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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petition of AUTOTEL :
for Arbitration of an Interconnection :
Agreement with QWEST CORPORATION : Docket No. 03-049-19
Pursuant to Section 252(b) of the :
Telecommunications Act :

OPENING BRIEF OF QWEST CORPORATION

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Qwest Corporation (“Qwest”), pursuant to 47 U.S.C. § 252(b)(4)(B) and the Fourth Scheduling Order issued in this docket on November 4, 2003, hereby submits its opening brief in this matter.

I. INTRODUCTION

A. PROCEEDINGS IN ARBITRATION DOCKET

Autotel filed its petition in this matter on March 7, 2003, identifying nine issues for arbitration. Qwest responded on April 1, 2003,¹ identifying six additional issues for arbitration. A scheduling conference was held in the matter on May 1, 2003. The parties then filed direct testimony on May 30, 2003, and Qwest filed rebuttal testimony on June 27, 2003. The Division of Public Utilities (“Division”) also made a filing on June 27, 2003, which included a preliminary issues matrix and a recommendation that a settlement conference be scheduled.

A second scheduling conference was held on July 2, 2003. At that conference, the parties agreed to comment on the preliminary issues matrix and to hold settlement discussions. Comments on the issues matrix were filed on July 23, 2003, and settlement discussions were held during the months of August and September 2003. These consisted of both meetings at which the Commission and Division participated and correspondence between the parties on which the Commission and Division were copied. As a result of these discussions, the parties were able to reach agreement on seven of the 15 issues.

The parties then filed supplemental testimony on unresolved issues on September 30, 2003, and Qwest filed supplemental rebuttal testimony on October 14, 2003. The Division circulated an issues matrix on remaining issues and incorporated changes requested by the parties in a final Issues Matrix filed on October 30, 2003. On November 4, 2003, a further scheduling conference was held at which the parties agreed to submit the remaining issues for

¹ Qwest filed amended responses on April 2, 2002 and April 29, 2002.

decision based on the testimony already filed and briefs to be filed on December 9, 2003 and reply briefs to be submitted on December 23, 2003. During this process, the parties also agreed to extend the time within which the Commission could resolve issues through January 30, 2004.

B. BACKGROUND

Autotel is not registered or authorized to do business in the state of Utah. However, Qwest understands that Autotel intends to offer wireless service in the Cedar City and St. George areas in connection with its license from the Federal Communications Commission (“FCC”) to provide Commercial Mobile Radio Service (“CMRS”)² in Las Vegas, Nevada. Autotel’s affiliate, Western Radio, Inc. (“Western”) provides similar service in Bend, Oregon. That service is not provided pursuant to an interconnection agreement between Qwest and Western, but is rather provided through Western’s purchase of services from Qwest under its state and federal tariffs.

Qwest has engaged in interconnection negotiations pursuant to 47 U.S.C. §§ 251 and 252 with Autotel’s principal, Richard Oberdorfer, for almost seven years in Oregon and two years in Utah without reaching agreement.³ In that same time, the Commission and the FCC have completed a review of Qwest’s compliance with 47 U.S.C. § 271 (“Section 271”) and clarified many issues regarding Qwest’s interconnection obligations. Also in that same time, Qwest has successfully negotiated numerous interconnection agreements with other providers, both wireline and wireless.

² CMRS licensees include providers of cellular, narrowband and broadband PCS, paging, and other commercial radio services. 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 (1996). (“*First Report and Order*”).

³ Although Qwest and Autotel were able to resolve their dispute on seven of the 15 issues present at the start of this arbitration during the technical conferences and exchanges which have been part of this arbitration, they did not reach agreement on the most significant issues.

These negotiations almost always begin with the wireline or wireless provider sending to Qwest a redline of the Qwest wireline or wireless interconnection template. However, Western would not accept the Qwest template as the starting point for negotiations. After years of wrangling over this issue and in the spirit of compromise, Qwest agreed to use the AT&T Wireless agreement in Utah as the starting point to begin negotiations. Since that decision, many months of negotiations (including mediation) have taken place, resulting in eight issues to be decided by arbitration. Virtually all of the issues between Qwest and Autotel were addressed and resolved in the multistate collaborative workshops conducted, at the Commission's direction, by an independent facilitator in Docket No. 00-049-08, Qwest's Utah docket for review by the Commission of Qwest's reentry into the interLATA market under Section 271. The provisions proposed by Qwest are the same as or consistent with those already included in Qwest's Commission-approved Statement of Generally Available Terms and Conditions ("SGAT"). This model agreement was developed through the multistate collaborative workshops. These same issues were then resolved in Utah by the Commission in specific decisions made by the Commission in Docket No. 00-049-08 and by the Commission's approval of a comprehensive SGAT in Utah in Docket Nos. 00-049-08 and 00-049-68.

Autotel seeks an agreement with Qwest on terms that are more beneficial to it than those which have been approved by the Commission and are included in Qwest's SGAT or its interconnection agreements with other wireless providers. The principal basis urged by Autotel for special treatment is that it is a wireless carrier that will be providing service to only a few customers in areas of the state it characterizes as rural. Accordingly, Autotel claims that it would be impractical for the Commission to require it to comply with terms and conditions for interconnection that have been agreed to and accepted by all other wireless providers.

There are several reasons why the Commission should not afford Autotel special treatment. The Telecommunications Act of 1996 (“Act” or “Federal Act”) and the Telecommunications Reform Act of 1995 (“Utah Act”) were intended to open the local exchange market to competition. In opening the market to competition, it has been made abundantly clear that the acts were not intended to favor or support any particular competitor or form of competition.⁴ They were not intended to require Qwest to subsidize competition for competitors with business plans that cannot be successful under the terms and conditions accepted and approved for other competitors. Based on opt-in rules, the Commission must be aware that any terms it approves for Autotel will be available to other carriers as well. Thus, the Autotel exceptions could easily become the rule, and, if the Commission were to implement Autotel’s terms, Qwest would routinely be subjected to obligations in excess of those imposed by the Act. Finally, St. George and Cedar City are hardly rural areas of the state lacking competitive alternatives. Several wireless carriers are operating in those areas using interconnection agreements consistent with that proposed by Qwest. This brief will demonstrate that the terms and conditions contained in Qwest’s proposed interconnection agreement comply with its considerable obligations under the Act and are fair and consistent with other wireless interconnection agreements approved in Utah.

II. ARGUMENT

The Division’s Matrix of Unresolved Issues (“Matrix”) identifies eight unresolved issues for arbitration. Qwest sets out below its argument regarding these unresolved issues, and requests the Commission to resolve those issues by adopting Qwest’s proposed contract language. The positions Autotel advances are neither supported by the Act nor in some instances

⁴ *United States Telecom Ass’n v. FCC*, 290 F.3d 415, 429 (D.C. Cir. 2002), *cert. denied*, 123 S.Ct. 1571 (2003).

even by testimony on the record. The positions advanced by Qwest, on the other hand, are consistent with its obligations under the Act, with Commission precedent, and with its SGAT. Each is fully supported by competent, sworn testimony on the record in this docket. The Commission should adopt Qwest's proposed language for the interconnection agreement between Qwest and Autotel.

A. ISSUE NO. 1: TRUNKING BETWEEN TANDEM (CORRESPONDING AUTOTEL ISSUE: NO. 1)

1. Summary of Issue.

This issue deals with Type 2 interconnection, the most common type of interconnection between Qwest and wireless providers. Type 2 interconnection is interconnection in which Autotel provides both telephone numbers and switching functions to its customers. Under Type 2 interconnection, Autotel interconnects at its designated Point of Interface ("POI") and Qwest's tandem switch or switches or at an end office switch or switches using direct trunking. The issue is whether Autotel, in using Type 2 interconnection through a Qwest tandem, must connect with each tandem switch to which its customers wish to direct or from which they intend to receive calls.

2. Autotel Position.

Qwest is specifically required to interconnect at the trunk interconnection points of a tandem switch for the transmission and routing of telephone exchange traffic, exchange access, or both [and to] [s]eparate local and toll traffic. Autotel is not asking Qwest to reconfigure its network to support Access Tandem to Access Tandem and Access Tandem to Local Tandem switching.⁵

⁵ Autotel's position is typically taken verbatim from the Matrix. However, minor edits have been made in a few cases for purposes of clarity.

3. Qwest Position.

Qwest is not required to reconfigure its network to transport traffic for Autotel between local calling areas without compensation. Therefore, Autotel is required to establish a connection to each Qwest Access Tandem serving landline customers to which it wishes its customers to be able to terminate calls or from which calls may be originated to its customers. These provisions are included in other wireless interconnection agreements approved by the Commission.

4. Qwest Proposed Contract Language.

IV.A.3.a.i. The Type 2A Local Interconnection connects Carrier's switch to a Qwest Local Tandem and exchanges traffic between Carrier and NXXs served by the end offices subtending the Local Tandem. This interconnection arrangement carries both first routed direct final traffic and traffic overflowed on an alternate final basis from a Type 2B High Use interconnection arrangement. Traffic may not be exchanged between local tandems and access tandems as there is no inter-tandem trunking between them.

IV.A.3.a.ii. The Type 2A Access tandem Interconnection connects Carrier's switch to a Qwest Access Tandem. An access tandem exchanges switched access traffic, toll tandem switched intraLATA toll, and local tandem exchanges traffic between Carrier and Qwest End Offices other than those subtending the associated Local Tandem. An interconnection is required to the toll tandem in the geographic area in which the Carrier has local service. Qwest will allow Interconnection for the exchange of local traffic at Qwest's access tandem without requiring Interconnection at the local tandem, at least in those circumstances when traffic volumes do not justify direct connection to the local tandem; and regardless of whether capacity at the access tandem is exhausted or forecasted to exhaust. Local traffic may not be sent to one access tandem for termination to another access tandem, as there is not inter-tandem trunking between them for delivery of EAS/Local and Local Calling Area traffic.

5. Argument.

Qwest acknowledges that Autotel may establish any Local Calling Area ("LCA") within its licensed area that it chooses for its customers. However, the FCC has also ruled that Qwest can configure its own network as a toll network for its own end users and that Qwest has the

right to charge wireless carriers for facilities that create Wide Area Calling (“WAC”) networks.⁶ Qwest is not required to reconfigure its network in order to comply with the LCAs established by Autotel. Yet that is exactly what Autotel’s position on Issue 1 would require.

Qwest 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.⁷ Trunk groups to Qwest’s access tandems carry “1+” exchange access traffic unless the carrier utilizes Qwest’s Single Point of Presence (“SPOP”) offering. Trunk groups to the local tandem carry local traffic only. These two types of trunks groups are also engineered differently to deliver slightly higher blocking rates for local trunk groups as compared to separate toll “grade of service” groups. To accept Autotel’s position, Qwest would have to reconfigure its network to support access tandem to local tandem switching and access tandem to access tandem switching for local traffic.⁸ The effect of Autotel’s position would be for Qwest to transport traffic throughout the LATA without compensation.

Qwest has offered two options that would not require Qwest to reconfigure its network. First, Autotel may pay Qwest for trunks to each access tandem in the Utah LATA. Second, if Autotel does not want to purchase trunks to each access tandem in the Utah LATA, it can accept the SPOP waiver as part of the SPOP product offering in Section V.F.9. and Appendix D of the

⁶ See *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, Order on Review, 17 FCC Rcd 15135 (rel. July 25, 2002); *TSR Wireless, LLC v. U S 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).

⁷ See, e.g., Direct Testimony of Larry B. Brotherson for Qwest Corporation (May 30, 2003) (“Brotherson Direct”) at 8-9; Direct Testimony of Rachel Torrence for Qwest Corporation (May 30, 2003) (“Torrence Direct”) at 3-6.

⁸ Torrence Direct at 3-8; Rebuttal Testimony of Rachel Torrence for Qwest Corporation (June 27, 2003) (“Torrence Rebuttal”) at 4-5.

proposed interconnection agreement.⁹ Either of these options would fulfill Qwest's interconnection obligations. Autotel's response has been that these options are too expensive. The Commission's role as arbitrator, however, is not to ensure the viability of Autotel's business model. It is to ensure that Qwest complies with the Act in providing interconnection to Autotel.

Autotel has made no argument, and introduced no testimony, as to how Qwest's proposed contract language would violate Qwest's interconnection obligations. Indeed, no viable argument is available, and the Commission should reject Autotel's proposal. Qwest's testimony on Issue No. 1 stands uncontroverted on the record. Qwest has – through years of negotiations with CLECs and other CMRS providers and in proceedings before state commissions, and the FCC – already arrived at workable compromise solutions to the issues involved in Issue No. 1. If Autotel does not wish to pay Qwest for trunks to each access tandem in the Utah LATA, Qwest already offers Autotel an acceptable compromise solution in the form of the SPOP waiver. The Commission should, therefore, accept Qwest's proposed contract language.

**B. ISSUE NO. 2: POINT OF CONNECTION - TYPE 1 INTERCONNECTION SERVICE
(CORRESPONDING AUTOTEL ISSUE: NO. 6)**

1. Summary of Issue.

The disagreement on Issue No. 2 concerns whether or not Autotel, when using Type 1 interconnection, is required to interconnect to a Qwest end office in each of Qwest's Local Calling Areas ("LCA") where Autotel provides service.

2. Autotel Position.

Per [47 U.S.C. §] 251 (c)(2)(B) Qwest is not specific on how issuing multiple numbers to an Autotel customer will implement [Local Number Portability] ("LNP") better than issuing only one number. Autotel is not aware of any Type 1 CMRS switch that is capable of delivering

⁹ See contract language proposed under Issue No. 10, below.

traffic to more than one end office. 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 [LCA]. The [LCAs] of a CMRS carrier and a LEC are different. Autotel does not have to conform its [LCA] to Qwest's.

3. Qwest Position.

Qwest is not required to transport calls from Autotel customers in one LCA to any customers in another LCA. In addition, Qwest may not assign numbers associated with one wire center to customers in the area served by another wire center. These provisions are included in other Type 1 wireless interconnection agreements approved by the Commission.

4. Qwest Proposed Contract Language.

IV.A.3.e. Autotel shall establish Type 1 trunk groups to at least one Qwest End Office in each of the EAS/Local Calling Areas where Autotel provides service. Type 1 interconnection may be accomplished through the provision of an analog loop or a DS1 Qwest provided Entrance Facility. Type 1 is an intraLATA/intrastate final route trunk group between an Autotel's switch and a Qwest End Office Switch.

5. Argument.

As a CMRS provider, Autotel may purchase either Type 1 or Type 2 interconnection services from Qwest. At Autotel's request, both Type 1 and Type 2 services are made available under the proposed interconnection agreement between the parties. The services available under each type of interconnection service are distinct, however, and Autotel errs by insisting that it be provided interconnection features under a Type 1 interconnection that are available with a Type 2 interconnection.

The FCC has described Type 1 and Type 2 interconnection as follows:

Type 1 service involves interconnection to a telephone company end office similar to that provided to a private branch exchange (PBX). Under Type 1 interconnection, the telephone company owns the switch serving the [CMRS] network and, therefore, performs the origination and termination of both incoming and outgoing calls. Under Type 2, the

[CMRS provider] owns the switch, enabling it to originate outgoing calls and to terminate incoming calls.¹⁰

There are additional important differences between Type 1 and Type 2 interconnections. A Type 1 interconnection is made directly to a Qwest end office. The numbers used by the CMRS provider are owned by Qwest and made available from the end office. A Type 2 interconnection, however, is primarily a tandem switch connection and provides substantially greater connectivity as a result. Moreover, a Type 2 interconnection can take advantage of all the functionality of the tandem switch – most of which is absent from the end office switch to which a CMRS carrier makes a Type 1 interconnection.

Issue No. 2 simply involves Autotel seeking to obtain Type 2 services while making a Type 1 interconnection. As with Issue No. 1,¹¹ Qwest is willing to offer a SPOP in the LATA for a Type 2 interconnection. However, the limitations of Type 1 interconnection where Autotel chooses to use Qwest end office switches to perform its switching functions require that Autotel must connect to each local calling area where it provides Type 1 service.¹² As with Issue No. 1, Qwest's testimony on Issue No. 2 stands uncontroverted on the record.

Autotel's position would require Qwest to transport Type 1 calls, for example, from Cedar City to St. George without Autotel connecting to a Qwest end office in the St. George LCA or compensating Qwest for this transport. In addition, Autotel would apparently assign to its St. George customers Qwest numbers from the Cedar City LCA. Qwest numbers assigned to a customer in the St. George LCA cannot be numbers from the Cedar City LCA. The reason is that the respective switches would not recognize or know how to process numbers assigned to

¹⁰ Memorandum Opinion and Order on Reconsideration, *In the Matter of The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 4 FCC Rcd 2369, at 2372, n. 16 (1989).

¹¹ *See also* Issue No. 10, below.

¹² *See* Brotherson Direct at 12-16; Torrence Direct at 9-12; Torrence Rebuttal at 5-6.

another switch. Any call by an Autotel customer to a number outside the LCA of any end office to which Autotel has a Type 1 interconnection trunk might not be completed and, if completed, would create substantial rating problems. For this reason, Qwest's proposed language for establishing Type 1 trunks in each LCA in which Autotel provides service must be included in the contract.

Autotel's proposal essentially seeks to turn any Qwest end office into an access tandem switch for routing Autotel's calls throughout the Major Trading Area ("MTA").¹³ These types of pleas have been made by CMRS carriers, particularly paging carriers, since the implementation of the FCC's interconnection rules in November 1996. A series of recent cases has clarified Incumbent Local Exchange Carrier ("ILEC") obligations and firmly established that CMRS carriers may not force the ILEC to route CMRS traffic throughout the MTA at no cost to the CMRS carrier. Those cases clearly establish that even though calls that originate and terminate within the same MTA are "local" in the sense they are subject to reciprocal compensation rules (unless involving multiple carriers, such as transit traffic or Interexchange Carrier ("IXC")-carried traffic), the ILEC is still entitled to configure the network on its side of the point of connection as a toll network.¹⁴ The FCC further concluded that when the CMRS carrier wishes to configure its network so that calls to its subscribers – beyond the landline local calling area – are not toll calls, the CMRS carrier must pay for those facilities because it is "buying down" the toll, just as if it had purchased a wide-area calling service from the ILEC.¹⁵

¹³ MTA or Major Trading Area is a geographic area established in Rand McNally's Commercial Atlas and Marketing Guide used by the FCC in defining CMRS license boundaries for CMRS providers.

¹⁴ See e.g. *Metrocall Inc. v. Southwestern Bell*, 16 FCC Rcd 18123 (2001); *TSR Wireless v. US West*, 15 FCC Rcd 11166 (2000).

¹⁵ See e.g. *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, 17 FCC Rcd. 2091, 2097 (released February 4, 2002).

Again, Autotel is really requesting a type of SPOP offering for Type 1 Interconnection. Such an arrangement simply does not work for Type 1 interconnection because the numbers are not associated with tandem switches.¹⁶ Telephone numbers for Type 1 interconnection are associated only with specific end offices. Conversely, Qwest tandems would not know how to route Type 1 calls if Autotel was not connected in every LCA where it provided service.

For all these reasons, the Commission should reject Autotel's arguments and accept Qwest's proposed contract language for Issue No. 2.

C. ISSUE NO. 3: DEFINITION OF NON-LOCAL TRAFFIC (CORRESPONDING AUTOTEL ISSUE: NO. 8)

1. Summary of Issue.

This issue deals with the proper definition of non-local traffic and addresses whether calls within the same MTA that are carried by an Interexchange Carrier ("IXC") and which have been subject to switched access charges are non-local.

2. Autotel Position.

Any call that originates and terminates within the same MTA is local. Any call which at the beginning of the call originates and terminates in different MTAs is non-local.

3. Qwest Position.

In addition to interMTA calls, non-local traffic includes calls carried by an IXC carrier, jointly provided switched access traffic, certain transit traffic, and certain roaming traffic.

Whenever an IXC is involved in a call, the call is non-local whether within an MTA or not.

4. Qwest Proposed Contract Language.

IV.C.4. Non-Local Traffic is InterMTA, Roaming, and/or Jointly Provided Switched Access traffic. Non-Local Traffic includes, but is not limited to, traffic originated by one Party, carried by an IXC, and terminated by the other Party. Reciprocal Compensation does not apply to Non-Local Traffic. For convenience, the location of the initial cell site

¹⁶ See Brotherson Direct at 15.

when a call begins shall be used as the determinant of the geographic location of the mobile customer.

5. Argument.

Autotel's definition of non-local traffic would exclude intraMTA calls that are carried by an IXC and have traditionally been subject to switched access charges. Issue No. 3 is an issue upon which Autotel provided no testimony. Therefore, Qwest's testimony on this issue is uncontroverted. Moreover, Issue No. 3 is another issue where the FCC's interpretation of the Act has resolved the question in a way that does not allow for Autotel's position to stand.

47 U.S.C. § 251(g) preserves the access charge regime under which calls involving an IXC have been subject to switched access. The FCC recognized that where exchange access charges apply, reciprocal compensation is inapplicable:

Access charges were developed to address a situation in which three carriers – typically, the originating LEC, the IXC, and the terminating LEC – collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service. By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call. This reading of the statute is confirmed by section 252(d)(2)(A)(i), which provides for “recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier.” ... We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.¹⁷

In the FCC's initial interconnection rules, it reserved to itself the authority to define the MTA as the local calling area for CMRS providers.¹⁸ The FCC did not override the basic

¹⁷ *First Report and Order* ¶ 1034.

¹⁸ *Id.* ¶ 1034-1038. The FCC initially ruled that intraMTA calls were “local” calls if they were to or from a CMRS provider and both parties were within the MTA at the start of the call. *Id.* ¶ 1036. However, in connection with its issuance of the ISP Remand Order in April, 2001, the FCC tacitly

principle that where an IXC handles the call, access charges rather than reciprocal compensation rules apply. Thus the FCC stated:

Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges **unless it is carried by an IXC**, with the exception of certain interstate interexchange service provided by CMRS carriers ... which is subject to interstate access charges. Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and **are assessed such charges for traffic that is currently subject to interstate access charges.**¹⁹

Accordingly, Autotel's position that all intraMTA traffic is "local" and thus subject to reciprocal compensation is simply contrary to the Act and the rulings of the FCC. It would violate section 251(g), as interpreted by the FCC, by exempting some calls that were previously subject to switched access. The Commission should reject Autotel's proposed language. Qwest's proposed language is consistent with its interconnection obligations under the Act.

D. ISSUE NO. 4: 50-MILE LIMIT ON DIRECT TRUNKED TRANSPORT (CORRESPONDING AUTOTEL ISSUE: NO. 2)

1. Summary of Issue.

The only dispute Qwest is aware of regarding this issue is Autotel's objection to the section of Qwest's proposed contract language regarding dedicated transport over fifty miles in

recognized the confusion caused by calling such calls "local." The FCC thus amended Rule 701 to delete the word "local," providing instead that such calls were "traffic" subject to reciprocal compensation. Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, CC Dkt. Nos. 96-98 & 99-68, FCC 01-131, 2001 FCC LEXIS 2340 (rel. Apr. 27, 2001) ("ISP Remand Order"), remanded, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

¹⁹ *First Report and Order* at ¶1043 (emphasis added). The FCC also noted that where a roaming call is carried over interstate facilities, "the cellular carrier is providing not local exchange service but interstate, interexchange service" and that access charges, rather than reciprocal compensation would apply. The FCC concluded that "[i]n this and other situations where a cellular company is offering interstate, interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge." *Id.* at n. 2485.

length. Qwest's proposed language would provide that if existing facilities are not available, and if the parties have not been able to resolve how the interconnection will be provided, they may bring the issue to the Commission for resolution. Although Autotel has attempted to broaden the scope of this issue, the dispute is only about interoffice facilities and has nothing to do with switching or anything else.

2. Autotel Position.

Qwest is obligated to provide the facilities and equipment for interconnection for the transmission and routing of telephone exchange service, exchange access and for network access to unbundled elements per [47 U.S.C. §] 251(c)(2)&(3). Qwest cannot avoid these obligations by agreeing not to discriminate between carriers. Nor does Qwest's obligation to provide dedicated transport end at 50 miles. Qwest must modify its existing network facilities at its expense to accommodate the requests of competitors such as Autotel.

3. Qwest Position.

This issue was litigated and resolved in the Section 271 process. Per Qwest's SGAT, Qwest will provide up to 50 miles Direct Trunked Transport ("DTT"). Beyond 50 miles, if Qwest has no available facilities, and if parties cannot agree on joint construction, either party may seek Commission resolution.

4. Qwest Proposed Contract Language.

IV.H.3. If Direct Trunked Transport is greater than fifty (50) miles in length, and existing facilities are not available in either Party's network, and the Parties have not been able to resolve the issue through mid-point arrangements, and the Parties cannot agree as to which Party will provide the facility, the Parties may bring the matter before the Commission for resolution on an Individual Case Basis.

5. Argument.

This precise issue was fully aired in the Section 271 process and the proposed language is consistent with the Commission's order in that process. Qwest's proposed language mirrors the

language in Section 7.2.2.1.5 of the approved Utah SGAT dated October 31, 2002, which was developed through open, collaborative workshops with active participation by carriers and state commission staffs and has been approved by the Commission. In the process, Qwest agreed to SGAT modifications to accommodate concerns of other telecommunications providers and also to reflect the Commission's decisions on impasse issues. The issue regarding transport in excess of 50 miles was a disputed issue that was resolved in an Order issued by the Commission in Docket No. 00-049-08 on September 18, 2001. Referring to Checklist Item Number 1, Interconnection, the order provided as follows:

“Direct Trunked Transport in Excess of 50 miles in Length.” As the Commission has stated before, if the parties cannot come to mutually agreeable terms, then either party may bring the issue before the Commission for determination of each party's obligations. The SGAT should be changed to reflect that this course of action is available.

When Dedicated Transport is greater than 50 miles in length, and existing facilities are not available in either carrier's network, one carrier or the other must construct facilities. In these situations the carriers can agree to a mid-point arrangement, where both carriers may be jointly responsible for construction and cost of the requested facilities. When a carrier seeks DTT in excess of 50 miles and an agreement cannot be reached on an appropriate cost sharing arrangement, then either carrier may submit the issue to the Commission for relief. This is consistent with FCC requirements.

The FCC does not require incumbents to “build out” or “construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.”²⁰ The FCC acknowledged that some reasonable end point to an incumbent LEC's obligation is appropriate, stating, “[r]egarding the

²⁰ Third Report and Order and Fourth Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd. 3696 (1999) (“*UNE Remand Order*”).

distance from an incumbent LEC's premises that an incumbent should be required to build out facilities for meet point arrangements, we believe that the parties and state commissions are in a better position than the Commission to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection."²¹ Moreover, in defining meet-point arrangements, the FCC stated: "the 'point' of interconnection for purposes of Sections 251(c)(2) and 251(c)(3) remains on the local exchange carrier's network (e.g. main distribution frame, trunk-side of the switch), and the **limited** build-out of facilities from that point may then constitute an accommodation of interconnection."²² If ILECs were required to build out their facilities to any distance to accommodate interconnection, the FCC's use of the word "limited" in this context, and its statement regarding deferral to state commissions to determine the reasonable distance for mid-span meet points, would have no meaning. If the FCC has limited an ILEC's obligations in a meet-point arrangement in which carriers share the duty to build out, surely it would endorse similar, reasonable limitations on the accommodations Qwest must make when providing DTT. Consistent with the limits identified by the FCC, the issue regarding transport in excess of 50 miles was resolved in Utah Docket No. 00-049-08

The purpose of this arbitration is to reach an interconnection agreement, nothing more. Qwest's proposed language would fulfill this purpose and would appropriately, in accordance with the Commission's precedent established in the Section 271 process and consistent with FCC requirements, put off disputes about dedicated transport over fifty miles in length until such situations actually arise. Autotel's proposal, on the other hand, would impose requirements on Qwest beyond those in the SGAT and beyond those required by the FCC. In so doing, it would

²¹ *First Report and Order* ¶ 553.

²² *Id.* (emphasis added).

also require Qwest to offer the same excessively generous terms in all of Qwest's interconnection agreements. The Commission should reject Autotel's proposal.

E. ISSUE NO. 5: RECIPROCAL COMPENSATION CREDIT (CORRESPONDING AUTOTEL ISSUE: NO. 3)

1. Summary of Issue.

This issue deals with whether Qwest may use its normal billing system for making facilities credits to Autotel for interconnection facilities provided by Autotel.

2. Autotel Position.

Qwest is required to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic with Autotel. Under Qwest's credit method, Autotel would only be compensated if Qwest's billing to Autotel was greater than Autotel's billing to Qwest. Autotel needs to be able to bill Qwest so it may receive the compensation to which it is entitled.

3. Qwest Position.

Qwest has attempted to address Autotel's concerns on this issue which involved uncertainty in how reciprocal compensation credits would be billed, paying only 50 percent of the cost of a two-way dedicated facility and a proper matching of billings and credits for two-way dedicated facilities provided by Qwest, by proposing the following contract language.

4. Qwest Proposed Contract Language.

IV.I.2.a. A Party providing two-way dedicated facilities will pay the other Party the rate set forth in Exhibit A less 50%. Qwest will use its Reciprocal Compensation Credit Method of Billing to calculate the rate described above if Qwest is providing the two-way facility to Autotel based on the following criteria.

2.a.1. The Reciprocal Compensation Credit for two-way dedicated facility charges provided by Qwest shall be based on the rates listed on Exhibit A for three components: the Entrance Facility, Dedicated Transport (Mileage) and Multiplexing. The sum of these charges will be reduced by a factor of .50 (fifty percent) as a credit to reflect that the traffic on these

facilities is relatively balanced. The two-way facility charges and the facilities credit will appear on the current month's bill to Autotel.

5. Argument.

Qwest has had a difficult time precisely identifying and addressing Autotel's concerns on this issue. Without going through the settlement discussions and negotiations, Qwest has proposed language on this issue that is essentially the same as the language Autotel originally proposed with only modest clarifying amendments. This proposed language makes clear that Qwest's method of billing reciprocal compensation credits does not require Autotel to pay for facilities provided by it rather than Qwest and that bills and credits will be applied simultaneously.

Qwest notes that it now calculates a facilities credit for every wireless carrier that has an interconnection agreement with Qwest. Autotel has no legitimate concern that it will not be appropriately billed and credited under Qwest's standard credit billing mechanism. Moreover, under the interconnection arrangements that Autotel appears to contemplate with Qwest, it appears that Autotel will be billing little if anything to Qwest. Therefore, Autotel's objections to Qwest's proposed language are without merit.

Accordingly, the Commission should reject Autotel's proposed language and approve the language submitted by Qwest.

F. ISSUE NO. 9: MF SIGNALING FOR TYPE 1 INTERCONNECTION (CORRESPONDING AUTOTEL ISSUE: NO. 7)

1. Summary of Issue.

This issue deals with whether Qwest is required to provide Multifrequency ("MF") signaling options to Autotel under Type 1 interconnection that are currently grandfathered to retail customers.

2. Autotel Position.

Autotel wants various kinds of [Dual Tone Multifrequency] (“DTMF”) signaling. Qwest only offers Wink Start. Autotel proposes, based on its agreement with Sprint in Nevada, that the latest generation of switching equipment has the capability of providing DTMF and pulse signaling.

3. Qwest Position.

DTMF and Pulse signaling are outmoded technologies no longer being provided to new Qwest customers. They may be provided to Autotel if requested and available, but only in accordance with the Special Request Process, which does not have a nonrecurring charge.

4. Qwest Proposed Contract Language.

V.E.4. Inband Multifrequency (MF) wink start signaling will be used with Type 1.

Qwest is also proposing a Special Request Process that will allow Autotel to obtain other types of signaling if available as follows:

Special Request Process

1. The Special Request Process shall be used for the following requests:

1.1. Requesting specific product feature(s) be made available by Qwest that are currently available in a switch, but which are not activated.

1.2. Requesting specific product feature(s) be made available by Qwest that are not currently available in a switch, but which are available from the switch vendor

1.3. Requesting a combination of Unbundled Network Elements that is a combination not currently offered by Qwest as a standard product and:

1.3.1. that is made up of UNEs that are defined by the FCC or the Commission as a network element to which Qwest is obligated to provide unbundled access, and;

1.3.2. that is made up of UNEs that are ordinarily combined in the Qwest network.

1.4. Requesting an Unbundled Network Element that does not require a technical feasibility analysis and has been defined by the FCC or the State Commission as a network element to which Qwest is obligated to provide unbundled access, but for which Qwest has not created a standard product, including, but not limited to, OC-192 (and such higher bandwidths that may exist) UDIT, EEL between OC-3 and OC-192 and new varieties of subloops.

2. Any request that requires an analysis of Technical Feasibility shall be rejected.

3. A Special Request shall be submitted in writing and on the appropriate Qwest form, which is located on Qwest's website.

4. Qwest shall acknowledge receipt of the Special Request within two (2) business days of receipt.

5. Qwest shall respond with an analysis, including costs and timeframes, within fifteen (15) business days of receipt of the Special Request. In the case of UNE Combinations, the analysis shall include whether the requested combination is a combination of network elements that are ordinarily combined in the Qwest network. If the request is for a combination of network elements that are not ordinarily combined in the Qwest network, the request shall be rejected.

6. Upon request, Qwest shall provide CLEC with Qwest's supporting cost data and/or studies for Unbundled Network Elements that CLEC wishes to order within seven (7) business days, except where Qwest cannot obtain a release from its vendors within seven (7) business days, in which case Qwest will make the data available as soon as Qwest receives the vendor release. Such cost data shall be treated as Confidential Information, if requested by Qwest under the non-disclosure sections of this Agreement.

5. Argument.

Autotel has not identified any need for its signaling demands. As a whole, the industry has moved away from any type of MF in band signaling in favor of out of band signaling and SS7 signaling in particular. At present Qwest provides only Wink Start MF signaling, with the exception of cases where other signaling is "grandfathered" until such time as it can be phased out in favor of newer and more efficient technologies. In general, these other types of signaling

are associated with obsolete technology and not applicable in today's environment and not used by Qwest.²³

In particular, Autotel is requesting DTMF or Pulse signaling. This signaling is a throwback to analog touchtone phones. At the time such phones were in use, signaling was initiated by the pulses sent when a customer dialed the phone number.²⁴ The switch responded by listening to the tones and routing the call accordingly. In today's environment, Qwest would receive the call from Autotel's switch and would not be listening to the pulses from the customer's phone set. While DTMF might be appropriate between Autotel's customer and Autotel's switch, it would be obsolete and unnecessary technology between Autotel's switch and Qwest's network. Wink Start MF signaling is the most appropriate of the in band signaling methods between the Autotel network and Qwest's network, not to mention the most current.²⁵

Autotel has not provided testimony as to why it believes DTMF or Pulse signaling are necessary. However, Autotel has provided testimony that it is allowed to use DTMF and Pulse signaling under its interconnection agreement with Sprint in Nevada. Autotel has not filed that interconnection agreement, indicating the terms and conditions on which this type of signaling is allowed, or any evidence regarding the reasons Sprint may be willing to allow such signaling in Nevada. In any event, the fact that Sprint may allow use of an outmoded technology in Nevada is no basis to require Qwest to provide it in Utah.²⁶

Qwest is willing to review the availability of DTMF and Pulse signaling for use in certain interconnections on a case-by-case basis with Autotel and has, therefore, proposed that Autotel

²³ See Torrence Direct at 15-16; Torrence Rebuttal at 7-9.

²⁴ See Torrence Direct at 15-16.

²⁵ See *id.*

²⁶ See Supplemental Rebuttal Testimony of Rachel Torrence for Qwest Corporation (October 14, 2003) at 1-4.

use the Special Request Process to address this issue. The Special Request Process, unlike the Bona Fide Request Process, to which Autotel objected, does not have a nonrecurring fee associated with requests. Each proposed implementation of DTMF or Pulse signaling would need to be evaluated to determine whether the existing Qwest switches are capable of providing this obsolete technology.²⁷

G. ISSUE NO. 10: TYPE 2 INTERCONNECTION TRUNKING – SPOP (CORRESPONDING AUTOTEL ISSUE: NONE)

1. Summary of Issue.

This issue is related to Issue Nos. 1 and 2. Qwest's proposed contract language would allow Autotel to use Type 2 interconnection without connecting to each access tandem.

2. Autotel Position.

Autotel advocates Type 1 interconnection. It did not address the Qwest original proposed language for Type 2 and therefore one would assume that Autotel feels it is not necessary.

3. Qwest Position.

Qwest proposes to address Autotel's concern on Issue No. 1 with its SPOP option, which is included in other wireless interconnection agreements approved by the Commission.

4. Qwest Proposed Contract Language.

V.F.9. Single Point of Presence (SPOP)

a. Single Point of Presence (SPOP) in the LATA is a Local Interconnection Service Interconnection trunking option that allows WSP to establish one physical point of presence in the LATA in Qwest's territory. Qwest and WSP may then exchange traffic at the SPOP utilizing trunking as described following.

b. By utilizing SPOP in the LATA, WSP can deliver both Exchange Access (IntraLATA Toll Non-IXC) and Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic and Exchange Service EAS/Local traffic at Qwest's Access Tandem Switches. WSP can also utilize Qwest's behind the tandem infrastructure to terminate traffic to

²⁷ See Torrence Direct at 17-18; Torrence Rebuttal at 8-9.

specific end offices. The SPOP is defined as the WSP's physical point of presence.

c. SPOP in the LATA includes an Entrance Facility (EF), Expanded Interconnect Channel Termination (EICT), or Mid Span Meet POI and Direct Trunked Transport (DTT) options available at both a DS1 and DS3 capacity.

d. Where there is a Qwest local tandem serving an end office that WSP intends to terminate traffic, the following conditions apply:

i. WSP may interconnect for the exchange of Qwest Local/EAS traffic at either the Qwest access tandem or the Qwest local tandem, at the WSP's option. When WSP is interconnected at the access tandem and where there would be a DS1's worth of local traffic (512 CCS) between WSP's switch and a Qwest local tandem or a Qwest end office subtending the Qwest access tandem, WSP will order a direct trunk group to that Qwest Local tandem or end office.

1. Qwest will allow interconnection for the exchange of Qwest local traffic at Qwest's access tandem without requiring interconnection at the local tandem, at least in those circumstances when traffic volumes do not justify direct connection to the local tandem.

2. When a WSP has an NXX that subtends a local tandem, but the anticipated traffic to and from the NXX is less than 1 DS1s (512 CCS) worth of traffic, the WSP may choose to use the access tandem for local traffic in the circumstances described above. The WSP will be required to submit an electronic letter on WSP letterhead to Qwest stating at which local tandems they will not interconnect. This letter should include, the local tandem CLLI(s) and the WSP specific NPA-NXXs for the local tandems. In addition, WSP will provide a revised electronic letter to Qwest of any changes in the network configuration or addition/deletions of NPA-NXXs of the aforementioned local tandems.

ii. Connections to a Qwest local tandem may be two-way or one-way trunks. These trunks will carry Exchange Service EAS/Local traffic only.

iii. A separate trunk group to the Qwest access tandem is necessary for the exchange of non-local Exchange Access (IntraLATA Toll Non-IXC) traffic and jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic.

e. Where there is no Qwest local tandem serving a Qwest end office, WSP may choose from one of the following options:

i. A two-way WSP Type 2 trunk group to the Qwest access tandem for WSP traffic terminating to, originating from, or passing through the Qwest network that combines Exchange Service EAS/ Local, Exchange Access

(IntraLATA Toll Non-IXC) and Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic.

ii. A two-way WSP Type 2 trunk group to the Qwest access tandem for WSP Jointly Provided Switched Access (InterLATA and IntraLATA IXC) Traffic terminating to and originating from the IXC Feature Group (FG) A/B/D network through the Qwest network and an additional two-way trunk Group to the Qwest access tandem for the combined Exchange Service EAS/Local and Exchange Access (IntraLATA Toll Non-IXC) traffic terminating to, originating from, and transiting the Qwest network.

1. If the WSP uses two way trunking, Qwest will send all Exchange Service EAS/Local, Exchange Access (IntraLATA Toll Non-IXC) and Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic delivered To the Qwest access tandem on the same combined trunk.

iii. A one-way terminating WSP Type 2 trunk group to the Qwest access tandem for WSP traffic destined to or through the Qwest network that combines Exchange Service EAS/Local, Exchange Access (Intra LATA Toll Non-IXC) and Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic.

iv. WSP may utilize a one-way Type 2 trunk group to the Qwest access tandem for Jointly Provided Switched Access (InterLATA and IntraLATA IXC) traffic terminating to the IXC FG A/B/D network through the Qwest Network, and an additional one-way trunk group to the Qwest access Tandem for the combined Exchange Service EAS/ Local, Exchange Access (IntraLATA Toll Non-IXC) traffic terminating to, originating from, and transiting the Qwest network.

1. If WSP orders either of the above one-way trunk options, Qwest will return the traffic via one combined Exchange Service EAS/ Local, and Exchange Access (IntraLATA Toll Non-IXC) trunk group.

v. To the extent Qwest combines Exchange Service (EAS/Local), Exchange Access (IntraLATA Toll carried solely by Local Exchange Carriers), and Jointly Provided Switched Access (InterLATA and IntraLATA Calls exchanged with a third-party IXC) traffic on a single trunk group, Qwest, at WSP's request, will declare a percent local use factor (PLU). Such PLU(s) will be verifiable with either call summary records utilizing Calling Party Number information for jurisdictionalization or call detail samples. WSP should apportion per minute of use (MOU) charges appropriately.

f. Qwest assumes WSP will be originating traffic destined for end users served by each Qwest access tandem in the LATA, therefore, WSP must order Type 2 trunking to each Qwest access tandem in the LATA to accommodate routing of this traffic. Additionally, when there is more than one Qwest access tandem within the LATA boundary, the WSP must

order Type 2 trunking to each Qwest access tandem that serves its end-user customers' traffic to avoid call blocking. Alternatively, should the WSP accept the conditions as outlined in the SPOP Waiver (Appendix A), Trunking will not be required to each Qwest access tandem in a Multi-access tandem LATA. The WSP needs trunking to each local tandem where they have a customer base if not utilizing the option of interconnecting at the access tandem for local as described above. The 512 CCS rule and other direct trunking requirements will apply for direct trunking to Qwest end offices.

g. If Direct Trunked Transport is greater than 50 miles in length, and existing facilities are not available in either Party's network, and the Parties cannot agree as to which Party will provide the facility, the Parties will construct facilities to a mid-point of the span.

h. WSP will provide notification to all Co-Providers in the local calling areas of WSP's change in routing when the WSP chooses to route its traffic in accordance with Qwest's SPOP interconnection trunking.

i. Ordering

1. SPOP in a LATA will be ordered based upon the standard ordering process for the type of facility chosen. See the Qwest Interconnection and Resale Resource Guide for further ordering information.

2. WSP will issue ASR's denoting change activity for existing trunk groups converting to SPOP trunk groups in the same LATA.

3. SPOP elements, such as EF; DTT; EICT; and multiplexing will be billed in accordance with the interconnection agreement (see Appendix A).

Appendix D

SINGLE POINT OF PRESENCE WAIVER

Qwest will waive the requirement for WSP to connect to each Qwest Access Tandem in the LATA with this waiver amendment.

WSP certifies that it will not originate any traffic destined for subtending offices of Qwest's Access Tandems for which WSP seeks a waiver. Or, if WSP does originate such traffic, that WSP will route such traffic to a Non-Qwest network. In addition, WSP certifies that it has no end users in the serving area of the Qwest Access Tandem for which WSP seeks a waiver.

WSP will send an electronic letter to Qwest indicating the Qwest access tandems subject to this waiver at the time of ordering trunks required to implement SPOP in the LATA. In addition, WSP will provide a revised electronic letter to Qwest advising of any changes in the network

configuration of the aforementioned access tandems. Should WSP desire to begin serving end users in the serving area of a Qwest access tandem currently under this waiver, WSP must first establish trunking to the Qwest access tandem. Additionally, should WSP desire to originate traffic destined to a Qwest end office subtending a Qwest access tandem currently under this waiver, WSP must first establish trunking to the Qwest access tandem. Should this traffic occur, the Parties agree to meet within forty-five (45) days of Qwest's identification of such misrouted traffic to discuss methods for avoiding future misrouting on that trunk group or groups. WSP will then have thirty (30) days from the date of meeting to correct such misrouting on that trunk group or groups. If further misrouting occurs or continues after that date on the same trunk group or groups as the original misrouting identified, the Parties agree to meet again within thirty (30) days of Qwest's identification of such misrouted traffic to discuss methods for avoiding future misrouting on that trunk group or groups. WSP will then have thirty (30) days from the date of meeting to correct such misrouting. If further misrouting occurs or continues after that date on the same trunk group or groups, Qwest will consider this waiver null and void and all requirements in Attachment 1 or in the existing Interconnection Agreement currently in effect between the Parties will be reinstated. If the parties disagree about whether the traffic identified by Qwest was actually misrouted, the Parties agree to avail themselves of the dispute resolution provision of their interconnection agreement.

5. Argument.

This proposed language would allow Autotel to accept the SPOP waiver and receive the benefits of Type 2 interconnection. It currently seeks those same benefits inappropriately while planning to use Type 1 interconnection. While Autotel is not required to use Type 2 interconnection, for the reasons identified above in Issue Nos. 1 and 2, unless it does so it cannot receive the benefits of Type 2 interconnection.

H. ISSUE NO. 11: UNES (CORRESPONDING AUTOTEL ISSUE: NO. 4)

1. Summary of Issue.

This issue has evolved during the course of this proceeding. It relates to Qwest's obligation to provide Unbundled Network Elements ("UNEs") to Autotel. Initially, Qwest understood the dispute to be whether Autotel could order UNEs without including the Commission-approved terms and conditions for purchase of those UNEs in the interconnection

agreement. Later, Qwest understood the issue to be whether Qwest was required to combine UNEs for Autotel without Autotel complying with Commission-approved terms and conditions in Qwest's SGAT for such combinations, which required collocation or one type or another in some instances. Finally, once it became clear why Autotel wished to order UNEs, the issue became whether Qwest was required to provide UNEs or UNE combinations for the purpose of connecting facilities on Autotel's network.

2. Autotel Position.

Autotel believes it has a right to UNEs at any technical feasible location without language (terms, conditions and maybe rates) under which Qwest offers UNEs and that collocation is not required for combining UNEs. Even with the new laws, Qwest is obligated to combine the loop and dedicated transport network elements for Autotel for the purpose of interconnection.

3. Qwest Position.

Qwest will provide nondiscriminatory access to UNEs and UNE combinations in accordance with applicable law. In accordance with ¶ 365 of the *Triennial Review Order*, Qwest is not obligated to provide dedicated transport between a wireless carrier's switch and Qwest's switch or between portions of the wireless carrier's own network. In addition, loops and network interface devices are to be used to serve end users, not to connect components of Autotel's network. If Autotel requests provision of appropriate UNEs, Qwest will provide them in accordance with the terms and conditions of its SGAT approved by the Commission.

4. Qwest Proposed Contract Language.

VII. Qwest shall provide nondiscriminatory access to the unbundled network elements included in 47 CFR 51.319. Should the parties wish to establish terms, conditions and rates for Unbundled Network Elements

(UNEs), the parties will enter into a separate UNE amendment to this agreement.²⁸

5. Argument.

Autotel apparently intends to use UNEs to connect locations on its network, for example, between Autotel's own switches. Autotel proposes to do this by ordering loops, subloops or network interface devices ("NIDs"). Autotel's proposed use of UNEs in this manner is inappropriate under the Act and should be rejected by the Commission.

In its *First Report and Order*, the FCC defined unbundled loops:

We further conclude that the local loop element should be defined 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.²⁹

The FCC's clear intent was that the purpose of unbundled loops is to allow a CLEC to access the ILEC's end-user customers. Autotel's intent to use unbundled loops or subloops to connect portions of its own network does not satisfy this definition. Likewise, in its *UNE Remand Order*, the FCC defined NIDs as being related to end-user customers.³⁰

Moreover, the recent *Triennial Review Order* narrowed the ILEC's bundling obligation for dedicated transport to transmission facilities between ILEC switches.³¹ Specifically, the FCC narrowed its definition of dedicated transport under section 251(c)(3) "to those transmission

²⁸ This proposed language is different than that contained in the Matrix because in preparing the Matrix Qwest inadvertently failed to delete language referring to the Bona Fide Request process, which the parties agreed would be deleted from the agreement.

²⁹ *First Report and Order* at ¶ 380.

³⁰ *UNE Remand Order*, 15 FCC Rcd 3696 at ¶ 233 ("Specifically, we define the NID to include any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a cross-connect device used for that purpose.").

³¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review 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*") ¶¶ 359-369.

facilities connecting incumbent LEC switches and wire centers within a LATA.”³² “Unlike the facilities that incumbent LECs explicitly must make available for section 251(c)(2) interconnection, we find that the Act does not require incumbent LECs to unbundle transmission facilities connecting incumbent LEC networks to competitive LEC networks for the purpose of backhauling traffic.”³³

Thus, dedicated transport is only those transmission facilities connecting ILEC wire centers and switches to each other. In paragraph 368 of the *Triennial Review Order*, the FCC clearly stated this definition of transport applied to wireless carriers:

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.³⁴

This language clarifies that Qwest’s obligation to provide unbundled dedicated transport does not extend to transmission between Qwest’s switches and those of Autotel and, by logical extension, to elements within Autotel’s own network. Therefore, Qwest does not have an obligation to provide the UNEs that Autotel is seeking. The Commission should therefore reject Autotel’s position on Issue No. 11.

The fact that Qwest has no obligation to provide UNEs for purposes of connecting Autotel’s own internal network does not mean that Autotel has no option except to build its own network. Qwest provides private lines and special access circuits to many wireless providers from its state and federal tariffs. These carriers use these services to connect elements in their

³² *Id.* at ¶ 365.

³³ *Id.*

³⁴ *Id.* at ¶ 368.

own internal networks.³⁵ The difference between purchase of these facilities in this manner rather than as UNEs is that Qwest is willing to construct these circuits when purchased under its tariffs because those tariffs contain minimum term obligations and are priced based on Qwest's actual costs. UNEs, on the other hand, are generally available on a month-to-month basis and are priced based on the estimated costs a hypothetical most efficient provider might incur, not in placing the precise facilities ordered, but in reconstructing the entire network.

Assuming that Autotel does wish to acquire UNEs for appropriate purposes, Autotel's statement of position on this issue indicates that it believes Qwest will require collocation for it to purchase any UNE combinations. Such a belief is inaccurate. The terms and conditions for purchase of various UNE combinations are specified in the Utah SGAT. While collocation is required for some combinations, it is not required for others. Even when it is required, it may often be accomplished through virtual collocation or Interconnection Distribution Frame ("ICDF"), which are relatively inexpensive.

Finally, Qwest notes that if Autotel orders loops, subloops and NIDs for appropriate purposes, *i.e.* to connect to end-use customers, it will no longer be a wireless carrier exempt from regulation by the Commission in Utah. Therefore, while Qwest is willing to provide UNEs and combinations of UNEs to Autotel for proper purposes in accordance with the terms and conditions approved in its SGAT, it doubts Autotel will actually purchase UNEs for those purposes.

III. CONCLUSION

The Commission should adopt Qwest's positions on the unresolved issues and approve Qwest's proposed contract language. Qwest's positions and language are in accordance with the

³⁵ See Supplemental Testimony of William R. Easton for Qwest Corporation (September 30, 2003) at 9.

Act and this Commission's and the FCC's decisions. Autotel seeks an agreement with Qwest on terms that are more beneficial to it than those which have been approved by the Commission and are included in interconnection agreements with other wireless providers and in Qwest's SGAT. The Commission should reject Autotel's attempt to obtain such an arrangement.

RESPECTFULLY SUBMITTED: December 9, 2003.

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPENING BRIEF OF QWEST CORPORATION** was served on the following by electronic mail on December 9, 2003:

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