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AZ CORP COMMISSION

Our File Number 39941-00001

May 13, 2002

HAND DELIVERED

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

Re: Testimony of Mindy J. Chapman
Docket No. T-01051B-02-0073

Docket Control:

Enclosed is the testimony of Mindy J. Chapman filed in the above-referenced docket on behalf of intervenor WorldCom, Inc.

Very truly yours,

Michael T. Hallam

MTH/jw

cc: Administrative Law Judge Jane L. Rodda
Christopher Kempley, Chief Counsel
Ernest Johnson, Director, Utilities Division
Maureen Scott, Legal Division
All Parties of Record

Arizona Corporation Commission
DOCKETED
MAY 13 2002
DOCKETED BY

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF QWEST CORPORATION'S) TARIFF FILING TO AMEND ITS TERMS AND) CONDITIONS AND PERMIT CUSTOMERS THE) OPTION OF INSTITUTING A FREEZE OF) THEIR LOCAL SERVICE PROVIDER)	**DOCKET NO. T-01051B-02-0073**

TESTIMONY OF MINDY J. CHAPMAN ON BEHALF OF INTERVENOR WORLDCOM, INC.

MAY 13, 2002

Q. Please state your name, title and business address.

A. My name is Mindy J. Chapman. I am Director for LEC Interface Operations for MCI WorldCom, Inc. ("MCI WorldCom"). My business address is 707 17th Street, Suite 4200, Denver, Colorado 80202.

Q. Please describe briefly your education and relevant professional experience.

A. I have over 18 years experience in the telecommunications field, all of it with WorldCom, Inc. ("WCom") or its predecessor companies, MCI WorldCom or MCI Telecommunications Corporation. My first position was as a Sales/Service representative, focusing on residential long distance sales. After a series of promotions I became Supervisor of 15 employees in April 1986. I supervised an error processing group that worked rejected orders from Local Exchange Carriers ("LECs"). In August 1988 I was promoted to the position of Staff Specialist II, where I focused on analysis of order processing systems. In August 1990 I was promoted to Staff Specialist III. In October 1990 I became a Manager, overseeing a group which was responsible for tracking and troubleshooting customer orders. In August 1991 I was promoted to the Manager II level, and adopted responsibility for overseeing LEC compliance. I also worked with LECs to review performance. In January 1993 I assumed additional responsibilities and was promoted to the Manager III level, and in October 1993 was made a Senior Manager, with nationwide responsibilities for overseeing monitoring and error processing. I was promoted to Senior Manager II in January 1997, with expanded responsibilities, including local order provisioning and error processing. I was promoted to my current position of Director in March 2000.

My current duties include tracking all data and order activity for all Long Distance and local resale and Unbundled Network Element ("UNE") Platform orders. I track all of these orders to completion, addressing data issues and assessing orders that are not timely completed. I also analyze orders that are rejected, and am responsible for initiatives to reduce the rate of rejected orders. I also monitor to ensure that all data from LECs is received, processed, stored and used in a timely and accurate fashion. I also help coordinate the LECs to ensure compliance standards and intervals for Dial One Order Processing and Local Order Processing.

With regard to my formal education, I received a BA from the University of Denver in 1981. I would like to add that I am not an attorney and I do not offer any legal opinions herein. However, in the course of my normal duties and as a person who is sometimes called upon to speak publicly on WCom's behalf on matters of public policy, I have had occasion to become familiar with certain rulings of the Federal Communications Commission ("FCC") and state regulatory commissions. In addition, I am personally familiar with at least some of these rulings because I appeared as a witness on behalf of the company or otherwise helped in the company's prosecution of the cases.

Q. What is the purpose of your testimony

A. The purpose of my testimony is to explain why the Local Service Freeze ("LSF" or "freeze") product or tariff being sponsored by Qwest Corporation ("Qwest") is unnecessary, and to alert the Arizona Corporation Commission ("Commission") to the potential anticompetitive impact that the proposed tariff may have. Although Qwest touts the tariff as a measure to protect consumers, the practice it "protects" consumers against, namely having their local phone service "slammed," is not now and has little chance of becoming a widespread problem. It is clear that the FCC and the Commission have strict rules and severe penalties if a company does "slam" a consumer. As such, the real beneficiary of the LSF will not be the citizenry of Arizona but rather Qwest itself, which, with the adoption of the tariff, will have available to it a mechanism by which it can act unfairly to protect its market share from the encroachment of local competition. Despite Qwest's assertions that LSF will be implemented to accommodate customer concerns, in reality, Qwest proposed LSF to maintain its market share, retain its customer base and keep stable its shareholder value.

Q. Could you explain what "local slamming" is?

A. "Slamming" is the term commonly used to describe the practice of switching a telephone customer's carrier without the customer's authorization. Historically, allegations of "slamming," when addressed by legislators, regulators or the news media, have typically focused on the unauthorized switching of residential customers' long-distance carriers. "Local slamming" refers to the same practice, i.e., unauthorized switching, but instead involves the switching of a customer's Local Exchange Carrier (also referred to as a Local Service Provider, or LSP).

Q. Please explain how LSFs have the potential to be anticompetitive.

A. As the incumbent LEC ("ILEC") in Arizona, Qwest enjoys a historical monopoly on local telephone service. Thus, virtually all local customers have little or no experience with local competition. Once nascent competition becomes available, many current Qwest customers (i.e., prospective CLEC customers) will be understandably uncertain about the prospect of competitive local phone service, and particularly about how to change their local provider. Given this tentative consumer population, anything that makes the process of changing local providers any more complicated or more difficult than it already is would be devastating to the growth of competition (and switching a customer's local service is both difficult and complicated -- much more so than switching a customer's long distance service).

The testimony filed by the Qwest expert, Mr. Scott McIntyre, liberally quotes from a FCC order to provide justification for the LSF tariff/product proposed by Qwest. See Direct Testimony of Scott A. McIntyre ("McIntyre Testimony") filed in this docket on April 11, 2002, pp. 5, l. 7 - 7, l. 3. However, his testimony *fails* to note that the FCC recognized the negatives of implementing product freezes:

> ...we recognize, as several commenters 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 commenters 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 share concerns about the use of

> preferred carrier freeze mechanisms for anticompetitive purposes. We concur with those commenters 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. *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking (the "FCC Second Report and Order") (released December 23, 1998) at ¶135.

The FCC recognized that states, which were most familiar with problems with competition in their own territories, should have the final word on the implementation of local freezes:

> ...We make clear, however, that states may adopt moratoria on the imposition or solicitation of intrastate preferred carrier freezes if they deem such action appropriate to prevent incumbent LECs from engaging in anticompetitive conduct. We note that a number of states have imposed some form of moratorium on the implementation of preferred carrier freezes in their nascent markets for local exchange and intraLATA toll services. We find that states – based on their observation of the incidence of slamming in their regions and the development of competition in relevant markets, and their familiarity with those particular preferred carrier freeze mechanisms employed by LECs in their jurisdiction – may conclude that the negative impact of such freezes on the development of competition in local and intraLATA toll markets may outweigh the benefit to consumers. FCC Second Report and Order, par. 137.

Moreover, Qwest already interacts with its customers on a routine basis (e.g., through monthly bills, bill inserts, customer service calls). Qwest's filed testimony disingenuously states that LSF addresses the same protection to consumers that the pending Arizona slamming/cramming rules will offer. McIntyre Testimony, p. 5, l. 1-5. The proposed Arizona slamming/cramming rules, however, address a recognized problem that has plagued the long distance market *in the past*. Given the publicity that long distance "slamming" has received, it would be far too easy for an ILEC in this type of environment to subtly steer (or scare) customers into "protecting" their local phone service from slamming – even though customers may not really want, and in reality do not need, such protection. Qwest's intention to offer LSF on every sale of a new connection is, in reality, an opportunistic marketing effort by Qwest.

Q. Has there ever been an instance of an incumbent carrier using a carrier freeze in an anticompetitive manner?

A. Yes. In fact there have been several such instances. I will briefly touch on three. In 1997, the Ohio Public Utilities Commission issued an order relating to Ameritech's implementation of a primary carrier freeze program. The program was designed to "protect" consumers from having their services slammed, including services for which slamming was not even an option. The Commission specifically concluded that "the only reasonable explanation for Ameritech to apply [PIC freezes] to intraLATA and local services in Ohio . . . to be retention of market share." *In the Matter of the Complaint of Sprint Communications, L.P. c. Ameritech Ohio, Public Utilities Commission of Ohio*, Case No. 96-142-TP-CCS, Opinion and Order (September 11, 1997) at 17.

In 1996, the Illinois Commerce Commission found that bill inserts by Ameritech offering local PIC protection, while having some public protection, were designed to help Ameritech maintain its monopoly in the intraLATA and local market in Illinois It found the bill inserts unreasonably discriminatory and anti-competitive, in violation of the Public Utilities Act. *In the Matter of the Complaint of* MCI *Telecommunications Corporation, et al. V. Illinois Bell*

Telephone Company, Case No. 96-0075; 96-0084 (consolidated), Opinion and Order, April 3, 1996, at p. 5.

In April 1997, MCI Telecommunications sued SNET in federal court in Connecticut (Civil Action No. 397 CV 00810 (AHN)), alleging that SNET had misused its control of the PIC change process to prevent its customers from exercising competitive choices and to damage its long distance competitors. The complaint alleged that SNET had restricted MCIT's access to certain PIC information, imposed cumbersome procedures for the lifting of PIC freezes, and deceptively marketed its PIC freeze program. As part of the settlement reached by the parties, SNET agreed that third party verification of a PIC change would override a customer's PIC freeze.

Q. **Earlier, you stated that switching a local customer's service is more complicated and difficult than switching a long distance customer's service. Could you elaborate?**

A. Yes. One of the reasons that telemarketing of long distance services is so successful is because it is convenient. A customer calls (or is called by) a carrier, and in a matter of minutes the customer can switch carriers and confirm the switch through third party verification. The customer service representative explains the calling plans to the potential customer, answers any questions, verifies the customer's name, billing address and phone number once a calling plan has been selected, and forwards the customer to an independent third party, who verifies which services were ordered, and that the sale was authorized. Telemarketing of local services, by contrast, is necessarily less convenient for consumers because the amount of time a customer spends on the phone -- learning about different rates and optional services, selecting a calling plan and services, deciding on directory options, and providing account and other personal information -- is often upwards of twenty minutes. In essence, a local service switch is much more complicated than a long distance service switch because so much more information needs to be obtained from, and conveyed to, the consumer.

Q. How is the sales process adversely affected by provider freezes?

A. Provisioning success rate is negatively impacted when an LSF is in place on an account. When a LSF is in place it requires the customer to take additional action to lift a LSF, further inconveniencing and discouraging the consumer from following through on the sale. In WCom's experience with other states, only nine percent (9%) of customers who have requested a switch from their local carrier to WCom, but who have a local freeze on their account, end up actually switching their local service. A local service provider freeze would introduce incremental and highly inefficient steps into the process for a customer trying to change his or her local carrier. The local sale would be made, would be sent to the incumbent carrier for provisioning, rejected back to the CLEC due to a freeze on the account. The customer would then have to be recontacted (a difficult task with residential customers) and requested to contact their local provider to lift their freeze. If a 3-way call cannot be completed for some reason, the customer may or may not do this on his or her own. If they do initiate the request on their own, WCom, as the CLEC, has no way of knowing when it was done and when to resend the order. Even when 3-ways are completed, the order must be held for some period of time and can not be resent immediately as Qwest requires at least one day for the lift to take affect on the account. The process required to 'pend' the order is cumbersome and somewhat of a guessing game as to when to resend and avoid yet another reject. The rate of success in provisioning this type of reject is likely to be very low, which will result in a loss of revenue to the CLEC. Ultimately, it is the consumer who is victimized by this protracted, inefficient process as their request for a change in service may be delayed indefinitely.

Moreover, a critical difference between a customer desiring to change long distance carriers and one desiring to change local carriers is the ability of the long distance customer to initiate that change independently. An end-user customer can contact their local carrier directly and initiate a change of the long distance provider, regardless of whether a PIC freeze is on the line or not. With local service, however, an end-user customer cannot initiate a change to a new local carrier via a call to his or her current local carrier.

Q. Does Qwest's proposal to make customers aware of the LSF option give it an unfair advantage?

A. Qwest proposes to inform customers of three different freeze options when customers contact Qwest's office for new or adjusted phone service. McIntyre Testimony, p. 15, l. 17- p. 16, l. 3. Every customer is very likely to contact Qwest for his or her initial phone service since it is the dominant carrier with a monopoly on local phone service. What Qwest deems a simple service to the end user is in fact a built in opportunity to market to every single consumer that needs telephone service and an opportunity to sell a freeze before the CLECs have had any opportunity to market to a potential consumer. The script proposed by Qwest in its testimony uses attractive words as baits to the end user, "free" and "protection." McIntyre Testimony, p. 15, l. 23. Thus, Qwest has an immediate opportunity to market to all end users on every new connect call. At a minimum, Qwest should not be permitted to market LSF to every new customer on the first contact. It should only be permitted to offer this product if the customer calls with a complaint of having been "slammed" or in response to an unsolicited customer request for the LSF.

Q. Why is slamming not as great a concern with local phone service as it was in the past with long distance?

A. There are now very clear rules and processes and severe penalties in place for slamming in the industry. Qwest implies that the problem is serious and states that, as a possible consequence, there is "the very real risk of a customer being left completely without phone service." This is a false assertion. Qwest is implying that the customer will lose dial tone. McIntyre Testimony, p. 13, l. 16-17. This is not true – if a local slamming occurs, a customer will have a dial tone, just not from the carrier it wants. While not minimizing the irritation for the consumer of being slammed, the consequences will not be as drastic as losing dial tone. In fact, in most cases, the service would still be provided over the same line and switch. If dial tone was lost upon migration, that would be a Qwest error in the processing of the migration request.

Q. How does a CLEC find out that the prospective customer has an LSF on his or her Qwest account?

A. Unless the customer tells a CLEC, such as WCom, during the sales call that he or she has an LSF (which is a rare occurrence), the CLEC finds out that the prospective customer has an LSF on the account when the CLEC receives a rejection notice from Qwest.

Q. Will it be time-consuming and cumbersome for the consumer to have an LSF lifted?

A. Qwest's testimony implies in several different responses about the "mechanics" of lifting a LSF that the process is "simple." These descriptions of the processes unfairly minimize the time-consuming and irritating characteristics of the processes that are bound to discourage all but the most determined of consumers. For example, Qwest states that a freeze will be removed "the same day the removal request is received." McIntyre Testimony, p. 19, l. 7-9. I wonder if this statement will apply to requests on weekends and holidays, whether the removal will be implemented on "the same day" *only* if the day is business day – and during business hours! Furthermore, since WCom makes many of its marketing calls to consumers in the evenings, and on weekends, it is highly unlikely, that WCom's customers who have LSF will be able to have it removed so conveniently.

Qwest also states that it will be much easier to have a freeze lifted than established because of the imposition of an LSF requires the consumer to participate in a TPV call. McIntyre Testimony, p.19, l. 11-18. Again, this assertion underplays the time-consumed and its effect on already time-deprived consumers. First, the consumer must speak with a CLEC's marketing representative, be educated about the products and packages available for him or her, and make a choice of services and products. As noted above, that can take as much as 20 minutes. Then, under the procedures suggested by Qwest, the consumer must participate in a three-way call with the CLEC and the Qwest representative to authorize the lifting of the LSF currently on the consumer's line. Again, this call could take a considerable amount of the consumer's time, particularly if the Qwest representative delays joining the call and the consumer and the CLEC have to endure some monotonous recording saying that the customer service representative will be with you soon. In addition, if the customer wishes to lift long distance freeze(s) as well, Qwest will yet again transfer them to another rep to process that request. This is hardly streamlined or simple. Predictably, many consumers will hang up during the wait on the second call to lift the LSF if they in fact had agreed to the second call to Qwest in the first place.

If the Commission does authorize LSF in Arizona, WorldCom would urge the Commission to reduce the time demanded from the consumer by authorizing processes to eliminate or simplify the call with the LEC including Electronic Authorization.

Q. Should Qwest be required to file a tariff if this Commission authorizes LSF?

A. WCom believes that it makes strong policy sense for the Commission to review Qwest's proposed LSF as part of the tariff process. I am informed that Arizona's Constitution and statutes provide the Commission with broad powers and jurisdiction to regulate telecommunications providers. WCom believes that the Commission should exercise its jurisdiction in this case as the potential anti-competitive effect of an LSF is great. In addition, I am informed, based upon legal review by my counsel, that the Commission's regulations define "tariffs" as "[t]he documents filed with the Commission which list the utility services and products offered by the utility and which set forth the terms and conditions and a schedule of the rates and charges for those services and products." Clearly, an LSF is a service offered by Qwest and falls squarely within this definition.

Q. Is it possible for a competitively neutral LSF to be adopted in Arizona?

A. Although WCom believes that LSFs are unnecessary, the only way that one could be implemented in a competitively neutral manner would be to have it administered by an independent third party, who would manage preferred carrier selections and freezes. This would be the best way of avoiding the inevitable anticompetitive effects of ILEC local freeze marketing. Moreover, as long as Qwest maintains its historical dominance of the local market, it should be specifically prohibited from marketing (or having resellers market) LSFs.

Q. Please summarize WCom's position.

A. It defies common sense to think that any CLEC could believe it could successfully "slam" any local customers, let alone the prospect of doing so in sufficient numbers and for a sufficient time to make it a financially viable option. The "protection" offered by the Local Service Freeze tariff proposed by Qwest will have the effect of depriving customers of the ability to efficiently and conveniently obtain the benefits of new local service options, and it will serve to perpetuate Qwest's market domination at the expense of fair and robust competition.

Q. Does this conclude your testimony?

A. Yes.