BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Notice of	**)**	
Opportunity to Submit Written	**)**	**DOCKET NO. UT-980675**
Comments on Proposed Rules on	**)**	
ASlamming@	**)**	**AT&T'S COMMENTS**
(WAC 480-120-139)	**)**	

INTRODUCTION

AT&T Communications of the Pacific Northwest, Inc. (AAT&T@) appreciates the opportunity to provide these comments regarding the Washington Utilities and Transportation Commission=s (AWUTC=s@ or ACommission=s@) ASlamming@ rulemaking in Docket No. UT-980675. In this rulemaking, the Commission has proposed changes to WAC 480-120-139 relating to Changes in Local Exchange and Intrastate Toll Services. On page 2 of its Notice, the Commission states: AThe draft rules are consistent with the newly adopted FCC rules.@ There is, however, a major departure from the FCC=s rules in that these proposed rules require Local Exchange Companies (ALECs@) to offer preferred carrier freezes. In these comments, AT&T will address this variance and will provide additional suggestions to enhance other rules regarding the removal of preferred carrier freezes.

IMPLEMENTATION OF PREFERRED CARRIER FREEZES

A. PIC Freezes Not Required in FCC=s Rules

Despite the Commission=s statement that the draft rules are consistent with the newly adopted FCC rules, proposed WAC 480-120-139(4) requires LECs to offer preferred carrier freezes. This is a significant variance from the FCC=s rules that went into effect on April 27, 1999. The federal rules do not require that a LEC offer a freeze, but rather set forth rules regarding authorization and removal **if** a freeze is offered. When impartially implemented, the freeze mechanism can provide a useful adjunct to other regulatory compliance and enforcement procedures for controlling slamming. AT&T has long supported the availability of carrier freezes for this purpose; indeed, as early as 1990, AT&T proposed that LECs be required to offer a PIC freeze option to end users as a consumer protection measure.

However, recent experience shows that LECs have extensively misused the carrier freeze procedure in order to advantage themselves when entering the interexchange marketplace, and to further entrench their own intraLATA toll and local service monopolies against new entrants. This serious anti-competitive potential was not present when the freeze procedure was first adopted, because the largest LECs did not then operate in the interexchange services market, and competition in the provision of intraLATA and local service was largely foreclosed by regulatory rulings. The current and anticipated changes in industry structure wrought by the Telecommunications Act of 1996 have irretrievably altered the incentives for LECs to implement carrier freezes in a neutral and unbiased manner.

For example, U S WEST has offered a PIC freeze mechanism to end users without disclosing that their selection of this option for their preferred IXC would also freeze the customers= selections of an intraLATA toll and local carrier. U S WEST implemented this type of Aaccount level@ freeze immediately prior to the availability of intraLATA presubscription in most of its states. The result was not, as U S WEST claimed, the protection of customers but rather a clear thwarting of competition and a frustration of customers that wished to change carriers. Even after the FCC clearly forbade such account level freezes with the implementation of its new rules on April 27, 1999, U S WEST continued to argue before four state commissions (Idaho, Iowa, North Dakota, and South Dakota), that it should be permitted to extend freezes to the account level. None of these four states supported U S WEST=s position. All ruled that such account level freezes were, in fact, in violation of the new federal rules and rejected U S WEST=s arguments.

Although the federal rules do currently allow LECs to provide preferred carrier freezes, AT&T requests that this Commission modify its proposed rule to remove the mandate that LECs offer such an option. AT&T believes that unscrupulous LECs will use this requirement to hide behind as they practice their anti-competitive behaviors.

B. Preferred Carrier Freeze To Be Offered Once Free Of Charge

AT&T suggests that the Commission modify, or at a minimum, clarify WAC 480-120-139(b). The proposed rule states: AAll local exchange companies must offer a preferred carrier freeze at no charge to the customer on a one-time basis.@ Although AT&T is unaware of any LECs charging for preferred carrier freezes at this time, the rule, as written, poses additional questions. For instance, a LEC offers a new customer a preferred carrier freeze upon initiation of service. The customer declines the freeze at that time, but later decides that they would like a freeze. Was the fact that the customer was offered the freeze sufficient to comply with the rule, and therefore, the LEC may charge the customer for implementing such a freeze once the customer requests it?

Another scenario to consider would be if a customer had elected to have a preferred carrier freeze implemented at no charge. If the customer later decides to switch carriers, thus necessitating the removal of the freeze, would the customer be open to possible freeze charges if the customer subsequently wanted to request a freeze on his or her new carrier choice? If so, such a charge could pose a financial hindrance to a customer=s decision to change carriers.

Finally, such a requirement would require LECs to implement costly and probably error-prone tracking systems to determine if a customer has been offered a preferred carrier freeze at no charge. AT&T recommends that the Commission instead mirror the FCC=s rules in this area and merely require that carriers provide an explanation of any charges associated with the preferred carrier freeze.

C. Lifting a Preferred Carrier Freeze

AT&T suggests that the Commission add additional clarifying safeguards in proposed rule WAC 480-120-139(e) regarding how a preferred carrier freeze may be lifted. AT&T=s suggestions would not be inconsistent with the FCC=s rules on this matter, but would merely provide additional flexibility for removing the freeze and diminish the opportunity for a LEC to practice anti-competitive behavior.

1. Preferred Carrier Freeze Removal Forms

First of all, AT&T requests that the Commission modify WAC 480-120-139(e)(i) to require LECs to accept copies supplied to customers by another carrier of any document used by the local carrier to change a carrier selection freeze. Customers would still need to sign the freeze removal authorization form, but the process would be less forbidding by permitting the customer to use carrier-supplied forms to accomplish the removal. Such additional language is needed because some LECs require customers to request a frozen PIC change in writing, using special forms available only from the LEC, and refuse to allow IXCs to provide copies of those forms, or the IXCs= own forms, to customers who wish to change their carrier.

2. Three-Way Call To Remove Preferred Carrier Freeze

WAC 480-120-139(e)(ii) requires LECs provide a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift the freeze. AT&T supports the Commission in this requirement as this process is critical in processing customers= carrier changes in a prompt fashion. That said however, even with this requirement, there are still ways that LECs can intentionally delay the process. For instance, LECs have been known to provide inadequate capacity to process those calls which creates long delays, to make this capability unavailable during hours where telemarketing activity is high, and have even used these calls to attempt to persuade customers not to change or select their service.

Therefore, AT&T requests that the Commission enhance this rule to require LECs to provide adequate facilities and staffing to expeditiously process anticipated call volumes during normal business hours, and to establish appropriate alternative methods (such as answering machines, Conversant systems or other electronic means) to process three-way calls in a timely manner after normal business hours.

Additionally, AT&T requests that the Commission state in this rule that the LEC that controls the PIC process is prohibited from discussing its own competing services, or those of any affiliate, with customers during the processing of a three-way call to remove a carrier selection freeze or to change the subscriber's selected carrier when a freeze is already in place.

The transaction should instead be limited to collecting the information necessary to remove the current frozen carrier choice and effectuate the customer's new carrier selection request.

3. Provide List of Customers With Freezes

Finally, AT&T suggests that the Commission consider an additional requirement that LECs make available to other carriers a universal list of customers that have placed freezes on their accounts, and specifically, what types of calls are frozen (i.e., interLATA, intraLATA, local). Such a list would not reveal the customers= chosen carriers, merely that a freeze has been placed on their accounts. Many customers are unaware that there is a freeze on their account, either because they placed it some time back and don=t recall, someone else in their family requested a freeze, or because the LEC extended a freeze from one portion of their account to another without their knowledge. Regardless of the reason, such a list would simply provide carriers with the information needed to know that if customers wish to change carriers, they first must lift or remove the freezes on their accounts. LECs have a competitive advantage in marketing their services because they already have access to such information. Competitive Local Exchange Companies (ACLECs@) and IXCs regularly must expend additional resources, both personnel and financial, to process a customer=s change request because they are unaware that a freeze is on the customer=s account. Often these orders are rejected many times or simply are never processed because the CLEC or IXC is unable to successfully recontact the customer to initiate the necessary steps to remove the freeze. Also, LECs have been known to contact the customers during this rejection period to market their own services. Providing a list of customers with freezes on their accounts to other carriers would merely help level the competitive playing field and permit customers= carrier change requests to be processed in a more timely fashion.

D. Remedies

WAC 480-120-139(5) specifies remedies for addressing payments when an unauthorized change has occurred. As this Commission is aware, the liability portion of the FCC=s new rules was indefinitely stayed by the United States Court of Appeals for the District of Columbia on May 18, 1999**.** AT&T, MCIWorldCom and others in the industry presented the FCC with an alternative neutral Third Party Liability Administrator proposal which would provide additional efficiencies in resolving customer complaints and critical neutrality in processing these charges. AT&T requests that the Commission continue to monitor the resolution of the liability issue at the federal level and, if appropriate, modify its rule accordingly at such time.

<u>CONCLUSION</u>

AT&T appreciates this opportunity to submit these comments and requests that the Commission consider the above suggested modifications to its proposed slamming rules, and continue to monitor activity at the federal level regarding the implementation of a neutral third party administrator.

Respectfully submitted this 15th day of July, 1999.

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