

**Qwest**  
421 SW Oak Street  
Room 810  
Portland, OR 97204  
Telephone: 503-242-5623  
Facsimile: 503-242-8589  
Email: Alex.Duarte@qwest.com



**Alex M. Duarte**  
Corporate Counsel

**VIA EMAIL AND U. S. MAIL**

August 3, 2005

Honorable Allan Arlow  
Administrative Law Judge  
Public Utility Commission of Oregon  
P. O. Box 2148  
Salem, OR 97308-2148

Re: ARB 537 (Western Radio/Qwest)- Response to Western's August 1, 2005 letter

Dear Judge Arlow:

I apologize for having to send this letter, but having reviewed the August 1, 2005 letter from Richard Oberdorfer of Western Radio Services Co. ("Western"), Qwest believes it must respond with additional facts to the second point that Western raised in its letter.

In its letter, Western stated that it had "received Qwest's request for negotiation of an interconnection agreement and two new proposed interconnection agreements on May 10, 2005." Western is apparently referring to Qwest's form letter (sent to approximately 180 one-way Type 1, two-way Type 1 and two-way Type 2 providers in 11 Qwest states) in which it stated that it was withdrawing section 20 (Facilities for Radio Carriers) of Qwest's Exchange and Network Services Tariff (Tariff No. 29 in Oregon), and thus that Qwest was implementing an interim interconnection agreement until a permanent agreement could be reached.

Qwest's withdrawal of this tariff was the result of the FCC's recent *T-Mobile* decision (CC Docket No. 01-92, FCC 05-42, 2/24/05). In that order, the FCC ruled that ILECs may not use tariffs to impose on wireless providers termination charges on non-access traffic, and that although tariffs may be invalid, the interim compensation process described in 47 C.F.R. §51.715 would apply until formal agreements between ILECs and wireless providers are established. Coupled with the *TSR Wireless* decision regarding paging carriers, Qwest decided that its only viable option was to withdraw this section of the tariff and to enter into interconnection agreements with these types of wireless providers.

Although Qwest sent this form letter to Western (and about 180 other carriers), it was not Qwest's intent to open new section 251/252 negotiations between Qwest and Western. Rather, with respect to Western (and its affiliate, Autotel), for which section 251/252 arbitrations have already been in process in several states, this letter was simply sent to establish an interim agreement to replace the withdrawn tariff section so that Qwest could continue to provide existing services to Western until the current section 251/252 process in this docket (ARB 537, and the subsequent appeal to federal court) had come to a final conclusion.

Accordingly, on June 3, 2005, Qwest made that clear to Western, when it responded to several accusations that Western had made regarding its request for new negotiations. In the final paragraph of Qwest's June 3rd response, which is attached, Qwest clarified as follows:

The interim agreement only applies for the period of time between removal of the tariff and when the parties replace it with a permanent agreement. Since in Oregon the [section] 251/252 process is already in place for Western Radio, that will occur when the federal court agrees to hear your appeal and issue a decision [which we now know has been denied] or the Oregon Commission approves a final arbitrated interconnection agreement between Qwest and Western Radio. Qwest is *not opening a new [section] 251/252 window* for Western Radio or Autotel *in any state*. (Emphasis added.)

Qwest believes that the best and fastest way out of this morass is for the Commission to promptly approve the interconnection agreement that Qwest submitted on November 18, 2004, to which Western did not file objections. Qwest submits that the interconnection agreement it submitted complies with the Commission's Order No. 04-600 on October 18, 2004 and Your Honor's Arbitrator's Decision of September 20, 2004. Again, any attempt by Western to reopen the negotiations window would be a complete waste of the time, effort and resources that all parties have expended here. Qwest believes that Western should not be allowed to circumvent the section 251/252 process merely because it does not agree with the results of this docket, or the federal court's dismissal of its appeal of the Commission's arbitration order.

If you would like to discuss this matter further, please feel free to call me at your convenience. Thank you for your attention to this matter.

Very truly yours,



Alex M. Duarte

Encl.

cc Mr. Richard Oberdorfer  
Gregory B. Monson, Esq.

-----Original Message-----

From: Sanderson, Bryan  
Sent: Friday, June 03, 2005 2:31 PM  
To: 'Richard L. Oberdorfer'  
Cc: Nodland, Jeff  
Subject: RE: Utah Negotiations

Richard: See the attached for my response to your email. Bryan



Autotel6-3-05R.doc  
(33 KB)

-----Original Message-----

From: Richard L. Oberdorfer [mailto:oberdorfer@earthlink.net]  
Sent: Thursday, June 02, 2005 3:22 PM  
To: Sanderson, Bryan  
Cc: Nodland, Jeff  
Subject: Re: Utah Negotiations

Bryan

I read your letter. You forgot to mention that Qwest refused to give Autotel the same terms and conditions that Qwest gave to AT&T. Also it was Qwest who broke of discussion on conforming the agreement to the Utah Commission Order and then asked the Commission to impose Qwest's terms and conditions. Since the case was dismissed without remanding the arbitration proceeding, the Utah PUC does not have to do anything until Qwest or Autotel file a Petition for Arbitration.

After reading Qwest's briefing in the Utah and Oregon cases I believe that it will be impossible for Autotel or Western to obtain interconnection by submitting a partially negotiated agreement in an arbitration. If Qwest is willing to offer an interconnection agreement that meets the requirements of law and regulation, it should do so in the near future.

Also, I am a little fuzzy on where Qwest wants to go with having damages for bad faith negotiation decided by state commissions. I looks to me that the only way the PUCs can look at that issue is if it is in an agreement. Is that what Qwest wants?

Finally, Western received Qwest's request for negotiation of an

interconnection agreement under section 252 on May 10, 2005. I apologize for taking so long to get back to you. The letter came while I was gone and it took a little while to figure out when it was received.

Richard

----- Original Message -----

From: "Sanderson, Bryan" <Bryan.Sanderson@qwest.com>  
To: <oberdorfer@earthlink.net>  
Cc: "Nodland, Jeff" <jeff.nodland@qwest.com>  
Sent: Thursday, June 02, 2005 11:11 AM  
Subject: RE: Utah Negotiations

Richard please see my attached response to your email. Thank you.

Bryan

-----Original Message-----

From: oberdorfer@earthlink.net [mailto:oberdorfer@earthlink.net]  
Sent: Sunday, May 29, 2005 7:22 PM  
To: Sanderson, Bryan  
Subject: Fw: Utah Negotiations

----- Original Message -----

From: <oberdorfer@earthlink.net>  
To: "Sanderson, Bryan" <Bryan.Sanderson@qwest.com>  
Cc: "Nodland, Jeff" <jeff.nodland@qwest.com>  
Sent: Saturday, May 28, 2005 2:43 PM  
Subject: Re: Utah Negotiations

>  
> Bryan  
>  
> I would assume our companies are headed for arbitration. That is of  
> course, unless Qwest is willing to enter into an interconnection  
> agreement  
> that meets the requirements of law and regulation. It also appears  
> that  
> Qwest now contends that state commissions have primary jurisdiction  
> over  
> all interconnection matters. While I think we disagree about the  
> extent

> of state commission authority under the Act, it would be appropriate  
to  
> change the dispute resolution language to reflect that position.  
>  
> We are not going to start over using a Qwest template. We tried that  
in  
> 1999 and ended up with some 70 open issues. Actually, the AT&T  
agreement  
> we started with on the last round of negotiations only had a few areas  
  
> that did not meet the requirements of law and regulation. However,  
Qwest  
> wanted to change many terms and conditions in that Commission approved  
  
> agreement and in the end Qwest requested the Commission impose a whole  
  
> Qwest agreement. In that respect, Qwest is no worse than any other  
> incumbent LECs I have attempted to negotiate with, they all ask the  
state  
> commission to disregard the results of the negotiations and impose the  
  
> incumbent's terms and conditions. So that is what we will do.  
>  
> I have not given much thought on how one incorporates provisions for  
> damages in an interconnection agreement. I know Utah imposed  
liquidated  
> damages in another agreement but I think that was for failing to  
provide  
> UNE loops or something. This is going to take some research.  
>  
> Thanks  
> Richard  
>  
>  
>  
>  
>  
>  
>  
>  
> ----- Original Message -----  
> From: "Sanderson, Bryan" <Bryan.Sanderson@qwest.com>  
> To: "Richard L. Oberdorfer" <oberdorfer@earthlink.net>  
> Cc: "Nodland, Jeff" <jeff.nodland@qwest.com>  
> Sent: Friday, May 27, 2005 10:15 AM  
> Subject: Utah Negotiations  
>  
>

> Richard:

>

> I am in receipt of Autotel's request for negotiations in Utah. I  
> received the request on May 20. I called you earlier this week to  
> discuss this request, but have not heard back from you. The purpose of  
> the call was to determine where you were headed by opening new  
> negotiations. Are you planning to start from scratch (using a Qwest  
> template), or are you thinking of resuming negotiations using the AT&T  
> Wireless agreement as the template as we had done earlier or were you  
> going to open negotiations using the AT&T Wireless agreement up to the  
> point of where you filed for arbitration? I am sure there are other  
> possibilities here as well, I just need to understand your thought  
> process so that I can plan and respond accordingly. Please contact me

at

> your earliest convenience. Thank you.

>

> Bryan Sanderson

>

Richard:

I have spent most of this morning reviewing my "history" file regarding negotiations with Western Radio and Autotel. As a result of that review I wanted to set the record straight regarding your statement that "Qwest refused to give Autotel the same terms and conditions that Qwest gave to AT&T". I am assuming you are talking about Utah since you state Autotel rather Western Radio. First of all I have no memory of you requesting an adoption of the AT&T Wireless agreement in Utah. If my memory serves me correctly you suggested using the AT&T Wireless agreement in Utah as a template for negotiations to break the logjam over whose agreement should be used for the template. Qwest agreed and that agreement became the basis for negotiations in Utah, Oregon, New Mexico, Arizona and Colorado. I also did review the original AT&T Wireless agreement in Utah and note that it is a Type 2 agreement only. Given your adamant demands that any agreement between Qwest and Autotel (or for that matter Western Radio) must include Type 1 and Type 2 and two-way and one-way trunks, giving Autotel the same terms and conditions as AT&T Wireless would not have met your demands.

Your statement that Qwest also broke off discussion on conforming the agreement to the Utah Commission Order is also incorrect. Qwest indicated it was willing to live with the Utah Order and was agreeable to implementing the ordered language. The contract and language submitted by Qwest to the Commission followed verbatim what was ordered by the Commission. Also you are under the false impression that the case was dismissed by the Commission. That is not the case. It is still sitting there in limbo, because a signed agreement between the parties has never been submitted for final approval. That is exactly the reason your federal lawsuit in Utah was dismissed because it wasn't ripe for review, since a signed contract had not been approved by the Commission. And that is the point I was trying to make in my last email. Qwest and Autotel are still under the original 251/252 negotiations/arbitration proceedings and a new request to open negotiations with Qwest is inappropriate.

It is simply not appropriate to send you another Qwest template, since our past history shows that you do not accept them and since we need to complete an agreement that is compliant with the Utah commission's order.

As far as damages for bad faith negotiations go, Qwest will, of course, vigorously dispute any claims that you may make in that regard in any jurisdiction. Qwest has continued to make all reasonable efforts to negotiate with Western Radio and Autotel any claim to the contrary is simply illusory and has no merit.

Finally the form letter and interim interconnection agreement you received only applies in Oregon where Western Radio subscribes to the Oregon Radio Common Carrier (RCC) Tariff. It is not applicable in Utah because Autotel does not currently subscribe to any Qwest services via a RCC tariff. The interim agreement only applies for the period of time between removal of the tariff and when the parties replace it with a permanent agreement. Since in Oregon the 251/252 process is already in place for Western Radio, that will occur when the federal court agrees to hear your appeal and issue a decision or

the Oregon Commission approves a final arbitrated interconnection agreement between Qwest and Western Radio. Qwest is not opening a new 251/252 window for Western Radio or Autotel in any state.

Best Regards,

Bryan Sanderson



**CERTIFICATE OF SERVICE**

**ARB 537**

I hereby certify that on the 3<sup>rd</sup> day of August, 2005, I served the foregoing **QWEST CORPORATION'S LETTER TO THE HONORABLE ALLAN ARLOW** in the above entitled docket on the following person via U.S. Mail, by mailing a correct copy to him in a sealed envelope, with postage prepaid, addressed to him at his regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

Richard L. Oberdorfer  
Western Radio Services Co.  
114 N.E. Penn Avenue  
Bend, OR 97701

DATED this 3<sup>rd</sup> day of August, 2005.

**QWEST CORPORATION**



By: \_\_\_\_\_

ALEX M. DUARTE, OSB No. 02045  
421 SW Oak Street, Suite 810  
Portland, OR 97204  
Telephone: 503-242-5623  
Facsimile: 503-242-8589  
e-mail: [alex.duarte@qwest.com](mailto:alex.duarte@qwest.com)

Attorney for Qwest Corporation