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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AT&T BROADBAND PHONE OF
WASHINGTON, LLC.,

Complainant,

v.

QWEST CORPORATION,

Respondent.

Docket No. UT-020388

QWEST CORPORATION'S
POST HEARING BRIEF

Qwest Corporation ("Qwest"), by and through its undersigned counsel, hereby submits its post-hearing brief in the above-captioned proceeding. Qwest asks the Commission to enter an order (1) finding that AT&T Broadband Phone of Washington, LLC ("AT&T") has failed to carry its burden of proof regarding its allegations that Qwest violated WAC 480-120-139 or RCW 80.36.170 and (2) denying all relief sought in AT&T's Complaint for Emergency Relief for Violation of WAC 480-129-139 (Reverse Slamming) ("Complaint").

I. INTRODUCTION

With all due respect, this case has been for AT&T more an exercise in crying "wolf" and resurrecting its previously-unsuccessful policy advocacy than a vehicle to provide the Commission with tangible, competent evidence of improper or unlawful conduct by Qwest. AT&T brought its Complaint under the pretense of the need for emergency relief to prevent Qwest from continuing what AT&T characterized as anti-competitive practices in connection with preferred carrier freezes. AT&T

1 commenced this proceeding despite a lack of evidence of misconduct and, inexplicably, despite the fact
2 that Qwest and AT&T were working cooperatively and on an expedited basis to resolve AT&T's
3 concerns through Qwest's Change Management Process. That cooperation has since led to resolution of
4 AT&T's concerns. Yet this litigation remains.

5 It is unclear why AT&T acted so aggressively and hastily. Perhaps AT&T was motivated by the
6 desire to impact Qwest's 271 proceedings¹ or perhaps by a desire to achieve through litigation what it
7 failed to accomplish through involvement in the Commission's rulemaking proceedings. What is clear is
8 that AT&T has failed to meet its burden of proof. Its testimony consists primarily of policy arguments,
9 but few facts. Its allegations focus on charges that Qwest violated non-existent regulatory requirements,
10 such as AT&T's belief that Qwest is required to retain third party verification records relating to the
11 placement of a preferred carrier freeze.

12 The Commission should rule that AT&T has failed to prove its allegations and/or has failed to
13 state a claim upon which relief can be granted. AT&T's requested relief should be denied and this case
14 dismissed.

15 II. PROCEDURAL BACKGROUND

16 On April 1, 2002, AT&T filed the Complaint and requested "an immediate or expedited order"
17 from the Commission requiring Qwest: (1) to discontinue its preferred carrier freeze offering until
18 Commission-approved policies and procedures could be developed, adopted and implemented; (2) to
19 refund customer payments; and (3) to pay penalties as authorized by RCW 80.04.380. *Complaint, at*
20 *9.*

21 Because AT&T invoked WAC 480-09-510 – which is reserved for emergencies in which the
22 Commission is required to take immediate action to prevent further danger to the public health, safety or

23 ¹ AT&T did raise its own Complaint in the 271 proceeding and urged the Commission "to defer its decision on the
24 issue of [whether approving Qwest's 271 application was in the] public interest until the Commission enters a ruling on
25 AT&T's complaint." *In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with*
26 *Section 271 of the Telecommunications Act of 1996, Docket Nos. UT-003022/UT-003044, 39th Supplemental Order*
(July 1, 2002), at ¶¶ 308-309. The Commission rejected AT&T's tactic and declined to stay its review in the 271
proceeding pending resolution of this case. *Id., at ¶ 311, 393.*

1 IV. DISCUSSION

2 **A. The Anti-Slamming Rule is Appropriate and Necessary and is not Anti-Competitive.**

3 **1. Requirements of WAC 480-120-139.**

4 In January 2000, the Commission approved the current form of WAC 480-120-139, which
5 establishes authorization and verification requirements for preferred carrier changes and requires that
6 LECs offer and notify each customer of the ability to place a preferred carrier freeze on his or her line to
7 protect against local service slamming.³ As to the latter requirement, the rule requires LECs to offer
8 preferred carrier freezes to all customers, to do so on a non-discriminatory basis and to notify customers
9 of the availability of the freeze initially for a new customer and then at least once per year for all
10 customers. *WAC 480-120-139(5), (5)(a)*. The rule also requires that LECs obtain third party
11 verification (“TPV”) of requests to add a freeze, but does not require that LECs retain TPV records
12 relating to freezes. *WAC 480-120-139(5)(c)*. Finally, the rule permits LECs to lift a freeze upon proper
13 oral or written authorization from the end user and prohibits LECs from changing the preferred carrier
14 unless and until the freeze is properly removed at the end user’s request. *WAC 480-120-139(5)(d), (6)*.

15 **2. The rule is appropriate and necessary and is not inherently anti-competitive.**

16 By statute, the Commission has the authority and duty to regulate in the public interest the rates,
17 services, facilities, *and practices* of all persons engaging within Washington in the business of supplying
18 utility service, including telecommunications. *RCW 80.01.040(3)*. Under that mandate, and in response
19 to numerous citizen complaints about slamming,⁴ the Commission adopted WAC 480-120-139 in its
20 present form in January 2000.⁵

21 AT&T asks the Commission to believe that local slamming is not present in Washington. *Exhibit*
22 *2-T, at 3 (“I am not aware of any similar slamming activity for local service in Washington and*

23 _____
24 ³ *In re the Matter of Amending WAC 480-120-139, Order Amending and Adopting Rules Permanently, Docket No. UT-980675 (January 20, 2000) (“Rule Adoption Order”).*

25 ⁴ The Commission’s order adopting the present WAC 480-120-139 cited Commission data showing that slamming remained a significant problem in Washington, with 186 slamming complaints in 1996, 228 in 1997, 475 in 1998 and an estimated 500 in 1999. *Rule Adoption Order*.

26 ⁵ *Rule Adoption Order*.

1 *would be surprised if any were occurring.”); Tr., at 45-46.*⁶ AT&T’s sole witness, Mr. Wolf, went as
2 far as to testify at hearing that he did not believe local slamming is even possible on the part of a facilities-
3 based CLEC. *Tr., at 61 (“I don’t happen to see any way that it [local service provider slamming*
4 *by a facilities-based CLEC] would be possible”).* However, AT&T’s premise – that local slamming is
5 non-existent and perhaps impossible – is neither supported by the record, nor by this Commission’s
6 recent experience.

7 At hearing, Qwest witness Scott McIntyre described in detail how CLECs of all varieties
8 (facilities based, UNE-based and resellers) can engage in local slamming. *Tr., at 104-105.* Resellers
9 and UNE-based CLECs can simply submit local service requests (“LSRs”) to the ILEC falsely indicating
10 that they have the end-users’ authorization to request a change in carrier. *Id., at 104.* A facilities-based
11 CLEC, such as one that provides telephone service over cable facilities, could dispatch a technician to a
12 customer’s premise, switch the customer’s line over to the CLEC’s cable provisioning and then simply
13 submit an LSR to the ILEC to port the number. *Id., at 104-105.*

14 The existence of local slamming is evidenced by this Commission’s recent investigation of New
15 Access Communications, LLC. Following a Commission Staff investigation, New Access admitted to
16 173 violations and consented to a \$72,806 penalty for local slamming and other related violations of
17 Commission rules.⁷ The need for WAC 480-120-139, despite AT&T’s self-serving statements to the
18 contrary, is thus apparent.

19 AT&T’s argument that preferred carrier freezes have been considered and rejected by the FCC
20 is untrue. In fact, the FCC concluded that preferred carrier freezes are lawful and may actually enhance
21 competition.

22 [W]e recognize that many consumers wish to utilize preferred carrier
23 freezes as an additional level of protection against slamming....The record
24 demonstrates that LECs increasingly have made available preferred

25 ⁶ Mr. Wolf admitted at hearing that he did not do any investigation or research to determine if local service
slamming is occurring in Washington. *Tr., at 45-46.* His opinion is pure conjecture.

26 ⁷ *WUTC v. New Access Communications, LLC, First Supplemental Order Approving in Part and Rejecting in Part*
Settlement Agreement, Docket No. UT-010161 (May 22, 2002), at 1-2.

1 carrier freezes to their customers as a means of preventing unauthorized
2 conversion of carrier selections. The Commission, in the past, has
3 supported the use of preferred carrier freezes as a means of ensuring that
4 a subscriber's preferred carrier selection is not changed without his or her
5 consent. *Indeed, the majority of commenters in this proceeding*
6 *assert that the use of preferred carrier freezes can reduce slamming*
7 *by giving customers greater control over their accounts. Our*
8 *experience, thus far, has demonstrated that preventing unauthorized*
9 *carrier changes enhances competition by fostering consumer*
10 *confidence that they control their choice of service providers. Thus,*
11 *we believe it is reasonable for carriers to offer, at their discretion,*
12 *preferred carrier freeze mechanisms that will enable subscribers to*
13 *gain control over their carrier selection.*⁸ (Emphasis added)

8 In its Order, the FCC carefully "balance[d] several factors, including consumer protection, the
9 need to foster competition in all markets, and [its] desire to afford carrier flexibility in offering their
10 customers innovative services such as preferred carrier freeze programs. Moreover, in so doing...[the
11 FCC] facilitate[s] customer choice of preferred carrier selections and adopt[s] and promote[s]
12 procedures that prevent fraud."⁹ The FCC concluded that the most effective way to ensure that preferred
13 carrier freezes are used to protect consumers, rather than as a barrier to competition, was not to prohibit
14 them, but "to ensure that subscribers fully understand the nature of the freeze including how to remove a
15 freeze if they choose to employ one."¹⁰ The FCC designed its preferred carrier freeze rules "to ensure the
16 fair and efficient use of preferred carrier freezes for intrastate and interstate services to protect customer
17 choice and, correspondingly, to promote competition."¹¹ WAC 480-120-139 likewise promotes
18 customer choice without sacrificing industry competition.

19 **B. AT&T has not proven that Qwest violated WAC 480-120-139 or RCW 80.36.170.**

20 **1. AT&T bears the burden of proof.**

21 In this complaint proceeding, AT&T, as the complainant, bears the burden of proof.¹² AT&T's

22 _____
23 ⁸ *Second Report and Order and Further Notice of Proposed Rulemaking, (Second Report), CC Docket No. 94-129, at ¶ 114. See also id. at ¶ 81.*

24 ⁹ *Id.*, at ¶ 113.

25 ¹⁰ *Id.*, at ¶ 121.

26 ¹¹ *Id.*, at ¶ 118.

¹² *Tr.*, at 10 (Chairwoman Showalter to Mr. Kopta: "[AT&T] should be well aware that the burden is on you [AT&T] to allege and prove facts that comply with or fulfill whatever statute or rule you're operating under."); see also *Spokane Energy, Inc. v. Washington Water Power Company, Docket No. U-86-114, Commission Order Granting Exceptions; Reversing Proposed Order; And Dismissing Complaint (April 22, 1987), at 4* ("In a complaint

1 public policy arguments and conclusory allegations alone, unsupported by competent evidence, are
2 insufficient to prove that Qwest has violated WAC 480-120-139 or RCW 80.36.170.

3 **2. AT&T's allegations are few in number and scant on details and competent**
4 **support.**

5 AT&T commenced this case under a general theory that Qwest was exploiting WAC 480-120-
6 139 to stifle competition by frustrating consumers' freedom to switch carriers. However, AT&T has
7 submitted very little in the way of detailed, competent evidentiary support to bolster its accusations.

8 AT&T's evidence consists entirely of the direct, reply and hearing testimony of Mr. Wolf. Mr.
9 Wolf himself has no first hand knowledge of the critical allegations underlying the Complaint – most
10 notably that Qwest reverse-slammed AT&T's prospective customers by unlawfully and broadly applying
11 preferred carrier freezes without customer authorization. AT&T offered no first hand testimony
12 whatsoever. It had every right to provide affidavits, declarations or other personal statements from the
13 allegedly-affected consumers, but it did not. As such, all that the Commission can rely upon is Mr.
14 Wolf's second, third or fourth hand explanation of events.

15 Looking for a moment past AT&T's obvious failure to provide competent, trustworthy evidence,
16 AT&T's allegations can be summarized as follows:

- 17 • AT&T provides local telephone service in Washington via its own cable facilities and
18 generally orders only local number portability ("LNP") from ILECs in order to establish service for its
19 customers under their existing telephone number. *Exhibit 1-T, at 2-3.*
- 20 • AT&T experienced an unusually high number of LSR rejections for LNP from Qwest in
21 the February 2002 time frame¹³ due to the existence of preferred carrier freezes.
- 22 • Out of the [CONFIDENTIAL INSERT NO. 1] orders for local service in Washington

23

proceeding of this kind, the burden of proof is squarely upon the complainant.”).

24 ¹³ Qwest's internal investigation revealed that AT&T may indeed have experienced a higher-than-average number
25 of rejections during a portion of February 2002 due to a backlog of freeze orders at Qwest's vendor during that brief
26 period. *Exhibit 21-T, at 16-17.* Since many preferred carrier freezes were processed over a short time frame to relieve
the backlog, it is indeed possible and reasonable that AT&T experienced a spike in rejections during that period of
time. *Tr., at 100-101.*

1 that AT&T placed between February 18, 2002 and April 25, 2002, AT&T identified 144 customers (or
2 **[CONFIDENTIAL INSERT NO. 2]**% of its prospective customers during that time period),¹⁴ who
3 AT&T believes had preferred carrier freezes added to their Qwest accounts.¹⁵

4 • AT&T believes that the “vast majority” of the 144 did not authorize Qwest to place a
5 preferred carrier freeze on their accounts, but has not identified with particularity which of the 144 fit that
6 description. *Exhibit 1-T, at 6.*

7 • AT&T asked in discovery for proof from Qwest that the 144 customers had authorized
8 placement of the freeze. *Exhibit 32-C (Qwest’s response to data request ATTB 01-005).* Qwest
9 provided customer account records evidencing authorization and produced TPV records for 25 of those
10 customers. This, AT&T alleges, is undeniable proof that Qwest did not actually follow the Commission’s
11 verification requirements.

12 • Ten percent of AT&T’s prospective customers who had preferred carrier freezes on their
13 Qwest accounts chose not to move to AT&T once aware of the freeze being in place. *Tr., at 46.*

14 • Qwest customers who call Qwest to remove a preferred carrier freeze experience
15 incredibly long hold times, thus frustrating their willingness to remove the freeze and change carriers. Mr.
16 Wolf speculates that the average hold time is down to 4-15 minutes since Qwest has instituted process
17 improvements. *Tr., at 60.*

18 • AT&T complains that Qwest refuses to extend its business hours (Monday through
19 Friday, 5 a.m. to 7 p.m.) to accept preferred carrier freeze removal calls on evenings and weekends and
20 that such refusal is anti-competitive and unlawful. *Exhibit 1-T, at 13; Exhibit 2-T, at 9-10.*

21 This represents the entirety of AT&T’s “proof,” and even these facts are not supported by first
22 hand, competent evidence. Instead of providing the Commission hard facts, AT&T dedicates the

23 _____
24 ¹⁴ *Exhibit 6-C (AT&T’s response to Qwest records requisition).*

25 ¹⁵ Mr. Wolf’s testimony also refers to 234 customers who had “been affected in the Seattle and Vancouver areas.”
26 *Exhibit 1-T, at 9.* As AT&T never provided Qwest or the Commission with any specific identifying information as to
the additional 90 customers, Qwest has had no ability to respond and the Commission has no basis to determine that
Qwest has engaged in any misconduct. *Exhibit 21-T, at 21.* As discussed above, AT&T bears the burden of proof in
this proceeding. Mr. Wolf’s general, uncorroborated statement does not come close to establishing a verifiable fact on
which the Commission can draw any conclusions.

1 majority of its testimony to public policy arguments, legal interpretations and rhetoric about Qwest's
2 allegedly anti-competitive conduct.

3 **3. The record shows that Qwest takes its obligations under WAC 480-120-139 very**
4 **seriously and that AT&T's allegations are untrue.**

5 a) **Qwest takes the requirements of WAC 480-120-139 very seriously.**

6 Qwest began offering local service freezes to its customers in Washington on March 1, 2001.¹⁶
7 *Exhibit 21-T, at 12.* Qwest's offering complies with both the letter and spirit of WAC 480-120-139.
8 *Id., at 13-16, 17-20; Exhibits 23 (August 2001 Qwest Customer Insert), 24 (January 2002 Qwest*
9 *Bill Insert), 25 (April 2002 Qwest Customer Mailing), 26 (Letter of Authorization Form), 27*
10 *(Request to Lift Freeze Form), 28-C (Qwest Multi-Channel Communicator re LSF Process), 29-C*
11 *(Qwest Local Service Freeze Methods).*

12 Qwest takes its obligations under WAC 480-120-139 very seriously. As such, Qwest has
13 conscientiously put in place policies, quality assurance measures and safeguards to ensure that its
14 employees and vendors properly permit customers to place and remove preferred carrier freezes. These
15 policies, measures and safeguards include, but are not limited to, the following.

16 First, Qwest's documented authorization and verification methods and procedures are compliant
17 with WAC 480-120-139. *Exhibit 21-T, at 15-19; Exhibits 26, 27, 28-C, 29-C.*

18 Second, there is no charge associated with either adding or removing a freeze. *Tr., at 101.*

19 Third, employees are directed never to ask a CLEC to leave a conference call convened for
20 purposes of removing a call and not to try to "save" the freeze or the customer attempting to lift the
21 freeze. *Exhibit 21-T, at 18; Exhibit 28-C, at 1, 3; Exhibit 29-C, at 5.*

22 Fourth, in April 2002, Qwest changed TPV vendors when it discovered that its existing vendor

23 _____
24 ¹⁶ Interestingly, AT&T claims to have been unaware of Qwest's preferred carrier freeze offering until February 2002,
25 some eleven months after it was first offered. *Exhibit 1-T, at 6.* This is simply false – Qwest notified AT&T on March
26 2, 2001 of the offering (*Exhibit 21-T, at 13, Exhibit 22 (CLEC Notification E-mail)*). This fact also undermines
AT&T's rhetorical assertions and implications that Qwest has used and is using the preferred carrier freeze as an anti-
competitive tool to the peril of CLECs. Had such a sinister practice been in effect since March 2001, it is likely AT&T
would have been aware earlier than February 2002.

1 was not retaining TPV records for freeze placements. Qwest also implemented a 3-year TPV record
2 retention policy. *Tr.*, at 86. Qwest took both actions despite the fact that Qwest is under no legal
3 obligation to retain such records. Qwest simply believes it is sound business practice. *Id.*

4 Finally, Qwest has developed a number of quality assurance measures to assure compliant and
5 expeditious handling of preferred carrier freeze removal calls. As detailed in response to Bench Request
6 No. 2, Qwest measures: (1) the average speed of answer; (2) the percentage of calls answered within 20
7 seconds; (3) the number of calls placed and abandoned; (4) the average talk time; (5) the average call
8 waiting time; (6) the average hold time; (7) the average “handle” time; and (7) the number of outgoing
9 calls needed to handle requests. *Exhibit 51 (Qwest’s response to Bench Request No. 2); Tr.*, at 93-
10 95.

11 Qwest’s June 2002 data, based on 5,800 calls to remove preferred carrier freezes in
12 Washington, shows outstanding performance on each of these measures. *Exhibit 51.* For example,
13 whereas Mr. Wolf speculated that the average hold time is now 4-15 minutes (*Tr.*, at 60), the data
14 shows that the average hold time is actually just 48 seconds. *Exhibit 51.* In addition, the data shows
15 that Qwest answered 95% of customer calls in June in less than 20 seconds, and in an average of just 10
16 seconds. *Id.* The aggregate average time on hold, call waiting and talk time averaged was less than 4
17 minutes (222 seconds) in June. *Id.* Finally, 98.4% of calls placed were actually handled by Qwest, while
18 only 1.6% of calls were abandoned by the caller. *Id.*

19 **b) Qwest’s evidence refutes AT&T’s unsupported claims.**

20 The evidence submitted by Qwest, through the testimony of Mr. McIntyre and through its
21 admissible business records, refutes AT&T’s broad and uncorroborated allegations.

22 *Reverse-slamming of 144 customers.* In response to AT&T’s data request, Qwest reviewed
23 its records for the 144 persons identified by AT&T. Thirteen of the 144 names appear to have been
24 erroneously listed by AT&T, either because their accounts were never frozen or because the telephone
25 number does not match the customer name on the account. *Exhibit 32-C, at 2-4.* Qwest provided
26 evidence that each of the remaining 131 customers authorized Qwest to place the freeze. *Exhibit 32-C.*

1 While Mr. Wolf's testimony refers to 234 customers, the additional 90 were not specifically identified to
2 Qwest and thus there is no evidence in the record as to what occurred with those 90 individuals'
3 accounts. *Tr.*, at 42-43.

4 *Lack of TPV records.* At hearing and in its testimony, AT&T raised concerns that Qwest had
5 TPV records for only 25 of those 144 identified customers. Qwest does not contest that fact. But, while
6 Qwest agrees that retaining such records is a sound business practice, Qwest is not required under WAC
7 480-120-139 to retain TPV records relating to placement of freezes. AT&T does not appear to agree,
8 although it has not yet identified the provision of the rule that imposes such a requirement on Qwest.¹⁷
9 Also, Qwest did provide electronic customer records for each of the 131 correctly-identified customers
10 showing that the freeze was authorized. *Id.* As mentioned above, in April, Qwest changed vendors
11 processing TPV of preferred carrier freeze placements and instituted a 3-year document retention policy
12 to provide itself and other carriers additional assurances that the Commission's requirements are being
13 complied with fully. *Tr.*, at 86. Thus, Qwest is acting well above and beyond its legal obligations under
14 the rule.

15 AT&T may believe it would be better public policy if the TPV records retention obligation
16 extended to preferred carrier freezes, but the Commission in this adjudicative proceeding does not have
17 the authority to re-write the rule. AT&T has every right to invite the Commission to revisit the rule, but
18 that invitation must come through a RCW 34.05.330(1) petition (discussed below), not through this ill-
19 advised, unsupported "emergency" litigation. Put succinctly, Qwest can not be found to have violated a
20 regulatory requirement that does not exist.

21 AT&T also asserts that Qwest's lack of TPV records for all 144 customers is undeniable proof
22 that Qwest reverse-slammed AT&T's prospective customers. *Exhibit 2-T*, at 7-8. It is not. First of all,
23 AT&T has the burden of proof. It thus has the obligation in this litigation to come forward with specific
24 and competent facts or sworn testimony of persons with first hand knowledge (i.e., the allegedly injured

25 _____
26 ¹⁷ Even to the date of hearing, AT&T opined that WAC 480-120-139 requires retention of TPV records in the context
of preferred carrier freeze. *Tr.*, at 52.

1 customers) that Qwest has placed freezes on customer accounts without permission or verification.
2 AT&T has not done so. It can not point to a single informal or formal complaint made to this
3 Commission evidencing that Qwest has deviated in any way from the preferred carrier freeze rule.
4 *Exhibit 50.* Second, if the limited TPV records demonstrate anything, they demonstrate that, where such
5 records were retained by Qwest's since-replaced vendor, the vendor was properly performing the
6 required verification. Thus, this evidence too fails to support AT&T's allegations.

7 *Qwest office hours.* Furthermore, AT&T seeks relief from the Commission due to Qwest's
8 refusal to extend its Monday-Friday, 5 a.m. to 7 p.m. availability to take calls from customers to remove
9 preferred carrier freezes. This is another example of AT&T seeking relief based on a finding that Qwest
10 has violated a non-existent obligation. AT&T admitted upon cross-examination that it is not a
11 requirement under the Commission's rules. *Tr., at 53-54.* As a matter of policy, Qwest believes that 70
12 hours a week of customer representative availability is more than adequate to meet the needs of Qwest's
13 customers and of CLECs. These are the same as Qwest's normal business office hours and the exact
14 same times that customers can place preferred carrier freezes over the telephone. *Tr., at 103.* Even if
15 AT&T disagrees with Qwest's policy position, this litigation is not the appropriate mechanism for making
16 its case as to what the rule should require.

17 *No complaints to the Commission.* As noted above, it is not inconsequential that there has not
18 been a single formal or informal complaint to this Commission regarding Qwest's placement or removal of
19 preferred carrier freezes since the rule's adoption two and a half years ago. *Exhibit 50.* Once again, the
20 record fails to support AT&T's allegations.

21 *No instances after April 10, 2002.* While Qwest admits that AT&T may have experienced a
22 spike in preferred-carrier-freeze-related rejections in February 2002, even AT&T admits that it is not
23 aware of a single prospective AT&T customer complaining that, since April 10, 2002, Qwest has placed
24 a preferred carrier freeze on his or her account without authorization. *Tr., at 57.* Whereas AT&T
25 alleges (and Qwest disputes) that Qwest placed unauthorized freezes on customer accounts prior to April
26 10, it is undisputed that no such instance has occurred since that date. Inexplicably, AT&T has

1 nevertheless proceeded in prosecuting this case.

2 *The magnitude of AT&T's allegations.* Finally, even accepting all of AT&T's uncorroborated
3 allegations as true for the sake of argument, AT&T lost no more than 23 customers out of the
4 **[CONFIDENTIAL INSERT NO. 3]** prospective customers due to Qwest's alleged misconduct
5 between February and April 2002. *Tr., at 42-43 (AT&T received reject notices on 234 customers*
6 *who had preferred carrier freezes on their Qwest accounts between February 18 and April 25,*
7 *2002), 46 (AT&T last lost 10% of prospective customers who had preferred carrier freezes on their*
8 *Qwest accounts).* This amounts to just **[CONFIDENTIAL INSERT NO. 4]** of its prospective
9 customers during that time period. *Exhibit 6-C (providing the total number of AT&T local service*
10 *orders in Washington in that time period).* AT&T's uncorroborated allegations, even if accepted as
11 true on their face (which Qwest does not and the Commission should not either), do not amount to the
12 epidemic that AT&T implies in its rhetoric. Qwest does not point this out to minimize the importance of
13 any customer's experience or frustration; it does so to provide the Commission – using AT&T's own
14 unsupported data – a proper understanding of the magnitude of the alleged problem that led AT&T to
15 commence this litigation and seek expedited handling and emergency relief.

16 **C. The record shows that AT&T's issues have been resolved through CMP.**

17 Qwest has worked diligently with AT&T to resolve problems and is committed to continue to do
18 so to the extent AT&T provides Qwest enough specific information to allow Qwest to properly deal with
19 the issues. *Exhibit 21-T, at 21.*

20 Less than a month before it commenced this litigation, AT&T raised its concerns regarding
21 Qwest's preferred carrier freeze process via a Change Request ("CR") in Qwest's Change Management
22 Process ("CMP"). At AT&T's request, Qwest expedited the CR through the CMP and responded to
23 AT&T's issues in a conscientious, forthright manner. Inexplicably, AT&T raised many of these same
24 issues in the Complaint in this proceeding despite the fact that Qwest had already taken steps to improve
25 existing processes and address AT&T's concerns. *Id., at 23.* In his testimony, Mr. McIntyre detailed
26 specific examples of concerns AT&T raised both in the CMP and in this litigation; Mr. McIntyre also

1 described the steps Qwest had (as of May 23, 2002, the date Mr. McIntyre's testimony was filed) taken
2 to resolve the issue. *Id.*, at 24-26; *Exhibit 30 (Qwest's Letter to AT&T re CR # PC 030802-1)*.
3 Rather than repeating that lengthy discussion here, Qwest simply refers the Commission to Mr.
4 McIntyre's testimony.

5 As Mr. Wolf confirmed at hearing, AT&T agreed to close its CR regarding the preferred carrier
6 freeze issues, meaning that all issues raised by AT&T in its CR have now been adequately addressed by
7 Qwest through that collaborative process. *Tr.*, at 56. As such, it is unclear to Qwest why AT&T did not
8 voluntarily dismiss this case. Unfortunately, it did not and Qwest finds itself having to respond to AT&T's
9 unsupported allegations.

10 **D. This is the improper venue for AT&T's attempt to undercut WAC 480-120-139.**

11 In the final analysis, this case is as an attempt by AT&T to alter or weaken WAC 480-120-139
12 for its own benefit. AT&T has been opposed to the Commission's attempt to prevent local service
13 slamming since the Commission proposed the current rule in Docket No. UT-980675. Its opposition has
14 always been rather aggressive and colorful. In its last round of comments before the current rule was
15 adopted by the Commission, AT&T glumly predicted that "mandated PIC [sic] freezes will likely result in
16 an increase of anti-competitive behavior by unscrupulous Local Exchange Companies ('LEC's') that seek
17 to deny or retard timely implementation of customers' choices of preferred carriers . . ." ¹⁸ The
18 Commission considered AT&T's comments and adopted the current rule nevertheless, believing that the
19 preferred carrier freeze would be "a valuable tool that consumers can use to protect themselves from
20 carriers that slam." ¹⁹

21 Despite having failed to bring competent proof of any violation of WAC 408-120-139 by Qwest,
22 AT&T is attempting to accomplish through this litigation what it was unable to achieve through its input
23 into the Commission's rulemaking process. This is evident from the relief AT&T requests, which is not
24 limited to penalties and Commission compliance directives, but rather an order effectively suspending the

25 _____
¹⁸ *Docket No. UT-980675, AT&T's Comments (November 11, 1999), at 1.*

26 ¹⁹ *Rule Adoption Order.*

1 rule and precluding Qwest from offering or accepting preferred carrier freezes from customers.
2 *Complaint, at 9.* AT&T's agenda is also clear from Mr. Wolf's testimony, in which he explains how
3 and why the "additional increment of scrutiny [provided by a preferred carrier freeze] adds little, if any,
4 real protection and comes at a high price." *Exhibit 1-T, at 4-5.*

5 Clearly, AT&T, through its self-described "emergency" litigation, is asking the Commission to
6 engage in quasi-legislative conduct through an adjudicative mechanism, this proceeding. This is
7 inappropriate. Should AT&T – despite its inability to prove ILEC misconduct or competitive harm to it
8 and other CLECs in Washington – persist in believing that preferred carrier freezes are inherently unfair
9 and anti-competitive, it should pursue its agenda through RCW 34.05.330(1), which permits any person
10 to "petition an agency requesting the adoption, amendment, or repeal of any rule." This proceeding is an
11 inappropriate forum for the relief AT&T seeks.

12 **V. CONCLUSION**

13 For the above reasons, Qwest respectfully requests that the Commission find and conclude that
14 AT&T has failed to prove that Qwest acted in any unlawful manner with respect to its implementation of
15 the Commission's preferred carrier freeze rule, WAC 480-120-139, or in connection with RCW
16 80.36.170. Qwest further asks requests that all of AT&T's requests for relief be denied.

17 DATED this 26th day of July, 2002.

18 QWEST

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