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**Commissioner**  
**MARC SPITZER**  
**Commissioner**

Arizona Corporation Commission

**DOCKETED**

AZ CORP COMMISSION  
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JUL 22 2002

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**IN THE MATTER OF QWEST )  
CORPORATION 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**

**AT&T BRIEF**

AT&T Communications of the Mountain States, Inc. and TCG Phoenix  
(collectively "AT&T") hereby file their brief on Qwest Corporation's ("Qwest") Local  
Service Freeze ("LSF") tariff.

**I. INTRODUCTION**

On January 28, 2002, Qwest filed its LSF tariff. The LSF tariff states, in its  
entirety:

The company permits customers to freeze their local service provider.  
This will be done for any requesting local exchange customer at no  
charge. Once the local service provider has been frozen, it may not be  
changed without the customer directly contacting the Company, consistent  
with all applicable laws and regulations. At the time a customer contacts  
the Company to establish a freeze, a representative will advise him/her on  
how to facilitate a change of provider on a frozen account.<sup>1</sup>

<sup>1</sup> Qwest Exchange and Network Services Price Cap Tariff, Section 2, page 34.1, release 1, § 2.2.16; Cox  
Ex. 4 at 6.

The Arizona Corporation Commission (“Commission”) suspended the tariff on February 26, 2002, and ordered that a hearing be held. A hearing subsequently was held on June 17, 2002. Testifying on behalf of Qwest was Mr. Scott A. McIntyre.<sup>2</sup> Testifying on behalf of AT&T was Ms. Dawn Russell.<sup>3</sup> Testifying on behalf of WorldCom, Inc. was Ms. Mindy J. Chapman.<sup>4</sup> Testifying on behalf of Cox Arizona Telcom, L.L.C. was Mr. Douglas Garrett.<sup>5</sup> Testifying on behalf of the Arizona Commission Staff was Mr. Wilfred M. Shand, Jr.<sup>6</sup>

Generally, Qwest supported its tariff by arguing that it gives consumers the choice to protect their local exchange service from slamming. The competitive local exchange carriers (“CLECs”) generally argued that the tariff is anticompetitive, inhibits customers from changing carriers and is intended to address a problem – slamming – that does not exist in the local exchange market. Staff in its pre-filed testimony did not take a position on the merits of a local service freeze, arguing instead that if the Commission finds a local service freeze is in the public interest, the tariff should be amended to include all the terms and conditions of the tariff. Further, Staff recommended that bill inserts describing the service be approved by the Commission in advance.<sup>7</sup>

The Federal Communications Commission (“FCC”) has adopted rules on slamming. In its order adopting rules, the FCC addressed the issue of local service

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<sup>2</sup> Mr. McIntyre’s Direct Testimony and Rebuttal Testimony were marked as Qwest Ex. 1 and Qwest Ex. 2, respectively.

<sup>3</sup> AT&T Ex. 1

<sup>4</sup> WCom Ex. 1

<sup>5</sup> Cox Ex. 1

<sup>6</sup> Staff Ex. 1

<sup>7</sup> Staff suggested that if the Commission finds that the tariff is not in the public interest at this time, the issue of local service freezes should be addressed again after the Commission completes the slamming and cramming rules. Staff Ex. 1 at 14.

freezes.<sup>8</sup> Although the FCC identified the consumer benefit of local service freezes, it also noted possible detrimental effects on competition. In an attempt to address some of these negative effects, the FCC set minimum standards for implementing preferred carrier freezes.<sup>9</sup> However, the FCC concluded “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.”<sup>10</sup>

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 jurisdictions – 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.<sup>11</sup>

The Commission must weigh whether the negative impact of Qwest’s LSF on the development of competition in the local market outweighs the benefit to consumers. The CLECs argue that the negative impacts on the development of competition outweigh any benefit to consumers, since there is no evidence that slamming in the local exchange market is a problem in Arizona.<sup>12</sup> Furthermore, as employed by Qwest, the LSF is unreasonable, anticompetitive and not in the public interest. The evidence provided by the CLECs overwhelmingly supports the CLECs’ position. Because of the negative impacts on the development of competition in the local exchange market, the Commission should reject Qwest’s LSF tariff.

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<sup>8</sup> *Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-334 (rel. Dec. 23, 1998), ¶¶112-138. The FCC refers to freezes on customer accounts as “preferred carrier freezes.”

<sup>9</sup> *Second Report and Order*, ¶¶ 121-134.

<sup>10</sup> *Id.*, ¶137.

<sup>11</sup> *Id.*

<sup>12</sup> Staff did not perform the analysis called for the FCC.

## II. ARGUMENTS

Simply stated, Qwest's LSF tariff allows customers to freeze their local service provider. "Once the service provider has been frozen it may not be changed without the customer directly contacting the Company..."<sup>13</sup> Not only is the tariff over-simplistic and lacking essential terms, the effects on local exchange competition and competitors are not readily apparent from a reading of the tariff. One must look at Qwest's actual practices in implementing the LSF in other jurisdictions.

Qwest argues that the LSF tariff allows a consumer the choice to prevent slamming of her/his local service provider.<sup>14</sup> Qwest's position is highly dependant on the FCC's order to support its position. However, Qwest ignores the impacts on the development of competition or attempts to minimize the impacts.

### A. The FCC's *Second Report and Order*

All of the parties argue the *Second Report and Order* supports their positions. It may be helpful to review what the FCC has said on the subject.

1. Generally, "preferred carrier freezes offer consumers an additional and beneficial level of protection against slamming."<sup>15</sup>
2. Preferred carrier freezes "also create the potential for unreasonable and anticompetitive behavior that might affect negatively efforts to foster competition in all markets."<sup>16</sup>
3. Accordingly, the FCC adopted rules on preferred carrier freezes. In doing so, the FCC "balance[d] several factors, including

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<sup>13</sup> Cox Ex. 4 at 6.

<sup>14</sup> When asked to identify the consumer benefits, Qwest's witness identified two benefits: 1) the LSF gives customers control over their account to prevent slamming, and 2) "they may be concerned about making impulsive decisions about their account." TR 38 (June 17, 2002).

<sup>15</sup> *Second Report and Order*, ¶113.

<sup>16</sup> *Id.*

consumer protection, the need to foster competition in all markets, and the [FCC's] desire to afford carriers flexibility in offering the customers innovative services such as preferred carrier freeze programs.”<sup>17</sup>

4. The FCC “recognize[d] that many consumers wish to utilize preferred carrier freezes as an additional level of protection.”<sup>18</sup>
5. “[T]he majority of commenters ... assert that the use of preferred carriers freezes can reduce slamming by giving customers greater control over their accounts.”<sup>19</sup>
6. The FCC concluded that “it is reasonable for carriers to offer, at their discretion, preferred carrier freeze mechanisms that will enable subscribers to gain greater control over their carrier selection.”<sup>20</sup>
7. The FCC recognized, however, “that in some instances preferred carrier freezes are being, *or have the potential to be*, implemented in an unreasonable or anticompetitive manner.”<sup>21</sup>
8. “By definition, preferred carrier freezes create an additional step (namely, that subscribers contact directly the LEC that administers the preferred carrier freeze program) that customers must take before they are able to obtain a change in their carrier selection.”<sup>22</sup>
9. The FCC was “persuaded that incentives for unreasonable preferred carrier practices exist.”<sup>23</sup>
10. Given that incumbent LECs “are preparing to face or are facing competition in the local exchange market and intraLATA toll markets... incumbent LECs may have incentive to market preferred carrier freezes aggressively to their customers and to use different standards for placing and removing freezes depending on the identity of the subscriber’s carrier.”<sup>24</sup>
11. “[P]referred carrier freezes should be implemented on a nondiscriminatory basis so that LECs do not use freezes as a tool to gain an unreasonable competitive advantage.”<sup>25</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, ¶ 114.

<sup>19</sup> *Id.* In its footnote, the FCC cited AT&T as one of the commenters.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*, ¶ 115 (emphasis added).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*, ¶ 116.

<sup>24</sup> *Id.*

12. "LECs should not be able to impose discriminatory delays when lifting freezes."<sup>26</sup>
13. The FCC's rules apply to all local exchange carriers equally.<sup>27</sup>
14. The FCC adopted minimum standards to govern solicitation and implementation. The solicitation must be "clear and not misleading."<sup>28</sup>
15. LECs are not prohibited from "taking affirmative steps to make consumers aware of preferred carrier freezes because [the FCC] believe[d] that preferred carrier freezes are a useful tool in preventing slamming."<sup>29</sup> LECs are not required to distribute literature describing their carrier freeze program. However, states are free to adopt such requirements.<sup>30</sup>
16. The Commission extended the verification procedures to preferred carrier freeze solicitations.<sup>31</sup>
17. The FCC adopted specific requirements for lifting freezes. "[C]arriers must offer subscribers a simple, easily understandable, but secure, way of lifting preferred carrier freezes in a timely manner."<sup>32</sup> This includes a written and signed authorization and three-way calling.
18. "LECs that receive requests to lift a preferred carrier freeze must act in a neutral and nondiscriminatory manner."<sup>33</sup> LECs may not attempt to retain customers during customer contacts to remove freezes.<sup>34</sup>
19. The FCC declined suggestions that the FCC "prohibit incumbent LECs from soliciting or implementing preferred carrier freezes for local exchange or intraLATA services until competition develops in a LECs service area."<sup>35</sup>
20. However, the FCC recognized "that preferred carrier freezes can

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<sup>25</sup> *Id.*, ¶ 119.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*, ¶ 120.

<sup>28</sup> *Id.*, ¶ 121. *See id.*, ¶¶ 122-123.

<sup>29</sup> *Id.*, ¶ 124.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, ¶ 125.

<sup>32</sup> *Id.*, ¶ 127.

<sup>33</sup> *Id.*, ¶ 132.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

have a particularly adverse impact on the development of competition in markets soon to be or newly open to competition.” The FCC shared commenters’ concerns about the use of freezes for anticompetitive purposes.

21. “We concur with these 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 carriers freeze practices under such conditions appear unnecessary and raise the prospect of anticompetitive conduct.”<sup>36</sup>
22. The FCC declined to adopt a nationwide moratorium on freezes on local exchange service.<sup>37</sup>
23. However, the “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.”<sup>38</sup>
24. “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 jurisdictions – 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.”<sup>39</sup>

To summarize, although the FCC found preferred carrier freezes beneficial to consumers and a means to prevent slamming, a state may still prohibit preferred carrier freezes in the local exchange market if the Commission finds the negative impacts of the freeze on the development of local competition outweigh the benefit to consumers. Therefore, simply claiming there is a consumer benefit is not enough to justify Qwest’s LSF.

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<sup>36</sup> *Id.*, ¶ 135.

<sup>37</sup> *Id.*, ¶ 136.

<sup>38</sup> *Id.*, ¶ 137.

<sup>39</sup> *Id.*

**B. State of Competition in Arizona**

The FCC agreed 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.”<sup>40</sup> Based on the FCC’s comments, a review of the state of competition in Arizona is in order.

As a part of the Qwest section 271 proceeding, Staff submitted data requests to 39 service providers. The results of the data requests show that CLECs serve 3% of total residential lines and 15% of total business lines, or a total of 7% of all access lines in Qwest’s territory.<sup>41</sup> This is hardly robust competition. In the key market – residential local exchange service – competition is almost nonexistent. Therefore, according to the FCC, there is “no real opportunity for slamming and the benefit to consumers from the availability of freezes is significantly reduced.”

**C. Incidence of Local Exchange Service Slamming in Arizona**

The FCC has stated that the incidence of local exchange service slamming is a factor in determining whether a state moratorium is appropriate.<sup>42</sup> Qwest did not provide any evidence that slamming of local exchange service providers was a problem in Arizona. In response to a Cox data request, Qwest identified only one specific example of local service slamming since January 2001.<sup>43</sup> During cross-examination, the Qwest witness admitted he was not aware of any actual incidence of

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<sup>40</sup> *Id.*, ¶ 135

<sup>41</sup> *In the Matter of Qwest Corporation’s Section 271 Application*, Docket No. T-00000A-97-0238, Staff Final Report on Qwest’s Compliance with Public Interest and Track A, dated May 1, 2002, ¶ 64. Qwest calls this “robust competition.” Qwest Ex. 2 at 14. AT&T must strenuously disagree.

<sup>42</sup> *Second Report and Order*, ¶ 137.

<sup>43</sup> Cox Ex. 1 at 6.

local slamming in Arizona.<sup>44</sup> Staff's witness testified that "Staff believes that the Commission could also reach a conclusion that the tariff is not in the public interest at this time, based on the proposed Qwest notice and the fact that local service slamming does not seem to be a significant problem at this time."<sup>45</sup> Therefore, based on the lack of any slamming in the local exchange market, the LSF "is an unnecessary option."<sup>46</sup>

Furthermore, the Commission proposed rule on slamming does not include preferred carrier freezes on local exchange service. Qwest admits this.<sup>47</sup> Qwest suggests that statements made by Commissioners indicate the Commissioners wish to take a proactive approach.<sup>48</sup> However, the fact that the Commissioners did not order that the rule include local exchange service in the preferred carrier freeze section of the rule leads AT&T to conclude the Commission did not consider slamming of local exchange service providers to be a problem that warrants including local exchange service within the scope of the rule.

There is also evidence customers do not see slamming as a problem in the local exchange market. Even with its aggressive marketing, according to Qwest, only 4% of the customer in Washington have implemented a freeze on their local exchange service.<sup>49</sup> In the eight states where LSF is available only 115,000 customers have elected the service.<sup>50</sup> However the negative impacts on competition are extensive.

#### **D. Negative Impacts on Development of Competition**

The issue is not whether preferred carrier freezes benefit consumers. The

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<sup>44</sup> TR 39.

<sup>45</sup> Staff Ex. 1 at 1. AT&T believes Staff mischaracterized the extent of the slamming problem; there is no problem at all.

<sup>46</sup> AT&T Ex. 1 at 5. See also Cox Ex. 1 at 6-7.

<sup>47</sup> Qwest Ex. 1 at 5.

<sup>48</sup> Qwest Ex. 2 at 12.

<sup>49</sup> *Id.* at 11.

<sup>50</sup> Qwest Ex. 1 at 13.

FCC found that preferred carrier freezes benefit consumers and reduce slamming. The issue is not whether Qwest proposed LSF tariff complies with the FCC's rules.<sup>51</sup> The issue is whether the negative impacts on the development of competition outweigh the benefit to consumers. AT&T believes there is no question that the negative impacts outweigh the benefit to consumers.

#### **1. The LSF Adds Costs to CLECs to Acquire Customers**

There is no question that the LSF adds an additional step in changing a customer from one service provider to another. The FCC concurs.<sup>52</sup> Qwest does not dispute this, although it attempts to minimize the significance of the additional step.<sup>53</sup> The CLECs maintain that the LSF makes the ordering process more complex and difficult.<sup>54</sup> The CLEC must convince the customer to switch, allow access to her/his CPNI, identify services she/he currently has and wishes to retain or add, fill out an order form identifying every USOC for every feature,<sup>55</sup> verify through the use of a third-party vendor her/his desire to switch, and finally, identify whether the customer has a carrier freeze and lift the carrier freeze through a 3-way call to Qwest's contractor. This assumes the customer is aware of the freeze and the marketing is not being done on Saturday or Sunday, in which case a follow-up call is necessary. This process is lengthy before the lifting of a freeze is added. Lifting a freeze adds a final, annoying, costly, time-consuming step to the process.

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<sup>51</sup> AT&T believes Qwest's LSF tariff as implemented in other states in Qwest's region does not comply with the FCC's rules. This makes the LSF all the more egregious.

<sup>52</sup> *Second Report and Order*, ¶ 115.

<sup>53</sup> TR 15-16 ("And granted, it does put a step in the way; but it seems to be a fairly small step from Qwest's perspective...").

<sup>54</sup> AT&T Ex. 1 at 3. See also TR 180-183.

<sup>55</sup> Ms. Chapman on behalf of WCom testified that Qwest is the only incumbent LEC in the nation that requires a CLEC to specify on a LSR every feature that a customer has. TR 180. This is another anticompetitive practice of Qwest. The LSF makes an already bad procedure worse.

The process complexity and difficulty raise CLEC costs at a time when competition in the local exchange market, particularly the residential market, is almost nonexistent. To add additional costs on CLECs where no slamming problem exists negatively impacts CLECs with no corresponding benefit to consumers.<sup>56</sup>

The costs are not hypothetical. AT&T documented the problems AT&T has had in Washington. In addition to the anticompetitive effects, the LSF has caused AT&T to spend many hours trying to resolve and escalate LSF disputes with Qwest.<sup>57</sup> When Qwest implemented the LSF in Washington, Qwest's processes and procedures were also inadequate, necessitating AT&T to expend time and resources in fixing *Qwest's* process.<sup>58</sup> The local service freeze history log shows that the LSF business procedures have gone through 11 versions in the last 6 months.<sup>59</sup> AT&T employees could have spent their time on more constructive endeavors, like obtaining customers. AT&T testified that 20% of AT&T's new customers declined to complete the process of lifting the freeze. All the marketing costs incurred on these customers were wasted, with nothing to show for them as a direct result of the freeze.

The LSF requires the CLECs to access Qwest's operations support systems ("OSS") to verify a customer freeze on every account. Cox testified that currently not every Cox service representative has or needs access to Qwest's OSS.<sup>60</sup> Therefore, the LSF tariff will require Cox to incur additional cost to provide its service representatives access to Qwest's OSS. In addition, Cox will incur costs to have its service

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<sup>56</sup> The FCC concurs: "We concur with these commenters that assert that, where no or little competition exists, there is no real opportunity for slamming and the benefit to consumers from availability of freezes is significantly reduced." *Second Report and Order*, ¶ 135.

<sup>57</sup> AT&T Ex. 1 at 11.

<sup>58</sup> *Id.*, Ex. 3 at 11.

<sup>59</sup> Cox Ex. 3; TR 59.

<sup>60</sup> Cox Ex. 1 at 7.

representatives trained on using Qwest's OSS.<sup>61</sup> Cox will have to incur needless costs as a direct result of the LSF.

One could argue that these are costs of doing business, and the FCC understood these costs would be incurred by all LECs. However, the issue, once again, is the negative impacts on the development of competition where there is no evidence that slamming is a problem. Considering the lack of slamming and the state of the industry today, these are needless costs that a CLEC should not have to absorb and are a direct result of Qwest's LSF.

## **2. Qwest's LSF is Anticompetitive and Discriminatory**

Although the FCC has recognized that preferred carrier freezes have a consumer benefit, the FCC noted that they have the potential to be implemented in an unreasonable or anticompetitive manner.<sup>62</sup> The FCC also stated "that incentives for unreasonable preferred carrier freeze practices exist."<sup>63</sup> The FCC noted that "incumbent LECs may have incentives to market preferred customer carrier freezes aggressively to their customers..."<sup>64</sup>

First, as noted previously, Qwest's business procedures have gone through 11 versions in only 6 months. This alone demonstrates that the LSF has been implemented in an unreasonable manner. CLECs should not have to endure and respond to this number of repeated changes. Although Qwest may have changed its processes and procedures in response to a new version, the impacts fall more heavily and negatively on the CLEC.

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<sup>61</sup> *Id.* TR 154-155.

<sup>62</sup> *Second Report and Order*, ¶¶ 115 and 135.

<sup>63</sup> *Id.*, ¶ 116.

<sup>64</sup> *Id.*

In the states where LSF is available, Qwest aggressively markets its LSF. It is seeking the right to affirmatively market the service in Arizona. At present, anytime a customer calls a Qwest service representative, the customer is advised of Qwest's LSF, whether or not the customer called about the LSF service. AT&T believes this practice is unreasonable and anticompetitive. Staff testified that Qwest should not be able to market the LSF if a customer calls to inquire about CLASS or custom calling features.<sup>65</sup> The Staff witness testified that he "would think that offering the service every time a customer calls in for any – for any reason and say, oh, by the way, we've got local service freeze, to me in my opinion constitutes aggressive marketing of the service or of the offering."<sup>66</sup> The Staff witness also testified that the bill insert "appears to be designed to alarm customers rather than inform."<sup>67</sup>

Once the customer has decided to implement a freeze on her/his account, having to remove the freeze can negatively impact the customer. As AT&T noted, 15% of the customers in Washington switched telephone numbers to avoid the delay and frustration of Qwest's freeze removal process.<sup>68</sup> This undermines the consumer benefit of local number portability and imposes additional costs on customers to switch providers. An additional 20% of the customers either cancelled or declined to further pursue the removal process; as a result, they remained Qwest's customers.<sup>69</sup> The effects on the development of competition cannot be ignored. Any process implemented by Qwest, as the incumbent LEC, that causes customers to cancel or decline service with a competitor

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<sup>65</sup> TR 201.

<sup>66</sup> TR 198-199.

<sup>67</sup> Staff Ex. 1 at 1.

<sup>68</sup> AT&T Ex. 1, Ex. 3 at 10.

<sup>69</sup> *Id.* at 11. WCom's witness testified that experience in other states demonstrates that only 9% of the customers who have requested a switch from their existing LEC to WCom that have a freeze on their account actually end up switching to WCom. WCom Ex. 1 at 9.

is anticompetitive. In fact, QWEST has every incentive to market LSF and require a cumbersome process to remove it, solely as a means in to secure their base of customers. Considering this, there is no reason to believe that should the market get to a point where LSF is needed, that LSF can be administered without some means of a truly Neutral Administrator not affiliated with QWEST or any other individual company.

The FCC has stated that "LECs should not be able to impose discriminatory delays with lifting freezes."<sup>70</sup> AT&T would argue that the delays it has incurred in Washington are anticompetitive, as well as discriminatory. AT&T has spent hours trying to lift freezes, resolving and escalating disputes and trying to fix Qwest's policies and procedures to make the process workable.<sup>71</sup> Not only is it costly to AT&T, the problems continue; and while the process is being fixed or the problems resolved, the customers remain with Qwest.

Another problem encountered by the CLECs is the limited hours that the freeze can be removed. CLECs market their services on weekends. However, Qwest does not operate the center that removes freezes on Saturdays and Sundays. As a result, a three-way call cannot be made to release the freeze over the weekend. It is necessary to call back the prospective customer during Qwest's regular business hours Monday through Friday to lift the freeze.<sup>72</sup> This necessitates contacting the customer a second time at a mutually convenient time to conduct the three-way call. The LSF and Qwest's business practices directly limit the ability of CLECs to market competing services to Qwest's customers.

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<sup>70</sup> *Second Report and Order*, ¶ 119.

<sup>71</sup> AT&T Ex. 1, Ex. 3 at 8-9.

<sup>72</sup> TR 61-63.

Once again, there is no evidence of slamming in the local exchange market in Arizona. The negative impacts that CLECs are encountering in jurisdictions that have implemented preferred carrier freezes are real and continuing. Any LSF at this stage of competition would not be in the public interest. It makes no sense, and would be unreasonable, discriminatory, and anticompetitive to allow Qwest to aggressively market the LSF when Qwest has not implemented processes that allow the lifting of a freeze without delay.

### **3. Staff Has Not Conducted An Analysis of the Negative Impacts on Competition**

The Staff has not conducted an analysis of the negative impacts of the LSF on the development of competition. Staff's witness stated that if a LSF tariff meets the conditions Staff imposes, it would recommend approval.<sup>73</sup> Staff's witness further testified that if the tariff is implemented in a competitively neutral manner, the benefit to consumers would outweigh the negative impacts on competition.<sup>74</sup> Competitively neutral was defined as being consistent with FCC rules.<sup>75</sup>

Staff's reasoning is faulty. To say that by simply following the FCC's rules there is no negative impact on competition completely ignores the FCC's rationale for allowing a moratorium on preferred carrier freezes. The FCC drafted rules in an attempt to eliminate the effects on competition. The FCC assumes all freezes would follow its rules. However, the FCC recognized that even if a preferred carrier freeze program followed its rules, a state may still impose a moratorium if the negative impacts on the development

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<sup>73</sup> TR 193-194.

<sup>74</sup> TR 196-198.

<sup>75</sup> *Id.*

of competition outweigh the consumer benefit. Staff has ignored the entire debate by its definition of negative impacts and competitively neutral.

Staff's position also eliminates the need to respond to the problems raised by the CLECs because Staff has focused only on compliance with the FCC's rules. From a review of Staff's testimony one can easily conclude that Staff did not address the negative impacts on the development of competition. At the hearing, Staff acknowledged that it did not evaluate the effects of the LSF tariff on the performance of Qwest's OSS, the effects of the LSF tariff on the ability of a CLEC to process a local service request, whether the LSF tariff lengthens the standard service interval, whether a LSF causes manual processing of an order or LSR that would normally be flow-through eligible, or the effects on the Performance Indicator Definitions.<sup>76</sup>

Staff did testify that there was not a "significant" slamming problem in the local exchange market in Arizona, although the evidence shows there is no problem at all.<sup>77</sup> Staff did not testify to the extent of local exchange competition in Arizona. In fact, Staff testified that if the service is implemented in a competitively neutral manner (the service follows the FCC rules), "it does not make a whole lot of difference the extent which competition exists."<sup>78</sup> These are important issues that the FCC identified in its order that Staff ignores.<sup>79</sup>

It appears that Staff has concluded that the benefits of a LSF tariff that is compliant with the FCC's rules always outweigh the effects the tariff may have on the development of competition. AT&T must reach this conclusion because it does not

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<sup>76</sup> Qwest's witness did not know the answers to these questions either. TR 32-34.

<sup>77</sup> Staff Ex. 1 at 1.

<sup>78</sup> TR 211.

<sup>79</sup> See *Second Report and Order*, ¶¶ 135 and 137.

appear that Staff has looked at *any* effects on the development of competition.<sup>80</sup> It appears that Staff is more concerned about giving customers a tool, the benefit of which is substantially reduced by the lack of competition, than the effects the tool may have on competition in Arizona.

### III. CONCLUSION

AT&T, and the other CLECs, have demonstrated that the negative impacts of the LSF on the development of competition outweigh the consumer benefit. There is no evidence that slamming of local exchange service providers in Arizona is a problem. Competition is nascent. Qwest's LSF creates additional unneeded costs for the CLECs. The processes are unreasonable, ill-defined and immature, which create anticompetitive effects.

Qwest's aggressive marketing is also anticompetitive. Simply curing the defects in the LSF will not solve the problems.

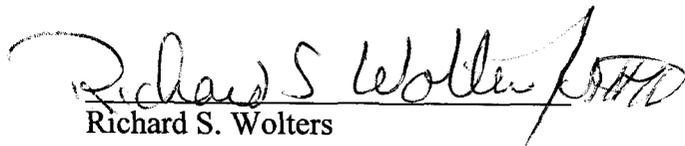
At this stage of competition and with no evidence of slamming, even "reasonable" procedures still add additional steps and costs and negative impacts on competition that outweigh the consumer benefit. Any LSF at this time simply is not in the public interest.

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<sup>80</sup> One would think Staff would have concerns regarding customers having to obtain new telephone numbers to avoid the delays in switching carriers caused by removing a freeze.

Dated this 18<sup>th</sup> day of July, 2002.

AT&T Communications of the  
Mountain States, Inc. and TCG  
Phoenix

A handwritten signature in cursive script, reading "Richard S. Wolters". The signature is written in dark ink and is positioned above the printed name and address.

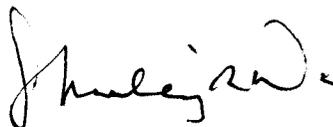
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**CERTIFICATE OF SERVICE**

I hereby certify that the original and 10 copies of **AT&T Brief**, Docket No. T-01051B-02-0073, were sent by U.S. Mail on July 18, 2002 to:

Arizona Corporation Commission  
Docket Control – Utilities Division  
1200 West Washington Street  
Phoenix, AZ 85007

Executed on July 18, 2002 in San Francisco, California.



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Shirley S. Woo