

David W. McGann
Robert C. Brown
Qwest Services Corporation
1801 California Street, Suite 4700
Denver, Colorado 80202
(303) 672-5839
(303) 295-7069 (fax)
david.mcgann@qwest.com
robert.brown@qwest.com

Gregory B. Monson (2294)
Ted D. Smith (3017)
David L. Elmont (9640)
STOEL RIVES LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111
(801) 328-3131
(801) 578-6999 (fax)
gbmonson@stoel.com
tsmith@stoel.com
dlelmont@stoel.com

Attorneys for Qwest Corporation

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 :

REPLY 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 reply to the Opening Brief of Autotel dated December 9, 2003 (“Autotel Brief”).

I. INTRODUCTION

Qwest and Autotel filed opening briefs on December 9, 2003. Autotel’s Brief illustrates a problem Qwest has had with Autotel and its affiliate Western Radio, Inc. (“Western”) throughout the nearly seven-year course of negotiations on interconnection agreements for Oregon and Utah. Autotel rarely discusses provisions of the interconnection agreement being negotiated, proposes specific language or amendments to language or discusses the application of either specific provisions in the agreement or the application of rules or decisions to them. Rather, it argues legal principles in an abstract manner, principally in reliance on its interpretation of Federal Communications Commission (“FCC”) rules, and ignores the fact that disputes between various incumbent local exchange carriers (“ILECs”) and competitive local exchange carriers (“CLECs”) or Commercial Mobile Radio Service (“CMRS”) providers regarding interpretation and application of those rules have taken place since passage of the Telecommunications Act of 1996 (“Act”) and have rejected positions Autotel is still urging. Where it does cite decisions, Autotel provides partial cites ignoring their context in relationship to other portions of the same or other decisions.

Many of the issues raised by Autotel 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 them. Qwest should not be required to provide a unique and more favorable arrangement to

Autotel, particularly in light of the pick and choose options available to all CLECs and CMRS providers.

Qwest will briefly respond to the arguments in Autotel's Brief, demonstrating that there is no reason to depart from prior decisions of the Commission and other relevant authorities. Accordingly, Qwest respectfully submits that the Commission should approve the interconnection agreement proposed by it and allow Autotel the opportunity to begin business in Utah on the same footing as other CMRS providers if it chooses to do so.

II. ARGUMENT

Qwest will address the issues in the order in which they appear in the Division's Matrix of Unresolved Issues ("Matrix").

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

Qwest has two types of tandem switches, local and access tandems. Local tandems are used to route local traffic between end offices located within the same Local Calling Area ("LCA"). Access tandems are used to route toll traffic. Qwest does not have inter-tandem trunks between local and access tandems or between local tandems.¹ A call that is a local call on Qwest's network will not be routed to an access tandem except under circumstances provided for in the Single Point of Presence ("SPOP") option, in which case it will be routed exclusively to the access tandem.² The dispute between Qwest and Autotel on this issue is whether Qwest is required to establish trunking between its local tandems or between its local and access tandems if Autotel elects to use Type 2 interconnection.

¹ Brotherson Direct at 7-9; Torrence Direct at 3-8.

² Torrence Direct at 8.

Before getting to the substance of the argument, two things must be noted. First, Autotel uses Type 1 interconnection rather than Type 2.³ Therefore, this dispute is probably purely academic. Second, in the event Autotel does elect to use Type 2 interconnection, Qwest has provided an SPOP option. Autotel did not mention the SPOP option in its Brief, let alone discuss why it does not meet its needs.

Autotel argues that the testimony of Rachel Torrence demonstrates that Qwest would not have to reconfigure its network to allow it to have access to subscribers throughout the Utah Local Access and Transport Area (“LATA”) if it only interconnects to one tandem. Yet the very words quoted by Autotel belie this argument. As cited by Autotel, Ms. Torrence testified that

Qwest has deployed an Access Tandem network architecture in which all End Office switches within a LATA subtend an Access Tandem or one of multiple Access Tandems in LATAs with more than one Access Tandem. This architecture allows for the origination, transport and termination of [Qwest’s] toll traffic.⁴

This testimony clearly establishes that access tandems are used for traffic that is toll traffic on Qwest’s network and that in LATAs with more than one access tandem, such as Utah, end offices subtend only one of the access tandems and not all of them. This testimony is completely consistent with Qwest’s other testimony on this issue. Local traffic is not routed to access tandems except under the SPOP option, which has its own restrictions.

Autotel is apparently unwilling to use the SPOP option.⁵ Therefore, it must interconnect at each access tandem if it wishes its customers’ calls to be completed to customers served by end offices that subtend other access tandems. The reason this is not acceptable to Autotel is that it requires Autotel to compensate Qwest for transporting calls that are long distance calls on

³ See Direct Testimony of Larry B. Brotherson (“Brotherson Direct”) at 5; Matrix at 6.

⁴ Direct Testimony of Rachel Torrence (“Torrence Direct”) at 5 (quoted with bracketed insertion in Autotel Brief at 1).

⁵ See Autotel Brief at 8 (“Issue 10: Qwest has failed to state an open issue for the Commission to decide. This issue should be dismissed.”); Matrix at 6.

Qwest's network. In other words, Autotel expects Qwest to transport calls Autotel elects to treat as local all across Qwest's network without reimbursing Qwest for the cost of transport. As pointed out in the Opening Brief of Qwest Corporation ("Qwest Brief"), Qwest is not required to do this.

The only authority Autotel cites in support of its position is 47 C.F.R. § 51.305. This is the FCC's general rule on interconnection. Autotel does not cite the specific portion of the rule that it believes governs this situation. However, based on its argument, Qwest assumes that Autotel is arguing that Qwest is obligated to provide interconnection at any technically feasible point and that one such point is at the access tandem. Qwest does not dispute that Autotel is to be allowed to interconnect at an access tandem if it chooses to do so. However, that obligation does not imply a corresponding obligation to transport and terminate traffic that is not local on Qwest's network though other access tandems to customers served by end offices that subtend those access tandems without compensation. As discussed in Qwest's Brief, Qwest has litigated similar issues with CMRS providers, and the FCC has concluded that Qwest is entitled to compensation and is not required to reconfigure its network to enable Autotel to provide Wide Area Calling ("WAC") to its customers at Qwest's expense.⁶ Accordingly, the Commission should approve Qwest's proposed language on this issue.

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

Issue No. 2 is related to Issue No. 1. Issue No. 1 relates to terms and conditions for interconnection with Type 2 interconnection, and Issue No. 2 relates to terms and conditions for

⁶ See Qwest Brief at 7, citing *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, Order on Review, 17 FCC Rcd 15135 (2002); *TSR Wireless, LLC v. U S WEST Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 11166 (2000), *aff'd sub. nom., Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

interconnection with Type 1 interconnection. Because Autotel is likely to use Type 1 interconnection, Issue No. 2 may have more relevance than Issue No. 1.

Type 1 interconnection is typically used by CMRS providers, such as paging companies, that only need to complete calls within the LCA served by a single end office. It is not generally used by CMRS providers that wish their customers to complete calls throughout a LATA. Such CMRS providers typically use Type 2 interconnection. As discussed in the testimony and in Qwest's Brief, Type 1 CMRS providers use the telephone numbers resident in the ILEC's end office switch whereas Type 2 CMRS providers have their own telephone numbers assigned to their switch.⁷ What Autotel really seeks on Issue No. 2 is an SPOP-type interconnection using Type 1 interconnection rather than Type 2.

In support of its position, Autotel cites the Act, the FCC's interconnection rule and the testimony of Ms. Torrence. The Act and rule are cited for the proposition that Qwest must allow interconnection at any technically feasible point. Qwest does not dispute that obligation. The testimony is cited for the proposition that interconnection at a Qwest end office is technically feasible. Qwest does not dispute that proposition either. However, the point ignored by Autotel is that there are terms and conditions associated with interconnection. One of those terms and conditions is that Autotel cannot interconnect at only one end office and expect Qwest to transport local calls delivered to that end office to customers served by other end offices outside the LCA of the end office to which it is connected without compensation. Another is that Qwest cannot assign numbers from its switch to persons located outside the area served by that switch.

⁷ See Qwest Brief at 10.

In its Brief, Qwest cited authorities supporting its position.⁸ Autotel has cited none controverting it. Accordingly, the Commission should approve the language proposed by Qwest on Issue No. 2.

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

This issue involves the proper definition of non-local traffic for purposes of determining whether the traffic is subject to reciprocal compensation or switched access charges. In support of its position, Autotel cites 47 C.F.R. § 51.701, which defines CMRS traffic that originates and terminates in the same MTA as local. However, as demonstrated in Qwest’s Brief, the FCC has made it clear in the *First Report and Order*⁹ and the *ISP Remand Order*¹⁰ that this does not mean that such traffic is to be treated as local when carried by an Interexchange Carrier (“IXC”) or in other circumstances.¹¹ Qwest’s proposed language is consistent with these decisions and should be approved by the Commission.

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

Autotel’s position on this issue is unclear based on its statement that “Autotel accepts Qwest’s offer made in the 271 process for Qwest’s to build facilities if they do not exist and are within 50 miles from the particular office.”¹² This statement might be read as accepting Qwest’s

⁸ See Qwest Brief at 11, citing *Mountain Communications*, 17 FCC Rcd 15135; *Metrocall Inc. v. Southwestern Bell*, 16 FCC Rcd 18123 (2001); *TSR Wireless*, 15 FCC Rcd 11166, aff’d sub. nom., *Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

⁹ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rec. 8965 (1996) (“*First Report and Order*”).

¹⁰ 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*, 16 FCC Rcd 9151 (2001) (“*ISP Remand Order*”), remanded, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) .

¹¹ See Qwest’s Brief at 13-14.

¹² Autotel Brief at 3.

proposed language. If so, this issue is resolved. However, the argument that precedes this statement indicates that Autotel continues to object to Qwest's proposed language on this issue.

Qwest's proposed language was approved by the Commission in Docket No. 00-049-08¹³ and the language offered mirrors that of Section 7.2.2.1.5 of the approved Utah Statement of Generally Available Terms and Conditions dated October 31, 2002 ("SGAT"). Nonetheless, Autotel argues that Qwest's reliance on this Commission precedent "does not meet the statutory standard for resolving open issues" and that since "Qwest routinely expands its network to better serve its own customers" the "Act requires Qwest to do the same for Autotel."¹⁴ As Qwest stated in its Brief, the FCC does not require ILECs 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."¹⁵ Instead the FCC has determined that some limitation on an ILEC's obligation to accommodate interconnection is appropriate and that, "the parties and the state commissions are in a better position than the [FCC] to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection."¹⁶

Qwest's proposed resolution of this issue is consistent with the FCC's interpretation the interconnection requirements applicable to ILECs, and with the Commission's precedent established in the Section 271 process. Furthermore it maintains the Commission's discretion to resolve disputes over the construction of transport facilities beyond fifty miles on a case-by-case

¹³ Order, *In the Matter of the Application of Qwest Corporation, fka U.S. West Communications, Inc., for Approval of Compliance with 47 U.S.C. § 271(d)(2)(B)*, Docket No. 00-049-08 (Utah PSC September 18, 2001) at 4.

¹⁴ Autotel Brief at 2-3.

¹⁵ See Qwest Brief at 16, citing 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*").

¹⁶ See Qwest Brief at 16-17, citing *First Report and Order* ¶ 553.

basis where the parties are unable to reach a mutually acceptable solution. In contrast, Autotel's proposal would impose requirements on Qwest that are not contained in the SGAT or required by the FCC. Adopting Autotel's proposal would also affect Qwest's existing agreements by forcing Qwest to offer the same 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)

This issue deals with how facility credits will be applied in Qwest's billings to Autotel. Qwest has modified its proposed language on this issue to address concerns raised by Autotel, but Autotel continues to object to this language, arguing that "Qwest's proposal would allow Qwest to calculate the rate differently and presumably at a greater amount for Qwest provided transport than the rate Autotel would receive for the transport it provided."¹⁷ Qwest does not understand what aspect of its proposal implies that it will calculate the rate differently for transport provided by Autotel than for transport provided by Qwest. There is no basis in the evidence for this presumption. Furthermore, the interconnection agreement and Utah statutes¹⁸ provide remedies for Autotel if Qwest attempts to apply any provision of the interconnection agreement in a manner that is unlawful.

As noted in Qwest's Brief, Qwest is currently calculating a facility credit for every CMRS provider that has an interconnection agreement with it.¹⁹ Qwest is unaware of any dispute with these carriers regarding operation of this provision. Therefore, Autotel has no legitimate concern that it will not be appropriately billed and credited. Accordingly, the

¹⁷ Autotel Brief at 3.

¹⁸ Utah Code Ann. §§ 54-8b-16 & 17.

¹⁹ See Qwest Brief at 20.

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)

Autotel contends that Qwest is required to offer Pulse and Dual Tone Multi-Frequency ("DTMF") signaling to Autotel as part of its Type1 interconnection arrangement. Qwest's testimony that DTMF and Pulse signaling are outmoded technologies that are not offered to new customers on its network is uncontroverted.²⁰ Instead Qwest offers "Inband Multifrequency (MF) Wink Start" signaling as an alternative to carriers who wish to use in-band signaling.²¹ Autotel has not explained why this signaling protocol is not acceptable.

In addition to offering MF signaling, Qwest has offered its Special Request Process to allow Autotel to obtain other kinds of signaling if available. While Autotel protests this process, its use would allow the parties to focus on identified signaling technologies at particular locations and thereby develop facts concerning the actual feasibility and cost of the requested signaling in a specific context. Autotel does not state why the terms of the Special Request Process are not reasonable.²² The Special Request Process is included in the Commission-approved SGAT Exhibit F.

²⁰ See Qwest Brief at 22-23, citing Torrence Direct at 15-16 and Rebuttal Testimony of Rachel Torrence ("Torrence Rebuttal") at 7-9.

²¹ Torrence Direct at 15 ("As a whole, the industry has moved away from any type of MF in-band signaling in favor of out-of-band signaling and Signaling System 7 ('SS7') in particular. Because of the archaic nature of network architectures associated with Type 1 interconnection, Qwest continues to provide limited in-band signaling. In support of Type 1 interconnection, Qwest offers MF Wink Start signaling.").

²² Autotel previously objected to the Bona Fide Request Process at least in part because of the nonrecurring charge associated with it. Initiation of the Special Request Process does not require payment of a nonrecurring charge. Supplemental Rebuttal Testimony of Rachel Torrence ("Torrence Supp.") at 2.

Autotel's proposal seeks to impose an unreasonable burden on Qwest to offer outmoded technologies simply because Autotel claims they are "technically feasible." This approach is not required under the Act and should be rejected by the Commission.

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

This issue is related to Issue No. 1 and may, therefore, be academic because Autotel may never actually attempt to establish Type 2 interconnection with Qwest. In any event, Qwest proposed the SPOP option in an effort to address concerns raised by Autoel. If Autotel does not want the SPOP option, Qwest does not insist on it. Therefore, unless the Commission concludes that Qwest's offering of the SPOP option is necessary to resolve Issue No. 1 in Qwest's favor, Qwest is willing to withdraw the SPOP option in resolution of this issue.

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

This issue relates to Qwest's obligation to provide Unbundled Network Elements ("UNEs") and combinations of UNEs to Autotel. Qwest's proposed language is that it "shall provide nondiscriminatory access to the unbundled network elements included in 47 C.F.R. § 51.319." Qwest's proposal further states that "[s]hould the parties wish to establish terms, conditions and rates" for UNEs, the parties will enter into a separate "UNE amendment" for that purpose.

Autotel's Brief does not discuss Qwest's proposed language, nor does it offer a specific alternative. Instead, Autotel merely states, "Qwest has changed its position and now has offered to provide UNEs and UNE combinations to Autotel in accordance with applicable law."²³ Qwest has not changed its position. Furthermore, Qwest does not understand why Autotel would object to the position identified in its Brief. Surely that is all Qwest is required to do.

²³ Autotel Brief at 4.

Autotel’s Brief further states that “[t]he interconnection agreement should contain terms and conditions that require Qwest to provide the loop and dedicated transport elements and to combine those elements.”²⁴ This argument is ironic. Qwest has always been willing to include the SGAT terms and conditions approved by the Commission following the lengthy multistate proceedings in Docket No. 00-049-08 and which are applicable to all other CLECs and CMRS providers in the interconnection agreement. Qwest has also been willing to enter into negotiations to add terms and conditions for the use of UNEs and UNE combinations. To date, Autotel has not been willing either to accept the terms and conditions in Qwest’s SGAT or to negotiate terms and conditions. It simply wants the interconnection agreement to state that Qwest is obligated to provide UNEs and UNE combinations without stating any terms and conditions on which they will be provided.

The essence of Autotel’s argument is reflected in its statement, “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 in the same manner that it interconnects with Qwest.”²⁵ In fact, however, in its recent *Triennial Review Order*,²⁶ the FCC specifically rejected Autotel’s approach to unbundling stating, “the standard for unbundling is not ‘technical feasibility’ and, moreover, just because a facility is capable of being unbundled does not mean that it is appropriately considered to be a network element for purposes of section §251(c)(3).”²⁷ In

²⁴ *Id.* at 5.

²⁵ *Id.* at 4.

²⁶ 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, 30 Comm. Reg. (P & F) 1 (rel. August 21, 2003) (“*Triennial Review Order*” or “*TRO*”).

²⁷ *TRO* at ¶ 366.

addition, the FCC specifically distinguished between an ILEC's duties to provide interconnection under section 251(c)(2) and its unbundling obligations under section 251(c)(3).²⁸

During the course of this arbitration, another issue has arisen. That issue is whether the manner in which Autotel seeks to use loops and dedicated transport is consistent with the FCC's interpretation of ILEC duties to provide UNEs under section 251(c)(3). Autotel's Brief states that "Autotel has requested the loop network element to provide service to end users."²⁹ There is no evidentiary support for this statement and it defies logic. Qwest understands that Autotel is a CMRS provider. As a CMRS provider, Autotel does not require loops to provide service to its end users. To the extent Autotel does require loops to provide service to its end users, it is no longer a CMRS provider exempt from certification and regulation by the Commission.

Qwest understands that Autotel seeks UNEs, including loops and dedicated transport, to connect locations on its own network. As noted in Qwest's Brief, these uses would be contrary to the *TRO* and other FCC precedent.³⁰ However, to the extent that Autotel does wish to obtain UNEs and UNE combinations for appropriate purposes, Qwest is willing to provide them on appropriate terms and conditions as noted above. Qwest's proposed language is consistent with this position, and the Commission should approve it.

III. CONCLUSION

Autotel has raised nothing in its Brief that undermines any of the uncontroverted evidence or authorities cited by Qwest in its Brief. Therefore, it is respectfully submitted that the Commission should adopt Qwest's positions on the unresolved issues and approve Qwest's proposed contract language. The Commission should reject Autotel's attempt to obtain a unique

²⁸ *Id.*

²⁹ Autotel Brief at 4.

³⁰ *See* Qwest Brief at 30-32.

arrangement, particularly since that attempt is based on interpretations of the Act and the FCC's rules that have been rejected.

RESPECTFULLY SUBMITTED: December 23, 2003.

Gregory B. Monson
Ted D. Smith
David L. Elmont
STOEL RIVES LLP

David W. McGann
Robert C. Brown
Qwest Services Corporation

Attorneys for Qwest Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **REPLY BRIEF OF QWEST CORPORATION** was served on the following by electronic mail on December 23, 2003:

Richard L. Oberdorfer
Autotel
114 North East Penn Avenue
Bend, OR 97701
oberdorfer@earthlink.net

Michael Ginsberg
Assistant Attorney General
Patricia Schmid
Assistant Attorney General
160 East 300 South, Suite 500
Heber M. Wells Building
Salt Lake City, UT 84111
mginsberg@utah.gov
pschmid@utah.gov
