

- 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  
REPORT AND ORDER

-----  
ISSUED: February 18, 2004

By the Commission:

PROCEDURAL BACKGROUND

This matter was commenced by a petition of Autotel for arbitration under §251(b)(1) of the Telecommunications Act of 1996, 47 U.S.C. §151 *et seq.* (the "Act") of some terms of its interconnection agreement with Qwest Corporation ("Qwest"). In its petition Autotel identified nine issues for arbitration. In its response Qwest identified six additional issues for arbitration. The parties have each filed testimony. Several settlement conferences were held and during that process seven of the issues were resolved, leaving eight to be resolved by the Commission. Supplemental testimony was filed, and both parties briefed the outstanding issues.

FACTUAL BACKGROUND

Autotel does not currently provide service in Utah. Autotel is a licensed Commercial Mobile Radio Service ("CMRS") provider. Autotel intends to offer CMRS service in the Cedar City and St. George areas of Utah. Qwest and Autotel have been in negotiations for an interconnection agreement for many years. Eight issues remain unresolved, seven raised by Autotel, and one by Qwest. Autotel and Qwest have numbered the issues differently, and in dealing with the issues we will refer to them as the "Autotel numbers."

Issue No. 1. (Qwest Issue No. 1): Is Qwest required to transport and terminate telephone exchange traffic and exchange access traffic delivered to a tandem by Autotel to another tandem?

This issue arises only with Type 2 interconnection. Autotel currently uses Type 1 interconnection, so the resolution of this issue may not have any practical effect. Autotel argues that Qwest is required to interconnect at the trunk interconnection points of a tandem switch for exchange traffic, exchange access, or both. Autotel argues that Qwest will have to, and is required to, reconfigure its network to do this.

Qwest argues that it is not required to reconfigure its network to transport Autotel traffic between local calling areas without compensation. Therefore, Qwest argues, Autotel is required to connect to each Qwest Access Tandem to which it wishes its customers to be able to terminate calls or from which calls may be originated by Autotel customers. Qwest argues that the FCC has decided that it has the right to charge wireless carriers for facilities that create Wider Area Calling networks, and is not required to reconfigure its network to comply with Autotel's local calling areas.<sup>(1)</sup> Qwest asserts that it "does not have inter-tandem trunking between the access tandem and the local tandem, does not combine these traffic types on the same trunk groups for itself, and does not use its access tandems as an overflow route for local calls from the local tandem." Qwest argues that to comply with Autotel's position it would need to reconfigure various aspects of its switching, and the effect of that would be for Qwest to transport traffic throughout the LATA without compensation. Qwest has offered two options to Autotel to provide the services it seeks, but Autotel claims those options are too expensive.

Autotel relies only on 47 C.F.R. §51.305, the FCC's general interconnection rule. Autotel has not cited any specific

language it believes supports its position. Qwest argues that Autotel has not submitted any argument or testimony as to how Qwest's proposed contract language would violate its interconnection obligations.

We agree that on the record in this matter Qwest's proposed language, and the two options it has provided to Autotel, fulfill its interconnection obligations. We will order the adoption of Qwest's language on this issue.

Issue No. 2. (Qwest Issue No. 4): This issue is regarding Qwest's obligation to provide dedicated transport over 50 miles in length. Autotel phrases the issue as: Can Qwest refuse to provide the facilities and equipment used for interconnection, access to unbundled network elements and the exchange of traffic? If so, under what conditions.

Autotel argues that Qwest is obligated to provide facilities and equipment for interconnection; that Qwest's obligation to provide dedicated transport does not end at 50 miles, and that Qwest must modify its existing network facilities at its expense to accommodate the requests of competitors such as Autotel.

Qwest argues for the adoption of the language accepted in the Section 271 process and incorporated into its SGAT. Under that language when dedicated transport is greater than 50 miles, and existing facilities are not available in either carrier's network so that the facilities must be constructed, then the carriers may agree to a mid-point arrangement and both carriers would be jointly responsible for the cost of construction. If the carriers cannot agree on appropriate cost sharing for facilities in excess of 50 miles, then either carrier may submit the issue to the Commission for decision.

Autotel responds that the Act requires Qwest to expand its network to serve Autotel. Autotel argues that the interconnection agreement should require Qwest to provide interconnection and network elements "wherever its existing network is and its future network will be deployed." Autotel also says that it "accepts Qwest's offer made in the 271 process for Qwest to build facilities if they do not exist and are within 50 miles from the particular office."

We do not read Qwest's obligation to be as broad as Autotel argues. The FCC has limited a LEC's obligation to build facilities for meet point arrangements to a reasonable distance. It is not unlimited as Autotel argues. In this case the provision proffered by Qwest for a 50 mile limit, and the option to bring to the Commission disputes about the costs of facilities exceeding 50 miles, is reasonable. We will adopt the language proposed by Qwest.

Issue No. 3. (Qwest Issue No. 5): Is Autotel required to accept from Qwest reciprocal compensation only in the form of a credit?

Autotel argues that under the credit method for reciprocal compensation proposed by Qwest it would only be compensated if Qwest's billing to Autotel was greater than Autotel's billing to Qwest. Autotel claims that the credit method could allow Qwest to calculate a different and possibly higher rate for Qwest provided transport than the rate Autotel would receive for the transport it provides. Autotel argues that the rates should be symmetrical.

Qwest notes that the method it proposes is the same method used for every wireless carrier that has an interconnection agreement with Qwest. Qwest also states that the proposed method also makes clear that Autotel will not be required to pay for facilities provided by it rather than Qwest, and that bills and credits will be applied simultaneously. Further Qwest states that there is no basis for the presumption that Qwest would calculate the rates differently for Qwest provided transportation than for Autotel provided transportation.

We fail to see how this credit method could result in Autotel not being compensated properly and timely. As for the rates charged, we agree that the rates need to be symmetrical. Qwest has stated that they will be, and Autotel has adequate remedies if they are not. We will accept Qwest's proposed language on this issue.

Issue No. 4. (Qwest Issue No. 11): Is Qwest required to combine unbundled network elements so that Autotel may use the elements to provide a telecommunication service?

Autotel argues that it is technically feasible for Qwest to combine loops and dedicated transport at the serving wire center and for Autotel to access unbundled network elements. Autotel claims that Qwest is required to combine the elements requested by Autotel and allow Autotel to access them at any technically feasible location.

Qwest states that it will provide nondiscriminatory access to UNEs and UNE combinations as required by law. But, Qwest is not obligated to provide dedicated transport between Autotel's switch and Qwest's switch or between portions of Autotel's network. Qwest further argues that Autotel's proposed use of loops is not consistent with the intent and purpose of unbundled loops. In its *First Report and Order* the FCC defined unbundled loops as: "a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises."<sup>(2)</sup> Qwest argues that Autotel's proposed use of loops to connect portions of its own network does not fit this definition.<sup>(3)</sup>

We agree that unbundled loops are, by definition, not available to Autotel to connect portions of its own network.

The availability to other carriers of UNEs for transport was directly addressed in the Triennial Review Order. Paragraph 368 states:

We note that this change in definition applies to all competitors alike, including intermodal competitors. We find that no requesting carrier shall have access to unbundled inter-network transmission facilities under section 251(c)(3). Thus, assuming *arguendo*, that a CMRS carrier's base station is a type of requesting carrier switch, CMRS carriers are ineligible for dedicated transport from their base station to the incumbent LEC network. However, all telecommunications carriers, including CMRS carriers, will have the ability to access transport facilities within the incumbent LEC's network, pursuant to section 251(c)(3), and to interconnect for the transmission and routing of telephone exchange service and exchange access, pursuant to section 251(c)(2).<sup>(4)</sup>

The FCC has decided that Autotel is not entitled to UNE inter-network transmission facilities, i.e. transportation from its switch to Qwest's network. Autotel is entitled to transportation facilities within Qwest's network. That doesn't completely answer the question here, however. Autotel seeks unbundled transportation elements to connect portions of its own network. Extending the reasoning of the FCC decision that Autotel is not entitled to UNEs to connect its switch to Qwest's network, we find that Qwest does not have the obligation to provide Autotel UNEs to connect portions of Autotel's network. As Qwest points out, it does provide services pursuant to its state and federal tariffs that Autotel could use to connect elements of its network.

We accept Qwest's proposed contract language on this issue.

Issue No. 6. (Qwest Issue No. 2): When using Type 1 interconnection, is Autotel required to interconnect to a Qwest end office in each of Qwest's local calling areas where Autotel provides service?

Autotel argues that it is technically feasible to interconnect to only one end office and for Qwest to transport and terminate calls to and from another end office in a different Qwest local calling area. The local calling areas of Autotel and Qwest are different and Autotel does not have to conform its local calling area to Qwest's.

Qwest counters that in a Type 1 interconnection it is not required to transport calls from Autotel customers in one LCA to another LCA. Qwest also states that Autotel may not assign numbers from one wire center to customers in an area served by another wire center as may occur in this scenario. Such out-of-area numbers would create switching problems.

Under Type 1 interconnection Qwest owns the switch serving Autotel's network and performs the origination and termination of incoming and outgoing calls. Type 1 interconnection is made directly to a Qwest end office. Qwest makes the numbers available to Autotel from the end office. If this were a Type 2 interconnection Autotel would own the switch, and would originate outgoing calls and terminate incoming calls. A Type 2 interconnection uses a tandem switch connection and provides all the functionality of a the tandem switch. Qwest states that it is willing to offer a single point of presence ("SPOP") connection in the LATA for a Type 2 interconnection. Autotel, however, seeks the functionality of a Type 2 interconnection while using a Type 1 interconnection. According to Qwest, Autotel is essentially requesting a type of SPOP for a Type 1 interconnection. Such functionality cannot be provided to a Type 1 interconnection.

There is a transportation aspect to this issue as well. Autotel's position would, according to Qwest, require Qwest to transport Type 1 calls to an end office outside Qwest's LCA without Autotel being connected to that end office, and

without compensation to Qwest for transporting the call. Numbers from one end office would also be assigned to customers in a different LCA. That would cause switching problems, and also rating problems.

Autotel has the option of using a Type 1 or Type 2 interconnection. It cannot, however, choose a Type 1 interconnection and demand the functionality of a Type 2 interconnection. There appear to be legitimate technical reasons why Autotel will need to connect to a Qwest end office in each Qwest LCA if Autotel opts for a Type 1 interconnection. Further, Autotel may not force Qwest to transport calls beyond the LCA without compensation with this type of connection. We will accept the language proposed by Qwest.

Issue No. 7. (Qwest Issue No. 9): When using Type 1 interconnection, is Qwest required to provide any technically feasible type of signaling requested by Autotel? If not, how does Autotel obtain the proper signaling so that Autotel's equipment will be able to interconnect with a Qwest end office?

Autotel states that its switches, and most Type 1 CMRS switches, are not capable of using MF signaling. Most Type 1 CMRS switches use pulse or DTMF signaling. Autotel states that since Qwest offers pulse and DTMF signaling to its own end users, such signaling is technically feasible and should be made available to Autotel.

Qwest states that Autotel has not shown any need for the requested signaling. Qwest states that it only provides signaling other than MF signaling where that signaling is "grandfathered" in. Qwest argues that the requested signaling is outdated. Qwest has, however, offered to review the availability of the requested signaling on a case-by-case basis using its Special Request Process. That process does not have a recurring fee.

Autotel has stated that the switches it owns, as well as most CMRS Type 1 switches, are not capable of using MF signaling. Contrary to Qwest's assertion, Autotel has shown the need for the requested signaling. It is undisputed that at least some of Qwest's equipment is capable of providing that signaling. Autotel is entitled to obtain the desired signaling where it is technically feasible for Qwest to provide it. We are left, however, without sufficient information to determine if the signaling is available at all the locations Autotel will want it. Qwest's Special Request Process is a reasonable way for Autotel to make requests for DTMF or pulse signaling at specific locations, and obtain Qwest's response. We will adopt the language proposed by Qwest, with the addition of language in the contract that states that Qwest shall provide Autotel pulse or DTMF signaling where technically feasible.

Issue No. 8. (Qwest Issue No. 3): What is non-local traffic for LEC/CMRS interconnection?

Autotel argues that any call that originates and terminates within the same MTA is local. Any call that at the beginning of the call originates and terminates in different MTAs is non-local. Autotel argues that this is precisely what FCC rules state.

Qwest argues that in addition to inter-MTA calls, non-local traffic should include "calls carried by an IXC carrier, jointly provided switched access traffic, certain transit traffic, and certain roaming traffic." According to Qwest, whenever an IXC is involved the call is non-local regardless of where it originates and terminates.

47 CFR 51.701(b)(1) states that local telecommunications traffic is "traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area." That is Autotel's position, and we will adopt that position.

Qwest Issue No. 10 (No corresponding Autotel issue): Type 2 interconnection trunking.

According to Qwest, this issue relates to Autotel issues 1 and 6. Qwest proposes contract language that would allow, at Autotel's option, for Autotel to use Type 2 interconnection without connecting to each access tandem. Qwest proposes this language to address Autotel's concern in Issue 1 with the SPOP option. Qwest states that the proposed language is in other wireless interconnection agreements approved by the Commission.

Autotel's response is that Qwest has failed to state an open issue for the Commission to decide and therefore the issue should be dismissed.

This issue, and the proposed interconnection agreement language, are directly related to issues raised in this arbitration proceeding. The language proposed by Qwest provides Autotel, at Autotel's discretion and option, with the ability to accept the SPOP waiver and get the benefits of Type 2 interconnection. The language does not require Autotel to use Type 2 interconnection. Inclusion of this language provides another option to Autotel without imposing any requirement that it be utilized by Autotel. We will accept the language proposed by Qwest.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that

1. The interconnection agreement between Autotel and Qwest Corporation shall be modified as set forth above. The agreement, as so modified, is approved.
2. The parties shall submit an interconnection agreement reflecting the determinations in this order within 30 days.

Dated at Salt Lake City, Utah, this 18<sup>th</sup> day of February, 2004.

/s/ Douglas Tingey  
Administrative Law Judge

Approved and Confirmed this 18<sup>th</sup> day of February, 2004, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

G#37130

1. *Citing Mountain Communications, Inc. v. Qwest Communications International, Inc.*, Order on Review 17 FCC Rcd 15135 (rel. July 25, 2002); *TSR Wireless, LLC v. US West Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 11166 (rel. June 21, 2000); aff'd sub.nom. *Qwest Corp. V. FCC*, 252 F.3d 462 (D.C. Cir. 2001).
2. First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, 11 FCC Rec. 8965 at ¶380 (1996)
3. In its brief Autotel claims it will use loops to "provide service to end users." There is no evidence in the record that supports that assertion, and we do not accept it.
4. Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, FCC 03-36 (rel. August 21, 2003)("Triennial Review Order") ¶368.