

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

ARB 864

In the Matter of)	
)	
WESTERN RADIO SERVICES)	ORDER
COMPANY)	
)	
Request for Interconnection Agreement)	
with CenturyTel of Eastern Oregon, Inc.)	
)	

**DISPOSITION: PETITION FOR ARBITRATION DISMISSED
WITHOUT PREJUDICE**

BACKGROUND

On June 16, 2008, Western Radio Services Company (Western) filed a Petition for Arbitration of an Interconnection Agreement (Petition for Arbitration) under section 252 of the 1996 Telecommunications Act (the Act) with the Public Utility Commission of Oregon (Commission). Western asserts that CenturyTel of Eastern Oregon (CenturyTel) refuses to negotiate in good faith the rates, terms and conditions of an interconnection agreement. Western’s Petition for Arbitration offers a proposed interconnection agreement in its entirety. Western indicates that CenturyTel prefers its standard terms and conditions. In response, CenturyTel offers a different interconnection agreement. Neither party explains in any detail how the two proposed agreements intersect or differ in any detail.

On December 15, 2008, Western filed a Complaint Regarding CenturyTel and Motion for Injunction (Western Motion).¹ On December 23, 2008, CenturyTel filed a Response to Western Radio’s Motion for Injunction. After an initial telephone conference in this proceeding on December 23, 2008, to address the Western Motion, Western filed a Reply in Support of Complaint and Motion for Injunction and Response to ALJ’s Question. A second telephone conference was held in this proceeding on January 5, 2009.

As a result of all briefing in this proceeding to date, potentially two points of agreement between the parties have been identified: 1) Western and CenturyTel agree to enter into a Type I interconnection; and 2) Should Western and CenturyTel agree to locate Western’s point of interconnection (POI) within CenturyTel’s exchange boundary, the

¹ The Western Motion relates to existing operations between the two parties that are outside of any interconnection agreement. The Petition for Arbitration also raised, as a purported issue, existing operations between the two parties.

companies agree to a bill and keep arrangement. Nevertheless, CenturyTel recently stated, that it “was not able to identify any issues on which the parties had come to agreement.”²

During the initial telephone conference, the Administrative Law Judge (ALJ) expressed concern about whether Western had fulfilled its duty, under Section 252 of the Telecommunications Act of 1996 (Telecom Act), as well as under OAR 860-016-0030, to adequately set forth, in its Petition for Arbitration, the resolved issues, the unresolved issues, and the position of each party with respect to each unresolved issue. Western asserts, however, that “Section 252 of the Act does not provide for requiring a requesting carrier to submit a new petition.”³ The ALJ indicated, during the second telephone conference, that she would certify the question of the sufficiency of Western’s Petition for Arbitration.

DISCUSSION

We accept certification by the ALJ of the question of whether Western’s Petition for Arbitration is sufficient pursuant to OAR 860-016-0030(2) and 47 U.S.C. 252(b)(2). OAR 860-016-0030(2) provides that a petition for arbitration must contain a proposed agreement that addresses all issues, both those in dispute and those not in dispute. In addition, the petition for arbitration must contain a “statement of all unresolved issues,” as well as “a description of each party’s position on the unresolved issues.” These requirements are consistent with the duty of the petitioner, under 47 U.S.C. 252(b)(2), to document the unresolved issues, the position of each party on the unresolved issues, and any other issues that the parties discussed and resolved.⁴

By Western’s own admission, Western’s Petition for Arbitration does not set forth all of the unresolved issues between the parties, nor does it state either party’s positions on the unresolved issues. Western’s Petition for Arbitration also does not elucidate what issues have been discussed and resolved by the parties. Western submits a proposed interconnection agreement on its own, indicates that the positions of CenturyTel are unknown, and requests that we adopt the proposed interconnection agreement in its entirety.

Yet, under 47 U.S.C. 252(b)(4)(A), a State commission is limited to considering the unresolved issues set forth by the petitioner. State commissions do not have the authority to define the issues. Western simply fails to present any issues that we may consider. Contrary to Western’s assertion that federal law does not provide for the submission of a new petition for arbitration, we have the authority under 47 U.S.C. 252(b)(4)(B) to require a petitioner “to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues.”⁵ If we

² Western Radio Services Company’s Reply in Support of Complaint and Motion For Injunction and Response to ALJ’s Questions, p. 6.

³ *Id.*

⁴ 47 U.S.C. 252(b)(2).

⁵ 47 U.S.C. 252(b)(4)(B).

need a petitioner to resubmit a petition for arbitration that identifies the issues needing resolution, we have the authority to do so.⁶

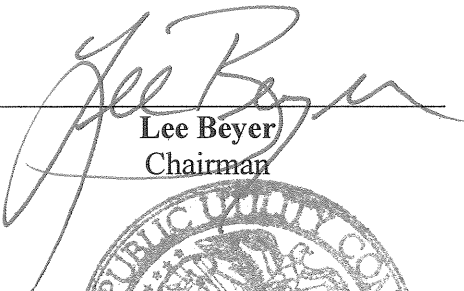
We dismiss Western's Petition for Arbitration without prejudice. Western may resubmit a petition for arbitration. A new petition for arbitration should clearly identify: 1) the unresolved issues; and 2) the positions of Western and CenturyTel on each unresolved issue. We direct the ALJ to address the Western Motion in context of this order.

ORDER

IT IS ORDERED that:


1. Western Radio Services Company's Petition for Arbitration is dismissed without prejudice.
2. Western Radio Services Company may file a new Petition for Arbitration that complies with documentation requirements of OAR 860-016-0030(2) and 47 U.S.C. 252(b)(2).

Made, entered, and effective JAN 28 2009.




Lee Beyer
Chairman





John Savage
Commissioner



Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

⁶ At least one State commission has instituted a process for rejecting petitions for arbitration that do not fulfill the requirements of 47 U.S.C. 252(b)(2) and corresponding State rules. Section 21.95(a) of the rules for the Public Utility Commission of Texas provide for a sufficiency review of a petition for arbitration to address, and the dismissal without prejudice of any petition for arbitration deemed to be insufficient.