

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04B-361T

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.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
PERMITTING PETITIONER TO
PROCEED *PRO SE*, SCHEDULING HEARING,
SCHEDULING PREHEARING CONFERENCE,
ESTABLISHING PROCEDURAL SCHEDULE, AND
MODIFYING DISCOVERY PROCEDURES**

Mailed Date: September 9, 2004

I. STATEMENT

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

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

3. 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.

4. By Decision No. R04-0928-I, the ALJ scheduled a prehearing conference in this matter. The prehearing conference was held as scheduled on August 24, 2004. Autotel and Qwest were present and participated.

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 Telecommunications Law. Autotel seeks an interconnection agreement with Qwest that meets the requirements of section 251, 252, and the regulations.”¹

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

¹ To the extent they are intended to address the need for counsel, the quoted statements are not persuasive. The Colorado 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.

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, after hearing Petitioner address these criteria at the prehearing conference, the ALJ is satisfied that Petitioner meets the statutory requirements. Accordingly, Autotel will be permitted to proceed *pro se* in this matter.

9. Based on the provisions of 47 U.S.C. § 252(b), it appears that the Commission should issue its decision in this matter on or before October 26, 2004. At the prehearing conference held on August 24, 2004, Autotel and Qwest each waived the nine-month arbitration time frame contained in § 252(b)(4)(C) of the Federal Telecommunications Act of 1996 (Act). They agreed to waive their right to petition the Federal Communications Commission (FCC) to invoke its jurisdiction pursuant to § 252(e)(5) of the Act on the grounds that the Commission failed to enter its decision in this matter on or before October 26, 2004. They also agreed not to appeal the Commission decision issued in this matter on the grounds that the decision was not issued on or before October 26, 2004. Petitioner and Qwest conditioned their waiver on the Commission's issuing its decision in this matter on or before February 28, 2005. The ALJ finds the waiver, as conditioned, reasonable. The Commission decision in this matter will issue on or before February 28, 2005.

10. Based on the February 28, 2004 date, the parties proposed a procedural schedule and hearing dates. The ALJ finds the proposed schedule and hearing dates acceptable. The following schedule will be adopted: (a) on or before **September 17, 2004**, each party will file its direct testimony² and exhibits; (b) on or before **October 13, 2004**, each party will file its answer testimony and exhibits; (c) on or before **October 15, 2004**, the parties will file a final joint issue

² 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.

matrix; (d) final prehearing conference will be held on **October 27, 2004**,³ (e) hearing will be held on **November 16, 2004**; and (f) on or before **December 10, 2004**,⁴ each party will file its post-hearing statement of position to which (absent further Order) there will be no response.

11. The final joint issue matrix will address only unresolved issues and will use the format of the issue matrix filed with Qwest's response to the Petition. For each unresolved issue, the joint issue matrix must contain *both* the language each party proposes for adoption *and* the rationale supporting the proposal. The specific proposals must be presented side-by-side for ease of comparison.

12. Daily transcript will be prepared in this proceeding. Autotel and Qwest will each bear 50 percent of the transcript's cost. Qwest will be responsible for making the necessary arrangements with the court reporters.

13. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-77 will govern discovery in this matter *except*: (a) responses to discovery will be due within 20 days of service; and (b) objections to discovery will be due within 20 days of service of the discovery request to which objection is made.

14. When citing or referring to an order of the FCC, a party (including its witnesses) shall provide the name of the order, the full docket name, and the FCC order number (*e.g.*, the *Triennial Review Order* is FCC 03-36).

³ Based on their experience in recent arbitration proceedings in which the same issues were presented in other states, the parties suggested the ALJ may determine that the issues here are principally legal and that the case can be decided on the filed testimony, legal briefs, and the final joint issue matrix (in essence, on summary judgment). If she determines that there is no need for a hearing, the ALJ will inform the parties in advance of the scheduled final prehearing conference.

⁴ If she determines that this matter can be determined without hearing, the ALJ may modify the procedural schedule to require that the statements of position be filed earlier than this date.

15. A party (including its witnesses) shall provide the decision number when referring to or citing a Commission decision.

16. Parties are reminded of Rule 4 CCR 723-1-22(d)(3), which states: "If a pleading refers to new court cases or other authorities not readily available to the Commission, six copies of each case or other authority shall be filed with the pleading." If a party wishes the ALJ to consider a cited authority *other than* an opinion of the United States Supreme Court, a reported Colorado state court opinion, or a Commission decision, the party must provide a copy of, or a website address for, that cited authority.

II. ORDER

A. It Is Ordered That:

1. Autotel may proceed *pro se* in this matter.

2. The time for Commission decision in this matter is enlarged to and including February 28, 2005.

3. The procedural schedule set out above is adopted.

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

DATE: October 27, 2004

TIME: 1:00 p.m.

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

5. The hearing in this docket is scheduled on the following date, at the following time, and in the following location:

DATE: November 16, 2004
TIME: 9:00 a.m.
PLACE: Commission Hearing Room
1580 Logan Street, OL2
Denver, Colorado

6. The parties shall follow the procedures, and shall make the filings, as detailed above.

7. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge