

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)
“Slamming”) AT&T’S COMMENTS
(WAC 480-120-139))**

INTRODUCTION

AT&T appreciates the opportunity to provide these comments regarding the Washington Utilities & Transportation Commission’s (“WUTC’s” or “Commission’s”) proposed “slamming” rules. In this rulemaking, the Commission has proposed changes to WAC 480-120-139 relating to Changes in Local Exchange and Intrastate Toll Services. In these comments, AT&T will address the main variance of these proposed rules from the current federal rules, namely the requirement of offering Preferred Carrier (“PIC”) freezes and notifications. While AT&T supports a customer’s desire to protect his or her carrier selections, AT&T, generally, opposes the mandatory requirement of PIC freezes on four fronts: (1) mandated PIC freezes will likely result in an increase of anti-competitive behavior by unscrupulous Local Exchange Companies (“LECs”) that seek to deny or retard timely implementation of customers’ choices of preferred carriers; (2) requiring PIC freezes will cause a negative economic impact to some carriers, particularly Competitive Local Exchange Carriers (“CLECs”); (3) no carrier, to AT&T’s knowledge, is currently offering a PIC freeze on local service; and (4) requiring carriers to notify customers of the availability of PIC freezes, on a yearly basis, would cause carriers undue hardship and expense. Secondly, AT&T will provide additional suggestions to enhance the proposed rules regarding the removal of preferred carrier freezes. Finally, AT&T requests that the Commission continue to monitor the status of the current stay on the liability section of the Federal Communications Commission’s (“FCC’s”) “slamming” rules.

A. PIC FREEZE REQUIREMENTS

1. Anti-Competitive Effects of PIC Freezes

When properly 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. However, AT&T's recent experience with certain LECs that have misused the carrier freeze, has revealed that the freeze can be a tool to prevent customers from obtaining their carriers of choice; in these cases it creates a "reverse" slamming problem otherwise known as "jamming." 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 fiat. 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 "account 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, consequently, frustration for 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. AT&T and its customers continue to be negatively impacted by U S WEST's anti-competitive use of PIC 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 continue to practice their anti-competitive behaviors. The FCC sought to balance the consumer protection offered by a PIC freeze with the potential anti-competitive use of a PIC freeze by providing rules for authorizing and lifting a freeze **if** a LEC offers such freezes. In its December 17, 1998 Second Order and Report, the FCC recognized that PIC freezes can result in anti-competitive behavior when it said:

We adopt rules to clarify the appropriate use of preferred carrier freezes because we believe that, although preferred carrier freezes offer consumers an additional and beneficial level of protection against slamming, they also create the potential for unreasonable and anticompetitive behavior that might affect negatively efforts to foster competition in all markets. (¶114)

The FCC continued:

[w]e believe 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. (¶114)(emphasis added)

[w]e share commenters' concerns that in some instances preferred carrier freezes are being, or have the potential to be, implemented in an unreasonable or anticompetitive manner. (¶115)

AT&T urges the Commission to adopt rules that require LECs that offer PIC freezes to authorize and lift those freezes in a manner consistent with the federal rules, but to eliminate the requirement that all LECs offer PIC freezes.

2. Mandating PIC Freezes Does Have An Economic Impact on Carriers

In Section (i) of the CR-102 notice, it is stated that the proposed rules are expected to have no economic effect on regulated carriers. The notice goes on to state: “The proposed rules differ from the FCC in one way - - the proposed rules require carriers to offer a PIC freeze. However, carriers currently offer a PIC freeze or similar service, so the rules requiring them to do so will have no economic impact.” AT&T disagrees with the assumption that all carriers are currently offering a PIC freeze or similar solution. This assumption is simply not true. Although the statement may be more true in addressing ILECs since their historic role has been that of the recorder of customers’ choices in interLATA (and now intraLATA) long distance carrier(s), and thus are more likely to have offered PIC freezes. As CLECs enter a market, they too will be the record keeper for their customers’ long distance carrier choices. However, CLECs may or may not currently offer PIC freezes to their customer base. Certainly, there were no previous requirements to do so. AT&T does not currently have the capability to offer such a freeze.

Accordingly, the rest of the statement, i.e., that requiring carriers to offer PIC freezes will have no economic impact, is similarly untrue. To the contrary, requiring LECs to provide PIC freezes will indeed have a negative economic impact on carriers, primarily CLECs, that have not previously offered PIC freezes. Such a rule will require CLECs to expend resources, both financially and personnel-wise, to make this state-

specific exception. Most likely, this additional expense will be passed along to consumers, thus reducing the attractiveness of a CLEC's pricing. Many ILECs already offer PIC freezes and have recovered the costs of necessary system adjustments as part of their regular rate-of-return proceedings or through other regulatory proceedings. For instance, this Commission earlier this year approved U S WEST's inclusion of its expense to update its Regional Subscription System ("RSS") to allow PIC freezes on both interLATA and intraLATA carrier choices as part of its cost recovery for intraLATA presubscription. The approval of said recovery allowed U S WEST to partially assess its systems costs, via its Equal Access Network Recovery Charge ("EANRC"), to its competitors in the intraLATA toll market. CLECs, however, will be required to recoup this expense through their rates, thus reducing the competitive attractiveness of their services. Furthermore, to comply with this proposed rule, LECs not currently offering PIC freezes may have to modify several of their internal systems and processes. For instance, AT&T would have to modify multiple ordering systems in order to provide PIC freeze capability.

3. PIC Freezes for Local Service

AT&T is not aware of any LECs that currently offer PIC freezes for local service. Although the federal rules pertaining to PIC freezes apply to local service **if** a carrier offers such a PIC freeze capability, again the distinction is that federal rules do not mandate such a PIC freeze capability. Accordingly, the discussion above regarding the assumption that there would be no economic impact is especially erroneous in this particular case.

4. PIC Freeze Notification Process Unduly Burdensome and Costly

Proposed WAC 480-120-139(5)(a) states that all local exchange companies must notify all customers of the availability of a preferred carrier freeze at the time service is ordered, and once per year thereafter on an individual customer basis. Requiring carriers to send yearly notices to all customers, both business and residential, regarding the availability of PIC freezes is a considerable expense that eventually must be borne by all Washington telecommunications customers. Despite the availability of PIC freezes in many areas for years, the majority of customers have not chosen to avail themselves of the service. The logical conclusion is that most customers do not believe that the risk of having their carrier changed without their authorization to be great enough to go through the inconvenience and extra steps necessary to change carriers when their account is frozen. Therefore, AT&T urges the Commission to reject this proposed rule that would increase costs for all Washington telecommunications customers.

B. LIFTING A PREFERRED CARRIER FREEZE

AT&T suggests that the Commission add additional clarifying safeguards in proposed WAC 480-120-139(5)(d) 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. Increase Flexibility of Three-Way Call To Remove Preferred Carrier Freeze

WAC 480-120-139(5)(d)(ii) requires LECs to 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 have intentionally delayed the process. For instance, LECs have been known to provide inadequate capacity to process those calls without long delays, have this capability unavailable during hours where telemarketing activity is high, and even used these calls to attempt to persuade customers not to change or select their service. In two of its states, U S WEST sent out postcards to customers where U S WEST had frozen itself as the customers' intraLATA carrier. The postcards told customers that they could dial the phone number on the card if they wished to lift or remove the freeze. However, the voice mail menu on the number provided by U S WEST gave no actual prompt that correlated directly with lifting or removing a freeze.

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 be prohibited from discussing its own competing services, or those of any affiliate, with customers during the processing of a three-way call, or any

customer-initiated 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.

2. Provide Carriers With Lists 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 jurisdiction is 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 freeze on their accounts. ILECs have a competitive advantage in marketing their services because they already have access to such information. CLECs and IXC's 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, ILECs 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.

C. REMEDIES

WAC 480-120-139(6) 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 U. S. Court of Appeals for the District of Columbia on May 18, 1999. AT&T, MCI WorldCom 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.

CONCLUSION

AT&T appreciates this opportunity to submit these comments and requests that the Commission monitor activity at the federal level regarding the implementation of a neutral third party administrator for liability and for PIC administration.

Respectfully submitted the 11th day of November, 1999.

AT&T COMMUNICATIONS
OF THE PACIFIC NORTHWEST, INC.

Mary B. Tribby
1875 Lawrence Street, Suite 1575
Denver, CO 80202
(303) 298-6508