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**Carla M. Butler**  
Sr. Paralegal

December 12, 2005

Frances Nichols Anglin  
Oregon Public Utility Commission  
550 Capitol St., NE  
Suite 215  
Salem, OR 97301

Re: ARB 706

Dear Ms. Nichols Anglin:

Enclosed for filing please find an original and (5) copies of Qwest Corporation's Request for Official Notice of Utah Commission Order Dismissing Petition for Arbitration, along with a certificate of service.

If you have any question, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink that reads "Carla".

Carla M. Butler

CMB:

Enclosure

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**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**ARB 706**

In the Matter of the Petition of WESTERN  
RADIO SERVICES CO. for Arbitration of an  
Interconnection Agreement with QWEST  
CORPORATION, Pursuant to Section 252(b)  
of the Telecommunications Act

**QWEST'S REQUEST FOR OFFICIAL  
NOTICE OF UTAH COMMISSION  
ORDER DISMISSING PETITION FOR  
ARBITRATION**

Pursuant to OAR 860-014-0050(1), respondent Qwest Corporation (“Qwest”) hereby requests that the Commission take official notice of the Order Granting Motion to Dismiss (“Utah Order”) that the Public Service Commission of Utah (“Utah PSC”) issued on December 7, 2005, a true and correct copy of which is attached to this request. The grounds for this request are as follows:

1. On October 14, 2005, petitioner Western Radio Services Co. (“Western”) filed a Petition for Arbitration in this docket.
2. On November 8, 2005, Qwest filed “Qwest Corporation’s Response to Petition for Arbitration, Including Motion to Dismiss” (“Motion”).
3. On November 22, 2005, Western filed its “Reply to Qwest’s Motion to Dismiss.”
4. On December 1, 2005, Qwest filed “Qwest’s Reply to Western’s Opposition to Qwest’s Motion to Dismiss.”
5. Qwest’s Motion is currently pending for decision before the Commission.
6. Western’s sister company Autotel filed a Petition for Arbitration of an interconnection agreement with Qwest before the Utah PSC on October 25, 2005 which was assigned Docket No. 05-049-95. Qwest filed “Qwest’s Response to Petition for Arbitration, Including Motion to Dismiss” on November 18, 2005.

7. Although the posture of the prior arbitration in Utah (Docket No. 03-049-19) is somewhat different than the posture of the prior arbitration in Oregon as the result of the Commission's issuance of Order No. 05-1075 on October 10, 2005 in docket ARB 537, in which the Commission approved an interconnection agreement between the parties, two of the underlying issues governing the Motion are substantially similar in both states.<sup>1</sup>

8. In the Utah Order, the Utah PSC granted Qwest's motion to dismiss, stating:

Qwest argues the Petition should be dismissed both because it ignores our prior orders regarding the arbitration in Docket No. 03-049-19 and because it fails to properly identify open issues for arbitration. We agree. In its Petition, Autotel fails to properly identify, as required by 47 U.S.C. § 252(b)(2)(A), any open issues for which it seeks Commission resolution, choosing instead to rely on general allegations relating to Qwest's duty to negotiate and state commission jurisdiction. Although Autotel has attached apparently competing agreements to its Petition, it fails to specifically identify issues within those agreements requiring Commission resolution, or the parties' respective positions regarding those issues. This failure alone is sufficient to justify dismissal of the Petition and our dismissal is based in part upon this failure.

We also base our dismissal on Autotel's continuing failure to file a signed ICA the terms of which comply with our decision in the Arbitration Order. 47 U.S.C. § 252(e) makes clear that if Autotel does not agree with the Commission's decision on issues arbitrated in Docket No. 03-049-19 it should submit a signed agreement in accordance with that decision and then appeal to the appropriate federal district court. Autotel refuses to do so. We refuse to permit Autotel, in contravention of federal statute, to ignore our previous orders and to, apparently, seek arbitration of previously settled issues. *Utah Order*, pp. 3-4

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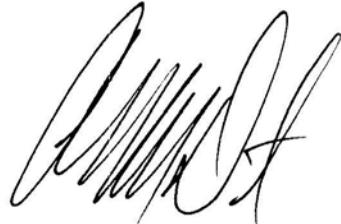
<sup>1</sup> In Docket No. 03-049-19, after the Utah PSC issued its arbitration decision, the parties were unable to reach agreement on and enter into an interconnection agreement compliant with the decision. Rather than reviewing Qwest's proposed agreement for compliance with the arbitration decision and approving the agreement as the Commission did in Order No. 05-1075, the Utah PSC declined to take further action until the parties submitted a signed interconnection agreement compliant with its arbitration decision. See Order Denying Request for Approval of Proposed Agreement, *In the Matter of the Petition of Autotel for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to Section 252(b) of the Telecommunications Act*, Docket No. 03-049-19 (Utah PSC Aug. 17, 2005). However, the Utah PSC affirmed that its arbitration decision would be binding on the parties in any further proceeding. See Order on Petition for Reconsideration and Clarification, *In the Matter of the Petition of Autotel for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to Section 252(b) of the Telecommunications Act*, Docket No. 03-049-19 (Utah PSC Sep. 21, 2005).

9. The Utah Order contains rulings on issues substantially similar to the issues currently pending on Qwest's Motion in this docket.

Accordingly, Qwest requests that the Commission take official notice of the Utah Order and that it consider the Utah Order in reaching its decision on Qwest's Motion.

DATED: December 12, 2005.

Respectfully submitted,



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Attorneys for Qwest Corporation

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

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In the Matter of the Petition of AUTOTEL	)	<u>DOCKET NO. 05-049-95</u>
for Arbitration of an Interconnection	)	
Agreement with QWEST CORPORATION	)	
Pursuant to Section 252(b) of the	)	<u>ORDER GRANTING MOTION TO</u>
Telecommunications Act	)	<u>DISMISS</u>
	)	

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ISSUED: December 7, 2005

By The Commission:

PROCEDURAL HISTORY

On October 26, 2005, Autotel filed a Petition for Arbitration (“Petition”) seeking Commission arbitration pursuant to 47 U.S.C. § 252(b) of an interconnection agreement (“ICA”) between Autotel and Qwest Corporation (“Qwest”). Autotel states it requested negotiation of an ICA with Qwest on May 20, 2005. The Petition seeks resolution of three issues denominated as (1) adoption of an interconnection agreement, (2) state commission jurisdiction concerning Qwest’s good faith negotiation duties under Section 251(c)(1), and (3) review of state commission actions.

On November 18, 2005, Qwest filed its Response to Autotel’s Petition for Arbitration, Including Motion to Dismiss, seeking dismissal of the Petition on the grounds that the Petition fails to comply with prior Commission orders and fails to properly identify any issues open for Commission arbitration.

On November 28, 2005, Autotel filed its Reply to Qwest’s Motion to Dismiss arguing Qwest seeks to send “Autotel in regulatory circles”arguing one thing in federal district court and another before this Commission. Autotel claims the Commission has yet to carry out

its statutory responsibility under 47 U.S.C. § 252(b)(4)(A) such that a final determination has not yet been made (by this, we believe Autotel is referring to the arbitration proceedings undertaken both in Docket No. 03-049-19 and the present docket). If the Commission grants Qwest's Motion to Dismiss, Autotel indicates it will seek to have the Federal Communications Commission ("FCC") preempt Commission jurisdiction of this matter. Autotel indicates its preference would be for the Commission to proceed to arbitration in the current docket.

BACKGROUND

Autotel's Petition continues an ICA dispute with Qwest previously arbitrated by this Commission in Docket No. 03-049-19. In that docket, the Commission resolved eight open issues and, by order dated February 18, 2004 ("Arbitration Order"), required parties to file a signed ICA within 30 days. Following Autotel's unsuccessful appeal of the Arbitration Order to the federal district court, and having given parties ample opportunity to submit a signed ICA or explain their inability to do so, on August 17, 2005, the Commission issued an Order Denying Request for Approval of Proposed Agreement ("August 2005 Order") denying Qwest's request to require Autotel to sign the ICA filed by Qwest. In light of the parties' failure to file a signed ICA, the Commission made clear it would take no further action in Docket No. 03-049-19, nor would it entertain further arbitration between the parties of these same issues, until the parties submitted a signed ICA in accordance with the terms of the Arbitration Order.

On September 2, 2005, Qwest Corporation ("Qwest") filed a Petition for Reconsideration and Clarification. On September 21, 2005, the Commission issued its Order on

Petition for Reconsideration and Clarification (“September 2005 Order”) repeating its determination not to engage in further ICA arbitration between the parties until a signed ICA has been filed in accordance with the Arbitration Order and stating “we leave it to the parties (particularly to AutoTel) to submit an executed ICA for Commission approval that will dictate the timing or process to be followed to resolve any additional disputes between the parties beyond those which we have already resolved through our binding [Arbitration] Order.” We further stated the

appropriate course of action for Autotel, if it disagrees with the results of our arbitration, is to file an appeal with the appropriate federal district court after the Commission has approved a signed ICA, which includes our arbitrated resolutions of disputed issues, submitted by the parties pursuant to 47 U.S.C. §252(e). We consider the findings and conclusions contained in the Arbitration Order to be res judicata or the law of the case and will not revisit these issues now or in the future.

Autotel failed to follow this advice and instead filed the Petition now before us.

DISCUSSION AND CONCLUSION

Qwest argues the Petition should be dismissed both because it ignores our prior orders regarding the arbitration in Docket No. 03-049-19 and because it fails to properly identify open issues for arbitration. We agree. In its Petition, Autotel fails to properly identify, as required by 47 U.S.C. § 252(b)(2)(A), any open issues for which it seeks Commission resolution, choosing instead to rely on general allegations relating to Qwest’s duty to negotiate and state commission jurisdiction. Although Autotel has attached apparently competing agreements to its Petition, it fails to specifically identify issues within those agreements requiring Commission

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resolution, or the parties' respective positions regarding those issues. This failure alone is sufficient to justify dismissal of the Petition and our dismissal is based in part upon this failure.

We also base our dismissal on Autotel's continuing failure to file a signed ICA the terms of which comply with our decision in the Arbitration Order. 47 U.S.C. § 252(e) makes clear that if Autotel does not agree with the Commission's decision on issues arbitrated in Docket No. 03-049-19 it should submit a signed agreement in accordance with that decision and then appeal to the appropriate federal district court. Autotel refuses to do so. We refuse to permit Autotel, in contravention of federal statute, to ignore our previous orders and to, apparently, seek arbitration of previously settled issues.

Because the current Petition appears directly related to the prior proceedings in Docket No. 03-049-19, we are compelled to remind the parties that we determined in that docket to undertake no further arbitration of the issues presented in that docket until the parties submit for approval a signed ICA consistent with our findings in that docket. While we will entertain requests to arbitrate new issues not presented in the prior docket, any such arbitration would be confined to only those new issues; absent presentation to this Commission of a signed ICA as outlined above, we will not revisit under any guise issues previously arbitrated.

Wherefore, based upon the foregoing and for good cause appearing, we enter the following

DOCKET NO. 05-049-95

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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

Qwest Corporation's Motion to Dismiss is granted. Autotel's Petition for Arbitration is dismissed.

DATED at Salt Lake City, Utah, this 7<sup>th</sup> day of December, 2005.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#46778

## CERTIFICATE OF SERVICE

### ARB 706

I hereby certify that on the 12<sup>th</sup> day of December 2005, I served the foregoing **QWEST CORPORATION'S REQUEST FOR OFFICIAL NOTICE OF UTAH COMMISSION ORDER DISMISSING PETITION FOR ARBITRATION** in the above entitled docket on the following persons via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

Richard L. Oberdorfer

Western Radio Services Co., Inc.  
114 NE Penn Avenue  
Bend, OR 97701  
oberdorfer@earthlink.net

Bryan Sanderson

Qwest Corporation  
1600 7th Ave., Rm. 3007  
Seattle WA 98191  
Bryan.Sanderson@Qwest.Com

DATED this 12<sup>th</sup> day of December, 2005.

**QWEST CORPORATION**



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

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