



BEFORE THE ARIZONA CORPORATION
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JEFF HATCH-MILLER
Chairman
MARC SPITZER
Commissioner
WILLIAM A. MUNDELL
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner

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AZ CORP COMMISSION
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IN THE MATTER OF THE PETITION BY
AUTOTEL FOR ARBITRATION OF AN
INTERCONNECTION AGREEMENT WITH
QWEST PURSUANT TO SECTION 252(B)
OF THE TELECOMMUNICATIONS ACT

Docket No. T-01051B-05-0858

REQUEST OF QWEST
CORPORATION FOR THE
COMMISSION TO TAKE
OFFICIAL NOTICE OF DECISIONS
IN OTHER STATES

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Qwest Corporation ("Qwest"), pursuant to Arizona Administrative Code R14-3-109.T.5, requests the Commission to take official notice of the decisions of the Colorado Public Utilities Commission, the New Mexico Public Regulation Commission, the Oregon Public Utility Commission and the Utah Public Service Commission granting Qwest's motions to dismiss petitions for arbitration filed by Autotel and its sister company Western Radio Services Co. ("Western") in those respective states.¹ Copies of each of these decisions are attached hereto and incorporated herein.

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¹ See Decision No. C06-0005, Order Granting Motion to Dismiss, *In the Matter of the Petition of Autotel for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to Section 252(b) of the Telecommunications Act*, Docket No. 05B-501T (Colo. P.U.C. Jan. 5, 2006), http://www.dora.state.co.us/puc/decisions/2006/C06-0005_05B-501T.doc; Order Granting Motion to Dismiss and Dismissing Petition, *In the Matter of the Petition of Autotel for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to Section 252(b) of the Telecommunications Act*, Case No. 05-00462-UT (N.M. P.R.C. Jan. 10, 2006); Order No. 06-001, *In the Matter of Western Radio Services Co. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996*, ARB 706 (Ore. P.U.C. Jan. 3, 2006), <http://apps.puc.state.or.us/orders/2006ords/06-001.pdf>; Order Granting Motion to Dismiss, *In the Matter of the Petition of Autotel for Arbitration of an Interconnection Agreement with Qwest*

1 The petitions filed by Autotel and Western in these states are essentially identical
2 to the petition filed in this matter. The grounds argued in support of Qwest's motions to
3 dismiss in these states are essentially identical to the grounds argued in its motion to
4 dismiss in this matter. Qwest already cited and quoted from the decision of the Utah
5 Commission and noted the pending decision of the Colorado Commission in its Opening
6 Brief filed on January 6, 2005 in this matter. Since that brief was filed, Qwest has
7 received copies of the decisions of the Colorado, New Mexico and Oregon Commissions.
8 Each of these decisions contains analysis on the same issues pending before the
9 Commission in this matter. Therefore, Qwest believes consideration of the decisions may
10 be useful to the Commission in deciding the issues pending in this matter.

11 Qwest makes this filing now rather than as part of its Response Brief due January
12 27, 2006, in order to allow other parties an opportunity to comment on these decision in
13 their Response Briefs.

14 Based on the foregoing, Qwest respectfully requests that the Commission take
15 official notice of these decisions.

16 DATED this 17th day of January, 2006.

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19 

20 Norman Curtright
21 QWEST CORPORATION
22 4041 N. Central Avenue
23 Phoenix, AZ 85012
24 (602) 630-2187

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Corporation Pursuant to Section 252(b) of the Telecommunications Act, Docket No. 05-049-95
(Utah P.S.C. Dec. 7, 2005), <http://www.psc.utah.gov/telecom/05orders/Dec/0504995ogmd.pdf>.

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-and-

Timothy Berg
Theresa Dwyer
FENNEMORE CRAIG, P.C.
3003 N. Central Ave., Suite 2600
Phoenix, AZ 85012
(602) 916-5421

-and-

Gregory B. Monson
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Salt Lake City, UT 84111
(801) 328-3131

1 ORIGINAL + 13 copies filed this 17th day of January, 2006:

2 Docket Control
3 ARIZONA CORPORATION COMMISSION
4 1200 West Washington
5 Phoenix, AZ

6 COPY delivered this 17th day of January, 2006:

7 Amy Bjelland
8 Administrative Law Judge
9 Arizona Corporation Commission
10 1200 West Washington
11 Phoenix, AZ 85007

12 Ernest Johnson
13 Utilities Division
14 Arizona Corporation Commission
15 1200 West Washington
16 Phoenix, AZ 85007

17 Christopher Kempley
18 Legal Division
19 Arizona Corporation Commission
20 1200 West Washington
21 Phoenix, AZ 85007

22 COPY mailed this 17th day of January, 2006:

23 Richard L. Oberdorfer
24 Autotel
25 114 North East Penn Avenue
26 Bend, OR 97701

27
28


COLORADO ORDER

Decision No. C06-0005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 05B-501T

IN THE MATTER OF THE PETITION OF AUTOTEL FOR ARBITRATION OF AN
INTERCONNECTION AGREEMENT WITH QWEST CORPORATION PURSUANT TO
SECTION 252(B) OF THE TELECOMMUNICATIONS ACT.

ORDER GRANTING MOTION TO DISMISS

Mailed Date: January 5, 2006
Adopted Date: December 21, 2005

I. BY THE COMMISSION

A. Factual and Procedural Background

1. This matter comes before the Commission upon the filing of a Petition for Arbitration by Autotel on November 23, 2005. In its Petition, Autotel requests that the Commission arbitrate an interconnection agreement (ICA) between it and Qwest Corporation (Qwest) to resolve certain issues raised by the parties in the negotiation process and the approval of an ICA in accordance with 47 U.S.C. § 252.

2. Autotel states that there are three issues, and several sub-issues, that it wishes the Commission to arbitrate: 1) Qwest's refusal to negotiate in good faith to determine the rates, terms, and conditions of the ICA; 2) relief to avoid future damages by the imposition of rates, terms, and conditions under an ICA; and 3) the timing of the review of state commission actions and Qwest's violation of the duty to negotiate in good faith pursuant to 47 *Code of Federal Regulations* 51.301(c)(6).

3. Autotel asserts that its request for negotiation was received by Qwest on June 23, 2005. The 135th day is November 5, 2005. The 160th day is November 30, 2005. The end of the nine-month period for Commission decision is March 23, 2006.

4. On December 19, 2005, Qwest filed a Response to Autotel's Petition for Arbitration and Motion to Dismiss. In its Response and Motion, Qwest states that Autotel's Petition is entirely inappropriate in light of the Commission's Decision No. C05-0242 (adopted February 25, 2005) in which the Commission issued its decision on issues arbitrated between these two parties in Docket No. 04B-361T. Following this decision, the parties filed a signed ICA that was approved by Decision No. C05-0580 on May 11, 2005. This ICA is to have an effective life of three years.

5. Qwest asserts that when it received Autotel's request for negotiation on June 23, 2005, Qwest responded that it was not willing to ignore the prior arbitration and restart negotiations, and that it had already fulfilled its obligations under the Federal Telecommunications Act by negotiating and arbitrating the approved agreement still in effect.

6. Qwest contends that Autotel may not engage in an arbitration proceeding and then indirectly challenge the decision of the Commission by seeking to arbitrate a new ICA containing terms already rejected by the Commission. Qwest states that if this action is allowed it would render the arbitration process meaningless.

7. Further, Qwest states that Autotel in its Petition has not identified any issues that involve a dispute regarding any provision of an ICA between the parties. None of the three issues enumerated by Autotel is a valid issue for arbitration of the terms and conditions of an ICA.

8. Qwest asks the Commission to Dismiss the Petition based on its stated arguments.

B. Discussion

9. We agree with Qwest's arguments and dismiss the Petition. By filing this Petition for Arbitration, Autotel is seeking to undermine our previous decision, Decision No. C05-0242, ordering the resolutions of interconnection issues. Autotel could have appealed that decision but chose not to, and instead signed and filed the currently effective ICA per the terms of our decision. Our decision and the resulting ICA are binding on the signatory parties. The parties may negotiate amendments to change the terms of that ICA, but only if both parties are agreeable to the negotiation process.

10. Autotel may not ask this Commission or Qwest to expend additional resources to arbitrate a new agreement when the effective agreement is less than a year into its term. Federal and state law requires negotiations to begin six months prior to the expiration of an agreement, not two and a half years prior.

11. If Autotel has a concern that Qwest is not adhering to the terms of the ICA, it can file a complaint with this Commission or pursue a proper dispute resolution process. However, we note, as Qwest states in its Response and Motion, that in this Petition Autotel fails to identify any open issues concerning the ICA for this Commission to resolve.

II. ORDER

A. The Commission Orders That:

1. The Motion to Dismiss the Petition for Arbitration filed by Qwest Corporation is granted.

2. The 20-day time period provided by § 40-4-114(1), C.R.S., within which to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Mailed Date of this Order.

3. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 21, 2005.**

(SEAL)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

CARL MILLER

Commissioners

NEW MEXICO ORDER

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE PETITION OF)
AUTOTEL FOR ARBITRATION OF AN)
INTERCONNECTION AGREEMENT)
WITH QWEST CORPORATION)
PURSUANT TO SECTION 252(b) OF THE)
TELECOMMUNICATIONS ACT)

Case No. 05-00462-UT

ORDER GRANTING MOTION TO DISMISS AND DISMISSING PETITION

This matter comes before the New Mexico Public Regulation Commission ("Commission") upon the Petition for Arbitration filed by Autotel on November 23, 2005.

THE COMMISSION FINDS AND CONCLUDES:

1. The Petition for Arbitration seeks arbitration pursuant to 47 U.S.C. § 252(b) of an interconnection agreement between Autotel and Qwest Corporation ("Qwest"). Autotel states that it requested negotiation of an interconnection agreement with Qwest on June 23, 2005. The Petition seeks resolution of three issues denominated as a) adoption of an interconnection agreement; b) state commission jurisdiction concerning Qwest's good faith negotiation duties under 47 U.S.C. § 251(c)(1); and c) review of state commission actions.

2. On December 19, 2005, Qwest filed its Response to Autotel's Petition for Arbitration, Including Motion to Dismiss, seeking dismissal of the Petition on the grounds that the Petition fails to comply with a prior Commission order and fails to properly identify any issues open for Commission arbitration.

3. Autotel's Petition for Arbitration continues an interconnection agreement dispute with Qwest previously arbitrated by this Commission in Case No. 04-00226-UT.

In that docket, the Commission resolved twelve open issues and, by Final Order dated July 28, 2005, ordered Qwest, upon presentation by Autotel of certain information, to prepare and submit to Autotel for signature an interconnection agreement consistent with the Final Order and to file the agreement for Commission approval upon receipt of the fully executed agreement from Autotel. On August 31, 2005, Qwest filed its Notice of Inability to File Signed Agreement and Request for Approval of Agreement in Case No. 04-00226-UT ("Notice"). In its Notice, Qwest states that it prepared and submitted an interconnection agreement to Autotel for signature on August 12, 2005, but that Autotel refused to sign the agreement. Qwest, in the Notice, asks the Commission to approve the interconnection agreement that Autotel has refused to sign.

4. The Commission agrees with Qwest that the Petition for Arbitration should be dismissed. The Petition for Arbitration should be dismissed, first, because it ignores this Commission's Final Order in Case No. 04-00226-UT. By filing its Petition for Arbitration, Autotel seeks to ignore this Commission's Final Order in Case No. 04-00226-UT and to, apparently, seek arbitration of previously settled issues. If Autotel disagrees with the results of this Commission's arbitration in Case No. 04-00226-UT, its appropriate course of action is to file an appeal with the appropriate federal district court, under 47 U.S.C. § 252(e)(6). Autotel cannot avoid the binding effect of this Commission's Final Order by attempting to start a new Section 252 negotiation, mediation, arbitration cycle on the issues previously arbitrated. To allow Autotel to do so would render the compulsory arbitration process meaningless.

5. The second reason that the Petition for Arbitration should be dismissed is because it fails to properly identify open issues for arbitration. A party that seeks

arbitration of an interconnection agreement shall provide the state commission with all relevant documentation concerning a) the resolved issues; b) the position of each of the parties with respect to those issues; and c) any other issue discussed and resolved by the parties. 47 U.S.C. § 252(b)(2)(A). Although Autotel has attached apparently competing agreements to its Petition for Arbitration, it fails to specifically identify issues within those agreements requiring Commission resolution.

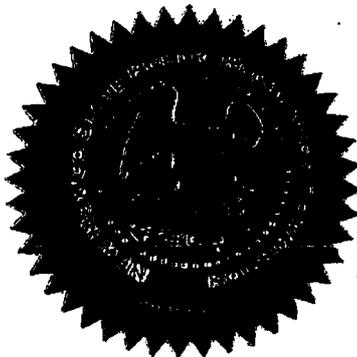
IT IS THEREFORE ORDERED:

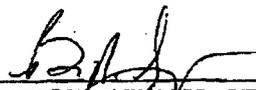
- A. Qwest Corporation's Motion to Dismiss is granted.
- B. Autotel's Petition for Arbitration is dismissed.
- C. This Order is effective immediately.
- D. This Docket is closed.
- E. This Order shall be served on all persons on the attached Certificate of Service.

Issued under the seal of the Commission at Santa Fe, New Mexico, on

January 10, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION





BEN R. LUJAN, CHAIRMAN



JASON MARKS, VICE CHAIRMAN

EXCUSED

DAVID W. KING, COMMISSIONER

EXCUSED

LYNDA M. LOVEJOY, COMMISSIONER

TELEPHONICALLY APPROVED ,

E. SHIRLEY BACA, COMMISSIONER

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE PETITION OF)
AUTOTEL FOR ARBITRATION OF AN)
INTERCONNECTION AGREEMENT)
WITH QWEST CORPORATION)
PURSUANT TO SECTION 252(b) OF THE)
TELECOMMUNICATIONS ACT)

Case No. 05-00462-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order Granting Motion to Dismiss and Dismissing Petition**, issued January 10, 2006, was mailed first-class, postage pre-paid, to the following:

Thomas W. Olson, Esq.
Montgomery & Andrews, P.A.
P.O. Box 2307
Santa Fe, NM 87504-2307

Gregory B. Monson
Stoel Rives LLP
201 South Main Street, Suite 1100
Salt Lake City, UT 84111

George Baker Thomson, Jr.
Senior Attorney
Policy and Law Department
Qwest Corporation
1801 California Street, Suite 3800
Denver, CO 80202

Hand Delivered to:
Carolyn Glick, General Counsel
NM Public Regulation Commission
1120 Paseo de Peralta
PO Box 1269
Santa Fe, NM 87504

DATED this 10th day of January, 2006.

NEW MEXICO PUBLIC REGULATION COMMISSION



Alice Lucero, Paralegal

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JAN 12 2006
MONTGOMERY & ANDREWS, P.A.

OREGON ORDER

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 706

In the Matter of)
)
WESTERN RADIO SERVICES CO.)
)
Petition for Arbitration Pursuant to) **ORDER**
Section 252(b) of the Telecommunications)
Act of 1996.)

**DISPOSITION: PETITION FOR ARBITRATION DISMISSED;
DOCKET CLOSED**

On October 14, 2005, Western Radio Services Co. (Western) filed a petition (Petition) with the Public Utility Commission of Oregon (Commission) seeking arbitration of an interconnection agreement with Qwest Corporation (Qwest). Western asserts that Qwest requested negotiation of an interconnection agreement by letter dated May 10, 2005. Western seeks Commission resolution of five issues that it claims were raised by the parties during the negotiation process.

On November 8, 2005, Qwest filed a response to Western's Petition, including a motion to dismiss. In support of the motion, Qwest asserts that the Petition is inappropriate in light of Commission Order No. 05-1075 entered October 10, 2005, in docket ARB 537 approving an interconnection agreement between Western and Qwest (Approved Agreement). Qwest also asserts that the Petition is inappropriate because Qwest's May 10, 2005, letter did not constitute a request for negotiation of an interconnection agreement. Finally, Qwest contends that the Petition fails to properly identify the disputed issues in the interconnection agreement and otherwise comply with the requirements of OAR 860-016-0030.

On November 22, 2005, Western filed a reply to Qwest's motion to dismiss. Western asserts that (a) Qwest's motion to dismiss is untimely, (b) the Commission is without jurisdiction to award the relief sought by Qwest, and (c) the Petition was filed in accordance with §252 of the Telecommunications Act of 1996 (the Act).

After reviewing the filings, the Commission concludes that Western's Petition should be dismissed for the following reasons:

1. The Petition is improper because it ignores the fact that there is already an approved interconnection agreement in effect. In addition, the Commission finds that the Petition is premised upon the incorrect assumption that Qwest requested negotiation of a new interconnection agreement on May 10, 2005.

On March 11, 2004, Western filed a petition for arbitration with the Commission, which was assigned docket ARB 537. Following extensive proceedings, the Arbitrator issued his decision on September 20, 2004. The Commission adopted the Arbitrator's Decision in Order No. 04-600, entered October 18, 2004. Order No. 04-600 directed the parties to submit an interconnection agreement consistent with the terms of the order within 30 days.

Although Qwest sent Western an interconnection agreement compliant with Order No. 04-600, Western declined to sign the agreement, but instead filed a complaint with the United States District Court for the District of Oregon alleging violation of the Act. The Court dismissed Western's complaint, agreeing with Qwest and the Commission that the federal district court lacked jurisdiction because the Commission had not yet approved an interconnection agreement between the parties.¹

On July 28, 2005, Qwest notified the Commission of the federal district court's decision and requested that the Commission approve the interconnection agreement that Qwest had submitted on November 18, 2004. On August 1, 2005, Western filed a response requesting that the Commission take no further action because Western was appealing the federal district court's dismissal of Western's complaint. Western also asserted that Qwest had requested negotiation of a new interconnection agreement on May 10, 2005. Qwest denied Western's claim that its May 10, 2005, letter was a request for negotiation.²

Just four days before Western filed the current Petition, the Commission entered Order No. 05-1075, approving the interconnection agreement submitted by Qwest on November 18, 2004 (Approved Agreement). We concluded that the Approved Agreement was in full compliance with the Arbitrator's decision and the requirements of the Act. Regarding Western's refusal to sign the Approved Agreement, we held:

¹ See *Western Radio Services Co. v. Qwest Corporation*, Civil No. 05-155-AA (D. Or. July 26, 2005).

² Qwest explained that the May 10, 2005, letter was merely a form letter to all wireless carriers indicating that it was (a) withdrawing a portion of its Oregon tariff as a result of the FCC's *T-Mobile* decision, and (b) implementing an interim tariff in place until Qwest and the wireless carriers could amend their interconnection agreements consistent with the *T-Mobile* decision.

The parties subject to the 252(b) process are plainly required to go through the steps set forth and *are not free to walk away from the arbitrated interconnection agreement if they are displeased with the outcome of the arbitration process* before the state commission. Indeed, if they were free to do so, it would *render the concept of compulsory arbitration meaningless. . . .*

An arbitrated interconnection agreement, with the disputed terms as decided by the Arbitrator and adopted by the commission, has the same legal power to bind the parties as if the agreement had been freely entered into by both parties prior to its submission to the Commission. *One party cannot simply refuse to execute and honor the agreement because of disappointment with the outcome of the arbitration proceeding. . . .* Order No. 05-1075 at 3. (Emphasis added.)

The Approved Agreement went into effect on October 10, 2005, and remains in effect for a period of three years.³ Just as it is inappropriate to allow Western to ignore the results of an arbitration proceeding by refusing to enter into an agreement consistent with the Commission's arbitration decision, it is likewise inappropriate for Western to attempt to commence arbitration of a new interconnection agreement only days after the Commission-arbitrated and approved interconnection agreement became effective. As Qwest points out, entertaining Western's Petition would essentially render the Commission's arbitration decisions meaningless. Both parties are expected to abide by the terms and conditions of the Approved Agreement until it expires or they voluntarily negotiate a new agreement.

2. The Petition is improper because it is premised upon the incorrect assumption that Qwest's May 10, 2005, letter was a request for negotiation.⁴ The Commission already considered and rejected this argument in Order No. 05-1075. There we held:

³ Section XXII.B.1. of the Approved Agreement provides: This Agreement shall be effective as of the *effective date of commission approval* of this Interconnection Agreement and *shall remain in effect* for a period of 3 years, and thereafter shall continue in force and effect unless and until a new agreement, addressing all of the terms of this Agreement, becomes effective between the Parties. The Parties agree to commence negotiations on a new agreement no later than 2 1/2 years after this Agreement becomes effective. This Agreement shall become effective pursuant to Sections 251 and 252 of the Act. (Emphasis added.)

⁴ Section 252(b)(1) of the Act requires that a petition for arbitration be filed "during the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation." If there is no request for negotiation, no petition can be entertained.

We also find that the Qwest letter of May 10, 2005, notifying radio carriers that it was withdrawing Section 20 of Oregon Tariff 29 as a result of the Federal Communications Commission's *T-Mobile* decision [citation omitted] and putting an interim tariff in place . . . in no way constituted a 'request for negotiation.' Order No. 05-1075 at 4.

Because the May 10, 2005, letter did not constitute a request by Qwest for negotiation of a new interconnection agreement, Western's Petition is inappropriate. Moreover, in the absence of Qwest's consent to negotiate a new interconnection agreement, negotiation is not proper at this time under the terms of the Approved Agreement, and, therefore, the 135-160 day period prescribed in Section 252(b)(1) of the Act cannot even begin to run.

3. As a final matter, the Commission is not persuaded by Western's argument that Qwest's motion to dismiss should be rejected because it was filed within the 25-day time period allowed under §252(b)(3) to respond to a petition for arbitration, rather than the 20-day time period specified in OAR 860-013-0050(3)(a) to respond to a motion. Qwest's motion to dismiss is an integral part of its response to Western's Petition. In such circumstances, Commission policy is that the filing deadlines set forth in the Act govern.⁵ Thus, Qwest's motion was not untimely. Moreover, Western did not suffer any prejudice because the motion was filed together with Qwest's response.

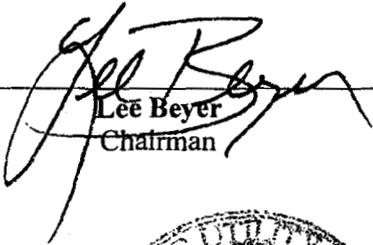
Based on the foregoing, the Commission finds that Qwest's motion to dismiss should be granted. It is unnecessary to discuss the remaining arguments advanced by the parties.

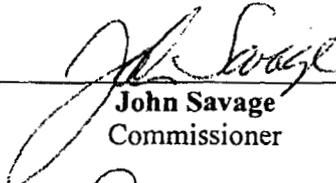
⁵ See e.g., Order No. 05-661, docket ARB 589.

ORDER

IT IS ORDERED that the Petition for Arbitration filed by Western Radio Services Co. on October 14, 2005, is dismissed. This docket is closed.

Made, entered, and effective JAN 03 2006.


Lee Beyer
Chairman


John Savage
Commissioner


Ray Baum
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. The request must be filed with the Commission within 60 days of the date of service of this order and must comply with the requirements in OAR 860-014-0095. A copy of they such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

UTAH ORDER

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of the Petition of AUTOTEL) DOCKET NO. 05-049-95
for Arbitration of an Interconnection)
Agreement with QWEST CORPORATION)
Pursuant to Section 252(b) of the) ORDER GRANTING MOTION TO
Telecommunications Act) DISMISS
)

ISSUED: December 7, 2005

By The Commission:

PROCEDURAL HISTORY

On October 26, 2005, Autotel filed a Petition for Arbitration ("Petition") seeking Commission arbitration pursuant to 47 U.S.C. § 252(b) of an interconnection agreement ("ICA") between Autotel and Qwest Corporation ("Qwest"). Autotel states it requested negotiation of an ICA with Qwest on May 20, 2005. The Petition seeks resolution of three issues denominated as (1) adoption of an interconnection agreement, (2) state commission jurisdiction concerning Qwest's good faith negotiation duties under Section 251(c)(1), and (3) review of state commission actions.

On November 18, 2005, Qwest filed its Response to Autotel's Petition for Arbitration, Including Motion to Dismiss, seeking dismissal of the Petition on the grounds that the Petition fails to comply with prior Commission orders and fails to properly identify any issues open for Commission arbitration.

On November 28, 2005, Autotel filed its Reply to Qwest's Motion to Dismiss arguing Qwest seeks to send "Autotel in regulatory circles" arguing one thing in federal district court and another before this Commission. Autotel claims the Commission has yet to carry out

DOCKET NO. 05-049-95

- 2 -

its statutory responsibility under 47 U.S.C. § 252(b)(4)(A) such that a final determination has not yet been made (by this, we believe Autotel is referring to the arbitration proceedings undertaken both in Docket No. 03-049-19 and the present docket). If the Commission grants Qwest's Motion to Dismiss, Autotel indicates it will seek to have the Federal Communications Commission ("FCC") preempt Commission jurisdiction of this matter. Autotel indicates its preference would be for the Commission to proceed to arbitration in the current docket.

BACKGROUND

Autotel's Petition continues an ICA dispute with Qwest previously arbitrated by this Commission in Docket No. 03-049-19. In that docket, the Commission resolved eight open issues and, by order dated February 18, 2004 ("Arbitration Order"), required parties to file a signed ICA within 30 days. Following Autotel's unsuccessful appeal of the Arbitration Order to the federal district court, and having given parties ample opportunity to submit a signed ICA or explain their inability to do so, on August 17, 2005, the Commission issued an Order Denying Request for Approval of Proposed Agreement ("August 2005 Order") denying Qwest's request to require Autotel to sign the ICA filed by Qwest. In light of the parties' failure to file a signed ICA, the Commission made clear it would take no further action in Docket No. 03-049-19, nor would it entertain further arbitration between the parties of these same issues, until the parties submitted a signed ICA in accordance with the terms of the Arbitration Order.

On September 2, 2005, Qwest Corporation ("Qwest") filed a Petition for Reconsideration and Clarification. On September 21, 2005, the Commission issued its Order on

DOCKET NO. 05-049-95

- 3 -

Petition for Reconsideration and Clarification (“September 2005 Order”) repeating its determination not to engage in further ICA arbitration between the parties until a signed ICA has been filed in accordance with the Arbitration Order and stating “we leave it to the parties (particularly to AutoTel) to submit an executed ICA for Commission approval that will dictate the timing or process to be followed to resolve any additional disputes between the parties beyond those which we have already resolved through our binding [Arbitration] Order.” We further stated the

appropriate course of action for Autotel, if it disagrees with the results of our arbitration, is to file an appeal with the appropriate federal district court after the Commission has approved a signed ICA, which includes our arbitrated resolutions of disputed issues, submitted by the parties pursuant to 47 U.S.C. §252(e). We consider the findings and conclusions contained in the Arbitration Order to be res judicata or the law of the case and will not revisit these issues now or in the future.

Autotel failed to follow this advice and instead filed the Petition now before us.

DISCUSSION AND CONCLUSION

Qwest argues the Petition should be dismissed both because it ignores our prior orders regarding the arbitration in Docket No. 03-049-19 and because it fails to properly identify open issues for arbitration. We agree. In its Petition, Autotel fails to properly identify, as required by 47 U.S.C. § 252(b)(2)(A), any open issues for which it seeks Commission resolution, choosing instead to rely on general allegations relating to Qwest’s duty to negotiate and state commission jurisdiction. Although Autotel has attached apparently competing agreements to its Petition, it fails to specifically identify issues within those agreements requiring Commission

DOCKET NO. 05-049-95

- 4 -

resolution, or the parties' respective positions regarding those issues. This failure alone is sufficient to justify dismissal of the Petition and our dismissal is based in part upon this failure.

We also base our dismissal on Autotel's continuing failure to file a signed ICA the terms of which comply with our decision in the Arbitration Order. 47 U.S.C. § 252(e) makes clear that if Autotel does not agree with the Commission's decision on issues arbitrated in Docket No. 03-049-19 it should submit a signed agreement in accordance with that decision and then appeal to the appropriate federal district court. Autotel refuses to do so. We refuse to permit Autotel, in contravention of federal statute, to ignore our previous orders and to, apparently, seek arbitration of previously settled issues.

Because the current Petition appears directly related to the prior proceedings in Docket No. 03-049-19, we are compelled to remind the parties that we determined in that docket to undertake no further arbitration of the issues presented in that docket until the parties submit for approval a signed ICA consistent with our findings in that docket. While we will entertain requests to arbitrate new issues not presented in the prior docket, any such arbitration would be confined to only those new issues; absent presentation to this Commission of a signed ICA as outlined above, we will not revisit under any guise issues previously arbitrated.

Wherefore, based upon the foregoing and for good cause appearing, we enter the following

DOCKET NO. 05-049-95

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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

Qwest Corporation's Motion to Dismiss is granted. Autotel's Petition for Arbitration is dismissed.

DATED at Salt Lake City, Utah, this 7th day of December, 2005.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#46778