

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T BROADBAND PHONE OF
WASHINGTON, L.L.C.,

Complainant,

v.

QWEST CORPORATION,

Respondent.

DOCKET NO. UT-020388

BRIEF OF COMMISSION STAFF

1 The Washington Utilities and Transportation Commission Staff (“staff”) submits this
brief to aid the Commission in its disposition of this case.

I. BACKGROUND

2 On March 29, 2002, AT&T Broadband Phone (AT&T) filed with the Washington
Utilities and Transportation Commission (Commission) a complaint for emergency relief
against Qwest Corporation (Qwest), pursuant to WAC 480-120-510. In the complaint, AT&T
alleged that Qwest violated WAC 480-120-139, the preferred carrier freeze rule, and RCW
80.36.170, the statute prohibiting unreasonable preferences.

3 AT&T’s complaint was founded on allegations that Qwest had violated WAC 480-120-
139(5) by imposing a preferred carrier freeze on customers’ local exchange service without
proper authorization and that Qwest had violated WAC 480-120-139(5)(d) by failing to remove
such freezes at the request of its customers. AT&T’s allegations that Qwest violated RCW
80.36.170 appear to stem from the allegations regarding preferred carrier freezes.

4 On April 12, 2002, the Commission conducted a proceeding to determine whether the
allegations set forth in AT&T's complaint constituted an immediate danger to the public health,
safety, or welfare such that the Commission could proceed with the complaint for emergency
relief under RCW 34.05.479 and WAC 480-09-150.

5 At this hearing, AT&T withdrew its request for emergency relief.

6 By order dated April 17, 2002, the Commission dismissed the claim for emergency relief
and ordered that the matter proceed on a non-emergency basis.

7 In a prehearing conference order dated April 29, 2002, Administrative Law Judge Mace
established a procedural schedule for this matter. In accordance with that schedule, AT&T and
Qwest filed testimony and exhibits. Although the Commission staff had appeared in the matter,
staff did not file testimony or exhibits.¹

II. ARGUMENT

8 This case is about the proper application of WAC 480-129-139, in particular subsection
5, which provides:

(5) Preferred carrier freezes. A preferred carrier freeze prevents a change in a customer's preferred carrier selection unless the customer gives the carrier from whom the freeze was requested express consent. Express consent means direct, written or oral direction by the customer. All local exchange companies must offer preferred carrier freezes. Such freezes must be offered on a nondiscriminatory basis to all customers. Offers or solicitations for such freezes must clearly distinguish among telecommunications services subject to a freeze (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll and international toll). The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested. Separate authorizations may be contained within a single document.

(a) All local exchange companies must notify all customers of the availability of a preferred carrier freeze, no later than the customer's first telephone bill, and once per year must notify all local exchange service customers of such availability on an individual customer basis (e.g., bill insert, bill message, or direct mailing).

¹ The Commission staff is a party to proceedings before the Commission pursuant to WAC 480-120-410(2).

(b) All carrier-provided solicitation and other materials regarding freezes must include an explanation, in clear and neutral language, of what a preferred carrier freeze is, and what services may be subject to a freeze; a description of the specific procedures to lift a preferred carrier freeze; an explanation that the customer will be unable to make a change in carrier selection unless he or she lifts the freeze; and an explanation of any charges incurred for implementing or lifting a preferred carrier freeze.

(c) No local exchange carrier may implement a preferred carrier freeze unless the customer's request to impose a freeze has first been confirmed in accordance with the procedures outlined for confirming a change in preferred carrier, as described in subsections (1) and (2) of this section.

(d) All local exchange carriers must offer customers, at a minimum, the following procedures for lifting a preferred carrier freeze:

(i) A customer's written and signed authorization stating his or her intent to lift the freeze;

(ii) A customer's oral authorization to lift the freeze. This option must include a mechanism that allows a submitting carrier to conduct a three-way conference call with the executing carrier and the customer in order to lift the freeze. When engaged in oral authorization to lift a freeze, the executing carrier must confirm appropriate verification data (e.g., the customer's date of birth), and the customer's intent to lift the freeze.

(e) A local exchange company may not change a customer's preferred carrier if the customer has a freeze in place, unless the customer has lifted the freeze in accordance with this subsection (5).

9 The Commission enacted WAC 480-120-139 to protect customers from unauthorized changes in their local exchange service providers (slamming), including not just long-distance services but also local exchange service. The rules do not mandate a particular level of account protection but rather put that choice in the hands of the customer. A customer who wants changes in service provider to be relatively easy can elect not to use the freeze option. Another customer who prefers a higher level of account protection can instruct his or her local exchange company to make no changes without hearing directly from the customer, i.e., to "freeze" the

account. The rule also provides for mechanisms to minimize the administrative burden when a customer with a frozen account decides to change providers, but it is necessarily the case that it is more complicated to change providers when a freeze is in place.

A. AT&T Failed to Prove that Qwest Placed Preferred Carrier Freezes on Customer Accounts Without Obtaining the Customer's Authorization

10 As set forth in WAC 480-120-139(5), Qwest cannot place a preferred local carrier freeze on a customer's account without the customer's express authorization. Local carriers must offer local service freezes, but the freeze cannot be imposed without customer authorization. *Id.*; *see also* Exhibit 1-T, at 4 (Wolf, Direct).

11 AT&T Witness Jonathan Wolf testified that Qwest imposed local service freezes on the accounts of at least 100 customers without receiving the customers' authorization. Exhibit 2-T, at 8; Tr. 41-42. AT&T's evidence on this point is sketchy. AT&T did not provide the names of customers whom it claims did not authorize the local service freeze. Mr. Wolf testified that when AT&T requested the third-party verification of the customers' local service freeze authorization, Qwest provided the information for only 25 of the customers. Exhibit 2-T at 7; Tr. 80. Mr. Wolf then extrapolated from Qwest's response that Qwest did not obtain authorization from the rest of the customers. Exhibit 2-T at 8.

12 Qwest responded through the testimony of Scott McIntyre. In his testimony, Mr. McIntyre stated that Qwest's representatives may have not received adequate training on local freeze implementation, and confused customer requests for long distance freezes with local service freezes. Exhibit 21-T at 21-22.

13 In addition, on cross-examination Mr. McIntyre testified that the vendor hired by Qwest as a third-party to verify customers' local service freeze authorizations was not able to produce the audiotape recording of the authorization. Tr. at 82-83. *See also* Qwest's Answer, ¶ 17. In

fact, the vendor improperly recorded over previous verifications. Tr. at 80. Qwest fired this vendor and hired another vendor to provide third-party verification. *Id.* at 19.

14 While staff is concerned about allegations of unauthorized local exchange provider freezes, the Commission staff believes that there is not sufficient evidence to prove that Qwest imposed local services freezes without customer authorization. Staff also believes that the actions taken by Qwest to hire a new vendor will help ensure that Qwest will maintain customer authorization records as set forth in WAC 480-120-139.

B. AT&T Failed to Prove that Qwest Violated WAC 480-120-130 Regarding Removal of Preferred Local Service Provider Freezes

15 AT&T also alleged that Qwest failed to remove preferred local service provider freezes from customer accounts. Complaint, ¶ 7. In his testimony in support of this allegation, Mr. Wolf explained the measures taken by AT&T to facilitate the removal of preferred local exchange carrier freeze orders from customer accounts. Exhibit 1-T, at 7-9. Mr. Wolf testified that the measures taken by Qwest were inadequate to remedy the problem. He testified that the three-way conference calls took too long, *id.* at 8, the temporary toll-free number Qwest established to assist AT&T and its customers in removing the freezes was ineffective, *id.*, and the hold times on telephone calls to remove freezes were long. *Id.* at 9.

16 Mr. McIntyre testified that customers are notified that once they authorize a freeze, the customers can remove the freeze only by directly notifying Qwest. *Id.* at 15. He further explained that Qwest will accept a customer's request to remove a preferred local exchange carrier freeze by any of the methods authorized by Commission or FCC rules. Exhibit 21-T, at 17-18 (citing WAC 480-120-139(5)(d) and 47 C.F.R. § 1190(e)(1)). Qwest has developed a form for customers to use to remove a freeze in writing, *id.* at 18, and has set up e-mail and Internet methods for removing freezes. *Id.* Qwest also has contracted with a third-party vendor

to handle customers' oral requests to remove preferred local exchange provider freezes. *Id.* at 18-19.

17 With respect to the situation faced by AT&T and its customers, Mr. McIntyre testified that Qwest worked with AT&T through its Wholesale Change Management Process to remedy the problems AT&T was having regarding freeze removals. Mr. McIntyre outlined the steps Qwest took to work with AT&T. *Id.* at 24-25.

18 Undoubtedly, difficulty or delay in removing preferred carrier freezes frustrates customers who wish to change their local service provider. *See* Exhibit 1-T, at 10. While there may have been problems in the past, staff is satisfied that the measures Qwest has taken to facilitate the removal of preferred local carrier freezes by its customers satisfies the requirements of WAC 480-120-139(5).

C. The Commission Should Deny AT&T's Request to Waive RCW 480-120-139

19 AT&T recommends that the Commission waive the preferred local exchange carrier rule and prohibit Qwest from offering or implementing the preferred local exchange carrier freezes until effective competition has developed in Washington. Staff objects to this remedy for the following reasons.

20 First, AT&T essentially asks the Commission to repeal a rule without following the process required for repeal of a rule. *See* RCW 34.05.310 – .395. Staff believes that AT&T's criticism of the rule itself has no merit, but if there were any merit the appropriate process would be a rule making petition rather than a complaint against a single local exchange company. The resulting rule making process would provide the opportunity for input from all stakeholders that this adjudicated proceeding does not.

AT&T also argues that preferred local exchange carrier freezes are unwise as a matter of public policy. Exhibit 1-T, at 11-12; 2-T at 3-711-12. Staff disagrees. Staff believes that the rule properly balances the consumer interest in avoiding slamming with the competitive interest. The rule provides that customers may expressly authorize both a freeze and its removal. The rule gives customers the opportunity to prevent slamming, and to change local exchange carriers. The Commission should not waive the rule.

Dated: July 26, 2002.

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