

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

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

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

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