

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T BROADBAND PHONE OF)
WASHINGTON, LLC,)
)
Complainant,)
)
v.)
)
QWEST CORPORATION,)
Respondent.)
_____)

Docket No. UT-020388

REPLY TESTIMONY OF
JONATHAN WOLF

ON BEHALF OF
AT&T BROADBAND PHONE OF
WASHINGTON, LLC

June 12, 2002

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Q. PLEASE STATE YOUR NAME.

A. My name is Jonathan Wolf, and I previously provided direct testimony in this proceeding.

Q. WHAT IS THE PURPOSE OF YOUR REPLY TESTIMONY?

A. The purpose of my reply testimony is to respond to the Direct Testimony of Scott A. McIntyre. More specifically, I address the concerns with Preferred Local Carrier (“PLOC”) freezes expressed by the FCC and other state commissions and how AT&T Broadband’s experience with Qwest’s implementation of PLOC freezes in Washington illustrates those concerns. I also demonstrate that Qwest is not in compliance with WAC 480-120-139 and that even to the extent that Qwest could be considered to be in compliance with the rule, Qwest is using the rule to its competitive advantage to the ultimate detriment of the development of local exchange competition in Washington.

Q. DO YOU AGREE THAT “THE FCC REJECTED CLAIMS THAT PREFERRED CARRIER FREEZES ARE ‘ANTI-COMPETITIVE’”?

A. I agree the FCC has concluded that the availability of appropriate *long distance* preferred carrier freezes *may* enhance competition, but I do not agree that the FCC has reached the same conclusion with respect to *local* service preferred carrier freezes. Mr. McIntyre’s quotes from the FCC order are misleading because he neglects to mention that the FCC also is concerned that incumbent local exchange carriers (“ILECs”) can use preferred carrier freezes to their competitive advantage:

In the Further Notice and Order, however, we stated that preferred carrier freezes may have the effect of limiting competition among carriers. We share commenters’ concerns that in some instances preferred carrier freezes are being, or have the potential to be, implemented in an unreasonable or anticompetitive

1 manner. Indeed, we note that a number of state commissions have
2 determined, and certain LECs concede, that unregulated preferred
3 carrier freezes are susceptible to such abuses. By definition,
4 preferred carrier freezes create an additional step (namely, that
5 subscribers contact directly the LEC that administers the preferred
6 carrier freeze program) that customers must take before they are
7 able to obtain a change in their carrier selection. Where customers
8 fail to take the additional step of lifting a preferred carrier freeze,
9 their otherwise valid attempts to effectuate a change in carrier
10 selection will be frustrated. Observing this process, some
11 commenters argue that certain preferred carrier freeze programs
12 are so onerous as to create an unreasonable hurdle for subscribers
13 and submitting carriers seeking to process a carrier change. Other
14 commenters, primarily interexchange carriers, suggest that LECs
15 are using deceptive preferred carrier freeze solicitation practices to
16 “lock up” consumers, without their understanding, as part of an
17 effort to stifle competition in their markets.

18 Particularly given the market structure changes
19 contemplated in the 1996 Act, we are persuaded that incentives for
20 unreasonable preferred carrier freeze practices exist. With the
21 removal of legal and regulatory barriers to entry, carriers are now
22 or soon will be able to enter each other's markets and provide
23 various services in competition with one another. Incumbent LECs
24 have, or will have in the foreseeable future, authorization to
25 compete in the market for interLATA services. Similarly,
26 incumbent LECs are preparing to face or are facing competition in
the local exchange and intraLATA toll markets. Given these
changes in market structure, incumbent LECs may have incentives
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.¹

Indeed, the FCC was sufficiently concerned about these issues that it did not
preempt states from prohibiting local preferred provider freezes, as several states
in the Qwest region have done. I urge the Commission to review the entire FCC
order before accepting Qwest's characterization of the FCC's conclusions.

¹ Second Report and Order, CC Docket No. 94-129, paragraphs 115-16 (footnotes omitted).

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2 **Q. DIDN'T THIS COMMISSION REJECT THE FCC'S AND**
3 **COMPETITORS' CONCERNS THAT PREFERRED CARRIER**
4 **FREEZES CAN BE ANTI-COMPETITIVE?**

5 A. The Commission did not reject those concerns but concluded that they were
6 outweighed by the need for "a valuable tool that consumers can use to protect
7 themselves from carriers that slam."² The Commission, however, reached that
8 conclusion in the face of an increase in long distance slamming complaints that
9 the Commission had been receiving at that time. I am not aware of any similar
10 slamming activity for local service in Washington and would be surprised if any
11 were occurring. Local exchange competition is still in its infancy, and Qwest
12 continues to provide local service to the vast majority of telephone subscribers in
13 Washington. Under these circumstances, preferred local carrier freezes serve
14 only to make it more difficult for competitors to obtain customers from Qwest,
15 not to protect those customers from slamming.

16 In orders issued since this Commission adopted its rule, other state commissions
17 have concluded that the harm to competition posed by PLOC freezes outweighs
18 the negligible potential benefits to consumers. In a May 8, 2002, order rejecting
19 Qwest's request to offer PLOC freezes, the Nebraska Public Service
20 Commission stated, "the reasons which require long-distance carriers to offer a
21 primary interexchange carrier ('PIC') freeze are not present in the case of local
22 exchange carriers. Adding another step into the process of changing local
23 exchange carriers constructs an additional barrier to competition." The PSC
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26 ² *In re Amending WAC 480-120-139 Relating to Changes in Local Exchange and Intrastate Toll Services*,
Docket No. UT-980675, General Order No. R-468, Order Amending and Adopting Rules Permanently at
3 (Jan. 20, 2000).

1 went on to state: “the negative impact of such freezes on the development of
2 competition in the local market outweighs the potential benefit of such service to
3 consumers. The provisioning of local service freezes at this time would be
4 harmful to the development of competition and that harm outweighs the benefit
5 of preventing the possibility that a local slam should occur and other mechanisms
6 in state and federal law cannot adequately compensate a victim of such an act.”³
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9 Similarly, the Minnesota Public Utilities Commission rejected Qwest’s attempts
10 to implement PLOC freezes in that state (referred to as a local service freeze or
11 LSF):
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13 The Commission has carefully considered Qwest’s LSF service
14 and even assuming the service is administered strictly as Qwest
15 stated in its reply comments, the Commission views the LSF
16 service as having the potential to inhibit local competition, which
17 is at a particularly fragile stage of development in Minnesota. And
18 as a practical matter it would be difficult to assure that in practice
19 the service would not be operated in a way more directly
20 burdensome to competition than Qwest acknowledges.

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22 In fact, simply offering the service suggests that customers need
23 protection from CLECs’ local service slamming practices, a
24 suggestion which the record in this case does not substantiate. As
25 such it tends to unfairly disparage and, hence, unfairly burden
26 Qwest’s local competitors.⁴

³ Application No. C-2662/PI-55, Nebraska PSC Order (May 7, 2002).

⁴ *In re Qwest Proposal to Offer Local Service Freeze Protection*, MN PUC Docket No. P-421/CI-02-75, Order Rejecting Local Service Freeze Option and Requiring the Company to Stop Offering It at This Time at 5 (May 7, 2002).

1 AT&T Broadband's experience with Qwest's implementation of PLOC freezes
2 in Washington supports the conclusions reached by the commissions in
3 Minnesota, Nebraska, and other states.⁵
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5 **Q. HOW SO?**

6 A. Qwest claims to have implemented PLOC freezes consistent with the
7 Commission's rule. If that is true, then the Minnesota commission is correct that
8 the rule itself tends to inhibit local competition. As I explained in my direct
9 testimony, AT&T Broadband has devoted substantial resources to assisting
10 potential customers remove the local freeze that Qwest has placed on their
11 accounts. Despite those efforts, AT&T Broadband has lost a substantial number
12 of customers who have decided that it is too much trouble to get the freeze lifted.
13 Even those customers who have persevered have been required to change their
14 telephone number and/or accept delays in installation of their AT&T Broadband
15 telephone service.

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17 The Commission needs to understand that convenience is an important aspect of
18 selling telephone service, as it is for many other services. Gas stations and mini-
19 marts, for example, successfully sell a wide variety of soft drinks, snacks, and
20 other products – often at higher prices than those same products are available in
21 grocery stores – because such purchases are convenient. While some customers
22 cannot wait to find an alternative to Qwest and are willing to go to great lengths
23 to do so, others may want to change but are hesitant to obtain service from an
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26 ⁵ As I discussed in my direct testimony, state commissions in Iowa and Montana also have rejected Qwest's attempts to introduce PLOC freezes in those states. I understand that Qwest has withdrawn its request to implement PLOC freezes in New Mexico and that the issue is pending before the Arizona commission.

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2 unfamiliar provider. The more difficult it is for such customers to obtain service
3 from alternate providers, the less likely these customers will be to do so.

4 **Q. DOES MR. MCINTYRE ADDRESS THIS ISSUE?**

5 A. Of course not. It is not in Qwest's best interest to make it easy for its customers
6 to obtain service from another provider – just the opposite, in fact. That is why
7 Qwest has been aggressively pursuing the ability to offer PLOC freezes
8 throughout its service territory (including appealing the recent adverse decision
9 made by the Iowa commission). Qwest knows that it is easier to keep an existing
10 customer than obtain a new one, and if customers freeze their local accounts,
11 they will be less likely to take the additional steps needed to lift that freeze in
12 order to change to another provider.

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14 Qwest's efforts to retain its monopoly market share, moreover, do not end at the
15 Commission's doorstep. The customer mailings that Mr. McIntyre has submitted
16 with his testimony demonstrate that Qwest is not merely providing information
17 about PLOC freezes but is actively marketing the concept to its customers.
18 These materials promise "protection" from other local carriers that change
19 customers' service without authorization.⁶ One flyer even pictures an anguished
20 woman who we apparently are meant to understand is suffering the adverse
21 consequences of not signing up for this protection.⁷ As the Minnesota
22 commission feared, Qwest is demonizing CLECs under the guise of complying
23 with the Commission's rule. Indeed, the marketing materials themselves refer to
24 the Commission, leaving the impression that the Commission, not just Qwest,

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26 ⁶ Ex. SAM-4.

⁷ Ex. SAM-5. See also the Qwest mailing attached as Exhibit ____ (JW-3) (Excerpt of Qwest response to AT&T Broadband Data Request No. 2), which Mr. McIntyre neglected to include with his testimony.

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2 fears that CLECs are not to be trusted and will serve customers without authority
3 if customers do not freeze their Qwest local service accounts.

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5 The Commission has long supported the development of effective local exchange
6 competition in Washington. A rule that makes changing local services providers
7 more difficult and that permits Qwest to disparage competitors in the name of
8 complying with Commission requirements is fundamentally inconsistent with
9 that public policy goal.

10 **Q. DO YOU AGREE THAT QWEST IS IMPLEMENTING PLOC FREEZES**
11 **CONSISTENT WITH THE COMMISSION RULE?**

12 A. No, I do not. Mr. McIntyre outlines the requirements of WAC 480-120-139(5)
13 and testifies that “Qwest complies fully with these rules in administering its LSF
14 program.”⁸ That statement is not true.

15
16 The first requirement, as Mr. McIntyre acknowledges, is that every PLOC freeze
17 “request must first be confirmed through written authorization from the
18 customer, or by use of an automated, electronic telephone menu system from the
19 telephone number for which the freeze was requested, or through the use of an
20 independent third party verifier.”⁹ AT&T Broadband submitted a data request to
21 Qwest asking for proof of authorization to implement a PLOC freeze for the 144
22 customers that AT&T Broadband identified in materials submitted to the
23 Commission and the parties early in this docket. Qwest provided such
24 verifications for only 25 of those customers. Particularly when many of the

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⁸ Direct Testimony of Scott A. McIntyre at 8 & 12.

⁹ *Id.* At 8-9.

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2 customers deny authorizing a PLOC freeze, the only reasonable conclusion is
3 that Qwest has reverse-slammed over 100 customers.

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5 Similarly, Qwest fails to account for the sudden and substantial number of
6 customers affected by Qwest's implementation of PLOC freezes after February
7 18, 2002. Mr. McIntyre suggests that the problem arose out of a backlog of
8 orders to add local freezes that were being worked during that time period.¹⁰
9 Even if true, that does not explain why Qwest did not timely remove the PLOC
10 freezes upon customer request once AT&T Broadband began notifying Qwest
11 that LSRs were being rejected or why Qwest did not have proper procedures in
12 place for removing PLOC freezes almost one year after beginning to offer such
13 freezes.¹¹ I fail to see how "the protection afforded by LSFs was working" or
14 that Qwest was in compliance with WAC 480-120-139, as Mr. McIntyre
15 claims,¹² when customers were having PLOC freezes placed on their accounts
16 without their knowledge or consent and customers could not get PLOC freezes
17 removed from their accounts despite repeated requests to do so.

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19 Other Qwest failures to comply with the Commission's rule are more subtle but
20 no less problematic. Qwest must lift a PLOC freeze upon receiving the
21 customer's written or oral request, but Qwest has made that process more
22 cumbersome and difficult than the Commission rule contemplates, as I explained
23 in my direct testimony. Mr. McIntyre counters that Qwest has implemented

24 ¹⁰ *Id.* at 16-17.

25 ¹¹ Mr. McIntyre misinterprets my direct testimony that AT&T Broadband first became aware that Qwest
26 was *implementing* PLOC freezes as taking issue with when Qwest began notifying customers that PLOC
freezes were available. *Id.* at 12-13. Regardless of when Qwest began *offering* PLOC freezes, AT&T
Broadband personnel did not encounter customers with PLOC freezes on their accounts until February
2002.

¹² *Id.* at 17.

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2 procedures that will enable AT&T Broadband to place orders sooner after Qwest
3 receives the customer request to lift the freeze.¹³ The process that Qwest has
4 established, however, still does not immediately lift the PLOC freeze, and no
5 order will be accepted until the freeze is lifted. When AT&T Broadband asked
6 for standards and data on the time interval between customer contact and when
7 the freeze is lifted, Qwest responded that it has no such standards or data. The
8 customer's account, therefore, remains frozen for an indefinite period of time
9 after the customer has contacted Qwest to lift the freeze.¹⁴

10
11 Mr. McIntyre also states that contrary to AT&T Broadband's experience, 92% of
12 calls to the telephone number that Qwest established for customers to remove
13 PLOC freezes were answered in 20 seconds or less in April.¹⁵ If that is true,
14 AT&T Broadband must have been on the line with the other 8% of the
15 customers, many of whom had hold times of up to 15 minutes.

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17 Finally, Mr. McIntyre attempts to justify Qwest's refusal to maintain longer
18 hours for processing PLOC freeze removal requests, stating that "Qwest has
19 made a business decision as to the hours it will receive calls from customers to
20 affect a freeze removal," specifically "Monday through Friday, from 5 a.m. to 7
21 p.m."¹⁶ AT&T Broadband serves residential customers, many of whom work
22 outside the home during the work week and are not available during working

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24 ¹³ *Id.* at 24.

25 ¹⁴ Although Qwest produced no supporting evidence, Mr. McIntyre testifies that "[t]he freeze will be
26 removed the same day the removal request is received," but it is not possible for Qwest to remove the
freeze immediately while the customer is on the line. *Id.* at 27. Qwest's alleged inability immediately to
lift the freeze, however, should not excuse Qwest's failure to remove PLOC freezes as required by the
Commission's rule.

¹⁵ *Id.* at 25.

¹⁶ *Id.* at 26.

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2 hours, at 5 a.m., or during dinner. Later evening hours and Saturday hours thus
3 are critical to AT&T Broadband's need to conference customers and Qwest to
4 remove PLOC freezes at a time that is convenient for the customers. I fail to
5 understand how Mr. McIntyre can claim that "there has not been a demand for
6 Saturday hours" when AT&T Broadband has been informing Qwest of such a
7 demand for the past three months. Again, the Commission should not consider
8 Qwest to be complying with the rule under these circumstances.

9 **Q. HAS AT&T BROADBAND BEEN WORKING WITH QWEST TO**
10 **RESOLVE THESE ISSUES INFORMALLY?**

11 A. Yes, we have. Mr. McIntyre criticizes AT&T Broadband for initiating this
12 proceeding, rather than simply relying on the Change Management Process
13 ("CMP"),¹⁷ but Qwest did not start to take any significant steps to resolve AT&T
14 Broadband's issues until after AT&T Broadband filed its complaint. Attached as
15 Exhibit ___ (JW-4) is a print-out from the Qwest wholesale services website that
16 details the discussions between the parties. As this print-out (as well as other
17 portions of Mr. McIntyre's testimony) demonstrates, the processes that Qwest
18 has adopted largely came about after March 29, 2002, the date on which the
19 complaint was filed. AT&T Broadband filed its complaint because Qwest was
20 not adequately addressing AT&T Broadband's concerns through the CMP, not
21 because of any unwillingness to resolve issues on a business to business basis.

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23 Mr. McIntyre, moreover, fails to recognize any of the information AT&T
24 Broadband has provided to Qwest during the CMP or previously provided to the
25 Commission when he claims that AT&T Broadband "has provided no specifics,
26 and did not even provide sufficient information in its direct case to allow Qwest

¹⁷ *Id.* at 26.

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2 to verify these allegations, or even identify any of the 234 [affected]
3 customers.”¹⁸ AT&T Broadband provided substantial information to Qwest
4 throughout the CMP, including the identity of 25 customers early in that process
5 with the request that Qwest provide PLOC freeze verifications for these
6 customers. Qwest refused to do so or to undertake any independent investigation
7 of AT&T Broadband’s claims. On April 10, 2002, AT&T Broadband filed with
8 the Commission and provided Qwest with a list of 144 affected customers and an
9 analysis of how Qwest’s PLOC freeze process adversely affected them. I
10 summarized this information in my direct testimony filed on April 30, 2002.
11 Qwest never submitted any data requests to AT&T Broadband or otherwise
12 requested any additional or more specific information. Indeed, Qwest apparently
13 made no effort to analyze or account for the data AT&T Broadband provided
14 until AT&T Broadband propounded data requests asking Qwest to do so.

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16 Qwest has had every opportunity to review specific data provided by AT&T
17 Broadband and to request additional data, but Qwest has not done so. Under
18 these circumstances, Qwest cannot reasonably contend that AT&T Broadband’s
19 evidence in support of its complaint lacks sufficient detail to enable Qwest to
20 provide a more specific response.

21 **Q. HAS AT&T BROADBAND ALTERED ITS RECOMMENDATION TO**
22 **THE COMMISSION?**

23 A. No, we have not. We continue to urge the Commission to stay the effectiveness
24 of its PLOC freeze rule until appropriate processes and procedures can be
25 developed to ensure that the rule can and will be implemented in a competitively
26 neutral and effective manner. AT&T Broadband, like the Minnesota

¹⁸ *Id.* at 21.

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commission, continues to doubt that the rule can be implemented in such a manner, either in theory or in practice, at least until effective local exchange competition has developed. Accordingly, AT&T Broadband recommends that the Commission continue to stay the rule and initiate a proceeding to review the rule and determine whether it can and will accomplish the Commission's goals without undermining competition in the local exchange market.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.