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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Petition of AUTOTEL	:	Docket No. 03-049-19
for Arbitration of an Interconnection	:	
Agreement with QWEST CORPORATION	:	QWEST'S MOTION TO STRIKE
Pursuant to Section 252(b) of the	:	PORTIONS OF TESTIMONY OF
Telecommunications Act	:	RICHARD L. OBERDORFER

Qwest Corporation (“Qwest”) moves to strike portions of the direct testimony of Richard L. Oberdorfer dated May 30, 2003, on the grounds that the testimony is irrelevant and prejudicial. Specifically, Qwest moves to strike Section III of testimony titled “History of Negotiations” which begins on page 2 and ends on page 3 of the testimony and the last question and answer on page 5 of the testimony.¹

¹ The question is “Have you ever negotiated a mid-span meet point with Qwest?”

I. INTRODUCTION

Autotel filed its petition for arbitration on March 7, 2003, identifying nine disputed issues in the interconnection agreement between Qwest and Autotel. Qwest filed a response to Autotel's petition on April 1, 2003, identifying 15 issues for arbitration. Qwest filed an amended response on April 2, 2003 and a second amended response on April 29, 2003, correcting inadvertent errors and clarifying positions in the prior responses, but not adding any additional issues. Following a scheduling conference and issuance of a Scheduling Order on May 1, 2003, the parties filed direct testimony on May 30, 2003. The parties are scheduled to file rebuttal testimony on June 27, 2003.

To the best of Qwest's information, Autotel is not currently authorized to do business in the state of Utah and is not offering telecommunications service in any state in Qwest's 14-state region. Western Radio, Inc. ("Western Radio"), which Qwest understands is owned and managed by Richard L. Oberdorfer, Autotel's principal, conducts business as a wireless carrier in Oregon. Western Radio does not interconnect with Qwest in Oregon pursuant to an interconnection agreement, but rather purchases facilities and services from Qwest under its state tariff. In Oregon, the facilities and services purchased by Western Radio allow it to exchange traffic with a single Qwest end office in Bend, Oregon.

Mr. Oberdorfer commenced negotiations with Qwest for interconnection in Oregon more than four years ago. In December 2001, Mr. Oberdorfer expanded his interconnection negotiations with Qwest to include the state of Utah. The parties have agreed for purposes of this docket that the date upon which the request for negotiations is deemed to have taken place for purposes of the time frames in 47 U.S.C. § 252(b) is September 30, 2002. Although they have resolved many issues, issues still remain

principally involving the manner of interconnection between Autotel and Qwest. Qwest has two types of interconnection with wireless carriers, Type 1 involving a connection to an end office in each wire center in which the carrier proposes to serve customers and Type 2 involving a connection to a tandem office. The disputes between Qwest and Autotel generally arise because Autotel is seeking a combination of Type 1 and Type 2 interconnection.

The issue in this arbitration is whether Qwest is obligated under the Act to provide certain facilities and services to Autotel and, if so, under what terms and conditions. In an apparent attempt to prejudice Qwest's position, Mr. Oberdorfer's testimony portrays his negotiations and course of dealings with Pacific Northwest Bell commencing as early as 1982 in a negative manner. Even if negotiations and dealings prior to the passage of the Telecommunications Act of 1996 ("Act") were in some way relevant to this arbitration, negotiations between Pacific Northwest Bell and Mr. Oberdorfer are not. Qwest's predecessor in Utah was The Mountain States Telephone and Telegraph Company, known as Mountain Bell, not Pacific Northwest Bell, which was another affiliate of American Telephone & Telegraph Company not under the direction or control of Mountain Bell. Mr. Oberdorfer also mischaracterizes Qwest's more recent negotiations with him.

Accordingly, Qwest feels compelled to take the unusual step in this proceeding of moving to strike portions of Mr. Oberdorfer's testimony that are wholly irrelevant and prejudicial. By striking this testimony, the Commission will confine this arbitration to issues that need to be decided and send an important message to the parties, particularly

to Autotel which thus far has appeared without the benefit of legal counsel, that the Commission expects this arbitration to be conducted in an efficient and effective manner.

II. ARGUMENT

Pursuant to Utah Code Ann. § 63-46b-8(1)(b), the Commission may exclude from a proceeding evidence that is “irrelevant, immaterial, or unduly repetitious.”² Relevant evidence is that “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”³ Further, given that even relevant evidence should be excluded if it is sufficiently prejudicial,⁴ evidence that is both irrelevant and prejudicial should certainly be excluded.

The portions of Mr. Oberdorfer’s testimony titled “History of Negotiations,” which begins on page 2 and ends on page 3, and the last question and answer on page 5 of the testimony are wholly irrelevant to the only issue in this arbitration—whether Qwest is obligated under the Act to provide certain facilities and services to Autotel and, if so, under what terms and conditions. Mr. Oberdorfer’s course of dealings with Pacific Northwest Bell have nothing whatever to do with Qwest in any context, let alone the context of interconnection under the Act. Likewise, Mr. Oberdorfer’s negative characterizations of Qwest’s actions in his past negotiations, even if they were accurate which they are not, are irrelevant.

Neither of these portions of Mr. Oberdorfer’s testimony offer evidence making it

² See also Utah Admin. Code R746-100-10.F.1, providing that the Commission “may exclude non-probative, irrelevant, or unduly repetitious evidence.”

³ Utah R. Evid. 401.

⁴ See *id.* at R. 403 (“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . .”).

“more probable or less probable”⁵ that Qwest will be determined to have obligations to provide certain facilities and services to Autotel and, if so, under what terms and conditions. Rather, these portions of Mr. Oberdorfer’s testimony are merely inaccurate attempts to cast Qwest in a negative light. As such, in addition to being irrelevant they are prejudicial and should be stricken.

III. CONCLUSION

For the foregoing reasons, the Commission should strike the section of Mr. Oberdorfer’s testimony titled “History of Negotiations” which begins on page 2 and ends on page 3 of the testimony and the last question and answer on page 5 of the testimony.

RESPECTFULLY SUBMITTED: June 12, 2003.

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⁵ See *id.* at R. 401.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **QWEST'S
MOTION TO STRIKE PORTIONS OF TESTIMONY OF RICHARD L.
OBERDORFER** was served on the following by electronic mail on June 12, 2003:

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