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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 NOTICE OF INABILITY
Pursuant to Section 252(b) of the	:	TO FILE SIGNED AGREEMENT
Telecommunications Act	:	AND REQUEST FOR APPROVAL
	:	OF PROPOSED AGREEMENT

Qwest Corporation ("Qwest"), based on the Commission's Report and Order issued February 18, 2004 ("Order"), notifies the Commission that the parties are unable to file a signed interconnection agreement by March 19, 2004 as directed in the Order. The parties have each tendered a proposed agreement to the other for signature and each party has refused to sign the agreement tendered by the other party on the ground that the tendered agreement does not comply with the Order. In addition to providing this notice, Qwest files as Attachment 1 its proposed interconnection agreement and as Attachment 2 a computer-generated redline

agreement comparing Attachment 1 with the agreement proposed by Autotel.¹ Qwest respectfully requests that the Commission approve Attachment 1.

I. INTRODUCTION

Given the history of this arbitration, it should come as no surprise that the parties have been unable to reach agreement on the meaning and effect of the Commission's Order. From the outset of negotiations with Autotel several years ago, it has been apparent that Autotel views this process from a unique perspective. For example, Autotel's Petition for Arbitration did not identify portions of the interconnection agreement being negotiated between the parties that were in dispute and did not attach an interconnection agreement identifying the disputed language. By way of further example, Autotel's testimony and briefs rarely addressed specific language in the interconnection agreement. Autotel even went so far as to claim that one issue raised by Qwest was not validly before the Commission for decision.² Finally, Autotel has consistently ignored the fact that many of the issues it has raised have been previously raised by others. The issues have been resolved by decisions of various administrative agencies and courts. In accordance with those resolutions, Qwest is currently successfully providing interconnection services to 23 CMRS providers in Utah, many of whom, like Autotel, are relatively small. These companies have managed not only to negotiate interconnection agreements with Qwest, but operate under

¹ The comparison is made using Qwest's proposed agreement (Attachment 1) as the original document and Autotel's proposed agreement as the revised document. Thus, deletions are matters included in Qwest's agreement but not included in Autotel's version, and insertions are matters included in Autotel's version but not included in Qwest's version. Qwest is unable to provide a computer-generated comparison between the price sheets attached to its proposed agreement and those proposed by Autotel. The principal difference in these price sheets is that Autotel has included prices for several unbundled network elements ("UNEs") for which no terms and conditions are provided in the interconnection agreement and which Qwest does not believe it is required to provide to a wireless provider such as Autotel.

² See Opening Brief of Autotel (December 9, 2003) at 8.

them. However, Autotel contends that Qwest should be required to provide a unique and more favorable arrangement to Autotel than to all of these other providers.

By the time Qwest filed its Second Amended Response to Autotel's Petition for Arbitration, 15 issues had been identified with the corresponding language in the agreement which was in dispute clearly specified in both an issues matrix filed with the response and a copy of the interconnection agreement with the language in dispute identified. The parties filed direct and rebuttal testimony on the issues. Autotel filed only direct testimony and chose to address only a few of the issues. It did not mention any specific contract language in its direct testimony. Following this briefing, the Division of Public Utilities ("Division") prepared a draft issues matrix that identified each issue and the language in the agreement that was at issue. Each party was given the opportunity to comment on the matrix.

The Administrative Law Judge, consistent with the Division's recommendation, also convened a series of settlement conferences, some face-to-face and some by telephone. During the course of the next several weeks, five of the 15 issues were resolved with written exchanges between the parties confirming their resolution and the language in the agreement that was agreed upon. The parties thereafter filed supplemental testimony. Qwest's supplemental direct testimony confirmed the language in the agreement on the settled issues and addressed three additional issues based on a better understanding of Autotel's position. Qwest proposed new language for the interconnection agreement to resolve two of those issues. Autotel's supplemental direct testimony did not discuss any specific language in the agreement. Autotel did not filing supplemental rebuttal testimony contesting any of Qwest's language on settled issues.

Following the filing of the supplemental testimony, it was apparent that the parties had reached agreement on two additional issues. The Division prepared a further matrix showing the

status of all 15 issues and the contract language either accepted or proposed on them. The parties proposed changes to the matrix which were accepted by the Division. The parties then filed opening and reply briefs on the remaining issues. In its opening brief, Autotel quoted Qwest's proposed language on two of the eight issues, but did not otherwise address specific proposed contract language. Autotel's reply brief did not cite any specific contract language. The reply brief did, disingenuously, purport to accept Qwest's "offers" on two issues. In fact, what Autotel was attempting to do in allegedly accepting these offers was to carve out a part of Qwest's language that it liked, but leave out the portion of the language it did not.

In contrast to Autotel's unique approach to arbitration, Qwest has consistently identified specific contract language that was in dispute and has also proposed modifications to contract language in an effort to resolve issues.

Following nine months of litigation and settlement conferences, the Commission took the matter under advisement and issued its Order approximately eight weeks later. On each issue in dispute except one, the Commission ruled that it was accepting either Qwest's or Autotel's proposed language. On the one issue excepted (Autotel Issue 7, Qwest Issue 9), the Commission adopted Qwest's language, but directed Qwest to modify the language in a specific way.³

Given the fact that language in dispute had been identified on each issue and that language had been proposed on each area of dispute, one would have assumed that compliance with the Commission's Order requiring the parties to submit "an interconnection agreement reflecting the determinations in this order within 30 days" would have been a relatively simple matter. However, experience has taught that nothing in the negotiations or arbitration with Autotel has been simple.

³ See Order at 9 ("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.")

Attachment 1 to this notice is Qwest's proposed interconnection agreement. Attachment 2 is a computer-generated redline comparing Attachment 1 with Autotel's proposed interconnection agreement. Deletions in Attachment 2 are matters included in Qwest's proposed agreement, but not in Autotel's version. Insertions in Attachment 2 are matters included in Autotel's version, but not included in Qwest's. Qwest is unable to provide a computer-generated redline comparing the price sheets in its agreement with those in Autotel's. The principal difference in the two price sheets is that Autotel's contains rates for several UNEs for which terms and conditions are not provided in the agreement and which Qwest does not believe it is required to provide to wireless providers such as Autotel.

II. DISCUSSION OF DIFFERENCES

The differences between the two agreements fall into three categories: differences in application of the Commission's Order, differences in terms previously agreed upon and non-substantive differences.

A. DIFFERENCES IN APPLICATION OF THE COMMISSION'S ORDER

In connection with each issue identified for arbitration by either party, Qwest identified specific language in the interconnection agreement that was at issue. This was done in its response to Autotel's petition, in its issues matrix and in its testimony. In a few cases, Autotel also identified language that was in dispute. The specific provisions of the agreement at issue were incorporated in the Issues Matrix prepared by the Division. Autotel had an opportunity to comment on the matrix and did not dispute the identified provisions or suggest that other provisions were in dispute. Qwest has limited its substantive changes in the agreement to language identified as being in dispute. In many cases, Autotel has made substantive changes in portions of the agreement which were not identified as being in dispute. These provisions of the agreement were not subject to arbitration, and it is improper to make substantive changes to the

agreement in these provisions unless they are mutually agreeable. Autotel is not authorized to make substantive changes to provisions in the agreement that were not identified for arbitration.

A few issues deserve more detailed comment. The parties have always disputed whether Qwest was obligated to provide certain UNEs to Autotel. In addition, Autotel also disputed the terms and conditions on which UNEs must be provided if Qwest were obligated to provide them. The parties' understanding of their dispute evolved during the course of this arbitration. At the end of the day, Qwest stated that it was willing to provide access to UNEs which it was legally obligated to provide to Autotel in a nondiscriminatory manner in accordance with the terms and conditions in its approved SGAT. The Order approved this position,⁴ and Qwest's proposed language in Article VII of Attachment 1 is entirely consistent with the Order. On the other hand, in complete disregard of the Order, Autotel has proposed to include an entirely new appendix to the agreement obligating Qwest to provide certain UNEs and has included the rates for the UNEs in the price sheets as if there were no dispute about Qwest's obligation to provide these UNEs in the first instance.⁵

The Order specifically referred to and approved Qwest's proposed language on Single Point of Presence ("SPOP")⁶ and Special Request Process.⁷ These have been included in Attachment 1, but, contrary to the Order, were not included in Autotel's proposed agreement.⁸

⁴ *Id.* at 7.

⁵ Although this is not the time to argue the merits given that the Order has already resolved this issue in Qwest's favor, Qwest's position that it is not required to provide certain UNEs to Autotel as a wireless provider was confirmed by the recent decision of the United States Court of Appeals for the District of Columbia Circuit in *United States Telephone Association v. Federal Communications Commission*, No. 00-1012 (decided March 2, 2004).

⁶ Order at 2-3 (referring to options offered by Qwest in Type 2 interconnection, which clearly refers to the SPOP option); 8 (referring specifically to the SPOP option) and 10-11 (referring specifically to the SPOP option and accepting Qwest's language).

⁷ *Id.* at 9 ("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.")

In numerous other instances, Autotel has proposed substantive changes to the agreement in language that was not identified as being in dispute.

B. DIFFERENCES IN TERMS PREVIOUSLY AGREED UPON

In a few cases, Autotel has not incorporated changes agreed to between the parties in the negotiations that took place in the arbitration. For example, on Issues 6 and 7, Qwest's letter to Autotel dated August 6, 2003, stated as follows:

Issue 6

....

IV.J. Miscellaneous Charges

Reciprocal Compensation does not apply to Miscellaneous Charges.

....

Issue 7

Qwest understands that the issue is resolved with the following change in the interconnection agreement:

J. Miscellaneous Charges

Cancellation charges will apply to cancelled Type 1 and Type 2 trunk orders, based upon critical dates, terms and conditions in accordance with Exhibit A and the Trunk Nonrecurring Charges referenced in this Agreement.

In Autotel's responsive e-mail dated August 8, 2003, it stated:

Issue 6

Autotel accepts Qwest's proposed changes.

Issue 7

Autotel accepts Qwest's proposed changes.

⁸ Autotel included an SPOP Waiver, but did not include the underlying terms and conditions for the SPOP which are an essential part of the SPOP option and waiver.

Qwest has incorporated the terms proposed in the on Miscellaneous Charges section of the agreement exactly as proposed in its letter. Autotel has not done so in its proposed agreement.

C. NON-SUBSTANTIVE DIFFERENCES

Many of the differences between the agreements are simply stylistic, reflect differences in formatting or involve updates made by Qwest. For example, Qwest's name in Attachment 1 is properly "Qwest Corporation." In Autotel's proposed agreement, it is "QWEST." The shorthand name for Qwest Corporation in Attachment 1 is "Qwest." In Autotel's proposed agreement it is "QWEST." In other examples, Qwest capitalized the first letter of certain terms consistent with other portions of the agreement, but Autotel did not capitalize them. Other non-substantive differences result from the fact that the base agreement being used, at Autotel's insistence, is an old AT&T Wireless interconnection agreement which has some outdated references in it. For example, references in that agreement to Bellcore, which are still included in Autotel's proposed agreement, should be changed to Telcordia because Telcordia is the successor to Bellcore, and Bellcore no longer exists.

Qwest would not normally bring these types of differences to the Commission's attention except for the fact that Autotel has refused to consider them. Autotel has claimed that Qwest's effort to make these non-substantive changes violates a supposedly negotiated agreement that Autotel would have control of the document and further that Qwest is attempting to trick Autotel into agreeing to changes in the agreement which would then require further review and approval of the Commission and delay Autotel's business plan. Qwest acknowledges that it did not identify these non-substantive issues in its response to Autotel's petition and that it did not identify them as disputed issues in its testimony or briefs. However, Qwest sees no reason not to correct non-substantive and non-controversial errors in the agreement prior to its execution and

does not believe that doing so would require further Commission approval or delay Autotel in any way.

III. CONCLUSION

This arbitration has consumed resources grossly disproportionate to its significance. Based on its business plan, it is unlikely that Autotel will do business with Qwest in Utah that will involve costs or generate revenues for either party that approach the value of the resources consumed by this proceeding. Autotel could have easily opted into any one of the interconnection agreements Qwest has with 23 other wireless providers in Utah and could have been in business in Utah many years ago. Instead, Autotel has insisted on unique and more favorable terms. Having now been forced to compromise or litigate several issues with Autotel, Qwest is entitled to an end to this process. Either Autotel should sign the agreement attached to this petition, which complies precisely with the Commission's Order, or it should decide that it is not interested in doing business in Utah on terms approved by the Commission. Therefore, Qwest respectfully requests that the Commission approve Attachment 1 as the ordered agreement between the parties and allow this matter to end one way or the other.

RESPECTFULLY SUBMITTED: March 19, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **QWEST'S NOTICE OF INABILITY TO FILE SIGNED AGREEMENT AND REQUEST FOR APPROVAL OF PROPOSED AGREEMENT** was served on the following by electronic mail on March 19, 2004:

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