

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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. 03-049-19
ORDER DENYING REQUEST
FOR APPROVAL OF
PROPOSED AGREEMENT

ISSUED: August 17, 2005

By The Commission:

PROCEDURAL HISTORY

On February 18, 2004, the Commission issued its Report and Order (“Arbitration Order”) in this docket ordering Autotel and Qwest Corporation (“Qwest”) to submit within thirty days an interconnection agreement consistent with the terms of the Arbitration Order. On March 19, 2004, Qwest filed a Notice of Inability to File Signed Agreement and Request for Approval of Proposed Agreement indicating that each party had tendered a proposed agreement to the other party for signature but that each party had refused to sign the proffered agreement on the ground that said agreement did not comply with the Arbitration Order. Qwest provided a copy of its proposed interconnection agreement which it claimed complies with the terms of the Arbitration Order and requested the Commission approve the same as the agreement of the parties.

On May 18, 2005, the United States District Court for the District of Utah dismissed for lack of subject matter jurisdiction a suit brought by Autotel seeking review of the Arbitration Order.

On June 14, 2005, the Commission issued a Procedural Notice giving the parties thirty days to respond to Qwest’s March 19, 2004, filing; to identify any developments arising since issuance of the Arbitration Order hindering the parties from submitting a signed interconnection agreement consistent with the terms of the Arbitration Order; and inviting the parties to suggest how best to bring this matter to a reasonable conclusion. The Commission noted its inclination, absent submission of a signed agreement, to take no further action in this docket.

On June 27, 2005, Autotel filed its Reply to the Commission’s June 14, 2005 Procedural Order indicating that on the same day the District Court dismissed Autotel’s complaint Autotel sent a new request for the negotiation of an interconnection agreement to Qwest. Autotel therefore believes no further action by the Commission is necessary until the parties either submit a negotiated interconnection agreement for approval or request arbitration.

On July 14, 2005, Qwest filed its Response to Procedural Notice and Reply of Autotel in which Qwest requested the Commission order Autotel to show cause why the Commission should not approve Qwest’s proposed agreement and renewed its request that the Commission approve its proposed agreement or direct specific language modifications consistent with the Arbitration Order.

DISCUSSION AND CONCLUSIONS

The Telecommunications Act of 1996 (the “Act”) requires any interconnection agreement adopted pursuant to arbitration to be

submitted to the state commission for approval or rejection, 47 U.S.C. § 252(e)(1). Despite the passage of eighteen months since issuing our Arbitration Order in this docket, the parties have failed to submit such an agreement. Qwest's request of March 19, 2004, and Autotel's Reply of June 22, 2005, therefore raise a novel issue for this Commission: what is the Commission's duty when, despite timely arbitration resolving the open issues submitted by the parties, those parties thereafter fail to submit a signed interconnection agreement for Commission approval?

In spite of the significant time and expense already consumed by the parties, the Division of Public Utilities, and the Commission in arbitrating the parties' open issues, Autotel would have this Commission do nothing but wait for a new arbitration request following the negotiations Autotel purportedly requested on May 18, 2005. Qwest, while admitting this Commission cannot compel Autotel to sign its proposed agreement, nevertheless requests this Commission approve that agreement even though the parties have not agreed to its terms.

We decline to follow either proposed course of action. When the parties presented their open issues to the Commission, we held a hearing, considered briefs, and issued our Arbitration Order resolving those issues. We also instructed the parties to submit a signed interconnection agreement consistent with our findings and conclusions as set forth in the Arbitration Order. We have fulfilled our duty under the Act.

The parties, on the other hand, have failed to submit an agreement adopted pursuant to the arbitration, as required by Section 252(e)(1). We therefore determine to take no further action, to include undertaking any future arbitration pursuant to the negotiations requested by Autotel on May 18, 2005, unless and until a signed agreement consistent with our Arbitration Order has been submitted by the parties.

The Commission recognizes this decision effectively leaves the parties without an interconnection agreement. However, we also recognize this lack of agreement is due, not to a lack of Commission action, but to business decisions made by the parties. If either party believes the Commission has failed to act in accordance with the Act, it may petition the Federal Communications Commission to assume jurisdiction of this matter pursuant to Section 252(e)(5).

The request for approval of proposed agreement will therefore be denied. No further proceedings are scheduled in this matter.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Request for Approval of Proposed Agreement is denied.

Dated at Salt Lake City, Utah, this 17th day of August, 2005.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/Julie Orchard
Commission Secretary

G#45429