

ORIGINAL



0000113265

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

COMMISSIONERS

2010 JUL 27 P 4:16

DOCKETED

JUL 27 2010

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY [Signature]

IN THE MATTER OF THE PETITION BY
AUTOTEL FOR ARBITRATION OF AN
INTERCONNECTION AGREEMENT WITH
FRONTIER COMMUNICATIONS
CORPORATION OPERATING COMPANIES OF
ARIZONA PURSUANT TO SECTION 252(B) OF
THE TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-03214A-10-0051

**FRONTIER COMMUNICATIONS
CORPORATION OPERATING
COMPANIES OF ARIZONA'S
RESPONSE AND MOTION TO
DISMISS AUTOTEL'S
ARBITRATION REQUEST**

I. INTRODUCTION.

On June 29, 2010, Autotel ("Autotel"), a wireless communications provider, filed a Petition for Arbitration ("Arbitration Petition") with the Arizona Corporation Commission ("Commission") in the above-referenced proceeding asking the Commission to conduct an arbitration of an interconnection agreement with Frontier Communications Corporation Operating Companies of Arizona. Frontier operates four ILECs in Arizona: Citizens Utilities Rural Company, Inc., Navajo Communications Company, Inc., Citizens Telecommunications Company of the White Mountains, Inc., and Frontier Communications of the Southwest Inc. (collectively "Frontier"). On July 13, 2010, the Commission issued a Procedural Order directing Commission Staff and Frontier to file a response to the Arbitration Petition by July 27, 2010. Autotel's most recent filing is another attempt by Autotel to circumvent the Commission's prior decisions, including the Commission's Arbitration Opinion and Order in Decision 67273 in which the terms of an interconnection agreement between Frontier and Autotel were arbitrated and the Commission's Decision 68605 in which the Commission dismissed Autotel's request for interconnection and admonished Autotel for wasting administrative and judicial resources. In accordance with Commission Rule R14-2-1505(C),

Snell & Wilmer

LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

1 Frontier hereby files this Response and Motion to Dismiss Autotel's Arbitration Petition.
2 Frontier respectfully requests that the Commission dismiss Autotel's latest Arbitration Petition
3 on the basis that Autotel is currently still subject to an existing arbitrated interconnection
4 agreement until March 2011 and because Autotel has failed to comply with the Commission's
5 rules and requirements in submitting its Arbitration Petition. This Response and Motion to
6 Dismiss is supported by the Affidavit of Jenny Smith, a copy of which is attached hereto as
7 Attachment 1.

8 II. BACKGROUND OF THE TELECOMMUNICATIONS ACT OF 1996.

9 This action arises under the provisions of 47 U.S.C. §§ 251 and 252 of the
10 Telecommunications Act of 1996. Pursuant to section 251(b)(5) of the Telecommunications
11 Act, LECs have a duty to establish reciprocal compensation arrangements for the transport and
12 termination of "telecommunications" traffic. In its First Report and Order in the Local
13 Competition Docket implementing the Telecommunications Act of 1996, the FCC addressed the
14 obligations of an ILEC to interconnect and exchange traffic with a CMRS carrier like Autotel.
15 The FCC explained:

16 *LECs are obligated, pursuant to section 251(b)(5) (and the corresponding*
17 *pricing standards of section 252(d)(2)), to enter into reciprocal compensation*
18 *arrangements with all CMRS providers, including paging providers, for the*
19 *transport and termination of traffic on each other's networks, pursuant to the*
20 *rules governing reciprocal compensation as set forth in Section XI.B, below.*¹

21 Based on this requirement, Frontier has successfully negotiated CMRS interconnection
22 agreements with several wireless carriers in Arizona. See Affidavit of Jenny Smith at ¶ 3, a
23 copy of which is attached hereto as Attachment 1. These wireless interconnection agreements
24 allow both parties to interconnect their networks, exchange traffic and receive compensation for
25 transporting and terminating that traffic. Autotel could elect to opt into an existing
26 Commission-approved interconnection agreement between Frontier and another wireless carrier

26 ¹ *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996, CC*
27 *Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile*
28 *Radio Service Providers, CC Docket No. 95-185, First Report and Order, FCC 96-325,*
Released August 8, 1996, (the "Local Competition Order"), ¶ 1008.

1 to provide service in Arizona. Autotel, however, has declined to do so and it is not clear that
2 Autotel even provides wireless service in Arizona.

3 **III. AUTOTEL'S PRIOR PROCEDURAL HISTORY REGARDING AN**
4 **INTERCONNECTION AGREEMENT AND COMMISSION DECISION 67273.**

5 On March 27, 2003, Autotel filed a Petition for Arbitration pursuant to 47 U.S.C. § 252
6 of the Act against Frontier and the Commission initiated in Docket No. T-03234A-03-0188, *In*
7 *the Matter of the Petition of Autotel for Arbitration of an Interconnection Agreement with*
8 *Citizens Communications Operating Companies of Arizona pursuant to Section 252(b) of the*
9 *Telecommunications Act of 1996.* In that proceeding, Autotel sought to enter into an
10 interconnection agreement with Frontier's three operating companies in Arizona. Frontier and
11 Autotel conducted extensive negotiations and the arbitration hearing was held before
12 Commission Administrative Law Judge Rodda on June 7, 2004. Frontier and Autotel each
13 presented witnesses who testified and were available for cross-examination during the hearing.

14 On October 5, 2004, the Commission issued its Arbitration Opinion and Order (Decision
15 67273) addressing the interconnection agreement between Frontier and Autotel. The Order
16 directed the parties to "prepare and sign an interconnection agreement incorporating the terms of
17 the Commission's resolutions" and that "the signed interconnection agreement shall be
18 submitted to the Commission for its review within thirty days of the date of this Decision."
19 Decision 67373 at 17.

20 Pursuant to Decision 67273, Frontier prepared the interconnection agreement
21 incorporating the terms and conditions from the Commission's Order and forwarded the
22 agreement to Autotel for signature on October 21, 2004. Autotel, however, refused to execute
23 the agreement as modified by the Commission's Arbitration Order. On January 27, 2005,
24 Frontier advised the Commission that Autotel would not execute the arbitrated interconnection
25 agreement as required by the Commission's Order. *See* Affidavit of Jenny Smith at ¶ 8, Exhibit
26 A. The Interconnection Agreement executed by Frontier was filed with the Commission
27 effective on January 31, 2005. Pursuant to A.A.C Rule R14-2-1508, agreements are
28 automatically approved 30 days from the filing date if the Commission has not formally rejected

1 the filing. The Commission did not reject the Frontier filing; therefore the Frontier
2 Interconnection Agreement with Autotel went into effect on March 3, 2005. The agreement had
3 a two-year term and automatic one-year renewals unless either party provided 90 days advance
4 notice prior to the March 3 anniversary date of their intent to terminate the Interconnection
5 Agreement. See Affidavit of Jenny Smith at ¶ 14, Exhibit A, Section 9.1. Based on the original
6 term and renewals of the final Interconnection Agreement, the Interconnection Agreement
7 remains in place and effective until March 2, 2011.

8 On May 5, 2005, Autotel filed a lawsuit against the Commission and Frontier in the
9 United States Federal District Court for Arizona challenging the Commission's Decision 67273.
10 Both Frontier and the Commission moved to dismiss Autotel's complaint in federal district
11 court and filed pleadings supporting the dismissal of the lawsuit on multiple grounds. On March
12 8, 2007, the United States District Court for the District of Arizona granted Frontier's and the
13 Commission's motion to dismiss. Autotel subsequently attempted to appeal the United States
14 District Court opinion to the United States Court of Appeals for the 9th Circuit but the appeal
15 was not properly filed.

16 **IV. PROCEDURAL HISTORY REGARDING COMMISSION DECISION 68605.**

17 On November 21, 2005, Autotel filed with the Commission a Notice of its Bona Fide
18 Request for interconnection, services and network elements with Frontier and for an inquiry by
19 the Commission and termination of the exemption of Frontier pursuant to section 251(f)(1)(B) of
20 the Telecommunications Act of 1996. Autotel's request was assigned Docket No. T-01954B-
21 05-0852.

22 Following the filing of Autotel's request for interconnection and the termination of
23 Frontier's rural exemption, the assigned Administrative Law Judge convened a procedural
24 conference. Both Frontier and Staff for the Commission raised two issues in response to
25 Autotel's November 21, 2005, request. The first issue was whether Autotel was precluded from
26 pursuing a request for interconnection and termination of Frontier's rural exemption due to its
27 refusal to executed the arbitrated interconnection agreement and its pending appeal in Decision
28 67273 (October 5, 2004). The second issue related to the necessity of terminating Frontier's

1 exemption under the Telecommunications Act of 1996 with regard to the requested
2 interconnection agreement.

3 Both Frontier and Commission Staff subsequently filed briefs supporting the dismissal
4 of Autotel's request for interconnection and termination of Frontier's rural exemption.
5 Following a review of the record, the Commission issued its Opinion and Order (Decision
6 68605) on March 23, 2006, dismissing with prejudice Autotel's Notice of its Bona Fide Request
7 for interconnection, services and network elements with Frontier. In Decision 68605, the
8 Commission explained:

9 [I]nterconnection with Citizens' network is possible under the previous
10 Decision and resulting ICA, **which is binding on both parties and may not be**
11 **ignored by either party.** Citizens pointed out that Autotel has failed to address
12 its previous lengthy interconnection arbitration proceeding, with which Autotel
has chosen, for unknown reasons, not to comply. Autotel's arguments are not
persuasive, and it has cited no legal authority that overcomes, or adequately
addresses the arguments set forth by Citizens and Staff.

13 We therefore agree with Staff and Citizens that Autotel's Notice should be
14 dismissed, and will do so with prejudice. We admonish Autotel for its waste of
15 administrative and judicial resources in filing this Notice while its Federal
Complaint remains pending and while it has failed to make use of its Approved
ICA. Autotel has further wasted Commission resources in failing to send a
16 suitable representative to appear for oral argument. Although this Commission
does not regulate Autotel apart from its role in arbitration pursuant to the Act, **it**
17 **is our hope that Autotel will take this admonishment into account for purposes**
of future filings and its deportment in those proceedings.

18 Decision 68605 at ¶ 13-14 (Docket T-01954B-05-0852; *In the Matter of the Request of Autotel*
19 *for Interconnection Services And Network Elements with Citizens Utilities Rural Company, Inc.*
20 *and For An Inquiry By the Arizona Corporation Commission and Termination of the exemption*
21 *of Citizens Utilities Rural Company, Inc. Pursuant to Section 251(f)(1)(B) of the*
22 *Telecommunications Act of 1996*) (emphasis added).

23 **V. PROCEDURAL HISTORY REGARDING AUTOTEL'S SECOND REQUEST TO**
24 **ARBITRATE INTERCONNECTION AGREEMENT.**

25 On April 7, 2006, Autotel filed another Petition for Arbitration for a proposed
26 interconnection agreement with Frontier. The April 2006 Petition represented Autotel's third
27 petition for an interconnection agreement with Frontier. The assigned Administrative Law
28 Judge conducted a hearing with oral argument on Autotel's third Petition for Arbitration and

1 issued a Procedural Order in Docket No. T-01954B-06-0232 dated July 28, 2006 dismissing
2 Autotel's Petition for Arbitration. The Procedural Order explained:

3 *Autotel's insistence in continuing to file successive petitions with the Commission*
4 *is perplexing in light of the outcome of the Second Petition, which admonished*
5 *Autotel for prematurely requesting arbitration of an ICA . . . The parties agreed*
6 *on the record that there is language in the ICA arising from the Original Petition*
7 *that allows the parties to amend the ICA through mutual agreement.*

8 Procedural Order at 3.

9 **VI. THE COMMISSION SHOULD NOT ALLOW AUTOTEL TO INITIATE**
10 **ARBITRATION AND CIRCUMVENT COMMISSION DECISIONS 67273 AND**
11 **68605**

12 As explained above, following the Commission's Decision 67273 (October 5, 2004),
13 Autotel would not agree to and was unwilling to finalize and execute the interconnection
14 agreement arbitrated and ordered by the Commission. Autotel has not complied with the
15 Commission's directive following the arbitration proceeding. Instead Autotel has attempted and
16 continues to attempt (for the third time) to circumvent the Commission's Arbitration Order
17 establishing an interconnection agreement between Frontier and Autotel. The Commission has
18 previously admonished Autotel for wasting "administrative and judicial" resources since it had
19 "failed to make use of its Approved ICA" with Frontier. The Commission also stated that it
20 "hoped" Autotel would take the admonishment into account for "purposes of future filings."
21 Decision 68605 at ¶ 14. In the July 28, 2006, Opinion and Order, the Commission further
22 identified Autotel's successive petitions as perplexing. In its most recent Arbitration Petition
23 dated June 29, 2010, Autotel disregards and does not distinguish or even acknowledge the
24 Commission's three prior orders.

25 Autotel's decision to ignore the Commission's prior orders and file the Arbitration
26 Petition is also particularly troubling since Autotel is undoubtedly aware of the fact that this
27 Commission, other state utility commissions and the courts have concluded that a carrier like
28 Autotel cannot circumvent a state commission arbitration decision by seeking to enter into a
new interconnection agreement. For example, other state commissions have refused to allow
Autotel to initiate and proceed with an interconnection arbitration after Autotel refused to avail

1 itself of a prior arbitrated interconnection agreement. In a series of orders, the Utah Public
2 Service Commission rejected Autotel's similar efforts to initiate new interconnection agreement
3 negotiations and arbitration with Qwest in Utah after it previously refused to sign the
4 interconnection agreement arbitrated by the Utah Commission. In *In the Matter of the Petition*
5 *of Autotel for Arbitration of Interconnection Agreement with Qwest Corporation Pursuant to*
6 *Section 252(b) of the Telecommunications Act*, Docket No. 03-049-19, the Utah Commission
7 had issued an order in February 2004 following an arbitration proceeding directing Autotel and
8 Qwest Corporation to submit an interconnection agreement consistent with the terms of its
9 arbitration order. Autotel refused to sign the interconnection agreement incorporating the
10 arbitrated terms and conditions ordered by the Utah Commission. Instead, Autotel requested
11 negotiation of a new interconnection agreement with Qwest. The Utah Commission dismissed
12 Autotel's arbitration petition and explained:

13 *We refuse to permit Autotel, in contravention of federal statute, to ignore our*
14 *previous orders and to, apparently, seek arbitration of previously settled issues.*
15 *... Because the current Petition appears directly related to the prior proceedings*
16 *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.

17 Utah Order (December 7, 2005), a copy of which is attached hereto as Attachment 2.²

18 The federal courts have similarly concluded that a competitive carrier like Autotel
19 cannot disregard a state commission's decision in an interconnection arbitration proceeding by
20 seeking to enter into a new interconnection agreement. See *Global Naps v. Verizon New*
21 *England*, 396 F.3d 16 (1st Cir. 2005), affirming *Global Naps v. Verizon New England*, 2004 WL
22 1059792 (D. Mass 2004). In this case, Global Naps, the CLEC, was not satisfied with the
23 Arbitration Order issued by the Massachusetts Department of Telecommunications and Energy
24 ("Massachusetts Commission"). Consequently, Global Naps sought to opt into another

25
26 ² *In the Matter of the Petition of Autotel for Arbitration of an Interconnection Agreement with*
27 *Qwest Corporation Pursuant to Section 252(b) of the Telecommunications Act before the Utah*
28 *Commission, Utah Public Service Commission Order Granting Motion to Dismiss, December 7,*
2005.

1 interconnection agreement per Section 251(i) of the Telecommunications Act. The
2 Massachusetts Commission rejected Global Nap's attempt to circumvent its prior arbitration
3 decision for a more favorable interconnection agreement for the following reasons: (1) its
4 decision in the underlying arbitration proceeding between the parties was final and binding on
5 both parties and therefore Global Naps had an obligation to sign the arbitrated interconnection
6 agreement and could not elect to enter into a new alternative interconnection agreement;
7 (2) Global Nap should not be allowed to "game the system" by attempting to arbitrate an
8 interconnection agreement and if unhappy with the results, merely seek a new agreement; and
9 (3) public policy dictated that the interconnection agreement arbitrated by the parties be upheld
10 to provide an incentive for competitive carriers to negotiate in good faith and to conserve
11 administrative resources. 396 F.3d at 21. The Massachusetts Commission refused to allow
12 Global Naps to enter into an interconnection agreement different than the interconnection
13 agreement previously arbitrated by the Commission.

14 The United States District Court in Massachusetts and the United States Court of
15 Appeals for the First Circuit upheld the Massachusetts Commission's decision to refuse to allow
16 Global Naps to circumvent the prior Massachusetts Commission's Arbitration Order. The First
17 Circuit Court of Appeals also characterized Global Nap's refusal to comply with the
18 Massachusetts Commission's Arbitration Order as a violation of the Telecommunication Act's
19 duties of good faith and cooperation. The Court explained:

20 *Section 252(b)(4) allows the state commission to impose conditions on both*
21 *parties in order to carry out the arbitration. And 252(b)(5) creates a duty for*
22 *both parties to cooperate with the arbitration at the risk of breaching the duty*
23 *both parties have under 252(a), to negotiate in good faith. . . . In attempting to*
24 *void the terms of a valid arbitration order, it is clear that Global Naps is refusing*
25 *to cooperate with the DTE, in violation of its duty to negotiate in good faith."*

26 396 F.3d at 25.

27 Autotel previously initiated and participated in a lengthy interconnection agreement
28 arbitration proceeding with Frontier before the Commission in Docket No. T-03234A-03-0188.
In that proceeding the Commission issued Decision 67273 directing Autotel to execute the
arbitrated interconnection agreement. Pursuant to the Commission's Opinion and Order,

1 Frontier prepared the interconnection agreement incorporating the terms and conditions from the
2 Commission's Order and forwarded the agreement to Autotel for signature on October 21, 2004.
3 On January 27, 2005, Frontier advised the Commission that Autotel would not execute the
4 arbitrated interconnection agreement as required by the Commission's Order. The
5 Interconnection Agreement executed by Frontier was filed with the Commission effective on
6 January 31, 2005. That interconnection agreement contained the following term and
7 termination provision:

8 *SECTION 9. TERM AND TERMINATION OF AGREEMENT*

9 *9.1 This agreement will become effective upon the first business day*
10 *following the date this Agreement has been approved by the applicable*
11 *regulatory authority or authorities and will continue for a period of two (2) years*
12 *unless terminated earlier under the conditions set forth in this Section. This*
13 *Agreement will be automatically renewed for successive periods of one (1) year*
14 *after the initial term unless either Party provides the other Party with no less*
15 *than ninety (90) day's prior, written notification of, in the case of Citizens, its*
16 *intent to terminate this Agreement, or, in the case of either Party, its desire to*
17 *renegotiate at the end of the initial or any successive period. During any such*
18 *renegotiations, the rates, terms and conditions of this Agreement will remain in*
19 *effect until the effective date of the renegotiated agreement.*

20 Pursuant to A.A.C Rule R14-2-1508, agreements are automatically approved 30 days
21 from the filing date if the Commission has not formally rejected the filing. The Commission did
22 not reject the Frontier filing; therefore the Frontier Interconnection Agreement with Autotel is
23 an active agreement and has been since March 3, 2005. The Commission acknowledged this in
24 Decision 68605 in which the Commission explained: “. . . [I]nterconnection with Citizens’
25 network is possible under the previous Decision and resulting ICA, which is binding on both
26 parties and may not be ignored by either party.” As identified in the quoted language above, the
27 Interconnection Agreement had a two-year term and automatic one year renewals unless either
28 party provided 90 days advance notice prior to the March 3 anniversary date of their intent to
terminate the Interconnection Agreement. Neither Autotel nor Frontier provided notice of
termination prior to December 3, 2009 (90 days before March 3, 2010). See Affidavit of Jenny
Smith Affidavit at ¶ 14. Accordingly, based on the ongoing automatic renewals of the final
Interconnection Agreement, the Interconnection Agreement remains in place and effective until
March 2, 2011.

1 The Commission should not allow Autotel to disregard its prior orders by initiating an
2 arbitration request for a new interconnection agreement without complying with the
3 requirements of the existing interconnection agreement which will remain in effect through
4 March 2, 2011. Moreover, if the Commission were allow Autotel's requested arbitration to
5 proceed, Autotel may again simply ignore the Commission's arbitration order and refuse to
6 comply with the Commission's decision. The Commission should dismiss Autotel's Arbitration
7 Petition and issue a finding that Autotel must comply with the Commission's prior arbitration
8 order and continue to operate under the existing Interconnection Agreement that remains in
9 effect until March 2, 2011, before Autotel can take any other action regarding arbitrating a new
10 interconnection agreement before the Commission.

11 Alternatively, the Commission should dismiss Autotel's Arbitration Petition as deficient
12 under Section 252(b)(2)(A) of the Telecommunications Act of 1996 and A.A.C. R14-2-1505(B)
13 of the Commission's Rules. Specifically, A.A.C. R14-2-1505(B)(2) provides:

- 14 2. A petition for arbitration shall be accompanied by all relevant
15 documentation concerning the unresolved issues, the position of each of
16 the parties with respect to those issues, and any other issue discussed and
17 resolved by the parties. Relevant documentation includes, but is not
18 limited to, the following:
- 19 a. A brief or other written statement addressing the disputed issues.
20 The brief should address, in addition to any other matters, how the
21 parties' positions and any conditions requested meet or fail to
22 meet the requirements of 47 U.S.C. 251; any applicable Federal
23 Communication Commission regulations; and any applicable
24 regulation, order, or policy of this Commission.
 - 25 b. Where prices are in dispute, the petitioner shall submit its
26 proposed rates or charges and related supporting materials.
 - 27 c. Any conditions which petitioner requests be imposed.
 - 28 d. A proposed schedule for implementation of the terms and
 conditions of the agreement.
 - e. The petition may include a recommendation as to any information
 which should be requested from the parties by the arbitrator
 pursuant to 47 U.S.C. 252(b)(4)(B). The recommendation should
 state why the information is necessary for the arbitrator to reach a
 decision on the unresolved issues.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- f. A proposed interconnection agreement.
- g. Any other documents relevant to the dispute, including copies of all documents in their possession or control on which they rely in support of their positions or which they intend to present at the arbitration.

Even the most cursory review of Autotel's Arbitration Petition dated June 29, 2010, reveals that Autotel failed to comply with the Commission's requirements for initiating an arbitration. For example, Autotel did not provide all relevant documentation, including the prior interconnection agreement arbitrated by the Commission. In fact, Autotel did not even identify the Commission's prior orders or acknowledge that an existing Interconnection Agreement was in place. Autotel has not explained or confirmed that it is licensed by the Federal Communications Commission to operate as a commercial mobile radio service (CMRS) provider in Arizona or that it currently sends or receives any communications traffic to or from Arizona, or within Frontier's service territories in Arizona. More significantly, Autotel did not identify the disputed issues and did not provide any specific requested changes to the existing interconnection agreement or identify any prices, rates or charges that it disputed. Autotel has simply submitted its "proposed" interconnection agreement, which Frontier has objected to and disputed. *See* Affidavit of Jenny Smith. Frontier continues to object to and believes there is no basis for the proposed agreement submitted by Autotel. The procedural deficiencies in Autotel's petition alone provide sufficient basis for the Commission to dismiss Autotel's Arbitration petition.

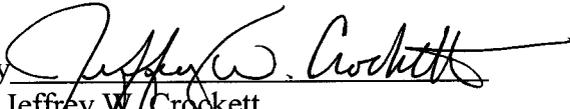
. . . .
. . . .
. . . .
. . . .
. . . .
. . . .

1 **VII. CONCLUSION.**

2 For the reasons stated above, and consistent with the Commission's prior decisions
3 involving Autotel's failure to comply with the Commission's requirements, the Commission
4 should dismiss Autotel's Arbitration Request filed with the Commission on June 29, 2010.

5 RESPECTFULLY SUBMITTED this 27th day of July 2010.

6 SNELL & WILMER L.L.P.

7
8 By 
9 Jeffrey W. Crockett
10 One Arizona Center
11 400 E. Van Buren Street
12 Phoenix, Arizona 85004-2202
13 Tel: 602-382-6234
14 Fax: 602-382-6070
15 jcrockett@swlaw.com

13 ORIGINAL and thirteen copies filed this
14 27th day of July 2010, with:

15 Docket Control
16 Arizona Corporation Commission
17 1200 West Washington
18 Phoenix, Arizona 85007

17 COPIES of the foregoing mailed
18 this 27th day of July, 2010, to:

19 Richard L. Oberdorfer
20 AutoTel
21 P.O. Box 1618
22 Bend, Oregon 97709

21 COPIES of the foregoing hand-delivered
22 this 27th day of July, 2010, to:

23 Lyn Farmer, Hearing Officer
24 Arizona Corporation Commission
25 1200 West Washington
26 Phoenix, Arizona 85007

25 Janice Alward, Chief Counsel
26 Arizona Corporation Commission
27 1200 West Washington
28 Phoenix, Arizona 85007

28 By: 

ATTACHMENT 1

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 In the Matter of the Petition by Autotel for
4 Arbitration of an Interconnection Agreement with
5 Frontier Communications Corporation Operating
6 Companies of Arizona Pursuant to Section 252(b)
7 of the Telecommunications Act of 1996.

Docket No. T-03214A-10-0051

**AFFIDAVIT OF JENNY SMITH
IN SUPPORT OF FRONTIER
COMMUNICATIONS
CORPORATION OPERATING
COMPANIES MOTION TO
DISMISS AUTOTEL'S
ARBITRATION REQUEST**

8
9 I, Jenny Smith, am familiar with the facts and circumstances at issue in this matter, and
10 am competent to make this Affidavit.

11
12 1. I am employed with Frontier Communications Corporation as Manager, Interconnection
13 Services. The major part of my work is to negotiate interconnection agreements with all
14 types of carriers seeking interconnection with a Frontier company pursuant to the
15 Telecommunications Act of 1996.

16 2. Over the past several years, I personally have negotiated numerous interconnection
17 agreements in several different states with competitive local exchange carriers, wireless
18 carriers, and paging companies.

19 3. Frontier has successfully negotiated interconnection agreements with several wireless
20 carriers in Arizona. The following wireless interconnection agreements, filed with the
21 Arizona Corporation Commission ("Commission"), allow both parties to interconnect
22 their networks, exchange traffic and receive compensation for transporting and
23 terminating that traffic.

- 24 • Sprint PCS / Citizens Utilities Rural Company (2000) – Decision No. 63212
25 Amendment One – Decision No. 63934
- 26 • ATT Wireless / Citizens Utilities Rural Company (2004) - Decision No. 67291
- 27 • ATT Wireless/ Citizens Telecommunications Company of the White Mountains –
28 Decision No. 67291
- ATT Wireless/ Navajo Communications Company – Decision No. 67743

- 1 • Smith Bagley/ Citizens Telecommunications Company of the White Mountains
- 2 (2006) – Decision No. 68680
- 3 • Smith Bagley/ Navajo Communications Company (2006) – Decision No. 68680
- 4 • T-Mobile/ Citizens Utilities Rural Company (2006) – Decision No. 69141
- 5 • T-Mobile/ Citizens Telecommunications Company of the White Mountains
- 6 (2006) – Decision No. 69144
- 7 • T-Mobile/ Navajo Communications (2006) – Decision No. 69142

8 4. In my position as Manager, Interconnection Services, I have been the primary company
9 contact for the Autotel interconnection negotiations.

10 5. I first began working with Autotel in May 2002 when I received a request for
11 interconnection, unbundled network elements and the negotiations of a CMRS agreement
12 for the state of Arizona.

13 6. The May 2002 negotiations resulted in an arbitration filed by Autotel with the
14 Commission on May 26, 2003. The arbitration was finalized in Decision No. 67273
15 dated October 5, 2004. The Commission order required Autotel and Citizens Utilities
16 Rural Company, Inc., Citizens Telecommunications Company of the White Mountains,
17 Inc., and Navajo Communications Company, Inc. to prepare and sign an interconnection
18 agreement incorporating the terms of the Commission's resolutions and to submit the
19 agreement to the Commission for review within thirty days from the date of the Decision.

20 7. Frontier sent the Commission ordered agreement to Autotel for signature on October 21,
21 2004.

22 8. Autotel refused to execute the Commission ordered agreement and instead attempted to
23 negotiate additional terms and conditions which were not part of the arbitration
24 proceeding. In an effort to avoid further litigation with Autotel, Frontier agreed to
25 consider additional requests made by Autotel. On January 28, 2005, after further
26 settlement discussions with Autotel broke down, Frontier sent the attached letter and the
27 final Interconnection Agreement (Exhibit A), signed only by Frontier to Mr. McNeil at
28 the Commission.

- 1 9. In May of 2005, Autotel filed a lawsuit in the United States District Court for the District
2 of Arizona against Frontier and the Commission alleging both defendants violated certain
3 regulations imposed by the Telecommunications Act.
- 4 10. On November 21, 2005, Autotel filed with the Commission a Notice of its Bona Fide
5 Request for interconnection, services and network elements with Citizens Utilities Rural
6 Company, Inc.
- 7 11. On March 23, 2006, in Decision No. 68605, Autotel's Notice of its Bona Fide Request
8 for interconnection, services and network elements was dismissed with prejudice by the
9 Commission.
- 10 12. On March 8, 2007, the United States District Court for the District of Arizona granted
11 Frontier's motion to dismiss.
- 12 13. Between March 8, 2007 and January of 2010, I received no correspondence from Mr.
13 Oberdorfer or anyone else at Autotel interested in implementing the Commission
14 approved Interconnection Agreement.
- 15 14. Neither Autotel nor Frontier provided notice of termination of the Interconnection
16 Agreement included in Exhibit A, prior to December 3, 2009 (90 days before March 3,
17 2010). As a result, Frontier considered the Interconnection Agreement identified in
18 Exhibit A to be renewed and in effect through March 2, 2011.
- 19 15. On January 1, 2010 I received an email from Mr. Oberdorfer inquiring as to what legal
20 entities Frontier currently operates in the state of Arizona and if Frontier considers any of
21 those legal entities a "rural telephone company" under 47 USC 153(37). In a response
22 email I explained to Mr. Oberdorfer that Frontier had not invoked its rights as a rural
23 telephone company in any of our Arizona companies.
- 24 16. On February 4, 2010, I received a formal request from Autotel requesting interconnection
25 with Frontier's local exchange entities operating in the State of Arizona and requesting
26 negotiations of an interconnection agreement for Autotel's CMRS facilities and
27 equipment.
- 28

- 1 17. On February 10, 2010 I responded to Mr. Oberdorfer that the Frontier companies and
2 Autotel already had an active interconnection Agreement in Arizona pursuant to Decision
3 No. 67273 and that I would schedule a kick off meeting with Frontier's account
4 management team to walk through the process of trunking requests, code openings and
5 translations requirements.
- 6 18. On February 12th Mr. Oberdorfer replied to my responses via email stating he is in
7 complete disagreement that Commission Decision No. 67273 resulted in an approved
8 Interconnection Agreement.
- 9 19. On April 8, 2010 I received an email from Mr. Oberdorfer with a draft interconnection
10 agreement attached for my review. The agreement proposed by Mr. Oberdorfer was
11 marked for the state of Oregon.
- 12 20. On April 12th I responded via email to Mr. Oberdorfer, questioning why he wanted me to
13 review an agreement which was marked for the state of Oregon - when we already had an
14 active agreement in place. I offered to consider amendments to our existing agreement if
15 he would be willing to provide redline changes to the agreement or an email with actual
16 language suggestions rather than just an email with what he would not accept. I provided
17 to Mr. Oberdorfer the final Word version of the current Interconnection Agreement
18 between Frontier and Autotel - so that Autotel could identify any proposed changes to the
19 existing agreement in redline format.
- 20 21. On April 19th Mr. Oberdorfer explained he was not willing to accept that an agreement
21 existed but stated that if one did - he believed it expired in 2007. I immediately responded
22 directing Mr. Oberdorfer to section 9.1 of the Interconnection Agreement, Term and
23 Termination. I explained how the clause worked and that he is required to send notice a
24 minimum of 90 days before the end of the current term. I further stated that I would
25 accept Autotel's request for negotiations as providing notice prior to the 90 day deadline
26 to terminate the existing agreement which expired in March 2011; however, Frontier
27 would continue to honor the existing agreement until its termination date of March 2,
28

1 2011. I offered to assist Autotel in establishing interconnection under the current terms
2 and Frontier's willingness to consider amendments before the agreement expires.

3 22. Subsequently, I received a federal express package with Mr. Oberdorfer's Petition for
4 Arbitration that, according to the date on the cover page, was apparently submitted to the
5 Commission on June 29, 2010.

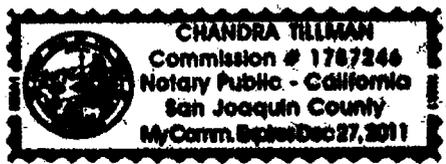
6
7 I declare under the penalty of perjury that the above is true and correct and that this
8 Affidavit was executed on the 27th day of July 2010 in Elk Grove, California.

9
10 
11 Jenny Smith
12 Manager, Interconnection
13 Frontier Communications Corporation
14 9260 E. Stockton Blvd.
15 Elk Grove, California 95624
16 Tel: 916-686-3533
17 Fax: 916-685-7101
18 Jenny.Smith@FTR.com

19 STATE OF CALIFORNIA)
20) SS
21 COUNTY OF Sacramento)

22 Subscribed and sworn to before me, a Notary Public on this 27th day of July, 2010.

23
24 
25 Notary Public



ORIGINAL



VIA UPS OVERNIGHT MAIL

January 28, 2005

Brian C. McNeil
Executive Secretary
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED

JAN 31 2005

DOCKETED BY

AZ CORP COMMISSION
DOCUMENT CONTROL

2005 JAN 31 A 10:47

RECEIVED

Re: Docket Number: T-03234A-03-0188
Decision Number: 67273

Dear Mr. McNeil:

On October 5, 2004 the Arizona Corporation Commission issued its Opinion and Order (Decision No. 67273) in the above-referenced docket resolving the interconnection agreement arbitration between Citizens Communications ILEC companies (Citizens Utilities Rural Company, Inc., Citizens Telecommunications Company of the White Mountains, Inc. and Navajo Communications Company, Inc.) and Autotel. The Order directed Citizens and Autotel to execute and file the interconnection agreement incorporating the terms of the Commission's resolutions in the Order within 30 days following the Order. Citizens prepared the interconnection agreement incorporating the terms and conditions from the Commission's Order and forwarded the agreement to Autotel for signature on October 21, 2004. Citizens executed the arbitrated agreement on October 25, 2004.

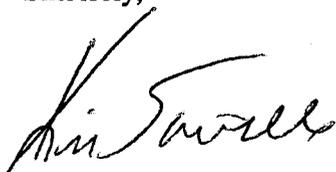
After approximately 90 days, Autotel has declined to execute the arbitrated interconnection agreement incorporating the resolutions from the Commission's October 5, 2004 Order. Moreover, Autotel has raised additional issues it would like to address in the arbitrated agreement. Citizens has been unsuccessful in resolving these issues with Autotel and consequently, hereby notifies the Commission that it appears unlikely that Autotel will execute the arbitrated interconnection agreement as required by the Commission's Order.

On behalf of Citizens, I hereby enclose a copy of the arbitrated interconnection agreement executed by Citizens Utilities Rural Company, Inc., Citizens Telecommunications Company of the White Mountains, Inc. and Navajo Communications Company, Inc. Again, Autotel has not executed the arbitrated agreement.

If you have questions, or would like to discuss this matter, please contact me.

Smith Affidavit Exhibit A

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin Saville".

Kevin Saville
Associate General Counsel
Citizens Communications
2378 Wilshire Blvd.
Mound, MN 55364
(952) 491-5564 Telephone
(952) 491-5515 Facsimile
ksaville@czn.com

Enclosures

cc: Docket Control
Service List

Smith Affidavit Exhibit A

1 RESPECTFULLY SUBMITTED this 28th day of January 2005.

2

3

4

5

6

7

8

9

10

11

12 Original and thirteen copies filed this
28th day of January 2005, with:

13

14 Docket Control
15 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

16 Copies of the foregoing mailed/delivered
this 28th day of January, 2005, to:

17

18 Richard L. Oberdorfer
Autotel
114 N.E. Penn Avenue
19 Bend, Oregon 97701

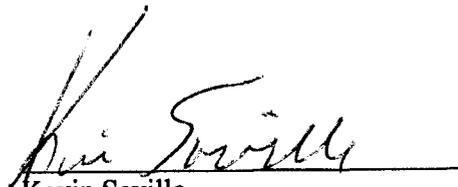
20

21 Kevin Saville
Associate General Counsel
Citizens Communications Company
22 2378 Wilshire Blvd
Mound, MN 55364

23

24 Lyn Farmer
Chief Administrative Law Judge
Hearing Division
25 Arizona Corporation Commission
1200 West Washington
26 Phoenix, Arizona 85007

27


Kevin Saville
Associate General Counsel
Citizens Communications Company
2378 Wilshire Blvd.
Mound, Minnesota 55364
(952) 491-5564 Telephone
(952) 491-5515 Facsimile
ksaville@czn.com

Smith Affidavit Exhibit A

1 Jane Rodda
Administrative Law Judge
2 Hearing Division
Arizona Corporation Commission
3 400 West Congress
Tucson, Arizona 85701
4

5 Christopher Kempley
Chief Counsel, Legal Division
6 Arizona Corporation Commission
1200 West Washington
7 Phoenix, Arizona 85007

8 Ernest Johnson
9 Director, Utilities Division
Arizona Corporation Commission
10 1200 West Washington
11 Phoenix, Arizona 85007

12 Brian C. McNeil
Executive Secretary
13 Arizona Corporation Commission
1200 West Washington
14 Phoenix, Arizona 85007

15
16
17 By: 
18
19
20
21
22
23
24
25
26
27

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

**INTERCONNECTION AND TRAFFIC*INTERCHANGE AGREEMENT
FOR CELLULAR AND OTHER 2-WAY MOBILE RADIO SERVICES**

Between

**Citizens Utilities Rural Company, Inc.
Citizens Telecommunications of the White Mountains, Inc.
Navajo Communications Company, Inc.**

and

AUTOTEL

Dated: October 5, 2004

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

**INTERCONNECTION AND TRAFFIC INTERCHANGE AGREEMENT
CELLULAR AND OTHER 2-WAY MOBILE RADIO SERVICES**

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINITIONS	1
SECTION 2. INTERCONNECTION	2
SECTION 3. USE OF FACILITIES AND SERVICES	4
SECTION 4. CHARGES FOR FACILITIES AND ARRANGEMENTS	6
SECTION 5. BILLING AND PAYMENTS	8
SECTION 6. ALLOWANCE FOR INTERRUPTIONS	9
SECTION 7. AUDIT	10
SECTION 8. SUBCONTRACTORS	10
SECTION 9. TERM AND TERMINATION OF AGREEMENT	10
SECTION 10. CONFIDENTIALITY AND PUBLICITY	11
SECTION 11. LIABILITY AND INDEMNITY	12
SECTION 12. LIMITATIONS OF LIABILITY	13
SECTION 13. INTELLECTUAL PROPERTY	13
SECTION 14. DISCLAIMER OF WARRANTIES	13
SECTION 15. RECORD RETENTION	14
SECTION 16. AMENDMENTS; WAIVERS	14
SECTION 17. COMMISSION DECISION	15
SECTION 18. REGULATORY CHANGES	15
SECTION 19. NOTICES AND DEMANDS	15
SECTION 20. ASSIGNMENT	16
SECTION 21. DISPUTE RESOLUTION	16
SECTION 22. ENTIRE AGREEMENT	16
SECTION 23. GOVERNING LAW	16
SECTION 24. EXECUTED IN COUNTERPARTS	17
SECTION 25. HEADINGS	17
SECTION 26. FORCE MAJEURE	17
SECTION 27. CONTROLLING LAW, COMPLIANCE, LAW ENFORCEMENT CERTIFICATION AND PROCESS	17
SECTION 28. REGULATORY APPROVALS	17
SECTION 29. SEVERABILITY	18
SECTION 30. NO JOINT VENTURE	18
SECTION 31. REMEDIES	18
SECTION 32. FURTHER ASSURANCES	18

ATTACHMENT 1 - CONTACT LIST

SERVICE ATTACHMENT - TYPE 2B

SERVICE ATTACHMENT - TYPE 2A

ATTACHMENT 2 - BONA FIDE REQUEST

-EXHIBIT A - BONA FIDE REQUEST FORM

**INTERCONNECTION AND TRAFFIC INTERCHANGE AGREEMENT
CELLULAR AND OTHER 2-WAY MOBILE RADIO SERVICES**

THIS AGREEMENT is made this 5th day of October, 2004 by and between Citizens Utilities Rural Company, Inc., Citizen Telecommunications Company of the White Mountains, both Delaware corporations, and Navajo Communications Company, Inc. a New Mexico corporation, with offices at 180 S. Clinton Street, Rochester, NY 14646 (referred to as "Citizens"), and AUTOTEL, a Oregon corporation, (as defined hereunder) with its office at 114 North East Penn Avenue, Bend OR 97701 (collectively referred to as the "Carrier"). Carrier and Citizens may also be referred to herein collectively as the "Parties" and singularly as a "Party".

RECITALS:

Citizens is an authorized telecommunications carrier engaged in providing 2-way telecommunications service in the state identified in the Attachment(s); and

Carrier is an authorized telecommunications carrier by radio engaged in providing mobile radio telecommunications service in the state identified in the Attachment(s); and

Citizens and Carrier desire to interconnect their facilities and interchange traffic for the provision of telecommunications service pursuant to 47 U.S.C. Section 251 and 252;

In consideration of their mutual agreements, Citizens and Carrier agree as follows:

SECTION 1. DEFINITIONS

For purposes of this Agreement, the following definitions will apply:

ACCESS TANDEM -- Citizens' switching system that provides a traffic concentration and distribution function for traffic originating from or terminating to end offices in the access area.

ACT -- The Communications Act of 1934, 47 U.S.C. 151 et seq. As amended by the Telecommunications Act of 1996, and as interpreted from time to time in the duly authorized rules and regulations of the FCC or the State Regulatory Authorities.

COMMERCIAL MOBILE RADIO SERVICE PROVIDER -- Telecommunications common carrier authorized by the Federal Communications Commission ("FCC") under FCC rules Part 22 (47 CFR Part 22), Part 24 (47 CFR Part 24), and Part 90 (47 CFR Part 90) which utilizes radion as the principle means of connecting its end user subscribers with the Public Switched Telephone Network.

CLEC (Competitive Local Exchange Carrier) -- A Carrier who competes in the provision of local exchange telecommunications service and is not an Incumbent LEC as defined in 47 U.S.C. § 251(h) of the Act.

END OFFICE -- The Citizens central office trunking/switching entity where telephone loops are terminated for purposes of interconnection to each other and to the network.

ILEC (Incumbent Local Exchange Carrier) -- As defined in the Act.

ISP REMAND ORDER -- The FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound Traffic, FCC 01-131, CC Docket Nos. 96-98 and 99-68 and the regulations promulgated thereunder.

LAND-TO-MOBILE DIRECTION -- Calls from landline customers to Carrier's system. Also referred to as land-to-mobile.

LOCAL CALLING AREA -- (1) The applicable Major Trading Area ("MTA") will be used to define the local calling area for all telecommunications traffic originated on the system of Carrier and interchanged with

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

Citizens for delivery in Citizens' exchange areas in the same MTA. (2) Citizens' local calling areas, as defined by state regulatory authorities, will be used to define the local calling area for all telecommunications traffic originated on the system of Citizens and interchanged with Carrier. These definitions of "local calling area" will not be deemed to affect the right of either Party to bill its own end-users its own charges for any such call, nor its right to reciprocal compensation, as defined in Section 51.701 of the FCC's Rules.

LOCAL TRAFFIC or "IntraMTA Traffic" is that telecommunications traffic, which originates and terminates, within the same MTA as defined in 47 C.F.R. § 24.202(a). For purposes of determining whether traffic originates and terminates within the same MTA, and therefore whether the traffic is local, the location of the end office serving the landline end user and the location of the cell site that serves the mobile end user at the beginning of the call shall be used.

MAJOR TRADING AREA -- The Major Trading Area ("MTA") is defined as the local calling scope for interconnection and is based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38-39, with the exceptions contained in Section 24.202(a) of the Rules of the Federal Communications Commission.

MOBILE SWITCHING CENTER (MSC) -- The Mobile Switching Center used by Carrier in performing originating and terminating functions for calls interchanged between Carrier customer and the Public Switched Telephone Network.

MOBILE-TO-LAND DIRECTION -- Calls from Carrier's premises to landline customers. Also referred to as mobile-to-land.

POINT OF INTERCONNECTION (POI) -- Point of Interconnection means the physical location(s) at which the Parties' networks meet for the purpose of establishing interconnection.

SERVICE AREA -- Service Area is defined as the geographic area in which Carrier is authorized by the FCC to provide services.

TRANSIT SERVICE -- Is the delivery of certain traffic between Carrier and a third party ILEC, CLEC or CMRS provider by Citizens over the Telephone Exchange Service trunks where Telephone Exchange Service trunks exist between Carrier and third party through Citizens tandem.

TYPE 2A INTERCONNECTION -- The connection between Carrier's System and a Citizens access tandem switch. Type 2A interconnection provides connectivity to all Citizens' end offices subtending the tandem.

TYPE 2B INTERCONNECTION -- A high-usage connection between Carrier's system and a Citizens' end office. A Type 2B interconnection is an interconnection between the Wireless MTSO and the ILEC's End Office only. It does not include Extended Area Service (EAS) calling, nor does it allow for County-Wide calling. Citizens will not complete any call to customers not served by the specified Citizens End Office in the attached Service Attachment for Type 2B and will not originate any calls from customers not served by the Citizens End Office. Type 2B will also provide a connection between Carrier's system and a Citizens' end office subtending a non - Citizens' tandem.

WIRELESS CARRIER -- Telecommunications common carrier authorized by the Federal Communications Commission (FCC) under FCC rules Part 22 (47 CFR Part 22), Part 24 (47 CFR Part 24), and Part 90 (47 CFR Part 90) which utilizes radio as the principal means of connecting its end-user subscribers with the Public Switched Telephone Network.

SECTION 2. INTERCONNECTION

2.1 Subject to the applicable interconnection rules and regulations, Citizens will provide to Carrier, upon request, those facilities and arrangements described herein and in the Attachments hereto to

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

establish the physical interconnection and interchange of traffic provided for herein and such other facilities Carrier may require and request for operation of its system.

2.2 All interchanged traffic will be handled only over interconnecting facilities as described herein.

2.2.1. The type of direct interconnections offered under this Agreement are designated as Type 2A, and Type 2B, as defined in Section 1.

2.2.2. The Parties may exchange traffic under this Agreement indirectly via the facilities of a third party, e.g. via the tandem of another local exchange company that serves the Citizens End Office which traffic is destined to, provided that 1) traffic between the third party and Citizens can be measured and 2) when traffic volumes are below a DS1 level. In the event the traffic exchanged between the Parties equals or exceeds a DS1 level (512 centum call seconds or "CCS") when measured at busy hour at least 15 times per month or 8 times per day, the Parties will establish one or more of the direct interconnections pursuant to Section 2.2.1 above.

2.2.3. In the event traffic is exchanged indirectly with Carrier, either Party's Local Traffic may be routed through one or more intermediaries for interconnection with the other Party's system and, transit a tandem switch before reaching Citizens' End Office. Citizens will accept such third party, indirect traffic however, Carrier will be charged Reciprocal Compensation and/or third party transiting fees based on Section 4, Charges for Facilities and Arrangements.

2.3 Carrier may request activation/addition of new POI's under the terms and conditions of this Agreement at any time during the term by submitting a request for interconnection to Citizens' Interconnection organization. Citizens will provide an amended Service Attachment to reflect activation or addition of new POI's. The Service Attachment will be signed by Citizens' authorized representative and Carrier's authorized representative, affixed to this Agreement, and thereby being made a wholly part and subject to this Agreement. To the extent that any of the Service Attachments may be inconsistent with or in conflict with this Agreement, the Agreement will prevail.

2.4 Signaling Systems and Administration

2.4.1 The Parties will, where Citizens has the capability, interconnect their networks using SS7 signaling associated with all interconnection trunk groups as defined in Telcordia GR-246 "Bell Communications Research Specification of Signaling Systems 7 (SS7) and GR-905, "Common Channel Signaling Network Interface Specification (CCSNIS) Supporting Interconnection, Message Transfer Part (MTP), and Integrated Services Digital Network (ISDN) User Part (ISUP) "including ISDN User Part ("ISUP") for trunk signaling and Transaction Capabilities Application Part ("TCAP") for CCS-based features in the interconnection of their networks provided use of SS7 signaling allows for measurement of land to mobile and mobile to land traffic.. For glare resolution, Citizens will have priority on odd trunk group member circuit identification codes, and carrier will have priority on even trunk group member circuit identification codes, unless otherwise mutually agreed. (does not have SS7 capabilities – only MF. How do we handle this change?)

2.5 The terms and conditions of this Agreement will prevail over and supersede any other conflicting rates, terms and conditions contained on Carrier's purchase order for services provided under this Agreement.

2.6 At Carrier's request, Citizens and Carrier will physically interconnect their facilities at Citizens' office or another mutually agreed to POI, and interchange traffic originating and/or terminating on Carrier's System in connection with Carrier's Authorized Services; such interconnection will be in accordance with the service, operating and facility arrangements set forth hereinafter.

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

2.7 Sizing and Structure of Interconnection Facilities

2.7.1 The Parties will mutually agree on the appropriate sizing for facilities based on the standards set forth below. The capacity of interconnection facilities provided by each Party will be based on mutual forecasts and sound engineering practice, as mutually agreed to by the Parties.

2.7.2 The electrical interface at Points of Interconnections (POIs) will be DS1 or DS3 as mutually agreed to by the Parties. When a DS3 interface is agreed to by the Parties, Citizens will provide any multiplexing required for DS1 facilities or trunking at their end and Carrier will provide any DS1 multiplexing required for facilities or trunking at their end. Citizens will charge DS3/DS1 multiplexing charges according to Citizens FCC #1 Tariff. (Tariff information is located at www.citizenscommunications.com/carrier_services.cfm)

2.7.3 Citizens and Carrier will engineer all Traffic Exchange Trunks using a network loss plan conforming to ANSI T1.508-1998 and ANSI T1.508-1998 Supplement A.

2.8. Where additional equipment is required, such equipment would be obtained, engineered, and installed on the same basis and with the same intervals as any similar growth job for Carriers, or Citizens internal customer demand.

2.9 Trunk Forecasting

2.9.1 The Parties will work towards the development of joint forecasting responsibilities for traffic utilization over interconnection trunk groups covered in this contract. Orders for trunks that exceed forecasted quantities for forecasted locations will be accommodated as facilities and/or equipment becomes available. Parties will make all reasonable efforts and cooperate in good faith to develop alternative solutions to accommodate orders when facilities are not available. Intercompany forecast information must be provided by the Parties to each other upon reasonable request. Citizens preference is a semi-annual forecast covering the following 24-month period.

2.10 Grade of Service

2.10.1 Each Party will provision their network to provide a P.01 grade of service.

2.10.2 The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services, cause damage to their plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities or create hazards to the employees of either Party or to the public (each hereinafter referred to as an "Impairment of Service").

2.10.3 Each Party will advise the other of any critical nature of the interoperative facilities, service, and arrangements and any need for expedited clearance of trouble. In cases where a Party has indicated the essential or critical need for restoration of the facilities, services or arrangements, the other Party will use its best efforts to expedite the clearance of trouble.

SECTION 3. USE OF FACILITIES AND SERVICES

3.1 The interconnecting facilities will be used only for the handling of interchanged traffic originating or terminating on Carrier's System in connection with Carrier's Authorized Services. Such facilities may, however, be used for any lawful use. This Agreement is applicable only to Citizens' Local serving areas,

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

within Carrier's MTA, Citizens will not be responsible for interconnections or contracts relating to Carrier's interconnection with any other LEC.

3.2 Connecting circuits, facilities and arrangements provided pursuant to this Agreement will not be used, switched or otherwise connected together by Carrier for the provision of through calling from a landline telephone to another landline telephone or from a landline telephone to an Internet Service Provider. The only exception is when Carrier's end-user "call forwards" to a landline telephone.

3.3 Connecting circuits, facilities and arrangements provided to Carrier by Citizens will not be used knowingly for any purpose or in any manner, directly or indirectly, in violation of law or in aid of any unlawful act or undertaking.

3.4 When needed and upon request by Carrier, special construction will be undertaken in accordance with the applicable Citizens tariff or as mutually negotiated by the Parties.

3.5 Any other provision of this Agreement notwithstanding, Citizens will recognize, deliver traffic to, accept traffic from, and otherwise honor the validity of any NXX assigned to Carrier by a third party in accordance with 47 USC Section 251(e) (or related FCC or state number administration rules).

3.6 Network Harm

3.6.1 Neither Party will use any service related to or use any of the services provided in this Agreement in any manner that interferes with third parties in the use of their service, prevents third parties from using their service, impairs the quality of service to other carriers or to either Party's Customers; causes electrical hazards to either Party's personnel, damage to either Party's equipment or malfunction of either Party's billing equipment (individually and collectively, "Network Harm"). If a Network Harm will occur or if a Party reasonably determines that a Network Harm is imminent, such Party will, where practicable, notify the other Party that temporary discontinuance or refusal of service may be required; provided, however, wherever prior notice is not practicable, such Party may temporarily discontinue or refuse service forthwith, if such action is reasonable under the circumstances. In case of such temporary discontinuance or refusal, such Party will:

- (a) Promptly notify the other Party of such temporary discontinuance or refusal;
- (b) Afford the other Party the opportunity to correct the situation which gave rise to such temporary discontinuance or refusal; and
- (c) Inform the other Party of its right to bring a complaint to the Commission or FCC.

3.7 Citizens and Carrier each may make reasonable tests and inspections of its facilities and may, upon notice and coordination with the other, temporarily interrupt the facilities being tested or inspected, so long as impairment or restriction of the operation of facilities is minimized. When cooperative testing is requested by either Party, such testing will be done in accordance with this Section 3

3.8 The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement will not interfere with or impair service over any facilities of either Party, its Affiliates, or its connecting and concurring carriers involved in its services, cause damage to their plant, invade the privacy of any communications carried over either Party's facilities or create hazards to the employees of any of them or to the public.

3.9 Carrier will be solely responsible, at its expense, for the overall design of its services and for any redesigning or rearrangement of its services which may be required because of changes in facilities, operations or procedures of Citizens, minimum network protection criteria, operating or maintenance characteristics of the facilities.

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

3.10 Mobile customers of Carrier will be instructed to report all cases of trouble to Carrier. In order to facilitate trouble reporting and to coordinate the repair of service provided to Carrier by Citizens under this Agreement, "Citizens 24-Hour Repair Center" will provide 24-hour trouble reporting for Carrier.

3.10.1 Where new facilities, services and arrangements are installed, Citizens, via the Network Operations Center (NOC), will ensure that continuity has been established and that appropriate transmission measurements have been made before advising Carrier that the new circuit is ready for service.

3.10.2 Citizens will furnish a trouble reporting telephone number for the designated NOC. See Attachment 1. This number will give Carrier access to the location where its facility records are normally located and where current status reports on any trouble reports are readily available. Alternative out-of-hours procedures will be established to ensure access by Carrier to a location which is staffed and has the authority to initiate corrective action.

3.10.3 Before Carrier reports a trouble condition, it will use its commercially reasonable efforts to isolate the trouble to Citizens' facilities.

3.10.4 In cases where a trouble condition adversely affects Carrier's service, Citizens will give Carrier the same priority extended to other telephone companies.

3.10.5 Citizens and Carrier will cooperate in isolating the trouble.

3.11 Trunking arrangements shall be established as follows:

3.11.1 Separate trunk groups for the exchange of Local Traffic.

3.11.2 Separate trunk groups to be used solely for the transmission and routing of Exchange Access Services to enable Interexchange Carriers to originate and terminate traffic from/to Carrier.

3.11.3 Where applicable, separate trunks will be used to connect Carrier's switch to Citizens E911 routers. If Carrier purchases such services from Citizens, they will be provided at full applicable tariff rates. For all 911/E911 traffic originating from Carrier, it is the responsibility of Carrier and the appropriate state or local public safety answering agency to negotiate the manner in which 911/E911 traffic from Carrier will be processed. (Tariff information is located at www.citizenscommunications.com/carrier_services.cfm)

3.12 Any request for access to Unbundled Network Elements shall be treated as a Bona Fide Request (BFR) pursuant to Attachment 2 of this Agreement.

SECTION 4. CHARGES FOR FACILITIES AND ARRANGEMENTS

4.1 Reciprocal Termination Charges. This form of reciprocal termination charging is usage-sensitive in which each party assesses the other usage-sensitive charges for the termination of traffic on each other's system. The Service Attachment to this Agreement reflects the selection by the Parties.

4.2 Reciprocal Transport Charges. Each Party is solely responsible for the provision of transport facilities necessary for the carriage of interchanged traffic between the Point of Interconnection and points within its own network and for all costs of delivering traffic to the Point of Interconnection; provided, however, that Citizens shall have no responsibility for delivering traffic to a Point of Interconnection located at any point outside of a Citizens local exchange area or beyond the boundary.

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

- 4.3 Reciprocal Termination Charges. Reciprocal Termination Charges are assessed on a per minute basis.
- 4.4 Each Party will charge and collect from the other Party appropriate federal, state and local taxes. Where a Party notifies the other Party and provides appropriate documentation that such Party qualifies for partial or full exemption, then the billing Party will not collect such taxes from the other Party.
- 4.5 In the absence of an agreement between Carrier, Citizens and other local exchange carriers in the MTA in which Carrier's System is located, Citizens has no obligation to deliver calls in the MOBILE-TO-LAND DIRECTION to points in the MTA in which Carrier's System is located that are beyond Citizens' local exchange areas, at rates set forth in the Service Attachment(s) to this Agreement.
- 4.6 Billing by either Party for calls to be terminated on its own network will begin at trunk seizure and will end at time of call disconnect.
- 4.7 Minutes of use, or fractions thereof, are accumulated over the billing period. Fractions of minutes are rounded up monthly to the nearest whole minute for total minutes for each end office for billing purposes.
- 4.8 For the purpose of this Agreement, the Parties, when the necessary facilities are deployed, agree to utilize industry standard technical arrangements enabling each Party to provide the other Party with all electronic signaling data necessary to bill terminating traffic, including but not limited to ANI.
- 4.9 If measurement capabilities are not available in a Citizens' end office or access tandem due to equipment failure, the following assumed minutes of use figures will apply to charges for reciprocal compensation for traffic exchanged between Parties in both the MOBILE-TO-LAND DIRECTION and the LAND-TO-MOBILE DIRECTION: 5,000 minutes of use per month for each voice grade connecting circuit and 120,000 minutes of use each month for each DS-1 connecting circuit. These assumed minutes of use will be billed in accordance with terms and conditions of this Agreement and the directionality of the traffic as identified in the Service Attachment. For example, if 70% of the traffic was MOBILE-TO-LAND and 30% of the traffic was LAND-TO-MOBILE, Citizens would bill Carrier for 4,000 minutes per month and Carrier would bill Citizens for 1,200 minutes per month for each voice grade circuit (96,000 and 24,000 respectively for a DS-1). The applicability of this arrangement referenced in this paragraph may be altered or terminated at any time once Citizens has the ability to record actual minutes of use or an alternative method can be established.
- 4.9.1 Carrier shall assume 70% ownership of the assumed minutes as referenced in 4.9 above. Citizens shall assume 30% ownership of the assumed minutes as referenced in 4.9 above.
- 4.9.2 The Parties agree that the traffic factor established in 4.9.1 will apply for a minimum of 6 months at which time the Parties may chose to revise the percentage every 6 months based on actual usage measured. The apportionment percentage will be based on the previous 6 months actual usage.
- 4.9.3 In the event the Traffic terminated on the Parties' respective networks is de minimis such that the total minutes for which either Party is entitled to compensation is less than 5,000 minutes of use for a one (1) month period the Parties agree that the only compensation for such Traffic will be in the form of the reciprocal Transport and Termination services provided by the other Party, and no billings will be issued by either Party.
- 4.10 Where Carrier interconnects with Citizens by purchasing facilities from Citizens and these facilities are used for two-way Traffic, the applicable recurring charges for such facilities to Carrier's POI on Citizens System, may be reduced by the following fixed percentage. (For example, this situation will occur if the POI for Citizens to Carrier Traffic is at the boundary of Citizens territory and the POI for Carrier to Citizens is at the Citizens switch.)

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

4.10.1 Carrier shall pay 70% of the recurring two-way facility.

4.10.2 The Parties agree that the facility fixed percentage established in 4.10 above will apply for a minimum of 6 months at which time the Parties may chose to revise the percentage every 6 months based on actual usage measured. The apportionment percentage will be based on the previous 6 months actual usage.

4.11 Service Attachment to this Agreement shall reflect which method of compensation will be used (i.e. actual minutes, assumed minutes, trunk signaling, or other special arrangements).

4.12 Transit Service. "Transit Service" means the delivery of certain traffic between Carrier and a third party ILEC, CLEC or CMRS provider by Citizens over the Telephone Exchange Service trunks where Telephone Exchange Service trunks exist between Carrier and third party through Citizens tandem. The following traffic types will be delivered: (i) Local Traffic or IntraLATA Toll originated from Carrier to such LEC and (ii) Local IntraLATA traffic originated from such LEC and terminated to Carrier where Citizens carries such traffic.

4.12.1 The Parties shall compensate each other for Transit Service as follows:

4.12.1.1 The originating Party shall pay to the transiting Party a transit service charge as set forth in the Attachments.

4.12.1.2 Each Party acknowledges that the transiting Party does not have any responsibility to pay any charges for termination of any transit traffic originating from a non-Party's network.

SECTION 5. BILLING & PAYMENTS

5.1 In consideration of the services provided by Citizens under this Agreement, Carrier shall pay the charges set forth in this Agreement and in applicable tariffs. In consideration of the services provided by Carrier under this Agreement, Citizens shall pay the charges set forth in this Agreement and in applicable tariffs. Invoices with charges set forth in this Agreement and in applicable tariffs shall be sent to:

To Carrier:

AUTOTEL
Attn: Billing
114 North East Penn Avenue
Bend, OR 97701

To Citizens:

Frontier, A Citizens Communications Company
Attention: Access Verification
14450 Burnhaven Drive
Burnsville, MN 55306

5.2 A monthly billing statement with a consistent, regular bill date shall be prepared by both Parties and will reflect the calculation of (i) reciprocal compensation due each Party and (ii) transit service compensation due Citizens, and (iii) any other tariffed or contracted service due each Party. All bills dated as set forth above will be due thirty (30) days after the bill date or by the next bill date (i.e., the same date in the following month as the bill date), whichever is the shortest interval, except as provided

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

herein, and are payable in immediately available funds. If such payment date would cause payment to be due on a Saturday, Sunday or Legal Holiday, payment for such bills will be due on the last business day preceding the Saturday, Sunday or Legal Holiday. If such bills are not received at least twenty (20) days prior to the payment due date, then the bill(s) shall be considered delayed. When a bill has been delayed, the due date will be extended by the number of days the bill was delayed, upon request of the receiving Party.

5.2.1 Parties will compensate each other on verifiable records of actual usage.

5.3 **Billing:** The Parties agree that disputed and undisputed amounts due under this Agreement shall be handled as follows:

5.3.1 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the Billed Party) shall within thirty (30) days of its receipt of the invoice containing such a disputed amount give written notice to the Billing Party of the amount it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. Such notice must be given pursuant to Section 19. The Billed Party shall pay when due all undisputed amounts to the Billing Party, and shall include a copy of the dispute with the payment of the undisputed amount.

5.3.2 In the event that a billing dispute is resolved in favor of the Billed Party, any payment of the disputed amount withheld pending settlement of the dispute shall not be subject to the late payment penalty. If any amount due following dispute resolution is not paid within 10 days after notice the dispute is resolved, late payment penalties set forth in 5.3.4 will apply from the date the dispute was resolved.

5.3.3 In the event that a billing dispute is resolved in favor of the Billing Party, any payments withheld pending settlement of the dispute will be subject to the late payment penalty set forth in 5.3.4 following.

5.3.4 Undisputed amounts shall be paid when due as set forth in Section 5.2 above. If any portion of the payment is received by the Billing Party in funds that are not immediately available to the Billing Party, a late payment penalty shall be due to the Billing Party. The late payment penalty shall be 1.5% per month or 18% annually, or the maximum allowed by law, whichever is less.

5.4 Both Parties shall use the Dispute Resolutions Procedures as described in Section 21.

5.5 In consideration of the services provided under this Agreement, the Parties shall pay the charges set forth in this Agreement and applicable tariffs. Any service provided, that is not identified in agreement will be governed by applicable tariffs.

SECTION 6. ALLOWANCE FOR INTERRUPTIONS

6.1 When use of the facilities furnished by either Party to the other Party in accordance with this Agreement is interrupted due to trouble in such facilities and such interruption is not caused by the interrupted Party, any contractor or supplier of the interrupted Party or its customer, the interrupted Party will, upon request, be allowed a credit as follows:

6.2 The amount of credit to Carrier will be an amount equal to the pro rata monthly charge for the period during which the facility affected by the interruption is out of service.

6.3 Claims for reimbursement will be made in writing within sixty (60) calendar days of the occurrence. All credit for interruption will begin from the time of actual notice by the interrupted Party to

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

the other Party, in accordance with Section 19 following, that an interruption of use has occurred. No credit will be allowed for an amount of less than five dollars (\$5).

6.4 A credit will not be applicable for any period during which the interrupted Party fails to afford access to the facilities furnished by the other Party for the purpose of investigating and clearing troubles.

SECTION 7. AUDIT

7.1 Either Party may, upon written notice to the other Party, conduct an audit, during normal business hours, only on the source data/documents as they may contain information bearing upon the services being provided under the terms and conditions of this Agreement. An audit may be conducted no more frequently than once per 12-month period, and only to verify the other Party's compliance with provisions of this Agreement. The notice requesting an audit must identify the date upon which it is requested to commence, the estimated duration, the materials to be reviewed, and the number of individuals who will be performing the audit. Each audit will be conducted expeditiously. Any audit is to be performed as follows: (i) following at least 45 days prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements, during ordinary business hours, and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations. Any other provision of this Section 7 notwithstanding, each Party shall have the right to audit only such data and records as are available in (or reproducible on) paper or other tangible (non-electronic) medium, and neither Party may have access to the other Party's electronic records without the other's prior written consent.

7.2 Each Party must retain billing records for a minimum of two years.

SECTION 8 - SUBCONTRACTORS

In the event that either Party uses a subcontractor to perform any duties under this agreement, the Party using the subcontractor or third party will remain responsible and will assure services are provided in accordance with the terms and conditions of this agreement.

SECTION 9. TERM AND TERMINATION OF AGREEMENT

9.1 This Agreement will become effective upon the first business day following the date this Agreement has been approved by the applicable regulatory authority or authorities and will continue for a period of two (2) year unless terminated earlier under the conditions set forth in this Section. This Agreement will be automatically renewed for successive periods of one (1) year after the initial term unless either Party provides the other Party with no less than ninety (90) day's prior, written notification of, in the case of Citizens, its intent to terminate this Agreement, or, in the case of either Party, its desire to renegotiate at the end of the initial or any successive period. During any such renegotiations, the rates, terms and conditions of this Agreement will remain in effect until the effective date of the renegotiated agreement.

9.2 The date when the facilities and arrangements furnished under this Agreement will be placed into service will be mutually agreed upon by the Parties, subject to applicable state regulatory approvals. If service is not established by such date, or in the event Carrier ceases to engage in the business of providing public land mobile radio service, either Party may terminate this Agreement on thirty (30) calendar days notice subject, however, to payment for facilities or arrangements provided or for costs incurred. Citizens will consult with Carrier prior to termination by Citizens.

9.3 This Agreement will immediately terminate upon the suspension, revocation or termination by other means of either Party's authority to provide communications services over its System.

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

9.4 This Agreement may be terminated at any time by either Party upon not less than thirty (30) calendar days notice, providing an opportunity to cure, to the other Party as set forth in Section 21 following, for material breach or failure to pay the other Party all undisputed charges on the dates or at the times specified in the applicable invoice for the facilities and services furnished pursuant to this Agreement.

9.5 Except for disputes arising under Section 5.3, if any other dispute arises between the Parties as to the proper charges for the facilities or arrangements furnished, or any other financial arrangements, the failure to pay an amount in dispute will not constitute cause for termination of this Agreement provided that a bond or escrow account (or other security arrangement reasonably acceptable to both Parties) is made for the security of the amount in dispute. The continuation of such dispute will not be deemed cause for Citizens to refuse to furnish additional facilities or arrangements upon reasonable request of Carrier or otherwise relieve the Parties of their obligation to fully comply with the provisions hereof as to which no dispute exists, provided financial security for payment of the amount in dispute has been made as stated above. Any dispute arising as to the security arrangement under this Section 9.5 will be subject to the dispute resolution provisions of Section 21 below.

SECTION 10. CONFIDENTIALITY AND PUBLICITY

10.1 All proprietary or confidential information ("Proprietary Information") disclosed by either Party during the negotiations and the term of this Agreement will be protected by both Parties in accordance with the terms of this Section 10.

10.2 As used in this Agreement, the term "Proprietary Information" will mean written, recorded, machine readable or other information provided in tangible form to one Party by the other Party regarding the above referenced subject matter and which is marked proprietary or confidential with the appropriate owner corporation name, e.g., "Citizens Proprietary". Information disclosed orally will not be considered proprietary unless such information is reduced to writing by the disclosing Party and a copy is delivered to the other Party within thirty (30) business days after such oral disclosure. The writing will also state the place, date and person(s) to whom disclosure was made.

10.3 Each Party agrees that it will not disclose any Proprietary Information of the other Party in whole or in part, including derivations, to any third party for a period of three (3) years from the date of disclosure unless the Parties agree to modify this Agreement to provide for a different nondisclosure period for specific materials. Neither Party will be liable for inadvertent or accidental disclosure of Proprietary Information of the other Party provided that:

- (i) each Party uses at least the same degree of care in safeguarding such Proprietary Information as it uses for its own proprietary information of like importance and such degree of care will be reasonably calculated to prevent such inadvertent disclosure;
- (ii) it limits access to such Proprietary Information to its employees, attorneys and agents who are directly involved in the consideration of the Proprietary Information and informs its employees and agents who have access to such Proprietary Information of its duty not to disclose; and
- (iii) upon discovery of any such inadvertent disclosure of Proprietary Information, it will endeavor to prevent any further inadvertent disclosure.

10.4 Information will not be deemed proprietary and the receiving Party will have no obligation with respect to any such information which:

- (i) is or becomes publicly known through no wrongful act, fault or negligence of the receiving Party; or
- (ii) was known by the receiving Party or by any other affiliate or subsidiary of the receiving

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

Party prior to disclosure, or is at any time developed by the receiving Party independently of any such disclosure; or

(iii) was disclosed to the receiving Party by a third party who was free of obligations of confidentiality to the disclosing Party; or

(iv) is disclosed or used by the receiving Party, not less than three (3) years following its initial disclosure or such other nondisclosure period as may be agreed in writing by the Parties; or is approved for release by written authorization of the disclosing Party; or

(v) is disclosed pursuant to a requirement or request of a governmental agency or disclosure is required by operation of law.

10.5 Since either Party may choose not to use or announce any services, products or marketing techniques relating to these discussions or information gained or exchanged during the discussions, both Parties acknowledge that one is not responsible or liable for any business decisions made by the other in reliance upon any disclosures made during any meeting between the Parties or in reliance on any results of the discussions. The furnishing of Proprietary Information to one Party by the other Party will not obligate either Party to enter into any further agreement or negotiation with the other.

10.6 Nothing contained in this Agreement will be construed as granting to one Party a license, either express or implied, under any patent, copyright or trademark, now or hereafter owned, obtained, controlled, or which is or may be licensable by the other Party.

10.7 Except for public filings, litigation, or other administrative or judicial proceedings arising from or related to the Agreement, all publicity regarding this Agreement and its Attachments is subject to the Parties' prior written consent.

10.8 Neither Party will publish or use the other Party's name, language, pictures, or symbols from which the other Party's name may be reasonably inferred or implied in any advertising, promotion, or any other publicity matter relating directly or indirectly to this Agreement.

SECTION 11. LIABILITY AND INDEMNITY

11.1 Neither Party will be liable for any act or omission of the other Party in the furnishing of that Party's service to its customers.

11.2 To the extent not prohibited by law or tariff and except as otherwise provided in the Agreement, each Party will indemnify, defend and hold harmless the other Party from any loss, cost, claim, injury or liability brought by a person not a Party under this Agreement which is proximately caused by the negligent acts or omissions or willful misconduct of the indemnifying Party or its employees, agents or contractors in connection with the performance of this Agreement. Such indemnity only extends to the comparative degree of negligence attributable to the indemnifying Party, as determined by state law negligence standards.

11.3 To the extent not prohibited by law or tariff, Citizens will reimburse each other for damages to facilities, premises or equipment of either Party that resulted from the negligent or willful acts of either Party and/or its employees or agents during the installation or removal of facilities, or the malfunction of facilities or equipment provided by a third party entity. Both Parties agree to cooperate with each other in the event a claim is prosecuted against a third party that caused such damage. The rights of the Party that has not been harmed will be subrogated to injured Party's right to recover for the damages to the extent of such payment.

11.4 Each Party will reimburse the other Party for any loss through theft of facilities provided under this Agreement on such Party's premises attributable to the reimbursing Party's actions (or to that of its

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

agents or employees), except to the extent that such loss is due to the other Party's comparative negligence.

11.5 The Parties will cooperate with each other in the defense of any suit, claim or demand by third persons against either or both of them arising out of the connection arrangements and interchange of traffic including, without limitation, Workers Compensation claims, actions for infringement of copyright and/or unauthorized use of program material, libel and slander actions based on the content of communications.

11.6 Neither Party will be required to reimburse the other for any claim or loss pursuant to this Section 11 arising out of a single incident, where the amount in controversy is less than one hundred dollars (\$100.00).

SECTION 12. LIMITATION OF LIABILITY

12.1 Each Party shall be liable to the other for direct damages for any loss, defect or equipment failure resulting from the causing Party's conduct of the conduct of its agent or in performing the obligations in this Agreement.

~~12.2 Neither Party shall be liable to the other under this Agreement for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence and regardless of whether the Parties know the possibility that such damage could result.~~

12.3 Nothing in this Section shall limit either Party's liability to the other for willful or intentional misconduct, including its gross negligence, or its repeated breach of any one or more of its material obligations under this Agreement.

12.4 Nothing contained in this Section shall limit either Party's obligations of indemnification as specified in the Indemnity Section of this Agreement.

SECTION 13. INTELLECTUAL PROPERTY

13.1 Each Party warrants it has obtained all necessary licenses/ permits for the provision of services under this agreement. Citizens and Carrier will each defend, indemnify, hold harmless the other Party and/or acquire any license or right for the benefit of the other Party, arising from any claim, demand or proceeding (hereinafter "Claim") by any third party alleging or asserting that the use of any circuit, apparatus, or system, or other facilities, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Citizens or Carrier under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party. Each Party's indemnification obligation will be to the extent of infringement by the indemnifying Party

13.2 Nothing in this Agreement will be construed as the grant of a license by, or the creation of an estoppel against, Citizens, either express or implied, with respect to any patent, copyright, trademark, trade secret or any other proprietary or intellectual property right now or hereafter owned, controlled or licensable by Citizens, except to the extent necessary for Carrier to use any facilities or equipment (including software) or to receive any service provided by Citizens under this Agreement.

SECTION 14. DISCLAIMER OF WARRANTIES

14.1 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION THE PARTIES' RESPECTIVE INDEMNIFICATION OBLIGATIONS), THE

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

PARTIES AGREE THAT CITIZENS HAS NOT MADE, AND THAT THERE EXISTS, NO WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY CARRIER OF FACILITIES, ARRANGEMENTS, OR SERVICES PROVIDED BY CITIZENS UNDER THIS AGREEMENT WILL NOT GIVE RISE TO A CLAIM BY ANY THIRD PARTY OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH THIRD PARTY.

14.2 CITIZENS WILL PROVIDE INTERCONNECTION TO CARRIER OF A QUALITY AND IN A DILIGENT MANNER CONSISTENT WITH SERVICE CITIZENS PROVIDES TO ITS CUSTOMERS AND OTHER INTERCONNECTORS, IN ACCORDANCE WITH APPLICABLE TECHNICAL STANDARDS FOR INTERCONNECTION SERVICES ESTABLISHED IN THE TELECOMMUNICATIONS INDUSTRY. CITIZENS MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO TRANSMISSION, EQUIPMENT OR SERVICE PROVIDED HEREUNDER, AND EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

14.3 It is the express intent of the Parties that each Party be solely responsible for all claims of its end-users, including, without limitation, any credits or adjustments that may be issued or required to be issued to its end-users, except to the extent such claims are found to be caused by the other Party's gross negligence or willful misconduct.

14.4 Upon a request for indemnification owed by either party (the "indemnifying Party") to the other (the "indemnified Party") under this Agreement, the indemnified Party shall promptly notify the indemnifying Party of any and all threats, written claims, or demands for which indemnification is sought under this Agreement. Each Party shall cooperate fully with the other, and the indemnifying Party shall control such defense and the right to litigate, settle, appeal (provided it pays the cost of any required appeal bond), compromise or otherwise deal with any such claim or resulting judgment; provided further that such settlement, compromise or other resolution of such claim does not result in any liability to the indemnified Party. The indemnified Party shall have the right to retain to undertake its own defense or settlement of any such threat, claim or demand upon written notice to the indemnifying Party, whereupon the indemnifying Party's indemnification obligations with respect to such threat, claim or demand (but not with respect to any other) shall automatically be excused.

SECTION 15. RECORD RETENTION

15.1 All data associated with the provision and receipt of Service(s) pursuant to this Agreement will be maintained for two years or the greater of:

- (i) the retention time required by law for maintaining Federal, State, and Local tax information;
- (ii) the retention time required by law or regulation in order to substantiate or reconstruct an End-User invoice; and
- (iii) the retention time currently used by Citizens for its billing information or Carrier for its own billing information, in compliance with legal or regulatory requirements; or
- (iv) the retention time as agreed to by both Parties in writing.

15.2 Either Party will, upon reasonable request, furnish copies or otherwise make available to the other Party its licenses and other federal and, if applicable, state regulatory authorizations.

SECTION 16. AMENDMENTS; WAIVERS

16.1 This Agreement may be amended only by written agreement signed by authorized representatives of both Parties.

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

16.2 No waiver of any provisions of this Agreement and no consent to any default under this Agreement will be effective unless the same is in writing and signed by or on behalf of the Party against whom such waiver or consent is claimed.

16.3 No course of dealing or failure of either Party to strictly enforce any term, covenant or condition of this Agreement in any one or more instances will be construed as a waiver or relinquishment of any such terms, covenants or conditions, but the same will be and will remain in full force and effect.

SECTION 17. COMMISSION DECISION

This Agreement will at all times be subject to such review by the Arizona Corporation Commission or FCC as permitted by the Act. If any such review renders the Agreement inoperable or creates any ambiguity or requirement for further amendment to the Agreement, the Parties agree to negotiate in good faith to agree upon any necessary amendments to the Agreement.

SECTION 18. REGULATORY CHANGES

In the event that any effective and non-appealable legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of either Party to perform any material terms of this Agreement; Carrier or Citizens may, on thirty (30) days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution and Mediation procedure set forth in Section 21.

SECTION 19. NOTICES AND DEMANDS

19.1 All notices, demands or requests which may be given by any Party to the other Party under this Agreement (other than Trouble reports and Notice of Interruption pursuant to Sections 3 and 5) are to be in writing (or made electronically, followed by written confirmation thereof) and will be deemed to have been duly delivered on the date delivered in person or three (3) business days after the date deposited, postage prepaid, in the United States Mail via certified mail return receipt requested, or the day after delivery to an overnight courier and addressed as follows:

For Carrier:
AUTOTEL
Attn: Richard Oberdorfer
114 North East Penn Avenue
Bend, OR 97701
Telephone: (541) 389-5286
Fax: (541) 389-9856

and to Citizens, addressed as follows:
Citizens Communications
Attn: Director - Carrier Services
180 S. Clinton Street
Rochester, NY 14646
Telephone: (585) 777-7124
Fax: (585) 424-1196

And

Citizens Communications Company
Attn: Kevin Saville
Associate General Counsel
2378 Wilshire Blvd.
Mound, MN 55364
Telephone: (952) 491-5564
Fax: (952) 491-5515

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

19.2 If personal delivery is selected as the method of giving notice under this Section, a receipt of such delivery will be obtained.

19.3 The address to which such notices, demands, requests, elections or other communications may be given by either Party may be changed by written notice given by such Party to other Party pursuant to this Section.

SECTION 20. ASSIGNMENT

20.1 Any assignment by either Party of any right, obligation or duty, in whole or in part, or of any other interest, without the written consent of the other Party will be void, except either Party may assign all or part of its rights and obligations to any legal entity which is a subsidiary or Affiliate of that Party without consent, but with written notification. For purposes of this Agreement, an "Affiliate" of a Party is any entity directly or indirectly controlling, controlled by, or under common control with said Party, and "control" means the ownership of, or the power to vote the equity securities or comparable interests of, forty percent (40%) or more the controlled entity. Such written consent to assignment to all other entities will not be unreasonably withheld or delayed.

20.2 All obligations and duties of any Party under this Agreement will be binding on all successors in interest and assigns of such Party and such assignment will not waive any right or remedy available to either Party under law, regulation or this Agreement, including without limitation the right of set-off. Each Party, upon written notice to the other, may from time to time and without additional consideration add any of its future Affiliates as parties to this Agreement and the other Party shall reasonably cooperate in amending this Agreement to effect such an addition; provided, however, such addition is subject to the condition that any such added Affiliate of Citizens be an incumbent local exchange carrier and any such added Affiliate of Carrier be a Wireless Carrier.

SECTION 21. DISPUTE RESOLUTION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be resolved by both Parties according to the procedures set forth below.

The Parties agree that in the event of a default or any other dispute arising hereunder or in connection herewith, the aggrieved Party shall first discuss the default or dispute with the other Party and seek resolution prior to taking any action before any court or regulator or before authorizing any public statement about or disclosure of the nature of the dispute to any third party. In the event that the Parties shall be unable to resolve a default or other dispute, recourse may be had by either Party to the ACC, if it has jurisdiction over the breach or dispute or to an appropriate court having jurisdiction over the Parties. Each Party shall bear the cost of preparing and presenting its case through all phases of the dispute resolution procedure herein described.

SECTION 22. ENTIRE AGREEMENT

This Agreement, including the preamble and all Attachments hereto, constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof. Except as otherwise expressly provided in this Agreement, neither Party is to be bound by any pre-printed terms appearing in the other Party's form documents, tariffs, purchase orders, quotations, acknowledgments, invoices, or other instruments. All exhibits referred to in this Agreement are incorporated herein by reference.

SECTION 23. GOVERNING LAW

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

This Agreement will be deemed to be a contract made under and will be construed, interpreted and enforced in accordance with the Communications Act of 1934, as amended, and, to the extent federal law is inapplicable, to the laws of the State of interconnection and will be subject to the concurrent jurisdiction of the Federal Communications Commission and the courts, public service commission, and other agencies in that state.

SECTION 24. EXECUTED IN COUNTERPARTS

This Agreement may be executed in counterparts, each of which is to be an original, but such counterparts will together constitute but one and the same document.

SECTION 25. HEADINGS

The headings and numbering of Sections and paragraphs in this Agreement are for convenience only and will not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

SECTION 26. FORCE MAJEURE

Neither Party will be held liable for any delay or failure in performance of any part of this Agreement from any cause reasonably beyond its control and without its fault or negligence, including, but not limited to, acts of God, acts of civil or military authority, government regulations or orders, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, labor difficulties or strikes, power blackouts, unusually severe weather conditions, inability to secure products or services or other persons or transportation facilities, or acts or omissions of transportation common carriers (collectively referred to as "Force Majeure" conditions). The Party whose performance is impaired by such Force Majeure condition will exercise commercially reasonable efforts to mitigate the effects thereof; and neither Party has any obligation to pay for any services disrupted or not provided during the period of such Force Majeure.

SECTION 27. CONTROLLING LAW, COMPLIANCE, LAW ENFORCEMENT CERTIFICATION AND PROCESS

27.1 This Agreement was negotiated by the Parties in accordance with the terms of the Telecommunications Act of 1996 and the laws of the State of Arizona. It will be interpreted solely in accordance with the terms of the Telecommunications Act and applicable California and federal law.

27.2 Each Party shall comply with all federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.

27.3 Each Party warrants that it has obtained all necessary state certification required in those states in which it has ordered services from the other Party pursuant to this Agreement. Upon request by any state governmental entity, each Party shall provide proof of certification.

27.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the Communications Assistance to Law Enforcement Act ("CALEA"). To the extent that either Party shall be found by any court or administrative agency of competent jurisdiction to be non-compliant with the requirements of CALEA, such Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

SECTION 28. REGULATORY APPROVALS

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

28.1 Although this Agreement may be executed by both Parties, to the extent that any federal or state statute, order, rule or regulation or any state regulatory agency having competent jurisdiction over one or both Parties to this Agreement will require that this Agreement be approved by such regulatory agency before this Agreement may be effective, this Agreement will not be effective in such state notwithstanding the Parties' signature until the first business day after such approval has been obtained. Citizens will prepare and submit an application for approval to the Arizona Corporation Commission pursuant 47 USC Section 252

28.2 Each Party agrees to cooperate with each other and with any regulatory agency so that any approval necessary to provide the Service(s) under this Agreement is obtained. During the term of this Agreement, each Party agrees to continue to cooperate with each other and with any regulatory agency so that the benefits of this Agreement may be achieved.

SECTION 29. SEVERABILITY

In the event that any one or more of the provisions contained herein, is, for any reason, held to be unenforceable in any respect under law or regulation, the remainder of this Agreement will not be affected thereby and will continue in full force and effect, unless removal of that provision results in a material change to this Agreement. In such a case, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may invoke the dispute resolution procedures of Section 21 foregoing.

SECTION 30. NO JOINT VENTURE

Nothing herein contained shall be construed as creating a partnership or joint venture by or between the Parties.

SECTION 31. REMEDIES

Unless stated otherwise, all remedies provided for in this Agreement shall be cumulative, nonexclusive and in addition to, but not in lieu of, any other remedies available to either Party at law, in equity, or otherwise.

SECTION 32. FURTHER ASSURANCES

From and after the date of this Agreement, each of the Parties shall, from time to time, at the request of the other Party and without further consideration, do, execute and deliver, cause to be done, executed and delivered, all such further acts, things and instruments as may be reasonably requested or required more effectively to evidence and give effect to the transactions contemplated by this Agreement.

The Parties thereto have caused this Interconnection and Traffic Interchange Agreement for Cellular and Other 2-Way Mobile Radio Services to be executed in their behalf on the dates set forth below:

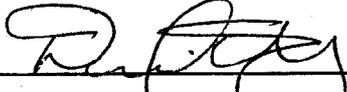
Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

For Carrier:

For Citizens Utilities Rural Company, Inc,
Citizens Telecommunications Company of the White
Mountains and Navajo Communications Company, Inc.:

By: _____

By: 

Typed: _____

Typed: Daniel McQuilley

Title: _____

Title: SUP

Date: _____

Date: 10/25/04

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

ATTACHMENT 1

CONTACT LIST

24-HOUR REPAIR CENTER - 1-800-565-1619

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

SERVICE ATTACHMENT - TYPE 2B

Section 1 - Description

Citizens' interconnection location: _____
Point of Interconnection (POI): _____ NPA ___ NXX ___

Carrier's interconnection location: _____ OCN _____
Point of Interconnection (POI): _____ NPA ___ NXX ___

Legal Entities: _____
Citizens Telecommunications Company of _____

Effective Date: First Business Day After State Approval

Section 2 - Usage Sensitive Charges

2.1 Charges for Reciprocal Transport and Termination of Local Traffic Interchanged Between The Parties:

The land-to-mobile originating rate is limited in application to Land-to-Mobile (Originating) calls that originate in the Citizens Local Calling Area at the Point of Interconnection. The mobile-to-land terminating rate is limited in application to Mobile-to-Land (Terminating) calls that terminate at a point within a Citizens Exchange Area in Carrier's Service Area. All other traffic is subject to access rates.

The rates in this Section 2 constitute compensation to the Parties for both the transport and termination of local traffic interchanged between them.

2.2	Mobile-to-Land (Terminating) per minute*	<u>\$0.011</u>
	Land-to-Mobile (Customer charges Citizens) per minute	<u>\$0.011</u>
	Wireline to Wireline (Land to Land)	<u>Bill and Keep</u>
	Non-MTA**	<u>Access rates apply</u>

*limited in application to calls originating on Carrier's system within its Service Area and terminating at a point in a Citizens exchange area within the MTA

**applicable to mobile-to-land (terminating) calls terminating at a point in a Citizens exchange area but which did not originate on Carrier's system within Service Area

Section 3 - Network Facilities

If Citizens is requested to provide facilities between the Point of Interconnection and any Carrier facilities or locations within Citizens Service Area, such facilities will be provided pursuant to the special access services' provisions of Citizens FCC #1 Tariff. (Tariff information can be found at www.citizenscommunications.com/carrier_services.cfm) The rates for such facilities are subject to change during the term of this Agreement.

SERVICE ATTACHMENT - TYPE 2A

Section 1 - Description

Citizens' interconnection location: _____
Point of Interconnection (POI): _____ NPA ___ NXX ___

Carrier's interconnection location: _____ OCN _____
Point of Interconnection (POI): _____ NPA ___ NXX ___

Legal Entities: _____
Citizens Telecommunications Company of _____

Effective Date: First Business Day After State Approval

Section 2 - Usage Sensitive Charges

2.1 Charges for Reciprocal Transport and Termination of Local Traffic Interchanged Between The Parties:

The land-to-mobile originating rate is limited in application to Land-to-Mobile (Originating) calls that originate in the Citizens Local Calling Area at the Point of Interconnection. The mobile-to-land terminating rate is limited in application to Mobile-to-Land (Terminating) calls that terminate at a point within a Citizens Exchange Area in Carrier's Service Area. All other traffic is subject to access rates.

The rates in this Section 2 constitute compensation to the Parties for both the transport and termination of local traffic interchanged between them.

2.2	Mobile-to-Land (Terminating) per minute*	<u>\$0.011</u>
	Land-to-Mobile (Customer charges Citizens) per minute	<u>\$0.011</u>
	Wireline to Wireline (Land to Land)	<u>Bill and Keep</u>
	Tandem Transit	<u>\$0.0061854</u>
	Non-MTA**	<u>Access rates apply</u>

*limited in application to calls originating on Carrier's system within its Service Area and terminating at a point in a Citizens exchange area within the MTA

**applicable to mobile-to-land (terminating) calls terminating at a point in a Citizens exchange area but which did not originate on Carrier's system within Service Area

Section 3 - Network Facilities

If Citizens is requested to provide facilities between the Point of Interconnection and any Carrier facilities or locations within Citizens Service Area, such facilities will be provided pursuant to the special access services' provisions of Citizens FCC #1 Tariff. (Tariff information can be found at www.citizenscommunications.com/carrier_services.cfm) The rates for such facilities are subject to change during the term of this Agreement.

Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

**ATTACHMENT 2
BONA FIDE REQUEST**

BONA FIDE REQUESTS

- 1.1 Any request for access to Unbundled Network Elements shall be treated as a Bona Fide Request (BFR). Citizens shall use the BFR Process to determine the terms and timetable for providing the requested access to UNEs, if available, and the technical feasibility of new/different points of Interconnection. Citizens will administer the BFR Process in a non-discriminatory manner.
- 1.2 This Agreement does not waive the status of Citizens or any unaffiliated ILEC as a rural carrier pursuant to the Telecommunications Act. Citizens reserves the right to respond that it is not required to provide a requested service or Unbundled Network Element as a result of a rural exemption pursuant to 47 U.S.C. § 252(f)(1) or other laws or regulations or to file a request for suspension or modification of any requirement in 47 U.S.C. § 251(b) or (c) pursuant to 47 U.S.C. § 251(f)(2) or other laws or regulations. Carrier reserves its rights to challenge such a response.
- 1.3 A BFR shall be submitted in writing and on the form attached as Exhibit A. The form will request, and Carrier will need to provide, at a minimum: (a) a technical description of each requested Network Element; (b) the desired interface specification; (c) each requested type of Network Element; (d) a statement that the Network Element will be used to provide a Telecommunications Service; (e) the quantity requested; (f) the specific location requested; (g) if the requested Unbundled Network Element is a proprietary element as specified in Section 251(d)(2) of the Act, Carrier must submit documentation that demonstrates that access to such Network Element is necessary, that the failure to provide access to such Network Element would impair the ability of Carrier to provide the services that it seeks to offer, and that Carrier's ability to compete would be significantly impaired or thwarted without access to such requested proprietary element; and (h) if the requested Unbundled Network Element is a non-proprietary element as specified in Section 251(d)(2) of the Act, Carrier must submit documentation that demonstrates that denial of access to such unbundled non-proprietary Network Element would decrease the quality or increase the cost of the service sought to be offered by Carrier.
- 1.4 Citizens shall acknowledge receipt of the BFR and in such acknowledgment advise Carrier of missing information, if any, necessary to process the BFR within 5 Business Days from receipt of the request.
- 1.5 Citizens will provide Carrier an analysis of the BFR within 15 Business days after Citizens has found the BFR to be complete as specified in Section 1.4 above. The analysis will specify Citizens' conclusions as to whether or not the requested access to an unbundled Network Element complies with the unbundling requirements set forth above and whether providing the Network Element is technically feasible.
- 1.6 After Citizens notifies Carrier that the BFR qualifies under the Act, Citizens and Carrier will either negotiate or arbitrate an amendment to this agreement or a new CLEC interconnection agreement to address the ordering, provisioning, billing (including rates) and repair of Network Elements.
- 1.7 If either Party believes that the other Party is not requesting, negotiating or processing any BFR in good faith, or disputes a determination, or quoted price or cost, it may seek arbitration pursuant to the Dispute Resolution provision of this Agreement.

EXHIBIT A

Bona Fide Request/Interconnection or Network Element Request Application Form

Date of Request _____

Requester Information

Name: _____

Address 1: _____

Address 2: _____

City: _____

State: _____

Zip: _____

Contact Person: _____

Title: _____

Phone Number: _____

Fax Number _____

E-mail Address: _____

Provide a technical description of the requested element and how it will connect to your wireless network:

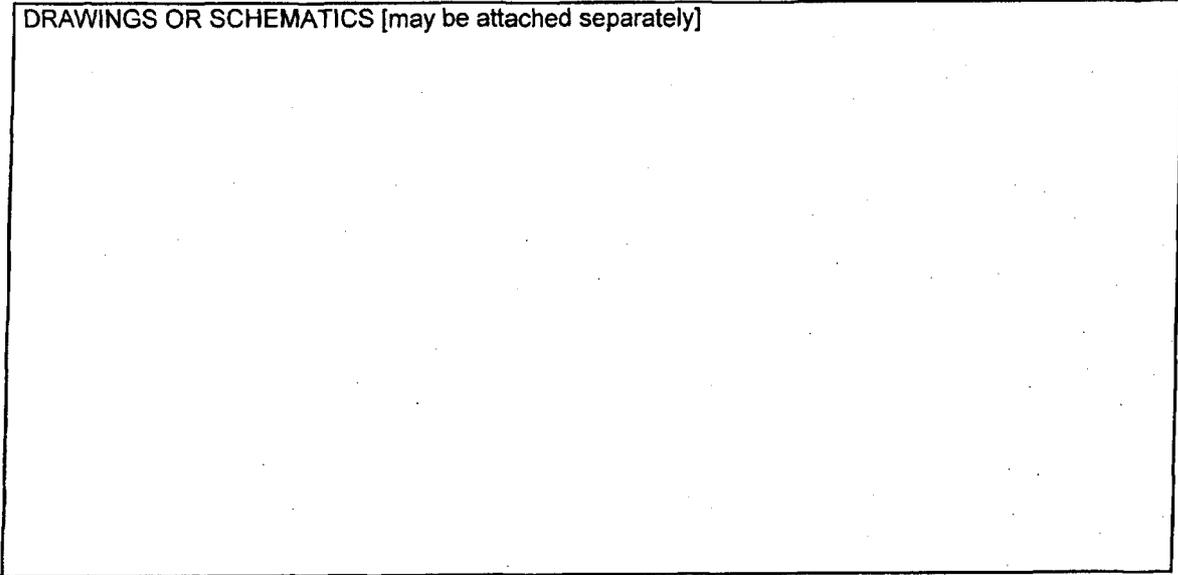
Smith Affidavit Exhibit A

Agreement Number: 000-AUTOTELAZ-03

DRAWINGS OR SCHEMATICS ARE REQUIRED IN UNDERSTANDING YOUR REQUEST.

PLEASE BE AS SPECIFIC AS POSSIBLE. THE MORE COMPLETE THE REQUEST THE FASTER THE REQUEST CAN BE PROCESSED.

DRAWINGS OR SCHEMATICS [may be attached separately]



I certify on behalf of my company that each network element requested will be used solely in providing telecommunications services per the Telecommunications Act of 1996.

Requesting Party recognizes that some requests require significant incremental costs. Citizens will make every attempt to inform the Requesting Party in advance of costs to be paid by the Requesting Party.

Requesting Party agrees to comply with all applicable regulatory requirements relating to this matter, including, without limitation, completing any necessary regulatory filings and/or to cooperate with Citizens along these lines.

Signature: _____

Title: _____

ATTACHMENT 2

DOCKET NO. 05-049-95

- 2 -

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

DOCKET NO. 05-049-95

- 4 -

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

- 5 -

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 7th day of December, 2005.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#46778