BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF QWEST CORPORATION'S APPLICATION FOR APPROVAL OF LOCAL SERVICE FREEZE TARIFF	DOCKET NO. T-01051B-02-0073 **CLOSING BRIEF**

I. INTRODUCTION

Qwest Corporation ("Qwest") hereby submits its Closing Brief in the above-captioned matter. As part of this proceeding, Qwest has sought permission from the Arizona Corporation Commission ("Commission") to offer its customers the option of placing a local service freeze ("LSF") for telephone service as a method to protect themselves against the practice of 'slamming' – an unauthorized change in service providers. This option is currently available to Arizona consumers in both the intraLATA and interLATA long distance markets, where slamming became so widespread, it caused the Federal Communications Commission ("FCC") to institute stringent rules against such a practice.[1] Indeed the Commission has promulgated, and sought comment on, its own state rules against the practice of slamming (Decision No. 64800) for telephone service. Qwest contends that by offering Arizona consumers a choice in establishing LSFs on an individual basis, the company is being consistent with the Commission's well-reasoned public policy goal of taking a proactive approach in thwarting the practice of slamming before it happens.

[1] Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking.

Three other states – Washington, Colorado and Utah – require Qwest to offer the LSF service to its customers. In an effort to reduce operational costs, the company felt that it was beneficial – from both an economic and policy perspective – to offer the service to its customers across its entire 14-state region. Qwest contends that the Commission should be, and has been, focusing on what consumers want as options to protect themselves against slamming, not what competitive local exchange carriers (CLECs) feel would better serve their own economic interests. Indeed, Commissioner Irvin has pointed out that the Commission's slamming and cramming rules, "...are in response to the outcry of the citizens of the State of Arizona. They wanted us to do something."[2] Chairman Mundell added, "We want to send a strong message to companies that do business in the State of Arizona that we will not tolerate this outrageous behavior . . ."[3] Finally, Commission Spitzer opined that, "Eventually, I think companies will reflect with some regret on what has happened in telecom since 1996, but these rules, in my judgment, are necessary to protect the citizens in the long run."[4] Qwest wholeheartedly agrees, and the company believes that giving consumers the tools and options to fight local slamming before it becomes a problem – at no cost to them – is one way to ensure that they do not fall victim to fraudulent practices. For the reasons provided herein, Qwest believes that its request to offer LSFs in Arizona is in the public interest.

II. SLAMMING IN LOCAL SERVICE SHOULD BE ADDRESSED BEFORE IT BECOMES A PROBLEM IN ARIZONA.

Many of the CLEC intervenors argue that slamming for local service in Arizona is unlikely to become a problem due to the complexity of the local service market and that slamming in the long distance market is a thing of the past. [Direct Testimony of Mindy Chapman (WorldCom) at 4-6; Direct Testimony of Dawn Russell (AT&T) at 5; Tr. pp. 93-96;

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2 In The Matter Of Rules To Address Slamming And Other Deceptive Practices, Arizona Corporation Commission Docket No. RT-00000J-99-0034, Special Open Meeting May 8, 2002, Tr. Pg. 5

3 Id. Tr. Pg. 4

4 Id. Tr. Pg. 8

184-186.] Consequently, they maintain, customers won't need any protection from a practice that is unlikely to become a problem. It is an all too familiar argument – one that the Commission has already rejected in promulgating its anti-slamming and cramming rules. The mere fact that slamming continues to be a problem in the long-distance market, despite a myriad of recent fines from the FCC and other state Commissions against CLECs, makes AT&T's and WorldCom's testimony concerning the lack of need to protect against slamming untenable. Id. Chairman Mundell correctly pointed this out during the Commission's Special Open Meeting of May 8, 2002, to adopt state slamming and cramming rules:

> "Let me preface my remarks, because I asked every one of the carriers the same question [about fines]. The reason I did that was because one of the suggestions in the pleadings, and I'll get to that in a second, is that these rules, from the start the companies took a position they're unnecessary, they are redundant, they conflict with the FCC, so it seems to me we know there's violations in other jurisdictions, and the FCC has imposed fines. *So as I said, we want to protect the customers in Arizona*." [emphasis added] [5]

Three states in Qwest's territory – Washington, Colorado and Utah – felt that the potential for local slamming was enough to *require* all local exchange carriers to offer preferred carrier freezes. In adopting its own rules, the Washington Utilities and Transportation Commission noted that a preferred carrier freeze is "a valuable tool that consumers can use to protect themselves from carriers that slam. The Commission believes that any tool a consumer can use to protect her or himself should be made available."[6] Likewise, the Colorado Public Utilities Commission concluded that, "Consumer protection during a transition phase in the telecommunications market is permissible and appropriate. Such protection will speed the transition to a fully competitive marketplace for telecommunications services."[7] And in Utah,

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5 Id. Tr. Pg. 81

6 In the Matter of Amending WAC 480-120-139 Relating to Changes in Local Exchange and Intrastate Toll Services, January 14, 2000, at ¶ 1.

7 In the Matter of Proposed Amendments to the Rules Regulating the Changing of Presubscription, Rule 25, Rules Regulating Telecommunications Service Providers and Telephone Utilities.

both houses of the state legislature unanimously passed House Bill 135, which expressly requires LECs to offer preferred carrier freezes to their customers.

In contrast, some states in Qwest's service territory – notably Iowa, Montana, Nebraska and Minnesota – chose to take a reactive approach in protecting consumers from local slamming, opting instead to wait until it becomes a problem before lifting their moratoriums on LSFs. Ironically, the Iowa Utilities Board decided to prohibit Qwest from offering LSFs, even after the state legislature passed Iowa Code § 476.103(8), which requires the Board to adopt rules allowing for "...the solicitation, imposition, and lifting of preferred carrier freezes." In Nebraska, the Public Service Commission was careful to distinguish itself from other states.

> "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 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 make applicable to all carriers with appropriate safeguards founded in rules and regulations."[8]

Arizona has promulgated slamming and cramming rules, which can be easily tailored to enforce LSFs in the competitively neutral manner in which Nebraska cannot. Finally, the Minnesota Public Utilities Commission noted that:

> "...[p]rotections against slamming at the local level are already in place in Minnesota, should it occur: a company that cannot verify that it had authorization to switch a customer is charged a penalty for not having proper verification...In the absence of evidence to the contrary, it appears that these protections have been adequate to minimize the danger of local slamming in Minnesota and the need for a LSF option." [9]

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[8] In the Matter of the Commission, on its own Motion, to Investigate the Effects of Local Service Freezes in Nebraska, C-2662/PI-55, at p.10.

[9] In the Matter of the Qwest Proposal to Offer Local Service Freeze Protection, Order Rejecting Local Service Freeze Option and Requiring the Company to Stop Offering it at this Time. P-421/CI-02-75 at p.5

In support of giving consumers the option to institute a LSF, Staff witness Shand testified that:

> "…I think that slamming may become an issue with respect to local service, especially given the Commission's recent decision regarding rates for unbundled network elements. And the fact that it's a lot easier to slam using – if a carrier is using unbundled network elements as opposed to providing the service using its own facility. So there are current rules that exist at the federal level regarding slamming, and slamming happens anyway."

[Tr. p.209.] Consistent with the reasoning exercised by at least two other state commissions and one state legislature in Qwest's region, Staff recognizes the need to be proactive in combating the fraudulent practice of slamming. This view is shared on a national scale, where LSF's are offered in a majority of states. Qwest respectfully submits that a local service freeze helps to accomplish the public policy goals of consumer choice and the option of protecting oneself against slamming before it occurs.

III. <u>GIVING CONSUMERS THE OPTION TO INITIATE A LOCAL SERVICE FREEZE WILL NOT ACT AS A BARRIER TO COMPETITION</u>.

In its Second Report and Order on Policies and Rules Concerning Unauthorized Changes in Consumers' Long Distance Carriers ("Second Report and Order"), the FCC concludes that, "Our experience, thus far, has demonstrated that preventing unauthorized carrier changes enhances competition by fostering consumer confidence that they control their choice of service providers." [Second Report and Order at ¶ 114.] Two of the objections raised by CLECs in this application involve the notification and implementation of LSFs – procedural concerns that have already been addressed by Applicant in other jurisdictions where it offers the service in a competitively neutral manner. Additionally, Qwest has offered to apply a LSF for any LEC providing service in Arizona on a resale basis.

A. Qwest provides notification about the local service freeze option to consumers in accordance with FCC rules governing the solicitation of slamming protections.

The FCC currently has rules in effect to help consumers protect themselves against slamming. These rules also give local exchange carriers like Qwest the ability to offer customers LSFs, provided certain minimum procedural safeguards are followed. To date, Qwest has complied with these rules without incident. Effective communication with customers is essential to properly educating them about LSF options. Qwest currently offers educational information about LSFs on its website. Additionally, Qwest's customer service representatives can provide consumers with background information about LSFs – including how one might go about lifting the service in order to change local service carriers – which is consistent with the FCC rules governing the manner in which Qwest makes consumers aware of the availability of the LSF option. These rules require that Qwest provide, at a minimum:

1) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

2) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in Secs. 64.1150 and 64.1160 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and

3) An explanation of any charges associated with the preferred carrier freeze.[10]

In the eight states where the LSF option is available to consumers, Qwest's notification procedures may vary slightly from state to state depending on the applicable rules or regulations. Nonetheless, these variations illustrate the proper method for state commissions which have chosen to expand upon existing FCC rules – the rulemaking procedure. Commission Staff witness Shand agrees that such an endeavor can be accomplished by either modifying the Commission's current slamming and cramming rules, or through some other rules docket directed

[10] 47 C.F.R. § 64.1190(d)(1)

at all LSF tariffs that are filed with the Commission. [Tr. p.205] In fact, SBC Telecom already has a tariff on file with the Commission authorizing it to provide LSF.

B. The benefits of consumer choice and protection associated with a local service freeze far exceed the procedural concerns expressed by Intervenors.

Once Qwest was required to offer LSFs in three states, the company had to develop methods, procedures and systems in order to implement the service for consumers. As an optional service that acts as a consumer protection mechanism against slamming, it made sense to take advantage of the work already being performed and make LSFs available to consumers across Qwest's 14-state region. Since that time, Qwest has worked extensively to continually improve its process of placing and lifting a customer freeze, as evidenced by the Change Management Process and the various improvements that have come about as a result.

For instance, in response to CLEC's concerns that retention marketing would take place during a customer's request to lift the freeze, Qwest hired a third-party vendor, Aegis Corp. – a company with no incentive to perform retention marketing, and specifically barred by Qwest from doing so – to handle the transaction. [Tr. p.16.] Further, Qwest has made improvements to its systems and updated methods to be used by CLECs when acquiring a customer with a LSF on the account. Nevertheless, much of the testimony provided by the Intervenors focus on the additional step of lifting a service freeze when a customer chooses to change his or her local service provider, criticizing it as overly burdensome and anti-competitive. Qwest contends that this additional step is minimal, and any resulting inconvenience to either the customer or the CLEC is far outweighed by the consumer protection benefits. Again, such a procedure would only occur because a customer has voluntarily chosen to exercise his or her right to additional protection against local slamming.

In its Second Report and Order, the FCC comments, "We conclude that LECs offering preferred carrier freeze programs must make available reasonable procedures for lifting preferred carrier freezes." The FCC goes on to say, "We conclude that adopting baseline standards for the lifting of preferred carrier freezes will appropriately balance the interests of Congress in opening markets to competition by protecting consumer choice, preventing anticompetitive practices, and providing consumers a potentially valuable tool to protect themselves from fraud." [Second Report and Order at ¶ 127.] These baseline standards include acceptance by a LEC of any written or oral authorization to lift a LSF once it is in place. Qwest provided evidence that a customer may lift a LSF either through written means, such as completing the freeze removal form available on Qwest's website, or orally, by virtue of a direct call to Qwest or participation in a three-way call with a CLEC.

In her direct testimony, Ms. Russell of AT&T describes changing a customer's local service provider as a two-step process. Whenever a LSF is in place, Russell contends that changing a local service provider then becomes a three-step process, and "...unreasonably complicates the ordering process and simply makes the carrier selection more difficult for the consumer . . .." She goes on to conclude that, "The local service freeze, which was intended as a consumer benefit thus becomes a burden to the consumer." [Direct Testimony of Dawn Russell (AT&T) at 5.]

Changing local service providers is not simply a two-step process as Ms. Russell suggests. During cross-examination, she concedes that the normal process for changing local service providers – even without having to lift a local service freeze – is far from simple.

> "Q. Currently, the process of transferring one customer from one local service provider to another involves what, generally? You have to get the customer's name; is that correct?
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> A. *It's actually a very complex project*, and it does depend on whether or not it's a resale environment or if it's a total port. But the detail level of customer information that's required for local service, unlike long distance, where it's just the telephone number and the customer's name and your third-party verification, the local service requires more detailed information that only the customer or the current local service provider would know.

Q. So a carrier might have to obtain billing information, credit information, types of services desired, due dates, facility availability, depending on what kind of carrier they were, correct?

A. Exactly. And it requires a great deal of interaction with the customer. An average local service sales call for a residential customer would be approximately 20 minutes long just for the sales process alone. You have to get detailed information like the customer – the way they want their directory listed. When you get into the circumstances around a business customer, it becomes even more complex where you have to perhaps even set up appointments with their technical advisors or to determine what type of equipment they have. Maybe even make an on-site premise visit to determine what would be the appropriate services to offer." [p. 96, line 19 through p. 97, line 19].

By her own admission, Ms. Russell acknowledges that changing local service providers is already a complicated process. Granted, in those instances where a LSF is in place, the process will include additional steps, but Ms. Russell's conclusion fails to acknowledge that if a LSF is to become a burden to any one particular customer, it is a self-imposed burden. In essence, customers who choose to initiate a freeze on their local service are doing so in order to protect themselves from an unauthorized change in local providers – they inherently want to make the process of changing local providers harder. Such protection does not come without consequence, and Qwest contends that the benefits of consumer choice and protection from fraud far exceed the relatively minor increase to an already complicated process.

III. CONCLUSION

Competition is, among other things, about choice for consumers. Meanwhile regulation is, among other things, about protecting consumers from fraudulent practices such as slamming. These two interests need not be mutually exclusive of one another, and allowing consumers the option to institute a local service freeze helps satisfy both of these public policy goals in a competitively neutral manner. Indeed, a local service freeze gives customers the ability to proactively prevent slamming and directly control their selection of a local service provider.

Furthermore, Qwest has already indicated that if the Commission feels changes or clarification needs to be added to its LSF Tariff, the company would support reasonable modifications, some of which have already been recommended by ACC staff. Applicant therefore respectfully requests that the Commission allow local service freezes to be made available to Qwest's Arizona consumers.

Respectfully submitted this 22nd day of July, 2002.

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