauthorized carrier  
 24 charges (cramming), pursuant to Title 14 Articles 19 and 20 of the  
 25 Arizona Administrative Code ("A.A.C."). Both Articles 19 and 20  
 26 include provisions subjecting violators to such enforcement actions and  
 27 penalties as authorized by Arizona law. To the extent Preferred is found  
 28 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.

### 18 Technical Capability

19 10. Preferred states that its two top officers possess more than 40 years' experience in the  
 20 telecommunication industry.<sup>6</sup>

21 11. Preferred is authorized and is providing competitive local exchange  
 22 telecommunication services in eighteen (18) states/jurisdictions and has never had an application to  
 23 provide its proposed services denied.<sup>7</sup>

24 12. Preferred plans to provide its proposed services in three ways: 1) utilizing a  
 25 combination of network elements, ancillary functions and features leased from CenturyLink; 2)  
 26 using commercial agreements with CenturyLink; or 3) via resale using the networks of its

27 \_\_\_\_\_  
 28 <sup>6</sup> Exhibit A-1 at Attachment E.

<sup>7</sup> Exhibit A-1 at (A-18 and A-19).

1 underlying carriers.<sup>8</sup>

2 13. The Company states it has a highly qualified and trained customer service staff located  
3 in California that will handle all Arizona related customer calls.<sup>9</sup> Preferred will not have any  
4 employees located in Arizona.<sup>10</sup>

5 14. Based on the above factors, Staff believes Preferred has the technical capabilities to  
6 provide its proposed services in Arizona.

7 **Financial Capabilities**

8 15. Preferred provided unaudited financial statements for the years 2010 and 2011. For  
9 the calendar year ending December 31, 2010, Preferred listed total assets of approximately \$1.4  
10 million; total equity of \$390,000; and a net income of \$55,000. For the calendar year ending  
11 December 31, 2011, Preferred listed total assets of approximately \$1.25 million; total equity of  
12 \$377,000; and a net income of \$41,000.

13 16. Preferred's proposed tariffs state that it may require advances, deposits, and  
14 prepayments from its customers. Staff recommends that Preferred procure a performance bond or  
15 ISDLC in the amount of \$135,000. Preferred's witness testified that the Company will abide by  
16 Staff's recommendation.<sup>11</sup>

17 **Rates and Charges**

18 17. Staff believes that Preferred will have to compete with other ILECs, and various  
19 competitive local exchange ("CLECs"), and interexchange carriers ("IXCs") in Arizona in order to  
20 gain new customers.<sup>12</sup>

21 18. Preferred projects that for the first twelve months of operation in Arizona, it will have  
22 total revenues of \$60,000 and a net book value of zero.<sup>13</sup>

23 19. Staff states that in general, rates for competitive services are not set according to rate  
24 of return regulation and the Company's fair value rate base is zero. Staff believes that Preferred's  
25

26 <sup>8</sup> Exhibit A-1 at A-17.

27 <sup>9</sup> Exhibit A-1 at A-19.

28 <sup>10</sup> Exhibit A-1 at A-19.

<sup>11</sup> Tr. at 10.

<sup>12</sup> Exhibit S-1 at 3.

<sup>13</sup> Exhibit A-1 at Attachment E.

1 rates will be heavily influenced by the market.<sup>14</sup> Staff reviewed Preferred's proposed tariff pages, rate  
2 comparison information of other CLECs and believes that Preferred's proposed rates are comparable  
3 to the rates charged by CLECs and ILECs providing service in Arizona.<sup>15</sup> Therefore, Staff states that  
4 while it considered the fair value rate base information submitted by Preferred, it did not accord that  
5 information substantial weight in Staff's analysis.<sup>16</sup>

6 **Local Exchange Carrier Specific Issues**

7       20. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, Preferred will make  
8 number portability available to facilitate the ability of customers to switch between authorized local  
9 carriers within a given wire center without changing their telephone number and without impairment  
10 to quality, functionality, reliability or convenience of use.

11       21. Pursuant to A.A.C. R14-2-1204(A) all telecommunication service providers that  
12 interconnect to the public switched network shall provide funding for the AUSF. Preferred shall  
13 make payments to the AUSF described under A.A.C. R14-2-1204(B).

14       22. In Commission Decision No. 59421 (December 20, 1995), the Commission approved  
15 quality of service standards for Qwest which imposed penalties due to an unsatisfactory level of  
16 service. In this matter, Staff believes Preferred does not have a similar history of service quality  
17 problems, and therefore the penalties in that decision should not apply.

18       23. In the areas where the Company is the only local exchange service provider, Staff  
19 recommends that Preferred be prohibited from barring access to alternative local exchange service  
20 providers who wish to serve the area.

21       24. Preferred will provide all customers with 911 and E911 service where available, or  
22 will coordinate with ILECs, and emergency service providers to facilitate the service.

23       25. Pursuant to prior Commission Decisions, Preferred may offer customer local area  
24 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or  
25 unblock each individual call at no additional cost.

26       26. Preferred must offer Last Call Return service, which will not allow the return of calls

27 <sup>14</sup> Exhibit S-1 at 3.

28 <sup>15</sup> Id.

<sup>16</sup> Id.

1 to the telephone numbers that have the privacy indicator activated.

2 **Complaint Information**

3 27. Preferred's application states that none of the Company's officers, directors, partners,  
4 nor managers have been or are currently involved in any formal or informal complaint proceedings  
5 before any state or federal regulatory agency, commission, administrative agency or law  
6 enforcement.<sup>17</sup>

7 28. Preferred states that none of the Company's officers, directors, partners or managers  
8 have been involved in any civil or criminal investigations, or had judgments entered in any civil  
9 matter, or by any administrative or regulatory agency, or been convicted of any criminal acts within  
10 the last ten (10) years.<sup>18</sup>

11 29. Staff's review of Preferred's application revealed that over a twelve (12) month  
12 period, four (4) complaints for slamming had been filed in Wisconsin; fourteen (14) complaints for  
13 slamming had been filed in Oregon; and nineteen (19) complaints had been filed in Indiana, sixteen  
14 of those were related to slamming and three were related to "high bills" involving Preferred.<sup>19</sup> Staff  
15 reported that all of the complaints in Indiana have been resolved and closed and that all but two  
16 complaints in Oregon have been resolved and closed.<sup>20</sup>

17 30. In its data request, Staff inquired why the Company had failed to report the above  
18 mentioned complaints when it filed its application. Preferred responded that:

19  
20 *Preferred interpreted the term "proceedings" in Application item A-11 as*  
21 *entailing an actionable regulatory matter. Preferred acknowledges that*  
22 *despite its constant, affirmative scrutiny of independent third party*  
23 *verifications and complaint account transfer procedures, there are*  
24 *instances where inquiries and complaints do occur, consistent with the*  
25 *experience of all telecommunications service providers.<sup>21</sup> 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*

26 <sup>17</sup> Exhibit A-1 at A-11.

27 <sup>18</sup> Exhibit A-1 at A-12.

28 <sup>19</sup> Exhibit S-1 at 1.

<sup>20</sup> Id.

<sup>21</sup> Exhibit A-3.

1 on to its third party verifier to place an immediate callback to the  
 2 customer. This extra procedure is costly and time sensitive, but has  
 3 dramatically reduced unauthorized account transfer allegations. A review  
 4 of the matters raised by individuals and the Company's account transfer  
 5 procedures has confirmed the viability of the Company's current  
 6 procedures, though Preferred strives to ensure that customer  
 7 communications remain clear and understandable. Preferred notes the  
 8 number of inquiries and complaints has decreased dramatically in 2012 as  
 9 a result of its continued efforts to mitigate the potential for complaints.<sup>22</sup>

6 31. Staff's review of the FCC's website revealed that thirty-six (36) informal complaints  
 7 had been filed against Preferred for slamming. The FCC's Consumer & Governmental Affairs  
 8 Bureau ("CGB") issued orders granting the consumer complaints against Preferred, finding that the  
 9 Company failed to provide evidence of an authorized carrier change.<sup>23</sup>

10 32. Subsequently, on December 20, 2012, the FCC released a Notice of Liability ("NAL")  
 11 finding that Preferred "apparently willfully and repeatedly violated Sections 201(b) and 258 of the  
 12 Communications Act of 1934 as amended and Section 64.1120 of the Commission's rules."<sup>24</sup> The  
 13 NAL proposed a monetary forfeiture of \$1,440,000.<sup>25</sup>

14 33. Preferred filed its response to the NAL on February 22, 2013.<sup>26</sup> As of the date of the  
 15 hearing, the FCC had not released additional orders.<sup>27</sup> Further, Preferred's witness testified that the  
 16 complaints identified by Staff are also included in the NAL.<sup>28</sup>

17 34. Company reviewed the FCC rules and determined where the Company was deficient  
 18 in its third party verification ("TPV") scripts.<sup>29</sup> The witness stated that based on the CGB decisions,

19 \_\_\_\_\_  
 20 <sup>22</sup> Exhibit A-3.

21 <sup>23</sup> See, e.g. *Preferred Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscribers'*  
 22 *Telecommunications Carrier*, Order, DA12-190 (rel. Nov. 28, 2012)(granting slamming complaints filed by G. Busch, B.  
 23 *Littmann, and J. Dyer*); *Preferred Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber's*  
 24 *Telecommunications Carrier*, Order, 27 FCC Rcd 13381 (CGB 2012)(granting slamming complaint filed by M. Tice);  
 25 *Preferred Long Distance, Inc. Complaints Regarding Unauthorized change of Subscribers' Telecommunications Carrier*,  
 26 *Order*, 27 FCC Rcd 13333 (CGB 2012)(granting two slamming complaints including the complaint filed by W. Legler);  
 27 *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers' Telecommunications*  
 28 *Carrier*, Order 27 FCC Rcd 13328 (GCB 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).

<sup>24</sup> Exhibit A-6 (*Notice of Liability for Forfeiture*, FCC 12-159 (rel. Dec. 20, 2012)).

<sup>25</sup> Exhibit A-5.

<sup>26</sup> Exhibit A-7.

<sup>27</sup> Tr. at 16.

<sup>28</sup> Tr. at 11.

<sup>29</sup> Id.

1 the Company found two areas where its scripts did not meet the technical meaning of the FCC  
 2 rules.<sup>30</sup> He stated that the Company: 1) was not specifically asking whether customers wanted to  
 3 switch each of their local exchange services as separate questions and 2) that verifiers were quoting  
 4 the customer's billing telephone number ("BTN") to the customer instead of letting the customer  
 5 state their BTN.<sup>31</sup> Preferred's witness stated that the Company paid the TPVs to update their website  
 6 portals to reflect the phone numbers being stated by the consumer during verification.<sup>32</sup> Further, the  
 7 witness stated that the updated procedures include that when an order from a sales agent comes into  
 8 the Company it is matched up with the order to make sure each phone number and each number  
 9 stated in the order matches the verification's website portal.<sup>33</sup> The witness stated that under the  
 10 Company's new procedures, if even one digit is mismatched in the order, the order is not processed.<sup>34</sup>  
 11 According to the witness, only two complaints have been filed since the scripts were revamped.<sup>35</sup>

12 35. Preferred's witness testified that the Company transfers approximately 4,000  
 13 customers per month.<sup>36</sup> He further stated that the Company found it notable that all of the complaints  
 14 identified in the NAL were filed in areas where AT&T is the ILEC and that the complaints were filed  
 15 after AT&T initiated its WinBack program.<sup>37</sup> The witness testified that in a number of the  
 16 complaints, the customer acknowledged that AT&T had instructed them to file the complaints with  
 17 the FCC and that he believed the complaints were systemic to a very aggressive AT&T WinBack  
 18 campaign.<sup>38</sup>

19 36. Staff believes the actions taken by Preferred are satisfactory to alleviate the recent  
 20 number of slamming complaints; however, because of the Company's history of slamming and  
 21 cramming violations in other jurisdictions, Staff recommends that as a condition of approval of a

22 \_\_\_\_\_  
 23 <sup>30</sup> Tr. at 12.

<sup>31</sup> Tr. at 13.

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Tr. at 14.

<sup>35</sup> Tr. at 20.

<sup>36</sup> Tr. at 22.

<sup>37</sup> An internet search shows that AT&T All for LessWinBack/Save program is an offering made available to businesses that are currently with another local exchange provider and are transferring their local exchange service to AT&T and existing business subscribers who have received a competitive offer and are considering switching their local exchange service to another local exchange provider. The WinBack/Save program provides a 40% discount on Complete Choice for Business package charges as a monthly benefit on the subscriber's bill.

<sup>38</sup> Tr. at 21-22.

1 CC&N for Preferred, to the extent Preferred is found to have engaged in slamming and cramming in  
2 Arizona, Preferred should be subject to such sanctions and/or penalties, including fines and/or  
3 revocation of its CC&N, as determined by the Commission, after hearing if requested by the  
4 Company.<sup>39</sup> Further, Staff recommends that a period of three years, Preferred docket a list of the  
5 number of complaints filed against it in all states/jurisdictions and at the FCC; the resolution of those  
6 of complaints; and a detailed explanation of the actions and/or changes in operations that Preferred  
7 has implemented to reduce or eliminate future complaints. Staff recommends that Preferred filed this  
8 documentation every six months beginning six months after Preferred begins servicing its first  
9 customer.<sup>40</sup>

#### 10 **Competitive Review**

11 37. Preferred's application requests that its telecommunication services in Arizona be  
12 classified as competitive. Staff believes Preferred's proposed services should be classified as  
13 competitive because Preferred will have to compete with CLECs and ILECs to gain customers; there  
14 are alternative providers to Preferred's proposed services; ILECs hold a virtual monopoly in local  
15 exchange and IXC markets; and that Preferred will not have the ability to adversely affect the local  
16 exchange or IXC markets in Arizona.<sup>41</sup>

17 38. Based on the above factors, Staff concludes that Preferred's proposed service should  
18 be classified as competitive.

#### 19 **Resolution**

20 39. Staff recommends that as a condition of approval of Preferred's application, to the  
21 extent Preferred is found to have engaged in slamming and cramming in Arizona, the Company  
22 should be subject to such sanctions and/or penalties, including fines and/or revocation of its CC&N,  
23 as determined appropriate by the Commission, after a hearing if requested by the Company.

24 40. Pursuant to the Article XV §§ 16 and 19 of the Arizona Constitution and A.R.S. §40-  
25 202 et seq., and Title 14 Article 19 and 20 of the A.A.C., the Commission has authority to impose  
26 fines and/or penalties to enforce any rules, regulations and orders.

27 <sup>39</sup> Exhibit S-1 at 8.

28 <sup>40</sup> Exhibit S-1 at 14.

<sup>41</sup> Exhibit S-1 at 11.





1 IT IS FURTHER ORDERED that Preferred Long Distance, Inc. shall procure a performance  
2 bond or irrevocable sight draft letter of credit in the amount of \$135,000.

3 IT IS FURTHER ORDERED that Preferred Long Distance, Inc. shall file the original  
4 performance bond or irrevocable sight draft letter of credit with the Commission's Business Office  
5 and thirteen (13) copies of the performance bond or irrevocable sight draft letter of credit with  
6 Docket Control, as a compliance item in this docket, within 90 days of the effective date of this  
7 Decision or 10 days before the first customer is served, whichever comes earlier. The performance  
8 bond or irrevocable sight draft letter of credit shall remain in effect until further order of the  
9 Commission. The Commission may draw on the performance bond or irrevocable sight draft letter of  
10 credit on behalf of and for the sole benefit of Preferred's customers, if the Commission finds, in its  
11 discretion, that Preferred is in default of its obligations arising from its Certificate. The Commission  
12 may use the performance bond or irrevocable sight draft letter of credit, as appropriate, to protect  
13 Preferred's customers and the public interest and take any and all actions the Commission deems  
14 necessary, in its discretion, including, but not limited to returning prepayments or deposits collected  
15 from Preferred's customers.

16 IT IS FURTHER ORDERED that Preferred Long Distance, Inc. shall for a period of three  
17 years, provide a list of the number of complaints filed against Preferred in all states/jurisdictions and  
18 at the Federal Communication's Commission and the resolution of those complaints. In addition,  
19 Preferred shall provide a detailed explanation of the actions and/or changes in operations that  
20 Preferred has implemented to reduce or eliminate future complaints. Preferred shall begin providing  
21 this information six months after it begins serving its first customer in Arizona. This information  
22 shall be provided on a semi-annual basis as a compliance filing.

23 IT IS FURTHER ORDERED that State laws prohibit unauthorized carrier changes  
24 (slamming) and unauthorized carrier charges (cramming), pursuant to Title 14 Articles 19 and 20 of  
25 the Arizona Administrative Code. Both Articles 19 and 20 include provisions subjecting violators to  
26 such enforcement actions and penalties as authorized by Arizona law. To the extent to which  
27 Preferred Long Distance, Inc. is found to have slamming and cramming complaints in Arizona and  
28 those complaints are resolved in the customers favor, Preferred shall be subject to such sanctions

1 and/or penalties including fines and/or revocation of its CC&N, as determined appropriate by the  
2 Commission, after a hearing if requested by the Company.

3 IT IS FURTHER ORDERED that Preferred Long Distance, Inc. shall file with Docket  
4 Control, as a compliance item in this docket, a document updating the Commission on any Federal  
5 Communication Commission's Orders related to the pending Notice of Liability (discussed herein),  
6 within twenty days of the release of said Orders.

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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
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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 \_\_\_\_\_

1 SERVICE LIST FOR: PREFERRED LONG DISTANCE, INC.

2 DOCKET NO.: T-04308A-12-0118

3 Andrew O. Isar  
4 MILLER ISAR, INC.  
4 4423 Point Fosdick Drive NW, Suite 306  
4 Gig Harbor WA 98335  
5 Regulatory Consultants to Applicant

6 Janice Alward, Chief Counsel  
6 Legal Division  
7 ARIZONA CORPORATION COMMISSION  
7 1200 West Washington Street  
8 Phoenix, AZ 85007

9 Steven M. Olea, Director  
9 Utilities Division  
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