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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

IN THE MATTER OF DISSEMINATION OF INDIVIDUAL CUSTOMER PROPRIETARY NETWORK INFORMATION BY TELECOMMUNICATIONS CARRIERS

T-01051B-02-0073

Docket No. ~~RT-00000J-02-0066~~

NOTICE OF FILING

Notice is given that the Direct Testimony of Dawn Russell on Behalf of AT&T Corporation is attached hereto and filed this date with the Arizona Corporation Commission.

Respectfully submitted this 13th day of May 2002.

AT&T COMMUNICATIONS
OF THE MOUNTAIN STATES, INC.,
AND TCG PHOENIX

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CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of Notice of Filing Direct Testimony of Dawn Russell on behalf of AT&T Corporation, regarding Docket No. RT-00000J-02-0066, were hand delivered this 13th day of May, 2002, to:

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDEL, Chairman
JIM IRVIN, Commissioner
MARC SPITZER, Commissioner

DOCKET NO. T-01051B-02-0073

IN THE MATTER OF QWEST CORPORATION'S APPLICATION FOR APPROVAL OF LOCAL SERVICE FREEZE TARIFF

DIRECT TESTIMONY OF
DAWN RUSSELL
ON BEHALF OF
AT&T CORPORATION

MAY 13, 2002

DIRECT TESTIMONY

Q: PLEASE STATE YOUR NAME.

A: My name is Dawn Russell.

I am employed by AT&T as the Verification Policy and Sale Operations Support Manager for the AT&T Business Services Division. In this role, I am responsible for, among other matters, managing the compliance of the AT&T Business Services Division with state and federal rules regarding preferred inter-exchange carrier changes ("PIC Changes") preferred inter-exchange carrier freezes ("PIC Freezes"), local exchange carrier changes ("PLOC Changes") and local exchange carrier freezes/local service freezes ("PLOC freezes" or "LSFs").

In addition, I am also responsible for managing various AT&T Business Services Division ("ABS") Sales Operation Groups, including ABS Third Party Verification Vendors, the ABS Slamming Resolution Center, and the group that oversees the processing of preferred inter-exchange carrier changes that are rejected by local exchange carriers (the "ABS PIC Reject Rework Group").

Q: HAVE YOU TESTIFIED BEFORE THE ARIZONA COMMISSION PREVIOUSLY?

A: No, I have not directly testified before, but I have provided information to the Commission and have participated in various informal conferences and/or proceedings with individual Commissioners and the Commission Staff.

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: The purpose of my testimony is to present why AT&T opposes Qwest's tariff seeking authorization to implement a local service freeze ("LSF") in the State of Arizona.

Q: CAN YOU BRIEFLY DESCRIBE WHAT A LOCAL SERVICE FREEZE IS?

A: A local service freeze is a service which, when selected by an end-user customer, enables the customer to prohibit any change to its local service provider without the customer directing its current local service provider to permit the change in carrier.

Q: CAN YOU DECRIBE THE PURPOSE OF A LOCAL SERVICE FREEZE?

A: The stated purpose of a local service freeze is to help prevent an unauthorized change to or "slam" of a customer's choice of carrier, by providing an additional, third step in the selection process applicable to local service.

Q: ARE THERE OTHER PURPOSES FOR A LOCAL SERVICE FREEZE?

A: While I am aware of no other ***stated*** purpose for a local service freeze other than preventing unauthorized changes to a customer's preferred carrier, the effect of local service freezes is far broader. In my opinion and experience, such local freezes, by adding an entire additional layer to the ordering process, make the ordering process more complex and difficult. As a result, such local service freezes inhibit consumers from changing carriers, thereby reducing the level of competition among carriers in the market place, all to the ultimate detriment of consumers.

Q: CAN YOU EXPLAIN HOW A LOCAL SERVICE FREEZE COULD WORK TO THE DETRIMENT OF CONSUMERS?

A: Yes. At the present time, to secure a change in any customer's local service provider, a customer must ordinarily complete a two-step process, administered by two separate and distinct entities.

First, the customer must place an order with a telecommunications carrier for local service. During this process, the customer must provide the new carrier with the information necessary to establish a billing account and obtain from the carrier the information necessary to select the appropriate calling plan.

Next, after completing this initial phase, the customer must have the order selection verified by a party that is independent of the new carrier. Of course, those customers who have submitted a written letter of agency to their new carrier are exempt from the third party verification process.

Only after completing both of these distinct processes can a customer secure a change in its local service provider.

The addition of a third element -- a local service freeze -- will require a third round of checks and inquiries, during which the consumer -- after completing a sales process and a verification process -- must now contact its existing carrier and lift the freeze so that a properly verified order will not be rejected. Every customer, even those who have prepared written letters of agency, are subjected to this third process. Attached as Exhibit 1 is a step-by-step analysis of the local service provider change process when a local service freeze is in place.

While such an additional check may provide some small measure of additional protection against unauthorized carrier changes, it does so only at a significant cost to the consumer, who must complete an entirely new round of verifications before to being able to change its carrier.

In my opinion and experience, the addition of this third level of inquiry unreasonably complicates the ordering process and simply makes the carrier selection more difficult for the consumer; and it is my experience, that the more difficult the process, the less likely it is that consumers will accept it or participate in it.

The end result of this cycle is simple: fewer customers will endure the longer, three-step selection process and will simply be unwilling to change their carriers. As such, there will be fewer opportunities for new carriers to make and complete sales, which ultimately means less competition in the marketplace among carriers.

The local service freeze, which was intended as a consumer benefit thus becomes a burden to the consumer.

Finally, it is my opinion, that a local service freeze is an unnecessary option in an environment where local competition is not prevalent and there is no reason to believe that "slamming" is a problem.

Q: TO YOUR KNOWLEDGE, MS. RUSSELL, DO OTHERS SHARE YOUR OPINION?

A: Yes.

Q: CAN YOU IDENTIFY THOSE OF WHOM YOU ARE AWARE?

A: Yes. I am aware that in its examination of the freezes upon a customer's selection of interexchange (long distance) carriers, the Federal Communications Commission ("FCC") made the following comment, which reflects the agreement, not only of the FCC itself, but of other noted commentators expert in the field of telecommunications:

> We... recognize, as several commentators observe, that preferred carrier freezes can have a particularly adverse impact on the development of competition in markets soon to be or newly open to competition. These commentators in essence argue that incumbent LECs seek to use preferred carrier freeze programs as a means to inhibit the ability or willingness of customers to switch to the services of new entrants... We concur with those commentators that assert that, where no or little competition exists, there is no real opportunity for slamming and the benefit to consumers from the availability of freezes is significantly reduced. Aggressive preferred carrier freeze practices under such conditions appear unnecessary and raise the prospect of anticompetitive conduct.

Second Report and Order, In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, CC Docket No. 94-129, FCC 98-334, released December 23, 1998, at para. 36.

Q: DO OTHERS IN ADDITION TO THE FCC AND THE EXPERTS CITED IN THE FCC DECISIONS SUPPORT YOUR OPINION?

A: Yes.

For example, in a recent decision issued by the Nebraska Public Service Commission denying Qwest's petition to implement a local carrier freeze, the Nebraska Commissioners concluded that the additional steps that local freezes add to the ordering process have but one outcome: fewer consumers are willing to subject themselves to the more cumbersome process, resulting in an a decreased opportunity for new carriers to enter and compete effectively in the marketplace:

> Upon consideration of the testimony and evidence offered, the Commission finds that the negative impact of [local service] freezes on the development of competition in the marketplace outweighs the potential benefit of such service to consumers. The provisioning of local service freezes at this time would be harmful to the development of competition and that harm outweighs the benefit.

May 7, 2002 decision of the Nebraska Public Service Commission Denying Qwest's Petition to Implement Local Service Freezes, Docket C-2662-PI-55. (A copy of this decision is submitted herewith as Exhibit 2).

In addition to the determination of the Nebraska Commission, the Iowa Utilities Board made a comparable determination based upon a virtually identical analysis, concluding that "a local service freeze is unnecessary to protect consumers and will have a detrimental effect upon the development of competition." (April 3, 2002 Decision of the Iowa Utilities Board, Docket FCU-02-01.)

Finally, I am aware that other regulatory commissions that have examined this issue have placed a moratorium on local service freezes, including the California Public Service Commission, the Minnesota Public Utilities Commission, the New Jersey Board of Public Utilities and the New York Public Service Commission.

Q: ASIDE FROM ITS GENERAL ANTICOMPETITVE EFFECTS, ARE THERE PARTICULAR ASPECTS OF THE LOCAL SERVICE FREEZE PROPOSED BY QWEST THAT AT&T OBJECTS TO?

A: AT&T opposes the application of Qwest in its entirety for the reasons previously stated by myself, the other experts and the regulatory bodies that I have cited. However, in addition to these comments there are specific aspects of the Qwest proposal that are of concern.

Q: CAN YOU INDENTIFY THOSE SPECIFIC AREAS OF CONCERN?

A: Yes. It is of significant concern that in addition to requesting the right to impose local service freezes, Qwest is seeking the right to affirmatively market this service. As Qwest is already the dominant local service provider in the Arizona marketplace, it is my opinion that permitting Qwest the ability to market a local carrier freeze will provide Qwest with both a potent anti-competitive weapon and the opportunity to wield it unchecked. As there is no way to monitor Qwest's sales practices, there is simply no way to determine if Qwest is avoiding the virtually unavoidable temptation to improperly apply freezes and unfairly "lock in" its market share.

Q: OTHER THAN YOUR PERSONAL OPINION, ARE THERE ANY FACTS TO SUGGEST THAT QWEST WOULD MISUSE THE LOCAL SERVICE FREEZE IN THAT MANNER?

A: At this point, there is no way to predict how the local service freeze option would be exercised by Qwest in Arizona. However, AT&T's experience with Qwest's use of the identical service in the state of Washington is instructive.

In Washington, Qwest began to implement local carrier freezes in or about the first quarter of 2002. Once such freezes became effective, AT&T discovered that the majority of new AT&T customers who were affected by such freezes had no idea that such a freeze had been placed on their accounts and had no recollection of ever authorizing Qwest to place such freezes. In this regard, I refer the Commission to the sworn testimony of Jonathan Wolf, of AT&T Broadband, submitted on April 30, 2002, to the Washington Utilities and Transportation Commission, a copy of which is attached hereto as Exhibit 3.

Given this experience, it is my opinion that authorizing such freezes and permitting Qwest to affirmatively market them is ill advised.

Q: ARE THERE ANY OTHER ASPECTS OF QWEST'S PROPOSAL WHICH RAISE CONCERNS?

A: Yes, the process for removing a local service freeze once it is in place.

As described by Qwest, the process for removing a local service freeze is simple, user friendly and easier than getting a freeze initially. While we have do not yet have direct experience with the Qwest process in Arizona, AT&T's experience with Qwest's local service freeze process in Washington demonstrates that the removal of a local service freeze is anything but simple, easy or user friendly. The simple process alluded to in the QWEST testimony is contrary to AT&T's experience with assisting customers with LSF lifting/removal. AT&T has engaged in countless meetings with QWEST outlining our problems with their LSF removal process. Such problems include long hold times, wrong "reach" numbers provided for QWEST LSF removal agents, and disconnects during the transfer process. All of this is experienced with the customer on line attempting to exercise his or her right to change carriers.

I again refer the Commission to the sworn testimony offered by Jonathan Wolf of AT&T Broadband for more details, however, as noted at length in his testimony, the removal process in Washington was so cumbersome that as many as 15% of all new AT&T customers decided to obtain entirely new telephone numbers rather than endure the Qwest local service freeze removal process.

Q: IS THERE AN IDENTIFIABLE IMPACT TO AT&T IF A LOCAL SERVICE FREEZE IS AUTHORIZED?

A: Again, we have no direct experience with the freeze process in Arizona at this time, so the impacts to AT&T are matters of opinion at present. As I noted above, it is my opinion, and that of the experts and regulators noted above, that, by definition, local service freezes are anti-competitive. Our experience with Qwest, again in Washington, confirms this. Once Qwest began to offer its local service freeze in Washington, 20% of AT&T's new customers declined to complete the process set up to remove a local service freeze. AT&T's market penetration and its very ability to compete in the local service market was thus reduced by one-fifth.

The following comments of the Montana Public Utilities Commission speak directly to the extraordinarily negative impact on competition once a local service freeze is implemented:

> ....., if the program was implemented, Qwest would be successful in locking large numbers of customers into its local service, especially given Qwest's plan to solicit customers regarding this program whenever customers call Qwest's business office for any reason. Once a customer's choice of Qwest as the local service provider is frozen, the customer must speak or write to Qwest directly in order to lift the freeze. This requirement for the customer's express consent to remove a freeze is the critical element of the customer protection that carrier freezes provide to customers. However, the freeze-lifting process with its necessary delays when applied to the local service market likely will result in customer frustration and the loss to CLECs of customers who intended to change local service providers but were deterred by the process.

April 25, 2002 Decision of the Montana Public Service Commission Denying Qwest's Petition to Implement a Local Service Freeze, Docket D2002.2.14. (A copy of this decision is submitted herewith as Exhibit 4).

It is to avoid precisely these circumstances that AT&T opposes Qwest's tariff.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

EXHIBIT 1

CHANGING LOCAL SERVICE PROVIDERS (LSP) WHEN A FREEZE IS IN PLACE

1. New LSP obtains customer's LSP change order in accordance with FCC 1 day verification requirements (e.g., LOA, TPV)

2. LSP sends LSR order to old LSP (1 day)

3. Old LSP sends order rejections to new LSP (2-3 days)

4. New LSP recontacts customer and bridges on old LSP in an attempt to lift the freeze and/or asks customer to contact the old LSP to arrange for the freeze to be lifted and then recontact new LSP to resubmit customer's order (5-10 days)

5. If freeze lift request accepted by old LSP, new LSP resubmits LSR (1 day)

6. If order is not further rejected for other reasons, old LSP releases the lines to be ported to new LSP (2-3 days)

7. Old LSP sends out PLOC to IXC carrier

8. For customers who wish to have the freeze reinstated after the PIC change order an order for LSF must be initiated

<u>Customer Contacts</u>

A. First Call: Customer places order with new LSP

B. Second Call: new LSP informs customer that the order was rejected because of freeze

C. Third Call: Customer (with or without new LSP) calls old LSP to lift freeze

D. Fourth Call: If customer did not bridge new LSP on with the old LSP, customer usually must call new LSP to advise that the freeze has been lifted and arrange for re-submission of customer order

EXHIBIT 2

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, to investigate the effects of local service freezes in Nebraska.	Application No. C-2662/PI-55 FINDINGS AND CONCLUSIONS Entered: May 7, 2002

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BY THE COMMISSION:

B A C K G R O U N D

The Nebraska Public Service Commission (Commission) opened the above-captioned docket on January 29, 2002, to investigate the effects of local service freeze offerings in Nebraska. Concomitantly in that order, the Commission demanded that Qwest Corporation (Qwest) cease and desist offering its proposed local service freeze program in Nebraska pending further review. Notice of this investigation appeared in The Daily Record, Omaha, Nebraska, on January 31, 2002.

Upon being informed about Qwest's proposal to offer a local service freeze to Nebraska consumers, the Commission issued a letter to Qwest requesting it to delay implementation of such service until the Commission had the opportunity to review the affects of this service on competition. Qwest responded that it was too late to delay implementation. However, Qwest informed the Commission that it would agree to delay the marketing of its product.

In addition, before formally opening this docket, the Commission received three informal complaints regarding Qwest's proposed local service freeze offering. ALLTEL Corporation (ALLTEL), Cox Nebraska Telcom, L.L.C. (Cox) and AT&T Communications of the Midwest (AT&T) sent letters to the Commission expressing concerns with Qwest's local service freeze offering and asking the Commission to investigate the proposed program. The Commission also received a petition from Cox requesting the Commission to issue a show cause action against Qwest and to order Qwest to cease and desist implementation of the local service freeze. Oral arguments were heard by the Commission on January 29, 2002. The Commission subsequently found that the issue was moot by the Commission's independent finding that the implementation of Qwest's local service freeze may be in violation of state law or federal law and ordering Qwest to cease and desist offering of the local service freeze pending further investigation.

A public hearing was held on February 20, 2002, in the Commission Hearing Room, Lincoln, Nebraska, upon notice to the parties by order entered January 29, 2002. Appearances at the public hearing were as shown above.

T E S T I M O N Y

Mr. Robert Logsdon, director of regulatory affairs for Nebraska and Iowa, testified first on behalf of Cox. Mr. Logsdon testified Cox believes that Qwest's actions in implementing the local service freeze are anti-competitive. Cox is the primary residential competitor in Omaha and Cox believes that there is no evidence of slamming by local carriers. To his knowledge, slamming has not been a problem in the local exchange markets as it has been in the long distance markets. Without a local service freeze, the customer only needed to make one phone call to switch local providers. With Qwest's local service freeze in place, customers will be required to lift the freeze with Qwest prior to leaving the company. Cox believes this to be an onerous requirement and one that would deter a number of customers from switching local providers.

Cox was also concerned that the information on the implementation of Qwest's local service freeze program was not adequate. Qwest sent a product notification to Cox on December 18, 2001, notifying competitive local exchange carriers (CLECs) of its decision to offer local carrier freezes for customer accounts in Nebraska. As of the date of the hearing, Qwest had not informed Cox on the proper procedures for lifting freezes on customer accounts. Cox was not given the phone numbers to call, information on how Qwest was going to be staffed to participate in three-way calls, nor was Cox informed about the hours Qwest would be available for three-way calls.

Mr. Logsdon further testified that it was difficult, if not *impossible, for a customer to not know he or she was being* switched to Cox service from Qwest. Therefore, a true act of slamming would be rare. A local service change from one facilities-based provider to another requires that a company technician set up an appointment to meet the subscriber and then requires physical modification of the system and wiring at the subscriber's home by the CLECs technician. Mr. Logsdon challenged Qwest to find proven cases of local slamming in Nebraska.

Cox took the position that the Federal Communications Commission (FCC) has given the states clear authority to issue moratoria on local service freezes. The FCC intended to leave the decision up to individual states. Mr. Logsdon testified this Commission has the ability to adopt such a moratorium upon local service freezes. Also, in the FCC's *Second Report and Order*, the FCC warned of the dangers for abuse among carriers. Mr. Logsdon further testified that the Colorado commission had specifically admonished Qwest for poor handling of three-way calls. Mr. Logsdon admitted that the Colorado decision pertained to Qwest's handling of primary interexchange carrier (PIC) freezes and not local freezes. Cox offered a copy of the Colorado Commission's order, which was received into evidence as Late-Filed Exhibit No. 13. In short, Mr. Logsdon stated that Cox believes the Commission has both the authority and the justification to ban preferred local carrier freezes in Nebraska. Cox advocated a complete moratorium on local service freezes.

Upon questioning, Mr. Logsdon provided that he saw no benefit in the local service freeze for consumers. First, he stated that the Commission was empowered to assist a consumer and punish a carrier if it determined that a local slam took place. Second, Qwest's local service freeze program was detrimental to competition because it added another step in the process for competitors to overcome. Mr. Logsdon testified that Nebraska has only a handful of competitors who have survived in the marketplace and there was no indication that local slamming could even become a big problem. Upon questioning by Ms. Vinjamuri, Mr. Logsdon testified that the Commission's three local slamming complaints, although unverified, should be considered seriously.

Mr. Brad Hedrick, testified next on behalf of ALLTEL. Mr. Hedrick offered ALLTEL's position statement into the record. It was received as Exhibit No. 7. Mr. Hedrick testified that he did not believe that the local service freeze was warranted or needed. ALLTEL did not utilize local service freezes in any of its incumbent local exchange carrier (ILEC) or CLEC operations. ALLTEL generally supported Cox's statements. He was not aware of any local slamming complaints filed by or against ALLTEL. ALLTEL believed that the local service freeze initiative by Qwest was anti-competitive. Mr. Hedrick testified that the Commission should balance the interests of ensuring that competition does develop with the needs of Nebraska consumers. It was ALLTEL's position that at this point in time, the implementation of local service freezes would be detrimental in the development of competition, while local slamming was not a prevalent problem.

More opposition came from Mr. Musfeldt, pro se, on behalf of Nebraska Technology & Telecommunications, Inc. (NT&T). He testified that the local service freeze as proposed by Qwest, would stall competition. NT&T was concerned that the local service freeze process would cause customer confusion and create inefficiencies for customers and CLECs alike. Importantly, the local service freeze as proposed by Qwest would add another step into the implementation process. Finally, Mr. Musfeldt testified that the interconnection agreement in place with the ILEC, which provides how the companies process their orders, is sufficient to deter them and like CLECs from slamming. Mr. Musfeldt testified that if NT&T changes a customer's service without prior authorization from the customer, Qwest could claim its interconnection agreement was in breach and could stop providing service to them.

Mr. Scott A. McIntyre, director of product and market issues, testified on behalf of Qwest. Mr. McIntyre provided in his direct testimony that Qwest's "local service freeze (LSF) program allows customers the choice of placing a 'hold' or 'freeze' on their local service account so that a change in local service providers cannot be made without their authorization."[1] This service is optional for consumers and is offered at no additional charge. Mr. McIntyre testified that local service freezes allow consumers to protect their account against slamming. He then testified that unauthorized changes in ser-

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[1] McIntyre, Direct at 3.

vice providers were a concern of this Commission as demonstrated by its rules prohibiting the practice of slamming. Mr. McIntyre testified that the FCC has recognized that carrier freezes serve as a means of protecting consumers against slamming. The FCC also established methods for lifting a freeze. Qwest would follow the FCC standards.

Mr. McIntyre further testified that the value of preferred carrier freezes is underscored by the fact that three states require Qwest to offer them through rules and regulations. Washington, Colorado and Utah have adopted rules requiring all local exchange carriers to offer preferred carrier freezes.

The Qwest witness pointed to customer concern for a reason to support Qwest's local service freeze. Mr. McIntyre reminded the Commission that long distance slamming has been a problem in Nebraska in recent years. In support of this information, Qwest invited the Commission to refer to its most recent annual report to the Legislature and to the Commission's website. Mr. McIntyre asserted that based upon the degree of slamming that has occurred in the long distance arena, it is realistic to think that Nebraska consumers are concerned about the potential for local slamming as well.

O P I N I O N A N D F I N D I N G S

In order to open the local market to competition pursuant to the Telecommunications Act of 1996 (the Act), state commissions are required to remove any barriers to competition. Neb. Rev. Stat. § 75-109(2) gives the Commission broad authority to "do all things reasonably necessary and appropriate to implement the federal Telecommunications Act of 1996." The Act makes it clear that state and local barriers are to be removed and that regulators must help foster a competitive local market. In certain cases, a barrier can be built to impede competition through the practical effect of the policies and programs of the telecommunications carriers. A barrier exists when customers face problems purposefully changing carriers or when customers are otherwise deterred from choosing amongst carriers. To that end, the Commission must ensure that the customer experiences a seamless transition when changing from one carrier to another. The Commission is also charged with promoting and moreover, facilitating a simplified mechanism for the switching of local carriers in order to foster the development of competition.[2] This is not only a significant component for consumer

[2] *See* Consumer Bill of Rights in Application No. C-1128.

protection, it also vital for carriers trying to enter and compete in local markets.

The Commission is likewise charged by state and federal authorities to protect consumers from certain abuses inherent in a competitive market, specifically here, slamming. Slamming is the term commonly used to refer to unauthorized changes of a subscriber's preferred carrier. Slamming became a widespread problem in the long distance market in the late 1990s and is now illegal under federal law and many state laws including Nebraska's.

In this particular instance, the Commission is faced with a balancing test. The Commission must balance the interest of promoting competition pursuant to the directives of state and federal law against the possibility that slamming in the local market could become a prevalent problem in Nebraska.

Generally, a freeze placed on a customer's preferred carrier selection for local exchange service (hereinafter local service freeze) requires direct authorization by the customer to the local exchange carrier to lift the freeze before a change in carriers can be made. A freeze placed on a subscriber's account is usually aimed at preventing one telecommunications carrier from slamming a subscriber's account.

In this instance, the local freeze service proposed by Qwest would likewise require any subscriber with a freeze on his or her account to make direct contact with Qwest in order to lift the freeze. Lifting a freeze with Qwest representatives is a precondition to the subscriber's ability to effect a change in local carriers. The testimony provided by Qwest demonstrated, competitive carriers would not be informed that a local freeze was preventing that customer's order from being processed.[3]

The parties opposed to the adoption of a local service freeze by Qwest made several arguments. First, they argued that the local service freeze proposal offered by Qwest is anti-competitive. They argued further that it does not respond to any particular problem because there is no prevalence of local slamming. Third, they contended Qwest's proposed offering was a method used by Qwest in order to keep its market share.

[3] Qwest provided supplemental testimony in the place of a letter requested by the Commission as a late-filed exhibit. This testimony was objected to by Cox. The Commission sustains Cox's objection and infers only that no letter could be produced by Qwest.

Finally, they averred that local preferred carrier selection programs are easily susceptible to abuse.

All parties opposed to the local service freezes questioned the timeliness of this proposed offering in light of Qwest's 271 application. The parties argued the local service freeze to be anti-competitive. Qwest's actions, which limit competitor's access and ability to switch customers, would not conform with Qwest's arguments that they have sufficiently opened the market for local competition.

The parties are correct in that there is little evidence of local slamming in Nebraska. Omaha is the largest market and Cox, another facilities-based carrier, is Qwest's largest competitor. Qwest admitted they had knowledge of no other slamming complaints filed with the Commission other than those unverified complaints listed in Exhibit 9. The Commission has no validated cases of slamming between Cox and Qwest.

Also, clear cases of abuse by carriers have, in fact, been documented in other states.[4] Not only does the carrier have a second chance to convince the customer not to switch to a competing carrier, it also has the customer's account records at its disposal. Without proper mechanisms in place to guard against abuse, competing carriers are helpless to gain a level competitive foothold. Absent express abuse, there is evidence that a customer will be less likely to switch carriers if that customer faces obstacles to change.[5] The Commission is not satisfied that the potential for abuse has been eliminated.

Qwest on the other hand made four basic arguments in support of preferred carrier freezes. First, Qwest contended that its decision to implement a preferred carrier freeze program was based in customer concerns of slamming. Qwest also argued that local slamming is occurring in Nebraska. Third, Qwest provided that preferred carrier freezes were not only suggested by the FCC but also by state law. Finally, Qwest argued that some other states have required Qwest to make a preferred carrier freeze available to its customers and because it provides it in other states, it needs to provide it in Nebraska. We analyze these arguments accordingly.

First, Qwest argued that its decision to implement a preferred carrier freeze program in Nebraska was based upon customer concerns regarding local slamming. To support this

[4] *See* Exhibits 4 and 13.
[5] *Id.*

argument, Qwest used information from the State of Washington regarding the number of people that have signed up for a local service freeze. Although the Qwest witness offered this as reasoning on direct, Qwest was unwilling to release the exact numbers to the other interested parties when asked. The Commission ordered Qwest to provide this information, albeit under confidential seal.

The Commission finds that the numbers of subscribers in Washington with a local service freeze is irrelevant in demonstrating even a generalized customer fear of slamming. Just because subscribers have opted to have a freeze placed on their account, after prompting by the Qwest customer service representative, does not indicate that the subscriber had any particular fear that his or her account would be switched without authorization. Many times customers will agree to opt into programs provided by a telephone carrier particularly when touted as "free" and "protection." Moreover, the Commission does not find the Washington numbers pertinent to showing customer sentiment in Nebraska. The Washington Commission may have had more complaints of local slamming or more reason to believe a preferred carrier selection was appropriate. Qwest did not provide any evidence that customers in Nebraska were concerned or fearful about local slamming.

Compounded with the aforementioned customer concerns, Qwest argued that slamming in the local exchange market, was occurring. In support of this argument, Qwest requested that the Commission take administrative notice of three alleged local slamming complaints received as recently as this year. Commission staff counsel requested that the Commission supplement the record with the results of its investigation of the local slamming complaints. All three complaints involved McLeodUSA, a competitive local exchange carrier which recently filed for bankruptcy. Of the three alleged slamming complaints, the Commission investigator found that one customer had, in fact, requested a change in carriers but had forgotten. Two complainants admitted they told the telemarketer "yes" to receiving additional information but stated they did not consent to a change in carriers. These two complaints were resolved informally, the customers were switched back to the carrier of their choice and refunded by McLeodUSA.

The Commission finds the evidence of local slamming to be nebulous at best. There was little proof on the record that local slamming was occurring in Nebraska or could proliferate in the local market. The Commission finds that two incidents not sufficient to warrant a need for Qwest's local service freeze.

Qwest's argument was, therefore, unsupported by fact or evidence in the record.

It is true that the FCC, in its *Second Report and Order* in CC Docket No. 94-129, FCC 98-334 (Second Report and Order), cited the general benefits of preferred carrier freezes.[6] The FCC outlined a number of rules a carrier must follow when implementing preferred carrier freezes.[7] At the same time, the FCC warned that preferred carrier freezes can have a particularly adverse impact on the development of competition in markets that are newly open to competition.[8] Moreover, the FCC made clear that states may adopt moratoria on the imposition or solicitation of intrastate preferred carrier freezes if they deem appropriate to prevent anticompetitive conduct.[9] AT&T, Cox and ALLTEL argue that paragraph 137 of the FCC's order describes situation in this case. Finally, as provided in the hearing, the FCC's *Second Report and Order* mainly addresses the problems associated with long distance slamming, a problem that was prevalent at the time of the writing of that order.

In 1998, when slamming was becoming a problem in the long distance markets, it was assumed that it likewise would proliferate in a vulnerable local exchange market. The same holds true for the Nebraska Consumer Slamming Prevention Act in Neb. Rev. Stat. § 86-1901 et seq., and the Commission's rules and regulations. This law and the corresponding rules were developed with long distance slamming experiences in mind.

Although state law and Commission rules are applicable to local exchange carriers as Qwest points out, slamming was and remains more of a problem in the long distance arena where switching a carrier involves only a change in carrier codes. Unlike the case in the long distance market, the Commission finds that state and federal laws prohibiting slamming in the local service markets provide a sufficient deterrent from and adequate compensation for incidents of slamming. While our state law provides that slamming by a local exchange carrier is unlawful, it does not require Qwest to offer a local preferred carrier selection mechanism.

Accordingly, neither state nor federal law bars this Commission from adopting a moratorium on local service freezes. The Commission finds that the reasons which require long

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[6] *See* Qwest Corporation's Post Hearing Brief at 3.
[7] *Id.* at 11.
[8] *See* Brief of Cox Nebraska Telcom, LLC at 9.
[9] *Id. See also* Second Report and Order ¶ 137.

distance carriers to offer a PIC freeze are not present in the case of local exchange carriers. Adding another step into the process of changing local exchange carriers constructs an additional barrier to competition. The local service freeze program Qwest wishes to implement is highly suspect at this time.

Upon consideration of the testimony and evidence adduced at the hearing, the Commission finds that the negative impact of such freezes on the development of competition in the local market outweighs the potential benefit of such service to consumers. The provisioning of local service freezes at this time would be harmful to the development of competition and that harm outweighs the benefit of preventing the possibility that a local slam should occur and other mechanisms in state and federal law cannot adequately compensate a victim of such an act.

Finally, the Commission rejects Qwest's argument that the Commission should give deference to a program Qwest was required to implement in other states and finds Qwest faces no undue burden from unequal enforcement of local service freezes throughout its region. Upon review of many of the programs in other states, the Commission became aware that the rules and regulations of those states apply across the board to all local exchange carriers. There are no such rules in place applicable to all carriers in Nebraska. The Commission declines to permit carriers on a piecemeal basis to implement local carrier freezes. If local carrier freezes are permitted at all, the Commission finds that such freezes should be made applicable to all carriers with appropriate safeguards founded in rules and regulations. At such time however, no carrier has demonstrated a palpable reason which convinces the Commission that local service freezes are needed or appropriate in the local market.

The Commission finds Qwest's argument that a moratorium in Nebraska would pose an undue burden upon the company, is likewise without merit. Qwest has programs, rates and terms that vary widely from state to state. Moreover, to date, Qwest is unable to offer its local service freeze program in a number of other states in its region. The Commission finds that it is not an undue burden on Qwest to instruct its account representatives of the prohibition on local service freezes in Nebraska.

The Commission, therefore, finds that local service freezes should be prohibited in Nebraska until further order by this Commission. Qwest is ordered not to offer its local service freeze program in Nebraska. The Commission further finds that this investigation and the petition filed in Application No. C-2664 should be dismissed.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that a moratorium on local service freezes be, and it is, hereby, adopted in Nebraska.

IT IS FURTHER ORDERED that Qwest be, and it is hereby, prohibited from offering local service freezes in Nebraska until further notice of the Commission.

IT IS FURTHER ORDERED that the petition filed in Application No. C-2664 should be, and it is hereby, dismissed.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of May, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

EXHIBIT 3

Exhibit ____ (JW-1T)

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T BROADBAND PHONE OF WASHINGTON, LLC,	)	
	)	Docket No. UT-020388
Complainant,	)	
v.	)	
QWEST CORPORATION,	)	
Respondent.	)	

DIRECT TESTIMONY OF

JONATHAN WOLF

ON BEHALF OF

AT&T BROADBAND PHONE OF

WASHINGTON, LLC

April 30, 2002

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS?

A. My name is Jonathan Wolf. My business address is 14243 SW Terman Road, Beaverton, Oregon.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?

A. I am employed by AT&T Broadband as the Telephony Manager for Oregon and Southwest Washington.

Q. WHAT ARE YOUR DUTIES AND RESPONSIBILITIES IN THAT CAPACITY?

A. I oversee all of the operations and provisioning functions for the company's Digital Broadband Telephony Service delivery in Oregon and Southwest Washington. I am also responsible for the service assurance functions (repair and maintenance) for the Digital Telephony Services. As part of my operational duties I oversee the vendor relationships with the incumbent local exchange carriers ("ILECs"), including Qwest Corporation ("Qwest").

Q. WHAT IS YOUR PROFESSIONAL AND EDUCATIONAL BACKGROUND?

A. I possess twelve years of professional Telecommunications experience including six years as an Economist at the Oregon Public Utility Commission and 6 years as an Operations Manager/Director at AT&T. I have a BA and MA in Economics.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to describe Preferred Local Carrier ("PLOC") freezes and the problems that AT&T Broadband Phone of Washington, LLC ("AT&T Broadband") has experienced with Qwest's implementation of PLOC freezes. I also recommend solutions to these problems that both will discourage unauthorized changes in local service providers and will minimize the ability of ILECs to undermine the development of effective local exchange competition.

BACKGROUND

Q. PLEASE DESCRIBE AT&T BROADBAND.

A. AT&T Broadband is a facilities-based provider of local exchange service in Washington. AT&T Broadband provides primarily residential service in Vancouver (as part of the Portland, Oregon market) and the greater Puget Sound area, including Seattle. AT&T Broadband competes with Qwest, the incumbent ILEC that provides local service to the vast majority of residential consumers in these areas.

Q. DOES AT&T BROADBAND OBTAIN ANY FACILITIES OR SERVICES FROM QWEST FOR USE IN SERVING CUSTOMERS?

A. Yes, but other than interconnection, such facilities and services are limited almost exclusively to local number portability ("LNP"). AT&T Broadband uses its own network to provide dialtone but needs LNP to be able to offer local service to existing Qwest customers using their existing telephone number. LNP includes the network adjustments necessary to have calls made from or to an individual telephone number routed through the AT&T Broadband switch, rather than through the Qwest switch to which that number originally was assigned as part of a block of telephone numbers. Many customers would refuse to obtain local service from AT&T Broadband if they were unable to retain their existing telephone number.

Q. HOW DOES AT&T BROADBAND OBTAIN LOCAL NUMBER PORTABILITY FROM QWEST?

A. AT&T Broadband has a Commission-approved interconnection agreement with Qwest and orders LNP pursuant to the terms and conditions of that agreement. After a Qwest customer requests local service from AT&T Broadband, AT&T Broadband submits a local service request ("LSR") to Qwest to port that customer's telephone number to AT&T Broadband. AT&T Broadband coordinates the installation of its facilities on the customer's premises with the number port to transition the customer from Qwest service to AT&T Broadband service without any service interruption. Because local telephone service cannot be provided without a telephone number, AT&T Broadband cannot install its facilities or begin providing service until Qwest ports the customer's telephone number.

PLOC FREEZE

Q. WHAT IS A PREFERRED LOCAL CARRIER FREEZE?

A. A PLOC freeze enables an end-user customer to prohibit its existing local exchange service provider from changing the customer's local telephone service from the existing provider to another provider without the customer's express authorization. The Commission's rule (WAC 480-120-139) requires all local exchange carriers ("LECs") to offer this option to their customers. That rule also requires providers to remove the freeze when the customer authorizes removal either orally or in writing.

Q. WHAT IS THE PURPOSE OF A PLOC FREEZE?

A. The purpose of a PLOC freeze is to help prevent a LEC from switching a customer from its existing provider to the LEC without the customer's approval, generally referred to as "slamming." AT&T Broadband, like most LECs, takes slamming concerns very seriously and has implemented measures to minimize, if not eliminate, slamming opportunities. AT&T Broadband, for example, uses a third party to verify that every customer ordering local service, in fact, authorizes AT&T Broadband to provide that service.

Q. WHAT DOES A PLOC FREEZE ADD TO THESE MEASURES?

A. In theory, a PLOC freeze adds another layer of scrutiny – essentially a third check (by the current provider, after a check by the new LEC and the third party verifier) – on a local service order to ensure that the customer has authorized a change in service providers. That additional increment of scrutiny, however, adds little, if any, real protection and comes at a high cost. The more difficult the process a customer must go through to change service providers, the less likely that customer is to make a change. In addition, a requirement that the customer contact its current local service provider to authorize a change to a different LEC provides the current provider with an opportunity to attempt to convince that customer not to make a change. The result is that a PLOC freeze can become a burden, rather than a safeguard, on consumer choice and the development of effective local exchange competition.

These concerns have lead state commissions in several states, recently including Montana and Iowa, to suspend or prohibit PLOC freezes until local exchange competition develops. The Montana Commission, for example, explained:

> The Commission agrees with comments that, if the program was implemented, Qwest would be successful in locking large numbers of customers into its local service, especially given Qwest's plan to solicit customers regarding this program whenever customers call Qwest's business office for any reason. Once a customer's choice of Qwest as the local service provider is frozen, the customer must speak or write to Qwest directly in order to lift the freeze. This requirement for the customer's express consent to remove a freeze is the critical element of the customer protection that carrier freezes provide to customers. However, the freeze-lifting process with its necessary delays when applied to the local service market likely will result in customer frustration and the loss to CLECs of customers who intended to change local service providers but were deterred by the process.[1]

WASHINGTON EXPERIENCE

Q. WHAT HAS BEEN AT&T BROADBAND'S EXPERIENCE WITH QWEST'S IMPLEMENTATION OF PLOC FREEZES IN WASHINGTON?

A. AT&T Broadband's experience with Qwest in Washington has been a nightmare, both for AT&T Broadband and for residential customers wanting to change their local service provider from Qwest to AT&T Broadband. That experience illustrates the accuracy of the Montana Commission's conclusion that a service provider freeze "when applied to the local service market likely will result in customer frustration and the loss to CLECs of customers who intended to change local service providers but were deterred by the process."

[1] *In re Commission's Investigation Into Qwest Local Service Freeze Option*, Montana PSC Utility Division Docket No. 2002.2.22, Notice of Commission Action (April 25, 2002).

Q. WHEN DID AT&T BROADBAND FIRST BECOME AWARE THAT QWEST WAS IMPLEMENTING PLOC FREEZES?

A. AT&T Broadband first became aware that Qwest was implementing PLOC freezes the week of February 18, 2002. Prior to that time, Qwest had accepted and processed AT&T Broadband's orders for LNP generally in a timely manner, consistent with Qwest's obligations under the parties' interconnection agreement. Beginning the third week of February, however, Qwest began rejecting a substantial number of AT&T Broadband's LSRs for LNP. The rejection notices stated, "Please have end user contact current local service provider to have local service freeze removed."

The number of these rejections quickly increased during the week of February 25, 2002. AT&T Broadband contacted Qwest about these rejections, and Qwest informed AT&T Broadband that Qwest was now offering preferred carrier local service freezes in Washington, and that customers are required to contact Qwest to have the freezes removed. AT&T Broadband notified its customers that they would need to contact the Qwest business office to have the preferred carrier freezes on local service removed. The vast majority of these customers informed AT&T Broadband that they had not authorized any freeze on their local service. Virtually every customer also notified AT&T Broadband that when they contacted Qwest to remove the freeze, the Qwest customer service representatives were unable to assist them. The customers' most common complaints to AT&T Broadband were that Qwest failed to remove the freeze despite multiple requests from the customer to do so. In at least one case, the customer informed AT&T Broadband that Qwest had told the customer that a fee of $5.00 would be added to the customer's next bill to cover the cost of removing the local service freeze.

Q. DID AT&T BROADBAND CONTACT QWEST IN AN EFFORT TO RESOLVE THIS ISSUE?

A. Yes, repeatedly. The first such occasion was on March 4, 2002, when AT&T Broadband escalated the issue to Qwest Western Region personnel. Qwest informed AT&T Broadband of the following process: AT&T Broadband should instruct the customer to call the business office to have the freeze removed. The customer service record would be updated in three to five days to reflect the removal, but AT&T Broadband would be able to submit an LSR on the next business day without receiving a rejection or delaying the service installation.

Qwest, however, did not implement that process. Customers continued to contact AT&T Broadband complaining that they were unable to get Qwest to remove the freeze on their local service, and AT&T Broadband continued to receive rejection notices from Qwest after the customer had notified Qwest to remove the local service freeze.

On March 7, 2002, AT&T Broadband again escalated this issue, this time through a contact at Qwest's Executive Branch. This contact assisted AT&T Broadband and one customer immediately to remove a local service freeze that the customer previously had been unable to get Qwest to remove. When AT&T

Broadband requested assistance with another customer, the contact became upset and stated, "Why should I help you take our customer?" The contact discontinued the conversation when the AT&T Broadband representative tried to explain that the customer was making the choice to move to another service provider.

Q. WHAT FURTHER STEPS HAS AT&T BROADBAND TAKEN TO RESOLVE THIS ISSUE?

A. AT&T Broadband representatives have joined customers on three-way conference calls with Qwest to remove the local service freeze. They have spent hours being transferred to, or being required to call a variety of, toll free numbers to have the local freezes removed. Qwest now is referring such requests to a third party vendor for processing. Qwest provided a temporary toll-free number to assist AT&T Broadband and its customers to work through the backlog of customer requests to remove local service freezes. This contact has been only of moderate assistance because of its limited availability and effectiveness. Customers are continuing to experience substantial delays in getting Qwest to remove their local service freeze, if Qwest removes those freezes at all, and AT&T Broadband is continuing to have its LSRs rejected long after the customer has notified Qwest to remove the freeze.

AT&T Broadband continued to attempt to resolve this issue with Qwest. AT&T Broadband provided Qwest with a written list of concerns, including customers' complaints that they are required to call Qwest multiple times to remove the local service freeze and the lack of any process for, or consistency in, removing local service freezes through the Qwest retail office or available escalation measures. Qwest consistently has delayed providing substantive responses to these concerns. Qwest, for example, has provided a third party verification of only one customer's PLOC freeze, otherwise refusing AT&T Broadband's repeated requests for this information with assurances that Qwest possesses verification for each and every freeze despite customer claims to the contrary.

Even when Qwest has proposed a process or procedure to remedy the situation, Qwest's proposal either fails to adequately address AT&T Broadband and customer concerns or Qwest fails to implement its own proposal. Qwest, for example, proposed to retain the "temporary" toll free number to assist AT&T Broadband and customers remove PLOC freezes. AT&T Broadband and customers, however, continue to experience excessive hold times of up to 30 minutes before a Qwest (or its third party vendor) representative will assist them. Several customers have elected to terminate the call rather than wait on hold for half an hour. Qwest repeatedly has cited "spikes in call volumes" as an excuse for these delays, but Qwest's failure to adequately staff its call center does not justify penalizing customers for attempting to exercise their option of changing their local service provider.

Q. HOW MANY CUSTOMERS HAVE BEEN AFFECTED BY QWEST'S IMPLEMENTATION OF PLOC FREEZES SINCE FEBRUARY 18?

A. AT&T Broadband's records indicate that as of April 25, 2002, 234 customers have been affected in the Seattle and Vancouver areas. Prior to February 18, AT&T Broadband consistently provided local service to its customers on the requested installation date, usually within 5 days. Because of the delays caused by Qwest's implementation of PLOC freezes, AT&T Broadband has been compelled to reschedule installation dates for almost 70% of the customers that Qwest claims to have authorized PLOC freezes, while approximately 25% must be rescheduled multiple times. The result has been a doubling of the average amount of time in which customers can obtain local service from AT&T Broadband. In addition, approximately 15% of the affected customers opt for a new telephone number, rather than tolerate the delay and frustration of Qwest's PLOC freeze removal process.

Adding insult to injury, over 95% of the affected customers deny authorizing Qwest to put a PLOC freeze on their account. As an informal check, five Seattle-area AT&T Broadband employees with Qwest local service contacted Qwest to determine whether there is a local service provider freeze on their account, and Qwest informed three of the five that they had authorized a freeze on their local service provider. All three of those employees deny authorizing any such freeze. I understand that Glenn Blackmon of Commission Staff similarly discovered that he has a PLOC freeze on his local service from Qwest that he does not recall authorizing. Qwest also claims that some customers requested a local service provider freeze *after* those customers requested that AT&T Broadband provide their local service. Customers understandably are even more frustrated by the process required to remove a PLOC freeze when they never authorized a freeze in the first place.

Q. WHAT HAS BEEN THE IMPACT ON CUSTOMERS?

A. From a customer perspective, Qwest's imposition of PLOC freezes without authority and failure to promptly remove that freeze is no different than slamming. The customer is being provided service by a carrier that the customer has not authorized to provide that service. Here, the customers formerly authorized Qwest to provide their local service, but Qwest is effectively refusing to honor their request to obtain service from another carrier and is continuing to provide their local service without their consent. The Commission should view such "reverse slamming" no differently than any other form of unauthorized service provisioning.

Q. WHAT HAS BEEN THE IMPACT ON AT&T BROADBAND?

A. As the Montana Commission predicted, AT&T Broadband has lost business due to Qwest's implementation of PLOC freezes. At least 20% of the affected customers have cancelled or declined to pursue their request for local service from AT&T Broadband rather than run the gauntlet of Qwest's PLOC freeze removal process. AT&T Broadband has also expended a tremendous amount of time and resources in a frustrating and often fruitless effort to assist customers to remove the PLOC freezes that Qwest has placed in their accounts, as well as to try to work with Qwest to modify Qwest's processes and procedures to accommodate customer needs.

RECOMMENDATIONS

Q. WHAT ACTION DOES AT&T BROADBAND RECOMMEND THAT THE COMMISSION TAKE TO RESOLVE THIS ISSUE?

A. AT&T Broadband recommends that the Commission waive the PLOC freeze provisions of WAC 480-120-139 and prohibit Qwest from offering or implementing PLOC freezes, at least until effective competition has developed in local exchange markets in Washington. AT&T Broadband understands and shares the Commission's slamming concerns, but in this case, the "cure" is worse than the disease. AT&T Broadband's experience with Qwest illustrates the inherent anticompetitiveness of any process that prevents customers from changing local service providers until they contact their existing provider to authorize the change. The incumbent monopoly service provider has no incentive to facilitate this process and every incentive to use the process to its competitive advantage, including making the process difficult for customers and carriers to navigate and using the process to make immediate win-back efforts.

Q. WHAT ALTERNATIVE DO YOU PROPOSE?

A. If the Commission continues to believe that LECs should be required to offer and provide PLOC freezes, the Commission nevertheless should prohibit Qwest from offering or implementing any PLOC freeze until the Commission has thoroughly reviewed and approved the process and procedures that Qwest uses both to impose and to remove a PLOC freeze.

Q. WHAT PRINCIPLES SHOULD GUIDE THE COMMISSION'S REVIEW?

A. The Commission should ensure that customers are fully and accurately informed before they authorize a PLOC freeze. AT&T Broadband's experience with Qwest demonstrates either that customers are not authorizing PLOC freezes or that customers are not aware that they are authorizing a PLOC freeze. The Commission should ensure that the information that Qwest provides to customers accurately explains a PLOC freeze and that customers who authorize such a freeze do so separately from, and independently of, any long distance provider freezes.

The Commission should also ensure that if a customer has properly authorized a PLOC freeze, the customer can remove that freeze with a minimum of delay and inconvenience. In addition, the Commission should minimize the need for contact between customers making a change and their current local service provider. If a LEC uses a third party to verify customer orders, the current local provider should accept verification from that third party, without requiring the customer personally to communicate with the current provider. Qwest currently requires customers to contact Qwest directly to remove a PLOC freeze. The Commission's rule includes no such requirement, and Qwest's procedure serves only to complicate and frustrate consumer choice. Qwest also may attempt to build into its process an opportunity to win back departing customers by forcing them to contact Qwest before they can obtain local service from another provider. A single third party verification of customer authorization to change local service providers should be sufficient to ensure that customers are not slammed.

Finally, the Commission should ensure that whatever process Qwest has in place for customers who choose to contact Qwest directly to remove their PLOC freeze should be simple, efficient, convenient and dependable. Qwest should maintain adequate personnel to promptly take calls from customers – with or without a representative from their new carrier – including evenings and Saturdays when residential customers are home. Qwest should also remove the PLOC freezes immediately while the customer is still on the call. In the event of problems with this process, Qwest should have escalation procedures in place that will enable the customer – with or without new carrier assistance – to remedy the problem and have the PLOC freeze removed without further delay.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.

EXHIBIT 4

Service Date: April 25, 2002

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Commission's Investigation of Qwest Communications' Implementation of a Local Carrier Freeze Option	)	UTILITY DIVISION DOCKET NO. D2002.2.14
IN THE MATTER of the Qwest Communications' Implementation of a Local Carrier Freeze Option	)	UTILITY DIVISION DOCKET NO. D2002.2.22

NOTICE OF COMMISSION ACTION

The Montana Public Service Commission opened Docket D2002.2.14 to investigate Qwest Communications' planned implementation of a preferred local carrier freeze option for its Montana customers. In a related docket, D2002.2.22, the Commission issued a notice of commission action on February 25, 2002, directing Qwest to suspend its offering of a local carrier freeze option pending the Commission's determination of its compliance with the Commission's carrier freeze rules (ARM 38.5.3816 through 38.5.3818).

On April 23, 2002, at a duly noticed work session, the Commission:

(1) decided in Docket D2002.2.22 that Qwest had submitted information that demonstrated its proposed preferred local carrier freeze program would comply with the Commission's carrier freeze rules;

(2) after considering the comments received in Docket D2002.2.14, imposed a moratorium on Qwest's implementation of the local carrier freeze program for 18 months, at which time Qwest may request the Commission to revisit this decision.

Background

On January 16, 2002, Qwest Communications notified the Commission by letter that the company was implementing a local carrier freeze option in Montana. According to Qwest, the option will allow customers to place a "freeze" on their preferred choice of local service provider in the same way they are now able to request a freeze of their interLATA and/or intraLATA long distance carrier choices. A preferred carrier freeze prevents a change in a customer's preferred carrier selection unless the customer gives the carrier from whom the freeze was requested his or her express consent. Preferred carrier freezes are offered to customers as a tool to prevent unauthorized carrier changes (slamming). Qwest indicated in its letter to the Commission that customers who call the Qwest business office will be informed that the local carrier freeze option is available and that Qwest will also provide information to customers about the new option in a bill insert.

On January 29, 2002, AT&T notified the Commission by letter that it opposes Qwest's implementation of a local carrier freeze program. AT&T cited a Federal Communications Commission order in which the FCC recognized the potential for abuse of preferred carrier freeze options in newly competitive markets and specifically stated that states may prohibit the implementation or solicitation of preferred carrier freezes if they determine such an action to be appropriate to prevent incumbent local carriers from engaging in anticompetitive conduct.[1] AT&T requested that the Commission prohibit Qwest from implementing the local carrier freeze program unless and until Qwest has demonstrated the need for it and has proved it can be implemented without harming or impeding local service competition in the state. AT&T further proposed that, if a local carrier freeze option is necessary in order to protect consumers from slamming, then a neutral third-party administrator should operate the program rather than Qwest in order to protect the interests of competitors.

In the Notice of Inquiry (Docket D2002.2.14) the Commission asked parties to address in their comments Qwest's plan for solicitation and implementation of the local carrier freeze option and the issues raised by AT&T, including the proposal for a third-party administrator for preferred carrier freezes. Commenters who asserted that the local service market is not sufficiently competitive to warrant the implementation of a local carrier freeze option were asked to comment as to what standards, criteria, or benchmarks the Commission might use to determine that the Montana market is sufficiently competitive to warrant such a program. The Commission also invited comments as to the effectiveness and ease of use of Qwest's existing process for lifting carrier freezes on customers' carrier choices. Commenters could also provide any other pertinent information that was not specifically requested in the notice.

Summary of comments

The Commission received timely comments from Qwest, Touch America (TA), and Montana Telecommunications Association (MTA). The Commission did not accept the comments of WorldCom because they were filed after the comment deadline had passed. The parties' comments are summarized below.

Qwest

In Docket D2002.2.22, Qwest was directed by the Commission to demonstrate that its planned local carrier freeze program complied with Commission rules and to explain why the offering was not filed as a tariff. Qwest responded with a March 11, 2002 filing that describes the program in detail and in which Qwest contends it complied with Commission rules. In response to the tariff question, Qwest argues that § 69-3-301, MCA does not require a tariff be filed for a service that is offered at no charge. Further, Qwest notes that it has offered interLATA and intraLATA carrier freezes for several years and the Commission has not required that Qwest submit tariffs for those offerings.

Qwest also submitted comments in response to the Notice of Inquiry docket. In those comments, Qwest points out that the Commission adopted rules in 1999 that mirror the FCC's related to preferred carrier freezes for every type of telephone service – local exchange as well as intraLATA/intrastate, interLATA/interstate and international toll service – in response to the problem of slamming. According to Qwest, the company wants to offer preferred local carrier freezes in Montana in order to promote customers' ability to choose to add protections against slamming. Qwest states its freeze program complies with Commission and FCC rules and emphasizes that the objective of the Commission's and FCC's rules is to prevent local as well as long distance slamming.

Qwest notes the Montana PSC received 35 local slamming complaints in 2001, and claims the incidence of local slamming will increase with increased competition. Qwest also cites information disseminated by two consumer protection organizations and several state

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[1] See AT&T letter, pp. 2-3, citing the FCC's *Second Report and Order, In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, FCC 98-334, released December 23, 1998, at para. 36.

regulatory commissions to warn consumers of local slamming and to encourage them to use the freeze option to protect themselves from slamming.

Qwest cites statements made by the FCC in its *Second Report and Order* on slamming in which the FCC said: its rules were meant to combat slamming in both the toll market and in the local service market as competition develops; it anticipated an increase in local service slamming if effective rules were not implemented; and preferred carrier freezes enhance competition by fostering consumers' confidence that they control their provider choices. Qwest adds that the FCC rejected CLEC requests to ban carrier freezes and local exchange carriers' solicitation of orders for carrier freezes and concluded that the best way to ensure carrier freezes are used to protect consumers, rather than erecting a barrier to competition, was not to prohibit them but to educate consumers about obtaining and removing freezes.

According to Qwest, the potential for anti-competitive effects resulting from preferred local carrier freezes is countered by the Commission's requirement for verification by an independent third party of a customer's authorization to implement a preferred carrier freeze. In addition, Qwest argues a preferred local carrier freeze does not "lock" the customer into that carrier choice because both the FCC and Commission rules include allowable methods for lifting preferred carrier freezes, including the use of a three-party call that allows a new carrier to confer with both the customer and Qwest to authorize the lifting of the customer's freeze.

Qwest rebuts the claim made by AT&T in its letter to the Commission that local service competition is just developing in Montana by citing the Commission's finding in its Section 271 docket (D2000.5.70) that numerous competitive local exchange carriers (CLECs) are providing competitive service in Montana. Qwest argues that AT&T's request that the Commission prohibit Qwest's implementation of a local carrier freeze program would deny local slamming protections to customers. According to Qwest, local slamming can have more significant impact on customers than long distance slamming and restoring service to the preferred local carrier can be more frustrating. Qwest asserts that it has implemented the local carrier freeze program in 9 of the 14 states in the region. Qwest emphasizes that three of those states (Washington, Colorado and Utah) require LECs to offer preferred carrier freezes and two of those states *require LECs to educate customers about the availability of carrier freezes.*

Qwest opposes AT&T's proposal that a neutral third party administer preferred local carrier freezes in order to protect the interests of competitors because it would be costly and because existing rules require the incumbent local exchange carrier (LEC) to act as an unbiased administrator of carrier freezes. Qwest reiterates that FCC and Commission rules require that an independent third party must verify that a customer has chosen to freeze their carrier choice(s).

Touch America

TA opposes Qwest's proposal to implement a local carrier freeze program. While everyone acknowledges there is a nationwide problem with long distance slamming, which justifies the need for the availability of long-distance carrier freezes, TA argues there is no such problem with local service slamming. TA claims that, unlike the local exchange market, the long distance market is fully competitive and a freeze program protects consumers without impeding competition. TA argues Qwest is not a neutral party when it comes to customers' changes in local service providers because most of the customers changing local carriers are leaving Qwest. For that reason, asserts TA, if Qwest is allowed to implement its local carrier freeze program, the Commission must oversee it to prevent anti-competitive behavior by Qwest.

According to TA, the preferred local carrier freeze option, in conjunction with Qwest's Winback program, allows Qwest to impede local service competition. TA asserts that Qwest will be able to implement large numbers of local carrier freezes to Qwest by soliciting them on each of the thousands of calls regarding service or billing issues the company receives each month from customers to its business offices. TA argues that nothing prohibits Qwest from using the requirement that a customer contact Qwest directly to lift a local carrier freeze from using that contact as an opportunity to retain the customer. According to TA, the freeze removal process allows Qwest to know immediately to which customers Winback efforts should be directed.

TA argues that the process will cause delays and frustrations for CLECs and their prospective customers, thereby creating a barrier to competition. A CLEC who signs up a customer will not be aware if the customer has a freeze in place until Qwest rejects the CLEC order to change the customer's provider because the customer's account is frozen. The CLEC must then re-contact the customer to have the customer get the freeze lifted, at which point it is unknown how long it takes Qwest to remove the freeze.

According to TA, no LEC should be able to implement a preferred local carrier freeze until the Commission verifies there is a problem with local service slamming. TA suggests that the Commission prohibit local carrier freezes until it has received verified local slamming complaints from at least 2 percent of the total number of access lines whose local service providers have been changed. Additionally, TA recommends that if the Commission approves Qwest's local carrier freeze program, it should adopt performance standards and penalties for local slamming, including significant fines.

TA supports the idea of a neutral, third-party administrator for local carrier freezes that would operate at the direction of the Commission. Local freeze administration would be funded by LECs who wish to implement local carrier freeze programs, who could recover its costs from customers requesting local freezes. TA recommends the administrator of the program maintain and keep current a list of customers who have chosen to freeze their choice of local provider and make the list available to all local service providers.

Finally, TA recommends a freeze program should include a quick method to lift a freeze that results in the freeze being lifted in 8 hours or less, and that any local service provider who presents the freeze administrator with a signed letter of agency from the customer should be able to have the freeze lifted without further customer contact.

MTA

MTA states generally that it is premature and anticompetitive for Qwest to implement a local carrier freeze option in Montana and that it supports AT&T's comments in its 1/28/02 letter to the Commission.

MTA argues there is no local service slamming problem which warrants a local carrier freeze program and that the need for such a program should be demonstrated before Qwest is allowed to implement it due to such a program's effect of impeding competition. MTA questions Qwest's motives for adopting this program now, when there is very little local service competition. MTA contends Qwest wants to lock customers into its local service prior to competition presenting a threat to Qwest's domination of the local service market.

According to MTA, freezing an account is easier than unfreezing it because Qwest will solicit all customers when they call the company for any reason as well as market the freeze option, which is offered at no charge. However, MTA says, significant additional effort is required on the parts of the customer and the CLEC to unfreeze an account.

MTA agrees with the spirit and intent of the Commission's slamming rules, but objects to implementation of a local service freeze in the absence of competition and evidence of local slamming. MTA asserts that the Commission has the authority to impose an indefinite moratorium on local service freezes and that other states have done so.

MTA recommends the Commission impose an indefinite moratorium on the application of local service freezes in Montana until the Commission determines that lifting the moratorium is in the public interest, as demonstrated by the extent of local service competition in Montana and by the extent of a local service slamming problem as measured by objective data obtained by the Commission. Alternatively, MTA suggests that Qwest could petition the Commission to lift the moratorium, but would have to demonstrate a need for the local service freeze option and that a freeze program would not impede competition.

According to MTA, if a freeze program is implemented at some time, the Commission must pay close attention to incumbent LECs' marketing of local freezes because some customers may not understand the potential effect of electing a freeze. Also, MTA suggests the Commission periodically review the ease of lifting local service freezes because the effect of a freeze that is easier to impose than to lift is to make it difficult for customers to switch local service providers.

Discussion

As required by the Notice of Commission Action in Docket D2002.2.22, Qwest submitted information about its local carrier freeze program to demonstrate to the Commission that the program complied with Commission rules. The Commission has reviewed Qwest's filing and has determined that Qwest's plan for such a program includes all of the elements required by Commission rules.

The Commission did not address the issue of whether Qwest was required to file a tariff for this service offering.

Although the program as proposed would comply with Commission rules regarding preferred carrier freezes, the Commission imposed a moratorium on Qwest's preferred local carrier freeze program for these reasons cited in comments received in Docket D2002.2.14:

- As argued by MTA and TA, it is likely that Qwest's implementation of the local carrier freeze option at this time, when CLECs' share of the local service market is minimal, will impede the development of competition. As evidence of significant local service competition, Qwest points to the finding on Track A in the Commission's 271 docket that numerous CLECs are providing service to thousands of Montana customers; however, the Commission notes the same Track A report cites Qwest's own estimates of CLECs' market share as of April 2001 to be 3.8% or 8.3%, depending on the calculation method. It is clear Qwest is the local service provider for the lion's share of customers in its Montana service territory.

  The Commission agrees with comments that, if the program was implemented, Qwest would be successful in locking large numbers of customers into its local service, especially given Qwest's plan to solicit customers regarding this program whenever customers call Qwest's business office for any reason. Once a customer's choice of Qwest as the local service provider is frozen, the customer must speak or write to Qwest directly in order to lift the freeze. This requirement for the customer's express consent to remove a freeze is the critical element of the customer protection that carrier freezes provide to customers. However, the freeze-lifting process with its necessary delays when applied to the local service market likely will result in customer frustration and the loss to CLECs of customers who intended to change local service providers but were deterred by the process.

- The need for protection against local service slamming has not been established. Carrier freezes have provided an important anti-slamming tool in the long-distance market where competition between carriers is robust and slamming is an unfortunate by-product. In contrast, competition is just developing in Qwest's local service market in Montana and the incidence of local service slamming is negligible. Although Qwest cites the 35 informal consumer complaints about local slamming received by the Commission in 2001 as evidence that a local

> slamming problem exists, a review of those complaints indicates that all but one were complaints against one CLEC and complaints staff reports that in most cases the CLEC had obtained the complainant's authorization in accordance with PSC rules. Qwest may be correct that, as local competition grows, so will the incidence of local service slamming, but the unproven need at this time to provide consumers with protection against local service slamming is outweighed by the Commission's interest in promoting development of robust local service competition.

The Commission imposes a moratorium on Qwest's local carrier freeze program, but allows Qwest to request the Commission revisit this decision after 18 months. By that time, the Commission, Qwest, CLECs and consumers will all have more experience with and knowledge of local service competition and the incidence of local slamming. In any future review, the Commission would include in its consideration the extent of local service competition and evidence of the existence of a local service slamming problem that would be addressed by implementation of a local carrier freeze option.

BY THE MONTANA PUBLIC SERVICE COMMISSION

GARY FELAND, Chairman
JAY STOVALL, Vice Chairman
BOB ANDERSON, Commissioner
MATT BRAINARD, Commissioner
BOB ROWE, Commissioner