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JOHN W. SUTHERS  
Attorney General

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STATE OF COLORADO  
DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING  
1525 Sherman Street - 5th Floor  
Denver, Colorado 80203  
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May 13, 2006

Marlene H. Dortch, Office of the Secretary  
Federal Communications Decision  
445 12th Street, S.W.  
Washington, D.C. 20554

WC Docket No. 06-134

RE: Petitions for Preemption on behalf of Western Radio and Autotel

Dear Ms. Dortch:

This letter concerns a petition by Autotel, filed by Marianne Dugan, Esq., requesting preemption of state jurisdiction by the FCC because the Colorado Public Utilities Commission did not issue a final decision in CPUC Docket No. 05B-501T. Enclosed please find a copy of Decision No. C06-0005, mailed on January 5, 2006. This decision granted Qwest Corporation's motion to dismiss. Autotel did not appeal that decision pursuant to CPUC rules. Please note that the certificate of service indicates that Autotel was served. It is my understanding that this resolves all issues raised by Autotel's petition. If you have any questions, please do not hesitate to let me know.

Sincerely,

FOR THE ATTORNEY GENERAL

Mark Valentine  
303-866-5501  
303-866-5671 (FAX)

Enclosure  
CC: Marianne Dugan, Esq.

Decision No. C06-0005

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

DOCKET NO. 05B-501T

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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.

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**ORDER GRANTING MOTION TO DISMISS**

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Mailed Date: January 5, 2006  
Adopted Date: December 21, 2005

**I. BY THE COMMISSION**

**A. Factual and Procedural Background**

1. This matter comes before the Commission upon the filing of a Petition for Arbitration by Autotel on November 23, 2005. In its Petition, Autotel requests that the Commission arbitrate an interconnection agreement (ICA) between it and Qwest Corporation (Qwest) to resolve certain issues raised by the parties in the negotiation process and the approval of an ICA in accordance with 47 U.S.C. § 252.

2. Autotel states that there are three issues, and several sub-issues, that it wishes the Commission to arbitrate: 1) Qwest's refusal to negotiate in good faith to determine the rates, terms, and conditions of the ICA; 2) relief to avoid future damages by the imposition of rates, terms, and conditions under an ICA; and 3) the timing of the review of state commission actions and Qwest's violation of the duty to negotiate in good faith pursuant to *47 Code of Federal Regulations* 51.301(c)(6).

3. Autotel asserts that its request for negotiation was received by Qwest on June 23, 2005. The 135th day is November 5, 2005. The 160th day is November 30, 2005. The end of the nine-month period for Commission decision is March 23, 2006.

4. On December 19, 2005, Qwest filed a Response to Autotel's Petition for Arbitration and Motion to Dismiss. In its Response and Motion, Qwest states that Autotel's Petition is entirely inappropriate in light of the Commission's Decision No. C05-0242 (adopted February 25, 2005) in which the Commission issued its decision on issues arbitrated between these two parties in Docket No. 04B-361T. Following this decision, the parties filed a signed ICA that was approved by Decision No. C05-0580 on May 11, 2005. This ICA is to have an effective life of three years.

5. Qwest asserts that when it received Autotel's request for negotiation on June 23, 2005, Qwest responded that it was not willing to ignore the prior arbitration and restart negotiations, and that it had already fulfilled its obligations under the Federal Telecommunications Act by negotiating and arbitrating the approved agreement still in effect.

6. Qwest contends that Autotel may not engage in an arbitration proceeding and then indirectly challenge the decision of the Commission by seeking to arbitrate a new ICA containing terms already rejected by the Commission. Qwest states that if this action is allowed it would render the arbitration process meaningless.

7. Further, Qwest states that Autotel in its Petition has not identified any issues that involve a dispute regarding any provision of an ICA between the parties. None of the three issues enumerated by Autotel is a valid issue for arbitration of the terms and conditions of an ICA.

8. Qwest asks the Commission to Dismiss the Petition based on its stated arguments.

**B. Discussion**

9. We agree with Qwest's arguments and dismiss the Petition. By filing this Petition for Arbitration, Autotel is seeking to undermine our previous decision, Decision No. C05-0242, ordering the resolutions of interconnection issues. Autotel could have appealed that decision but chose not to, and instead signed and filed the currently effective ICA per the terms of our decision. Our decision and the resulting ICA are binding on the signatory parties. The parties may negotiate amendments to change the terms of that ICA, but only if both parties are agreeable to the negotiation process.

10. Autotel may not ask this Commission or Qwest to expend additional resources to arbitrate a new agreement when the effective agreement is less than a year into its term. Federal and state law requires negotiations to begin six months prior to the expiration of an agreement, not two and a half years prior.

11. If Autotel has a concern that Qwest is not adhering to the terms of the ICA, it can file a complaint with this Commission or pursue a proper dispute resolution process. However, we note, as Qwest states in its Response and Motion, that in this Petition Autotel fails to identify any open issues concerning the ICA for this Commission to resolve.

**II. ORDER****A. The Commission Orders That:**

1. The Motion to Dismiss the Petition for Arbitration filed by Qwest Corporation is granted.

2. The 20-day time period provided by § 40-4-114(1), C.R.S., within which to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Mailed Date of this Order.

3. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
December 21, 2005.**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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\_\_\_\_\_

Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

CERTIFICATE OF SERVICE

DOCKET NUMBER(s): 05B-501T

DECISION NUMBER: C06-0005

I, Doug Dean, Director of the Public Utilities Commission of the State of Colorado, certify, that on the date indicated on this certificate, at Denver, Colorado, I served a true and correct copy of the attached Commission Decision -- entered in the above numbered matter of record -- upon each of the persons whose names and addresses appear below, by mailing the same in sealed envelopes properly addressed, with sufficient postage prepaid to carry the same to its destination to the following:

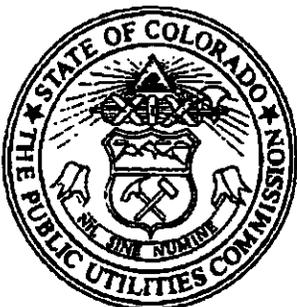
**Filing Parties**

**Applicant**

Autotel  
114 Northeast Penn Avenue  
Bend, OR 97701

**Applicant**

Qwest Corporation  
1801 California Street Floor 10TH  
Denver, CO 80202



WITNESS MY HAND  
AND THE SEAL OF THE  
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

*Doug Dean*

PUBLIC UTILITIES COMMISSION

MAILED

JAN 05 2005

\_\_\_\_\_  
DIRECTOR

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**Filing Party Representatives**

**Legal Representative**

Representing: Qwest Corporation  
Mr. David W. McGann Esq.  
Policy and Law Department  
Qwest Services Corporation  
1005 17th Street Suite 200  
Denver, CO 80202

**Legal Representative**

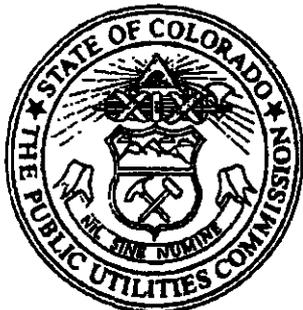
Representing: Qwest Corporation  
Mr. Gregory B. Monson Esq.  
Stoel Rives, LLP  
201 South Main Street Suite 1100  
Salt Lake City, UT 84111

**PUC Advisory Staff**

Representing: Colorado Public Utilities Commission  
Ms. Rebecca M. Quintana  
Colorado Public Utilities Commission  
1580 Logan Street Room 201  
Denver, CO 80203

**Representative for a party in this docket**

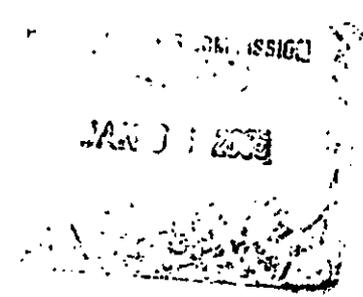
Representing: Qwest Corporation  
Mr. Bryan Sanderson Esq.  
Qwest Corporation  
1600 7th Avenue Room 3007  
Seattle, WA 98191



WITNESS MY HAND  
AND THE SEAL OF THE  
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

*Doug Dean*

DIRECTOR



BEFORE THE PUBLIC UTILITIES COMMISSION  
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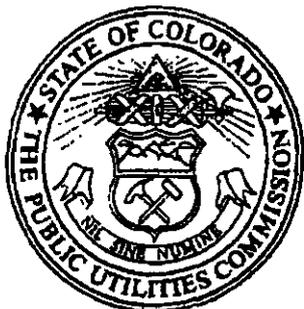
Interested Persons / Firms / Utilitie

Edie Ortega  
Director - Government Relations  
CenturyTel, Inc.  
1301 Pennsylvania Street Suite 900  
Denver, CO 80203

ITCS  
4775 Barnes Road Suite M  
Colorado Springs, CO 80917-0917

Mr. Mark W. Williams Esq  
Cage, Williams, Abelman & Layden, P.C.  
1433 17th Street Suite 300  
Denver, CO 80202

Mr. Robert W. Nichols Esq  
Nichols & Associates  
3610 Longwood Avenue  
Boulder, CO 80305



WITNESS MY HAND  
AND THE SEAL OF THE  
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

PUBLIC UTILITIES COMMISSION

JAN 9 2005

*Doug Dean*

\_\_\_\_\_  
DIRECTOR

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Mr. Steven H. Denman Esq  
Abel Band Russell Collier Pitchford & Gordon Chartered  
240 South Pineapple Avenue P.O. Box 49948  
Sarasota, FL 34230-6948

Ms. Joan Stewart  
Womble Carlyle Sandridge & Rice LLC  
1401 Eye Street Northwest  
Washington, DC 2000522102

Thomas F. Dixon Esq  
WorldCom Inc.  
707 17th Street Suite 4200  
Denver, CO 80202

Routing telecommunications:  
6, 23, 60, OCC, Qwest, CTA, file, imaging

NOTE: All PUC staff, including staff who may be listed as parties, received this decision electronically.

WITNESS MY HAND  
AND THE SEAL OF THE  
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

*Doug Dean*

\_\_\_\_\_  
DIRECTOR

