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BEFORE THE ARIZONA CORPORATION COMMISSION

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

Docket No. T-01051B-02-0073

COX ARIZONA TELCOM'S POST-HEARING BRIEF

INTRODUCTION

In its January 28, 2002 tariff filing, Qwest asked this Commission to approve its proposed tariff to offer preferred local carrier service freeze ("LSF") to customers in the state of Arizona. Ostensibly, the LSF tariff is intended to protect customers against local service "slamming" by Qwest's competitors. The proposed tariff requires a customer with the service freeze to contact Qwest "directly" to lift the freeze before the customer can change from Qwest to another local service provider, thus forcing a Qwest customer to contact both Qwest and a competitive local exchange carrier ("CLEC") in order to switch service providers from Qwest to that CLEC. Without the tariff, the customer only needs to make one phone call to the CLEC to switch local service from Qwest.

Qwest filed this LSF tariff despite the fact that: (i) Qwest faces little local exchange service competition in the state of Arizona – particularly in the residential market – and retains the vast majority of its market share for both business and residential service[1] and (ii) local slamming is not a problem in Arizona – indeed, Qwest could only identify one example of local slamming since January of 2000.

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[1] In Staff's Proposed Report on Qwest's Compliance with Public Interest and Track A, filed on May 2, 2002 in Docket No. T-00000A-97-0238 (the Arizona 271 docket), Staff estimated (at paragraph 64 of the Report) that CLECs served only 3% of residential lines and 15% of business lines in Qwest's Arizona service territory as of approximately July 2001.

The potential anti-competitive effects of the proposed LSF tariff outweigh any potential benefits to Arizona consumers. Approval of the proposed tariff does not serve the public interest given the nascent state of telecommunications competition in Arizona at this time – particularly in the residential markets. Basically, what Qwest is doing is protecting its local exchange service market share by making it harder for customers to leave Qwest. The added step of calling Qwest is sometimes all it takes to prevent a customer from switching carriers. Indeed, the FCC has recognized that preferred carrier freezes have the potential to be implemented in an anticompetitive manner[2] and has clearly given states the ability to adopt moratoria on the imposition or solicitation of local service freezes.[3]

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Cox urges the Commission to reject Qwest's proposed LSF tariff, in light of the dearth of competition (particularly residential competition) and the lack of local service slamming. If such a tariff is implemented, its primary impact will be to interfere with the potential flow of customers to Qwest's competitors, not to protect Arizona consumers against a serious problem with local service slamming.

DISCUSSION

I. THE PROPOSED TARIFF IS NOT IN THE PUBLIC INTEREST.

In deciding whether the proposed LSF tariff is in the public interest and should be approved at this time, the Commission must balance the anticipated benefits of the tariff against the potential harm caused by the tariff.[4] The sole benefit of the tariff is to prevent local service slamming – an activity that simply has not been a concern in Arizona since the implementation of competition over six years ago. The potential harm caused by the tariff is substantial, including: (i) frequent marketing of a service by Qwest that implies

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[2] FCC 98-334, CC Docket No. 94-129, Paragraph 115. Relevant excerpts of the FCC Order are attached as *Exhibit C* to Ex. Cox-1(Garrett Direct).

[3] FCC 98-334, Paragraph 137.

[4] *See* FCC 98-334, Paragraph 137.

that Qwest's competitors are engaged in improper business activity; (ii) increased difficulty for consumers wishing to move to a competitor of Qwest; (iii) interference with the development of competition, particularly in the residential market. Cox submits that the balance tips heavily against the proposed LSF tariff – both now and for the foreseeable future – and Qwest's proposed LSF tariff should be rejected.

A. **Local Service Slamming is Not a Problem in Arizona.**

Prior to the hearing, Qwest acknowledged that there is no significant local slamming in its response to Cox's Data Request 1-2 (a copy of the response is attached as *Exhibit A* to Ex. Cox-1 (Garrett Direct)). In that response, Qwest identified *only one specific example* of local service slamming in Arizona since January 1, 2001. At the hearing, Qwest confirmed that it was not aware of any local slamming problem in Arizona. [Tr. at 39] Staff also does not believe that local service slamming is a problem in Arizona at this time. [Ex. Staff-1 at 14 (Shand Direct)]

The record here also does not indicate that such a problem is going to develop. No party – including Qwest and Staff – stated a belief that local service slamming would be a significant problem in the foreseeable future. Moreover, no party pointed to any change of circumstances that would suggest local service slamming will increase. Rather, the record shows that local service slamming is difficult, if not impossible, to do without Qwest's or the customer's knowledge. For example, a change of local service by full facilities-based providers like Cox requires a company technician to set an appointment to meet the customer and then requires physical modification of the system and wiring at the customer's home by the CLEC's technician. [Ex. Cox-1 at 6 (Garrett Direct)] Although Qwest witness McIntyre has attempted to suggest that a cable service technician could surreptitiously transfer local service [see Ex. Qwest-2 at 25 (McIntyre Rebuttal)], he admitted that he is not even aware of the processes that Cox must take to connect a phone customer to its phone network. [Tr. at 63-65]

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The current lack of slamming reflects both (i) the difficulty of local slamming by facilities-based providers and (ii) the lack of economic incentive for resale slamming (the available discounts have kept most authorized providers from entering Arizona's residential markets.) [*See* Ex. Cox-1 at 6-7 (Garrett Direct)] In addition, current FCC slamming regulations create a strong financial disincentive for any unscrupulous provider who might be tempted to use such tactics. *See* 47 C.F.R. §§ 64.1150 to 64.1170. At best, the proposed LSF tariff is intended to prevent a problem that simply has not manifested itself in Arizona since local competition began over six years ago.

B. <u>The Proposed LSF Tariff Would Have Anticompetitive Effects.</u>

An LSF can have detrimental impacts on competition, particularly when the competitive market is not well developed. It would inhibit the movement of customers from Qwest to Qwest's competitors, thus maintaining Qwest's market share and market power and harming developing competition. Moreover, Qwest's mere offering of the LSF to its customers implicitly disparages its competitors by suggesting that those competitors are in fact engaging in local service slamming and cannot be trusted. And Qwest apparently intends to solicit its customers to sign up for the LSF at every opportunity. Indeed, the potential anticompetitive mischief of the LSF is real and substantial.

Qwest apparently has recognized the potential anticompetitive impacts of the proposed LSF tariff and has engaged in numerous attempts over the past several months to enact "business procedures" to avoid those impacts. The record shows that, as of the date of the hearing, Qwest was on "Version 11.0" of those procedures. [Ex. Cox-2; Tr. at 58-59] Qwest's attempt to paint these changes as part of a "continuous improvement" effort rings hollow when nearly all the changes were initiated post hoc at the insistence of CLECs who found Qwest's implementation of the LSF in other states virtually unworkable. Even now, the changed procedures are simply posted on Qwest's website. They are not part of the tariff itself, are not binding on Qwest and could be changed yet again at Qwest's whim. [*See* Tr. at 58-61] In fact, the procedures do not effectively guard

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against or alleviate the anticompetitive impacts.

1. Inhibition of Customer Movement

The FCC has recognized that a local service freeze can have a particularly adverse impact on the development of competition in nascent markets.[5] The FCC acknowledged and discussed a litany of potential anticompetitive activities and impacts that may result from the implementation of a local service freeze.[6] The FCC noted that the added step of calling an ILEC is sometimes all it takes to prevent a customer from switching carriers and is perhaps the main reason that it concluded that preferred carrier freezes have the potential to be implemented in an anticompetitive manner.[7] The Commission Staff also has stated that its biggest concern about the proposed tariff is that it makes it difficult for potential CLEC customers to change service providers. [Ex. Staff-1 at 3 (Shand Direct)]

Although Qwest claims that lifting the freeze is only one additional step in the process, the record shows that it will add a particularly confusing step to the process when combined with other necessary steps that could include multiple transfers of a customer's call between CLEC, third-party verification of change of service, Qwest and third-party freeze removal. [Tr. at 80-84] This confusion is in addition to difficulties from the potential process problems related to the lifting of the freeze itself (which are discussed below). Indeed, the increased difficulty for Qwest customers to switch to a competitor will assist Qwest in retaining its massive market share.

That anticompetitive concern is amplified here. By forcing customers to call Qwest to lift a freeze, Qwest may subject the customer to "retention" scripts or other efforts to keep that customer with Qwest. Qwest also could inform the customer of its "Winback" program in an effort to entice the customer to return to Qwest in the future. [*See* Ex. Cox-1 at 10 (Garrett Direct) and Exhibit D thereto (Qwest Winback Tariff)] Qwest attempted

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[5] FCC 98-334, Paragraphs 127, 135.

[6] FCC 98-334, Paragraphs 113 to 118.

[7] FCC 98-334, Paragraph 115.

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to downplay that potential at the hearing by noting that it has recently changed its procedures to involve a third-party to handle requests for lifting a freeze. However, both the tariff and Qwest's hearing testimony indicate that a customer must first contact Qwest if he or she wants to lift a freeze. [Tr. at 56] Moreover, as discussed below, (i) Qwest's new procedures are simply non-binding wholesale business procedures that may be changed and (ii) some of those procedures – such as the use of a third party – may not be available at critical times.

2. "Manufacturing" Consumer Concern and Disparaging Competitors

The marketing of the proposed LSF product raises several anticompetitive concerns. To begin with, it is particularly disconcerting that Qwest indicated at the hearing that it will use the countless number of unrelated consumer contacts it receives to market the local service freeze to its customers. [Tr. at 35-36, 55] Those marketing contacts will offer a *free* freeze service to consumers who do not need it and would otherwise not have requested the service. Over time, this constant barrage of marketing at every opportunity will create a significant barrier to exit for numerous Qwest customers who may not realize the implications of the freeze if they later choose service from a Qwest competitor. Qwest's marketing will necessarily imply the threat of local service slamming and may be matched by alarmist scripts used by its representatives to scare customers into believing their local phone service is at risk. Indeed, Commission Staff expressed significant concern over the potential abuse of this "aggressive" marketing approach. [Tr. at 200-201] However, nothing in the tariff filing limits Qwest's marketing.

Even if Qwest does not "aggressively" market the LSF, Qwest harms its competition each time the LSF is offered. The mere existence of the LSF product implies that Qwest's competitors are engaged in sharp business practices. Such implicit disparagement will make consumers unduly wary of CLEC marketing, perhaps to the point of not even listening to a sales call or reviewing marketing materials. Qwest's LSF tariff –

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particularly if marketed as broadly as Qwest has indicated – will cast a cloud over Qwest's competitors and suggest that consumers face a local service slamming problem that simply does not exist. Ironically, Qwest noted that there is a local slamming problem in Arizona "only to the extent customers are concerned about it" and not because local slamming is actually occurring. [Tr. at 39] In fact, it will be Qwest's blanket marketing of the LSF that creates such a consumer perception of a slamming problem. Qwest should not be able to justify its LSF tariff by "manufacturing" a consumer demand.

3. Operational Barriers to Effective Customer Transfers

The proposed LSF tariff – even with Qwest's wholesale "business procedures" – is particularly unenlightening about the actual operation of the tariff. The LSF adds a critical step to the customer transfer process. If a customer has LSF, the pre-ordering and ordering processes, including LNP, for all customer transfers must take into account the potential additional step of having the LSF lifted. It is a single step that could jeopardize the transfer if not handled properly by Qwest.

Cox witness Doug Garrett identified several operational issues that would require specific commitments from Qwest on procedures and timing or that would significantly interfere with Cox's ability to efficiently transfer customers to Cox from Qwest. [Ex. Cox-1 at 7-10 (Garrett Direct)] Some of these problems may be ostensibly resolved through the current wholesale "business procedures," but presently many of those procedures are not available on weekends or evenings when CLECs often will have their most significant need for them – particularly for the residential market. [Ex. Qwest-2 at 29 (McIntyre Rebuttal) (third party freeze removal only available on week days until 7:00pm Arizona time)] Moreover, testimony at the hearing confirmed that many of the operational concerns raised by Cox and other CLECs will still exist regardless of the "business procedures. For example:

> (i) Each and every Cox Customer Service Representative does not have direct access to a Qwest customer's account information to determine if that customer has an LSF. [Ex. Cox-1 at 7 (Garrett Direct)] That would

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require access through Qwest's IMA and specialized training for every CSR – which would entail a significant cost and could lead to quality control issues if too many CSRs have access to Qwest's complicated IMA system. [See Tr. at 153-154] If a Cox CSR cannot effectively – and promptly – tell whether a potential customer has an LSF on its account, the order to switch a customer and port their telephone number may fail and require the Cox CSR to contact the customer again to lift the freeze. Cox also would be forced to reset its internal schedule for preparing for installation of the customer's service and to set a new – and later – installation date with the customer. Such a situation would create an impression that Cox is not as competent as it should be and may result in the customer deciding to forego switching to Cox.

(ii) It appears that a Qwest customer must call their "Qwest Business Office" as the first step in removing the freeze. [*See* Tr. at 56; Ex. Cox-4 (proposed LSF tariff)] The customer may be transferred to the third party agent (presently Aegis) where the freeze will actually be removed – assuming Aegis is open. Qwest acknowledged that Aegis presently fields calls only on weekdays until 7:00 p.m. Arizona time – although that time could be changed unilaterally by Qwest. [*See* Ex. Qwest-2 at 29 (McIntyre Rebuttal)] Regardless, this presents two opportunities to be put on hold, have the call dropped during transfer, or be otherwise delayed.

(iii) In some circumstances, Qwest will provide the customer with an eight-digit "Record order number." That number must be included in any LSR submitted by the CLEC to allow prompt processing of the LSR. Thus, the customer must accurately remember and communicate the number to the CLEC. If the number is wrong, the LSR will be rejected and make the CLEC look incompetent. That cumbersome step is rife with potential error and simply will exacerbate difficulties in the process for CLECs and consumers. [*See* Tr. at 161-163]

(iv) If a customer calls Qwest to remove the freeze, it is still unclear exactly when the freeze will be lifted, particularly if the request is made in the evening, on a weekend, via the internet or sending a fax to Qwest. It does not appear that a freeze will be instantaneously lifted contemporaneously, even with a call to Aegis to lift a freeze. [*See* Tr. at 34] Indeed, Qwest acknowledged that Aegis does not have direct access to customer information and may not even be able to tell if a customer has a freeze in place. [Tr. at 23, 52, 55] Moreover, if the freeze lift is requested on a Friday afternoon, the record is not clear whether the freeze be lifted that day, or Saturday or Monday.

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In sum, the process simply does not provide enough certainty about when a freeze is lifted. CLECs must know when the freeze is lifted so that it can avoid having its personnel repeatedly transmit LSRs and number porting requests that will be rejected if Qwest has not completed the activity. [Ex. Cox-1 at 9 (Garrett Direct)] In fact, as set forth in Qwest's Wholesale Business Procedures, it appears that a CLEC will not be notified when a freeze is lifted; rather a CLEC simply must assume that the freeze will no longer appear on a customer's account the day after the freeze is requested. Qwest also could not confirm that a customer will receive confirmation of the removal of freeze if the customer uses several of the freeze removal processes. [Tr. at 53-54, 68] For facilities-based providers such as Cox, the timing of lifting the freeze is even more critical because it will determine how and when a customer will be able to switch to a facilities-based CLEC because it impacts the time of the port, the timing of all the internal work steps needed to establish the customer's account and prepare Cox network facilities, the scheduling of truck rolls for installation, the time the customer would need to be at home to await the technician, etc. [Ex. Cox-1 at 9 (Garrett Direct)] All of this extra coordination also has the effect of raising a competitor's cost of competing with Qwest. [Id.] The extra steps in processing the order, the inevitable costs of re-work when the LSF is either found to be in place or fails to "lift" as expected, as well as the extra time spent contacting and communication with customers introduce very real and unnecessary additional costs at a time when CLECs are struggling to compete against Qwest.

(v) The three-way call process described in Qwest's "Business Procedures" – where a CLEC representative can initiate a three-way call to Qwest's Business Office or third-party agent to have the freeze lifted – is impractical. Unless the customer informs the CLEC CSR that there is a local service freeze on the account during the initial contact to establish service with the CLEC, as discussed above, the hundreds of CSRs used by Cox to handle customer calls do not have access to Qwest's IMA OSS and would not know of the freeze until after the contact has ended. [Ex. Cox-1 at 7-8 (Garrett Direct)] Moreover, as set forth above, even if the customer informs the CLEC CSR that a freeze exists on the account, there is no guarantee that Qwest (or its agent) will handle the call expeditiously – the Qwest Business Office or the third party agent may be closed – thus, making such a three-way call impossible.

These significant operational problems – as well as problems identified by the other CLECs – alone warrant rejection of the proposed LSF tariff. However, examination of Qwest witness Scott McIntyre at the hearing raised additional concerns about the operation of the tariff, particularly with respect to the lifting of the freeze. Mr. McIntyre acknowledged that:

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(i) The third-party agent to lift freezes (Aegis) does not have access to customer service record and cannot tell a customer whether there is a local service freeze on the account; therefore, the customer may have to call a Qwest CSR for the information. [Tr. at 24-25, 28] This adds a phone call and emasculates any benefit of the third party agent.

(ii) If a customer lifts a freeze through Aegis, it will still take several days to update the customer service record to show that the freeze was removed. [Tr. at 20, 22] That delay will make it difficult for a consumer to confirm a removal request was processed and may create process problems if an LSR is kicked out and compared against the Qwest customer service record.

(iii) If the CLEC uses an eight-digit Record Number on an LSR, it may cause the LSR to drop out of the flow-through process and be handled manually. [Tr. at 32-33] It is unclear whether the manual processing will be able to proceed at that point because freezes removed by Aegis are not processed until the evening and the repository that will reviewed by Qwest may not yet be updated. [Tr. at 34] Indeed, there appeared to be numerous uncertainties about how orders would be processed if a Record Number was requested. [*See* Tr. at 42-45] Regardless, the lack of flow through will slow down the ordering process.

(iv) It is unknown how Aegis will know if a customer is authorized to lift a freeze. [Tr. at 55]

(v) It is unknown what the mechanism will be for customers to confirm that a fax or email request to remove a freeze has been received by Qwest or processed by Qwest, short of calling Qwest. [Tr. at 53-54, 68]

In sum, the operational hurdles are still significant and will create both: (a) barriers to customer movement between Qwest and its competitors and (b) increased costs to Qwest's competitors.

C. The Proposed LSF Tariff's Harmful Effects Outweigh Any Potential Benefits.

In light of the potential adverse effects of an LSF, the FCC has clearly given state public utility commissions the ability to adopt moratoria (or other requirements) on the imposition or solicitation of intrastate preferred carrier freezes.[8] In effect, the FCC

[8] FCC 98-334, Paragraph 137.

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acknowledged that states are in the best position to know if local carrier slamming is a problem, if a freeze may have unwarranted anticompetitive impacts on the emerging competitive markets, the potential for inappropriate conduct by the carrier offering the freeze and whether the proposed local service freeze is in the public interest. The FCC stated:

> 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. We encourage parties to bring to our attention, or to the attention of the appropriate state commissions, instances where it appears that the intended effect of a carrier's freeze program is to shield that carrier's customers from any developing competition.[9]

The FCC further provided that:

> 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 the local and intra-LATA toll markets may outweigh the benefit to consumers.[10]

The record here confirms that the substantial negative impacts from the LSF outweigh the limited benefits, if any, to the Arizona consumers. Indeed, both consumers and competition will suffer from a tariff that will inhibit consumer movement to new carriers of choice. The Commission should reject the proposed LSF tariff.

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[9] FCC 98-334, Paragraph 135.

[10] FCC 98-334, Paragraph 137.

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Finally, Cox notes that four other states (Iowa, Montana, Minnesota and Nebraska) recently have found that the balance tips against Qwest's proposed LSF tariff and have rejected Qwest's applications:

> In Iowa, the Iowa Utilities Board ("IUB") has prohibited Qwest from implementing a local service freeze at this time, noting the relative lack of local service slamming and the small percentage of market share held by CLECs. An electronic copy of the April 3, 2002 IUB decision was attached as *Exhibit H* to Ex. Cox-1 (Garrett Direct).
>
> In Montana, the Montana Public Service Commission ("MPSC") imposed an 18-month moratorium on Qwest's proposed local service, noting that at this time there is no apparent need for such a freeze and that a freeze would have an anti-competitive effect of unduly locking in customers to Qwest. A copy of the April 25, 2002 MPSC decision was attached as *Exhibit I* to Ex. Cox-1 (Garrett Direct).
>
> In Minnesota, the Minnesota Public Utilities Commission ("MPUC") issued an Order rejecting Qwest's local service freeze option and requiring Qwest to stop offering it at this time, noting that (i) there is no local service slamming problem in Minnesota, (ii) local competition is at a fragile state of development in Minnesota, and (iii) it would be difficult to assure that in practice the LSF would not be operated in a way more directly burdensome to competition than Qwest acknowledges. [An electronic copy of the May 7, 2002 MPUC order is attached as *Exhibit J* to Ex. Cox-1 (Garrett Direct).]
>
> In Nebraska, the Nebraska Public Service Commission ("NPSC") also has prohibited Qwest from implementing a local service freeze at this time, noting the relative lack of local service slamming. [A copy of the May 7, 2002 NPSC decision is attached as *Exhibit K* to Ex. Cox-1 (Garrett Direct).]

These decisions further confirm what the record here shows: that an LSF tariff is not needed, particularly when there is little, if any, local service slamming and when such a tariff may harm emerging competition.

II. THE PROPOSED TARIFF IS FLAWED

If the Commission concludes that the potential benefits offered by a local service freeze may outweigh the potential harm to competition and to the consumers who will

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benefit from that competition, then the Commission should approve a form of LSF tariff that protects against the potential anticompetitive effects of such a freeze. The proposed LSF tariff in this docket does not begin to offer adequate safeguards against such effects and should be rejected. Moreover, Cox submits it would be improper for the Commission to craft and approve a new version of the tariff now. Any new LSF proposal should be subject to full review and challenge by any affected party before it is approved.

A. <u>The Proposed LSF Tariff Contains Insufficient Detail.</u>

The proposed LSF tariff submitted by Qwest is a single paragraph consisting of four sentences. The tariff provides that "[o]nce the local service provider has been frozen, it may not be changed without the customer directly contacting [Qwest]." The tariff provides no information on how to remove the freeze. It states only that "[a]t the time a customer contacts [Qwest] to establish a freeze, a representative will advise him/her on how to facilitate a change of provider on a frozen account." That nebulous obligation is dependent on a Qwest representative providing accurate information on a process that has changed numerous times over the past several months. Moreover, given the evolving process, it is possible that a customer will not remember the instructions six months down the line when he/she wants to change providers. It further does not provide any time frame within which the freeze will be lifted.

Commission Staff also expressed significant concern about the limited tariff language, such as the lack of information on how or who an LSF could be added or lifted. [Ex. Staff-1 at 12-13 (Shand Direct)] Staff further indicated that they could not support approval of the proposed LSF unless there were significant additions to that tariff, including all necessary terms and conditions regarding the provision of the service. [Ex. Staff-1 at 14 (Shand Direct); Tr. at 193]

In light of the myriad of potential operational difficulties identified in the record – as well as Staff's concerns with the tariff – the scant four sentences are simply inadequate to protect against anticompetitive effects or consumer frustration.

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B. Qwest's "Business Procedures" for the LSF Tariff are Unsettled and Nonbinding.

Qwest's basic response to the criticisms of its proposed tariff is to point to its wholesale "business procedures" and assert that they have been modified to eliminate the industry's concerns. As of the date of the hearing, Qwest was up to Version 11.0 of those procedures. [Ex. Cox-2 (Version 11.0)] That is the eleventh version since January 11, 2002. [*See* Ex. Cox-3 (history log for business procedures)] As Qwest acknowledged, there is nothing to stop Qwest from further modifying those procedures. [Tr. at 60] That could include eliminating key provisions such as the third-party freeze removal. Moreover, such business procedures are not binding, either for the industry or for the consumers. What those procedures do reflect are the numerous critical procedural and operational issues raised by the proposed LSF tariff.

To the extent Qwest argues that the PIC freeze process works well and the would be true for the LSF process, Qwest's arguments are disingenuous. Presently, Qwest has no interest in any PIC changes within its incumbent LEC territories. [Ex. Cox-1 at 5 (Garrett Direct)] However, for local exchange carrier changes, Qwest faces an unavoidable conflict of interest because almost every change of local service provider involves a customer that is leaving Qwest. [Id. at 5-6] Facilitating such switches is not in Qwest's economic or competitive interest.

Due to the inevitable conflict in Qwest administering its LSF tariff and the potential for anticompetitive mischief, there needs to be enforceable requirements – set forth in either Commission rules or the tariff itself – to eliminate such conflicts and to minimize any untoward impacts of the proposed tariff. Such enforceable requirements do not now exist. Such requirements should not be concocted toward the waning stages of a tariff proceeding because they will not be subject to sufficient scrutiny by affected parties. Indeed, given the potential industry-wide impact, it is probably more appropriate to consider the matter in a rulemaking so that any local service freeze tariff will not be abused. [*See* Tr. at 210 (Staff believes that a rulemaking would be more appropriate)]

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CONCLUSION

This Commission should reject Qwest's tariff. The FCC has given the Commission that authority and has recognized, even in late 1998 at the height of CLEC entrance into the market, that local service freezes may not be appropriate in some markets. Today, in 2002, competition has not flourished like many hoped it would, local slamming almost never occurs, and a local service freeze is simply an anti-competitive tool for Qwest to stifle competition.

If the Commission concludes a local service freeze is in the public interest at this time, it should reject the form of tariff that Qwest has filed. That tariff is too vague to ensure that the public interest will be served. Qwest should be required to submit a new tariff filing that addresses the operational concerns raised in this proceeding.

DATED: July 22, 2002.

Respectfully submitted,

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