

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 04B-361T

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IN THE MATTER OF PETITION OF AUTOTEL FOR ARBITRATION OF AN  
INTERCONNECTION AGREEMENT WITH QWEST CORPORATION PURSUANT TO  
SECTION 252(B) OF THE TELECOMMUNICATIONS ACT.

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**INTERIM ORDER OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
SCHEDULING PREHEARING CONFERENCE,  
LISTING ISSUES FOR DISCUSSION,  
GRANTING MOTION, AND WAIVING RESPONSE TIME**

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Mailed Date: August 10, 2004

**I. STATEMENT**

1. On July 2, 2004, Autotel filed a Petition for Arbitration of an interconnection agreement with Qwest Corporation (Qwest). The Petition for Arbitration (Petition) commenced this proceeding.

2. By Decision No. C04-0780 at ¶ 2, the Commission directed Autotel to provide notice of the Petition “no later than five days after the mailed date of” that Order. The Order also extended the intervention period to and including July 30, 2004. *Id.* The Order was mailed on July 15, 2004; therefore, Autotel was to mail notice of the Petition no later than July 20, 2004.

3. On July 27, 2004, Autotel filed its Notice of Filing. From the Certificate of Service appended to the Notice of Petition for Arbitration (Notice of Petition), it appears that Autotel did not mail the Notice of Petition until July 26, 2004, six calendar days *after* the date for mailing established by the Commission. From the filing it is clear that Autotel did not mail the notice within the required time. In addition, Autotel is located in Bend, Oregon, and appears to

have mailed the Notice of Petition from Oregon, which raises a real possibility that those to whom the Notice of Petition for Arbitration was sent by first class mail did not receive it until shortly before (or on) the last day for intervening in this matter. For this reason, the ALJ will take these facts into consideration in the event any person seeks permission to intervene late in this proceeding.

4. Autotel is placed on notice that the Commission and the ALJ expect Autotel to comply with orders issued in this proceeding. Autotel must follow Commission procedures.<sup>1</sup>

5. By Decision No. C04-0780 at ¶ 4, the Commission directed Autotel to provide information to the Commission from which the Commission could determine whether Autotel meets the requirements for appearing in this proceeding without counsel. The Commission stated that, in the alternative, Autotel must obtain counsel and that counsel must enter her/his appearance on or before July 30, 2004. *Id.*

6. Autotel elected to attempt to establish that it may appear without counsel and through an officer. By filing dated July 23, 2004, Autotel informed the Commission that it is a closely-held corporation; that Mr. Oberdorfer, the signatory of the Petition, is its President and sole stock holder; and, therefore, that it may appear without counsel pursuant to § 13-1-127, C.R.S., and Commission rule. Autotel also asserted that “[i]n any event, in conducting Arbitrations under Section 252, State Commissions are administering Federal

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<sup>1</sup> In this regard, if Autotel is given permission to proceed without counsel in this matter (*see* discussion *infra*), Autotel should obtain a copy of the Commission Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, and of the relevant telecommunications rules of the Commission. All Commission rules are available on-line at the Commission’s website: [www.dora.state.co.us/puc](http://www.dora.state.co.us/puc). In addition, a copy of the Rules of Practice and Procedure may be obtained from the Commission’s document room.

Telecommunications Law. Autotel seeks an interconnection agreement with Qwest that meets the requirements of section 251, 252, and the regulations.”<sup>2</sup> The filing was not verified.

7. Section 13-1-127(2), C.R.S., establishes the criteria a closely-held entity must meet in order to be represented by an officer in a proceeding before the Commission:

[A] closely held entity may be represented before ... an administrative agency by an officer of such closely held entity if:

(a) The amount at issue in the controversy or matter before the ... agency does not exceed ten thousand dollars, exclusive of costs, interest, or statutory penalties, on or after January 1, 1991; and

(b) The officer provides the ... agency, at or prior to the trial or hearing, with evidence satisfactory to the ... agency of the authority of the officer to appear on behalf of the closely held entity in all matters within the jurisdictional limits set forth in this section.

8. In this case the July 23 filing does not address the amount in controversy. In addition, the filing does not address the officer’s authority to appear on behalf of Autotel. It is, therefore, deficient in that it does not address the statutory criteria. As the record now stands, Autotel has not established that it may appear in this proceeding without counsel.

9. To provide Autotel another opportunity to establish that it meets the statutory requirements, the ALJ will permit Autotel to present, at the prehearing conference scheduled for August 23, 2004 (*see discussion infra*), evidence that it meets those requirements. Of particular interest to the ALJ are the following: the amount in controversy, the state in which Autotel is incorporated, and whether Autotel is authorized to do business in Colorado.

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<sup>2</sup> To the extent they are intended to address the need for counsel, the quoted statements are not persuasive. The standards for appearing before the Commission without counsel apply irrespective of whether the Commission is arbitrating under federal law or adjudicating under Colorado law. The statute governs appearances before the agency and specifies the circumstances in which a closely held entity may appear through an officer and without counsel. To the ALJ’s knowledge, there is no provision of the federal Telecommunications Act of 1996 which addresses, let alone overrides, state requirements governing representation of closely held entities in arbitrations before a state commission.

10. On July 28, 2004, Qwest filed a Motion for a One Day Extension of Time to File Response to Petition for Arbitration and Motion for Waiver of Response Time (Motion). In this filing Qwest states that it was unable to file timely its Response to the Petition due to problems with Qwest's photocopying machines. Although Qwest made an attempt to file its Response on the due date of July 27, 2004, it was date-stamped at 5:01 p.m. on July 27<sup>th</sup> and, thus, considered filed on July 28, 2004. Qwest sent by electronic mail a copy of its Response to the Petition to Autotel on July 27, 2004. The Response to Petition for Arbitration was filed with the Motion. The Motion states good cause. As Autotel timely received a copy of the Response, it will not be prejudiced by granting the Motion. The Motion will be granted, and the request to waive response time will be granted.

11. Qwest filed its Response to Petition for Arbitration on July 28, 2004.

12. Based on the provisions of 47 U.S.C. § 252(b), it appears that the Commission must issue its decision in this matter on or before October 26, 2004.

13. On August 3, 2004, the Commission determined that it will issue an initial decision in this proceeding and that an administrative law judge (ALJ) will hear this matter. *See* Minute Order dated August 3, 2004. This docket is assigned to the undersigned ALJ.

14. It is necessary to schedule a hearing and to establish a procedural schedule in this proceeding as soon as possible. A prehearing conference will be held on August 24, 2004. The provisions of Rule 4 *Code of Colorado Regulations* (CCR) 723-1-79(b)(3) and of Rule 4 CCR 723-1-79(b)(4) govern this prehearing conference.

15. The parties must be prepared to discuss at the prehearing conference: (a) date by which the parties will file, simultaneously, their direct testimony<sup>3</sup> and exhibits; (b) date by which the parties will file, simultaneously, their answer testimony and exhibits; (c) date by which the parties will file a final joint issue matrix; (d) date by which each party will file its prehearing motions; (e) hearing dates (*see* ¶ 16); and (f) date by which post-hearing statements of position will be due and whether response should be permitted. In addition, the parties must be prepared to discuss who will pay for the daily transcript; the format of the joint issue matrix; discovery procedures and deadlines; and any special provisions for service of testimony and exhibits and of discovery. Further, the parties should review, and be prepared to discuss to the extent relevant, the matters contained in Rule 4 CCR 723-1-79(b)(5). Moreover, Autotel must be prepared to address the issues identified in ¶ 9 of this Order. Finally, the parties may raise any issues.

16. The parties are on notice that the **ALJ is unavailable from August 25 through and including September 27, 2004**. The ALJ suggests, therefore, that the hearing be held on September 29 and 30, 2004, which are the first available September hearing dates on the ALJ's calendar. The decision date does not permit a hearing any later than October 1, 2004.

17. The undersigned expects the parties to consult prior to the prehearing conference with respect to the listed matters. The parties are encouraged to present, if possible, a procedural schedule and hearing dates which are satisfactory to the parties and which allow sufficient time for Commission deliberations on, preparation of, and issuance of a Commission decision in this matter no later than October 26, 2004.

18. The parties received a copy of this Order by facsimile on August 10, 2004.

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<sup>3</sup> All testimony will be filed in question and answer format. Except for rebuttal witnesses, no person will be permitted to testify in this proceeding unless that person has submitted either direct or answer testimony.

## **II. ORDER**

### **A. It Is Ordered That:**

1. The Motion for a One Day Extension of Time to File Response to Petition for Arbitration is granted.

2. A prehearing conference in this docket is scheduled as follows:

DATE: August 24, 2004

TIME: 10:00 a.m.

PLACE: Commission Hearing Room  
1580 Logan Street, OL2  
Denver, Colorado

3. The parties shall follow the procedures, and shall be prepared to discuss the matters, as set forth above.

4. The Motion for Waiver of Response Time is granted.

5. Response Time to the Motion for a One Day Extension of Time to File Response to Petition for Arbitration is waived.

6. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge