

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T BROADBAND PHONE OF WASHINGTON, LLC,	)	
	)	
Complainant,	)	Docket No. UT-020388
	)	
v.	)	AT&T BROADBAND PHONE
	)	POST-HEARING BRIEF
	)	
QWEST CORPORATION,	)	
	)	
Respondent.	)	
<hr style="width: 100%;"/>	)	

AT&T Broadband Phone of Washington, LLC (“AT&T Broadband”), provides the following post-hearing brief in support of its complaint against Qwest Corporation (“Qwest”).

**INTRODUCTION**

Preferred local carrier (“PLOC”) freezes are incompatible with the development of effective local exchange competition. Imposition of a PLOC freeze requires customers seeking to change local service providers to contact their existing provider to remove the freeze before that provider will transfer services and facilities – including telephone numbers – used to provide the customers’ local service to the new carrier. The incumbent local exchange companies (“ILECs”) serve the vast majority of consumers (particularly residential consumers) in Washington and have every incentive to retain their monopoly market share, including by burdening customers’ ability to change service providers. The incumbent monopoly provider is not the appropriate gatekeeper of customer choice, but PLOC freezes give the ILECs just such authority.

The Commission nevertheless has adopted a rule that requires all local exchange companies in Washington to offer PLOC freezes to their customers in an effort to prevent

unauthorized changes in local service providers or “slamming.”<sup>1</sup> Predictably, Qwest’s implementation of this rule is more consistent with Qwest’s economic best interests than the Commission’s intent. Qwest has heavily marketed PLOC freezes to its customers and facilitated imposition of such freezes to the point of freezing customers’ accounts without the customer authorization that the rule requires. Simultaneously, Qwest adopted deficient procedures for removing such freezes which Qwest has only grudgingly improved to a level that remains unreasonable and inconsistent with the Commission rule. The result has been the creation of an additional burden on customer choice and AT&T Broadband’s ability to serve willing consumers without any demonstrable benefit to consumers or anyone other than Qwest.

The Federal Communications Commission (“FCC”) recognized that PLOC freezes “have the effect of limiting competition among carriers” and “are being, or have the potential to be, implemented in an unreasonable or anticompetitive manner.”<sup>2</sup> Accordingly, the FCC concluded “that states may adopt moratoria on the imposition or solicitation of intrastate preferred carrier freezes if they deem such action appropriate to prevent incumbent LECs from engaging in anticompetitive conduct.”<sup>3</sup> Several state commissions in the Qwest region recently have done just that, finding that “the negative impact of such freezes on the development of competition in the local market outweighs the potential benefit of such service to consumers.”<sup>4</sup>

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<sup>1</sup> WAC 480-120-139(5).

<sup>2</sup> *Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, FCC 98-334, Second Report and Order and Further Notice of Proposed Rulemaking ¶ 115 (rel. Dec. 23, 1998).

<sup>3</sup> *Id.* ¶ 137.

<sup>4</sup> Ex. 2T (AT&T Broadband Wolf Reply) at 4 (quoting Application No. C-2662/PI-55, Nebraska PSC Order (May 7, 2002)). State commissions in Minnesota, Iowa, and Montana

The Commission did not have the benefit of AT&T Broadband's experience with Qwest's implementation of PLOC freezes or the views of other state commissions when amending WAC 480-120-139 to require LECs to offer such freezes. Qwest's implementation of PLOC freezes not only is inconsistent with that rule but demonstrates that the rule itself is an unnecessary burden on the development of effective competition in Washington. The Commission, therefore, should conclude that Qwest has violated, and continues to be in violation of, WAC 480-120-139 and should stay the effectiveness of the rule pending a re-evaluation of the desirability of PLOC freezes.

## **DISCUSSION**

### **A. Qwest Has Violated – and Continues to Be in Violation of – WAC 480-120-039**

#### **1. Qwest Has Imposed Preferred Local Carrier Freezes Without Customer Authorization.**

The Commission rule currently requires all local exchange companies to offer preferred carrier freezes, but “[t]he carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.” WAC 480-120-139(5). “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.”<sup>5</sup> Qwest has imposed PLOC freezes on thousands of customer accounts without such confirmation.

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have reached the same conclusion within the last few months. *Id.*; Ex. 1T (AT&T Broadband Wolf Direct) at 4-5.

<sup>5</sup> WAC 480-120-139(5)(c).

Dozens of Qwest residential customers seeking to obtain local exchange service from AT&T Broadband have stated that they never authorized the PLOC freeze that Qwest placed on their accounts.<sup>6</sup> AT&T Broadband employees and one Commission staff member also discovered that they have PLOC freezes on their accounts without their knowledge or consent.<sup>7</sup> Qwest produced no evidence to prove that the overwhelming majority of these customers authorized a PLOC freeze. Qwest produced verifications for only 25 of the 144 customer names and numbers with PLOC freezes that AT&T Broadband provided to Qwest for verification.<sup>8</sup>

Qwest nevertheless contends that it is in full compliance with WAC 480-120-139. Qwest claims that its third party vendor failed to retain copies of PLOC freeze verifications but that such verifications were obtained and that the Commission rule does not require their retention. Qwest apparently believes that companies imposing PLOC freezes are not required to retain records of customer authorizations because WAC 480-120-139(5) governing PLOC freezes does not specifically incorporate the record retention requirements in subsection (3). The rule is not susceptible to Qwest's crabbed interpretation.

The rule requires customer authorization for PLOC freezes and provides for three options for confirming such authorization: (1) written authorization from the customer; (2) electronic authorization; or (3) independent third party verification ("TPV").<sup>9</sup> Qwest, not its

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<sup>6</sup> Ex. 1T (AT&T Broadband Wolf Direct) at 6 & 10; Ex. 2T (AT&T Broadband Wolf Reply) at 7-12; Ex. 5C (AT&T Broadband confidential supporting documentation).

<sup>7</sup> Ex. 1T at 10.

<sup>8</sup> Ex. 2T at 7-8; Ex. 32 (Qwest response to AT&T Broadband Data Request No. 01-011).

<sup>9</sup> WAC 480-120-139(1) & (5).

customers, bears the burden to prove that the PLOC freezes it implements are authorized, regardless of whether the rule expressly requires Qwest to retain the documentation of its customers PLOC freeze authorizations. Indeed, even Qwest acknowledges that retaining such records is “good business practice” and that “from a business perspective, it makes common sense to be able to dispute those and verify that customers asked for what they got.”<sup>10</sup> Qwest cannot claim to be in compliance with the rule if Qwest cannot prove that its third party vendor obtained proper customer authorization to implement a PLOC freeze.

Qwest produced documentation of customer PLOC freeze authorization for only 25 of 144 customers. The remaining customers claim that they did not authorize a PLOC freeze. Qwest’s only rejoinder is the unsupported belief from a witness without personal knowledge that Qwest’s third party vendor – who Qwest fired for incompetence – obtained but did not retain such authorization.<sup>11</sup> Such testimony does not have any credibility. Without the documentation required in the rule that each of these customer authorized PLOC freezes on their accounts, Qwest simply has not demonstrated customer authorization consistent with WAC 480-120-139. The record evidence thus supports the conclusion that Qwest has reverse-slammed – i.e., continued to provide local exchange service without customer consent to – over 100 customers.

More ominously, Qwest concedes that it is “likely” that no documentation exists to support the PLOC freezes on the vast majority of the 87,607 customer accounts on which

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<sup>10</sup> Tr. at 86 (Qwest McIntyre).

<sup>11</sup> *Id.* at 76-77 & 80-82.

Qwest has imposed a freeze prior to April 2, 2002.<sup>12</sup> AT&T Broadband continues to hear from customers that they never authorized a PLOC freeze on their Qwest accounts, and Qwest has refused to provide – and apparently does not possess – any documentation to refute those customers’ contentions.<sup>13</sup> As long as those PLOC freezes remain in place, AT&T Broadband and other competing local exchange carriers (“CLECs”) will continue to experience rejection of their local service requests (“LSRs”) based on Qwest’s imposition of PLOC freezes that customers have not authorized.<sup>14</sup>

## **2. Qwest Has Failed to Lift Preferred Local Carrier Freezes Upon Customer Request.**

Once a carrier has imposed a PLOC freeze with proper customer authorization, the Commission rule requires the carrier to remove that freeze upon customer request.

All local exchange carriers must offer customers, at a minimum, the following procedures for lifting a preferred carrier 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.<sup>15</sup>

Again, Qwest has failed to comply with this requirement of the rule.

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<sup>12</sup> *Id.* at 83-84.

<sup>13</sup> Tr. at 41-42 & 69-71 (AT&T Broadband Wolf).

<sup>14</sup> .Qwest cannot mitigate its noncompliance by suggesting that it now uses a different third party vendor who allegedly is retaining all PLOC freeze authorizations, at least as long as the PLOC freezes imposed prior to April 2, 2002, remain in effect.

<sup>15</sup> WAC 480-120-139(5)(d).

AT&T Broadband produced substantial evidence that Qwest has unreasonably burdened customers' ability to remove PLOC freezes. Customers repeatedly complained to AT&T Broadband that they could not remove the PLOC freezes that Qwest had imposed on their accounts.<sup>16</sup> AT&T Broadband expended considerable resources in working with these customers to remove the freezes with mixed success.<sup>17</sup> Despite those efforts, most of the affected customers have experienced substantial delays in obtaining service from AT&T Broadband because of Qwest's imposition of PLOC freezes on those customers' accounts.<sup>18</sup> Many customers have given up trying to get Qwest to remove the freezes and either opted to obtain a new telephone number (15% of the affected customers) or abandoned their efforts to change service providers (20% of the affected customers).<sup>19</sup> Such a burden on consumer choice cannot be reconciled with WAC 480-120-139.

Qwest has produced no evidence to the contrary or any justification for its anticompetitive processes. To the extent that Qwest even acknowledges these problems, Qwest claims that AT&T Broadband's evidence lacked sufficient specificity to enable Qwest to respond.<sup>20</sup> AT&T Broadband provided Qwest with detailed information about the problems AT&T Broadband and its customers were having with removing PLOC freezes, both in this proceeding and during the Change Management Process ("CMP").<sup>21</sup> Qwest would not have

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<sup>16</sup> Ex. 1T (AT&T Broadband Wolf Direct) at 6-9.

<sup>17</sup> *Id.* at 7-10.

<sup>18</sup> *Id.* at 9-11; Ex. 5C (AT&T Broadband confidential supporting documentation).

<sup>19</sup> *Id.*

<sup>20</sup> *See* Ex. 21T (Qwest McIntyre) at 21.

<sup>21</sup> Ex. 5C (AT&T Broadband confidential supporting documentation); Ex. 4 (print-out of local

implemented changes to its PLOC freeze removal process if it did not find them warranted by AT&T Broadband's concerns. When Qwest chose not to undertake any investigation of the allegations in AT&T Broadband's complaint, AT&T Broadband propounded discovery to Qwest seeking whatever data Qwest has on Qwest's performance when requested to remove PLOC freezes in Washington. Qwest's response was that no such data exists.<sup>22</sup> Qwest thus has no data to dispute AT&T Broadband's evidence, regardless of the level of specificity.

Qwest also claims that it has now implemented changes to its PLOC freeze removal processes to address AT&T Broadband's concerns and that AT&T Broadband apparently must agree because it agreed to close the local service freeze change request it had filed with Qwest through CMP. Even to the extent that Qwest has improved its processes, that fact does not remedy Qwest's prior failure to enable customers to remove PLOC freezes. Closure of the change request, moreover, means only that the issues that could be resolved through negotiation and consensus have been addressed, not that all of AT&T Broadband's issues have been resolved.<sup>23</sup> AT&T Broadband and its customers still cannot immediately remove a PLOC freeze that Qwest has imposed on the customers' accounts, and they continue to experience unacceptably long hold times when removing PLOC freezes.<sup>24</sup> Qwest also unreasonably limits the hours in which it will accept requests to remove PLOC freezes to exclude evenings after 7:00 p.m. and Saturdays – the very times when residential customers are most likely to be home

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service freeze process change request on Qwest's CMP website).

<sup>22</sup> Ex. 33 (Qwest response to AT&T Broadband Data Request No. 01-011); Ex. 34 (Qwest response to AT&T Broadband Data Request No. 01-012); Tr. at 93-98 (Qwest McIntyre).

<sup>23</sup> Tr. at 56 & 68 (AT&T Broadband Wolf).

<sup>24</sup> *Id.* at 59-61; Ex. 2T (AT&T Broadband Wolf Reply) at 9.



and available to participate in a three-way call with AT&T Broadband to remove the freeze.<sup>25</sup>

Qwest produced no evidence that the times during which its third party vendor may accept requests to *impose* a PLOC freezes are similarly limited, leaving open the likelihood that customers can more easily request imposition of a freeze than its removal.<sup>26</sup>

Qwest further contends that nothing in WAC 480-120-139 requires specific hours during which a company must accept customer requests to remove PLOC freezes or time frames within which such requests must be implemented. Qwest, however, ignores its obligation to provide service under terms and conditions that are “fair, just, reasonable, and sufficient,” RCW 80.36.080, and more specifically, do not subject any person – including competing telecommunications companies – “to any undue or unreasonable prejudice or disadvantage in any respect whatsoever,” RCW 80.36.170, including “competitive disadvantage.” RCW 80.36.186. Facilitating imposition of PLOC freezes while burdening customers’ ability to remove those freezes subjects customers to unreasonable prejudice and disadvantage and subjects CLECs seeking to serve those customers to unreasonable competitive disadvantage in violation of these statutory provisions, if not WAC 480-120-139.

Accordingly, AT&T Broadband has demonstrated that Qwest’s implementation of PLOC freezes in Washington violates state statutes and WAC 480-120-139 as AT&T Broadband alleged in its Complaint.

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<sup>25</sup> Ex. 2T at 9-10.

<sup>26</sup> Qwest’s witness had no knowledge of the hours of operation of Qwest’s TPV vendor, Tr. at 91-92, and although Qwest’s business office hours are the same for customers calling Qwest directly to implement or remove a PLOC freeze, *id.* at 103, Qwest uses three telemarketing firms to market services, including PLOC freezes, and a customer request in response to a telemarketer would not involve the Qwest business office. *Id.* at 89-90.

**B. The Rule Cannot Be Implemented Without Adversely Impacting the Development of Effective Local Exchange Competition.**

The Commission should re-evaluate PLOC freezes in light of AT&T Broadband's experience. Even without considering Qwest's past and current violations of WAC 480-120-139, actual implementation of the rule has demonstrated that it does far more to inhibit competition than to protect consumers. .

PLOC freezes, by their very nature, discourage consumers from changing local service providers.<sup>27</sup> Even if customers legitimately authorize a freeze and Qwest's processes for removing the freeze operate as Qwest has represented, customers still must contact Qwest directly to remove the freeze. As the Montana Public Service Commission observed, "the freeze-lifting process with its necessary delays when applied to the local service market likely will result in customer frustration and the loss to CLECs of customers who intended to change local service providers but were deterred by the process."<sup>28</sup> The Montana Commission's concerns accurately describe the experiences of AT&T Broadband and its customers (and potential customers). AT&T Broadband must devote substantial resources to contact customers with PLOC freezes, educate those customers about such freezes, and assist the customers to remove the freezes.<sup>29</sup> Service installation delays and customer cancellations are unavoidable when this additional step is added to the process of changing service providers.<sup>30</sup>

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<sup>27</sup> Ex. 1T (AT&T Broadband Wolf Direct) at 4; Ex. 2T (Wolf Reply) at 5-6.

<sup>28</sup> Ex. 1T at 5 (quoting *In re Commission's Investigation Into Qwest Local Service Freeze Option*, Montana PSC Utility Division Docket No. 2002.2.22, Notice of Commission Action (April 25, 2002)).

<sup>29</sup> Tr. at 60 (AT&T Broadband Wolf); Ex. 1T at 7-10.

<sup>30</sup> See Ex. 1T at 9-10.

CLECs, moreover, must devote precious limited resources to securing customers who have already ordered service, rather than to offering service to additional customers.

Qwest is fully aware of the competitive advantage PLOC freezes provide to the carrier currently serving the customer. Qwest aggressively markets PLOC freezes and has retained three telemarketing firms to do so.<sup>31</sup> Qwest also provides far more “notices” to customers than the Commission rule requires – notices that are meant to persuade, not inform. Qwest warns its customers that “some service providers are switching your local service provider without your permission,”<sup>32</sup> and states that the Commission has required Qwest to offer PLOC freezes to prevent such practices.<sup>33</sup> The implication is that CLECs are regularly engaging in local service slamming and that the Commission believes the PLOC freezes are necessary to prevent Qwest’s competitors from pursuing such “unfair and illegal” practices.

Qwest produced no evidence in this proceeding that AT&T Broadband or any other CLEC is slamming local service customers in Washington, much less that local service slamming is a significant problem in this state. The Minnesota Commission found that far less aggressive and misleading marketing efforts under such circumstances are detrimental to the development of effective local competition: “simply offering the service suggests that customers need protection from CLECs’ local service slamming practices, a suggestion which the record in this case does not substantiate. As such it tends to unfairly disparage and, hence, unfairly burden

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<sup>31</sup> Ex. 2T at 6; Ex. 3 (Qwest marketing material); Ex. 23 (same); Ex. 40 (Qwest responses to Staff data requests) at Response to Request No. 02-003; Tr. at 89 (Qwest McIntyre).

<sup>32</sup> Ex. 3.

<sup>33</sup> Ex. 23.

Qwest's local competitors.'''<sup>34</sup>

Qwest, no doubt, will contend that its advertising is accurate and that customers dissuaded from changing local service providers because of PLOC freezes represent an insignificant proportion of the total number of customers who order local service from CLECs. Qwest's actions, however, belie such arguments. Qwest would not be engaging in extensive marketing of PLOC freezes if Qwest did not believe that PLOC freezes provide a benefit to the company, and the only such benefit is to keep a significant number of customers from obtaining local service from another provider. Whether or not Qwest's statements to its customers are accurate, moreover, those statements are misleading and are designed to malign competitors and discourage consumer choice.

Qwest will likely also claim that local service slamming remains a possibility, even if it is not a problem today, and that any negative impacts of PLOC freezes on competition are outweighed by the benefits to consumers of another tool to minimize slamming. That argument assumes that CLECs have an economic incentive to engage in local service slamming and that existing requirements and penalties do not sufficiently counteract those incentives. Such an assumption is incorrect. It would be virtually impossible for AT&T Broadband to engage in local slamming when all of its service orders are verified via TPV, an AT&T Broadband technician must be dispatched to the customer premises to install the service, and customers must provide access to that technician and sign for the service.<sup>35</sup>

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<sup>34</sup> Ex. 2T at 4 (quoting *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)).

<sup>35</sup> Tr. at 61 (AT&T Broadband Wolf).

CLECs in other circumstances also lack a significant financial incentive to engage in local service slamming. While Qwest's witness opined that local service slamming is physically possible, he did not address the financial consequences or relative economic incentives.<sup>36</sup> Facilities-based CLECs incur substantial nonrecurring and recurring charges for obtaining local loops and other facilities from Qwest to serve each customer – charges that no rational CLEC would incur unless it were authorized to provide service to that customer.<sup>37</sup> CLECs serving customers using resold Qwest services and combinations of Qwest network elements also must pay substantial amounts to Qwest to obtain those services and facilities,<sup>38</sup> and are unlikely to do so without customer authorization.

In addition to CLECs having little or no economic incentive to serving local exchange customers without authorization, penalties for doing so are severe. The Commission rule prohibits slamming, and the Commission has imposed heavy penalties for violating that prohibition.<sup>39</sup> CLECs, moreover, cannot operate without an interconnection agreement with Qwest or other ILEC in the CLEC's service area, and such agreements generally include provisions that require proof of customer authorization to change service providers and provide remedies – potentially including terminating the agreement – for violations of that requirement.<sup>40</sup>

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<sup>36</sup> Tr. at 107-08 (Qwest McIntyre).

<sup>37</sup> See Qwest Interconnection Services Tariff WN U-42 (listing charges for unbundled network elements); Qwest Statement of Generally Available Terms (“SGAT”), Exhibit A (same).

<sup>38</sup> *Id.*

<sup>39</sup> See, e.g., *WUTC v. WebNet Communications, Inc.*, Docket No. UT-010633, Commission Order Accepting Settlement (April 2002) (imposing fines and requiring company to cease business operations in Washington for slamming long distance customers).

<sup>40</sup> See, e.g., Qwest SGAT Section 5.3 (Proof of Authorization).

PLOC freezes add little, if any, additional protection from local service slamming for consumers, and the negative impacts on the development of local exchange competition are substantial – as AT&T Broadband’s experience amply demonstrates. Under these circumstances and in light of Qwest’s failure to comply with the existing rule, AT&T Broadband urges the Commission to stay the effectiveness of the PLOC freeze provisions of WAC 480-120-139 and initiate additional proceedings to re-examine and re-evaluate those provisions.

### **CONCLUSION**

AT&T Broadband Phone, therefore, respectfully requests that the Commission find that Qwest has violated and continues to violate WAC 480-120-139(5) by having imposed PLOC freezes without customer consent and having failed (and continuing to fail) to provide reasonable terms and conditions for removing PLOC freezes. The Commission should remedy these violations by staying the effectiveness of the rule and prohibiting Qwest from offering or imposing PLOC freezes until the Commission has re-examined the rule. Alternatively, the Commission should (1) impose fines on Qwest comparable to the fines levied on companies found to have engaged in slamming; (2) require that Qwest remove the PLOC freezes imposed on all customer accounts prior to April 2, 2002; and (3) require that Qwest amend its procedures for lifting PLOC freezes (a) to require immediate removal of a PLOC freeze upon customer request; (b) to expand the hours during which customers may request that those freezes be lifted to be comparable to the hours in which Qwest’s TPV vendor accepts requests to impose PLOC freezes; and (c) to ensure that hold times for customers calling to remove PLOC freezes do not exceed the hold time for calls to Qwest or the TPV vendor to impose

such freezes.

DATED this 26th day of July, 2002.

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