

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the matter of the petition)
by Western Radio Services Co.)
for arbitration of an)
interconnection agreement)
with Qwest pursuant to)
Section 252(b) of the)
Telecommunications Act)

Docket No. ARB 706

REPLY TO QWEST’S MOTION TO DISMISS

A. Background

On October 14, 2005, Western Radio Services Co. (Western) filed with this Commission a Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act. On November 8, 2005, Qwest Corporation (Qwest) filed a Response to the Petition for Arbitration, including a Motion to Dismiss the Petition. Qwest contends that this Commission has already made an arbitration determination, that Western has violated Section 252(b)(1) by submitting the Petition and that the Petition does not comply with the Oregon Commission rules for filing a Petition for Arbitration.

B. Argument

OAR 860-013-0050(3)(a) requires motions against a petition to be filed within 20 days of service. Qwest’s Motion to Dismiss the Petition has not been filed within the 20 days allowed and is untimely.

This Commission has yet to act to carry out its responsibility under Section 252(b)(4)(A), therefore a determination in this proceeding has not been made. However at this point the Commission may still decline to act and dismiss the Petition for Arbitration so the parties may petition the FCC for preemption of the proceeding without acting on any motions from the parties.

State commissions do not have jurisdiction over a carrier’s alleged violation of the Telecommunications ACT. 47 USC Section 207 gives persons claiming to be damaged by a carrier the choice of making a complaint to the FCC or filing suit in Federal District Court. In addition, the relief available to those persons under 47 USC Section 206 is monetary damages and not the withholding of an interconnection agreement to prevent the requesting carrier from competing with the incumbent local exchange carrier.

The Petition submitted by Western contains a statement of all unresolved issues, a description of each party's position on the unresolved issues and a proposed agreement addressing the issues. While Qwest may be correct that two of the open issues are more procedural and not intended to be part of an interconnection agreement, it is important to note that those issues were raised by Qwest and not Western. 47 USC Section 252(b)(2)(A) requires the petitioner to submit all the unresolved issues and Western submitted all the open issues. In any event, Qwest has taken its opportunity to respond to Western's Petition in accordance with 47 USC Section 252(b)(3).

C. Conclusion

If the Commission grants the Qwest Motion to Dismiss, the Commission will have acted on the Petition and made a determination. Western would bring action in Federal District Court.

The Commission may decline to act and dismiss the Petition so Western may petition the FCC for preemption of the proceeding. If the FCC preempts the Oregon Commission, there is a limitation on remedies that applies in Section 252(e)(6). Qwest is likely to oppose preemption by the FCC.

If the Commission follows the arbitration process in Section 252, neither party should have cause for action against the Commission. This would be Western's preference.

Respectfully Submitted, this 22nd day of November 2005,

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of Western Radio Services Co. Reply to Qwest's Motion to Dismiss was sent via first class mail on November 22, 2005:

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