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BEFORE THE ARIZONA CORPORATION COMMISSION

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KRISTIN K. MAYES - Chairman  
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2010 SEP 30 P 4: 27

AZ CORP COMMISSION  
DOCKET CONTROL

IN THE MATTER OF AUTOTEL CORPS'S BONA FIDE REQUEST FOR TERMINATION OF EXEMPTION PURSUANT TO SECTION 251(f)(1)(B) OF THE TELECOMMUNICATIONS ACT OF 1996 AND TO PROVIDE COMMERCIAL MOBILE RADIO SERVICES IN ARIZONA.

DOCKET NO. T-03214A-10-0051

STAFF'S FILING  
RE: AUTOTEL'S RESPONSE

I. INTRODUCTION.

On February 29, 2010, Autotel filed a Notice of Bona Fida Request [sic] and Request for Termination of Exemption with respect to the Frontier Communications Corporation Operating Companies ("Frontier"), formerly Citizens Telecommunications Company ("Citizens"). Frontier operates the ILECs Citizen Utilities Rural Company, Inc. ("CURC"); Citizens Telecommunications Company of the White Mountains ("CTCM"); and Navajo Communications Company ("NCC").

On June 30, 2010, Autotel filed a Petition for Arbitration, and another such Petition on July 7, 2010. On July 13, 2010, by Procedural Order, the Commission's Utilities Division ("Staff") and Frontier were directed to file a response to Autotel's Request and Petition for Arbitration.

On July 27, 2010, Staff filed a response stating that the Commission had conducted an earlier arbitration between Frontier/Citizens and Autotel and that Autotel had refused to sign the resulting agreement as required by Commission Decision No. 67273. Staff also stated that Autotel's petition may be procedurally deficient and that Autotel's Request may be moot and unnecessary. Staff requested a procedural conference be scheduled to discuss whether Autotel's Request and Petition should be denied.

...

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Arizona Corporation Commission

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1 On August 3, 2010, by Procedural Order, a procedural conference was scheduled for  
2 September 1, 2010, to discuss Frontier's Motion to Dismiss and to determine whether a procedural  
3 schedule should be set.

4 On September 1, 2010, the procedural conference was held as scheduled. Mr. Richard  
5 Oberdorfer appeared on behalf of Autotel. Frontier and Staff appeared through counsel. During the  
6 procedural conference, Frontier urged the Commission to dismiss Autotel's Petition and Staff  
7 supported that request. A discussion was held as to whether Autotel intends to provide wireless  
8 services in Arizona; whether Autotel's request for termination of exemption is moot or unnecessary;  
9 and whether Autotel has met its requirements for renegotiating the terms of the Interconnection  
10 Agreement ("ICA") with Frontier.

11 At the conclusion of the procedural conference, Autotel was directed to file a response to  
12 Frontier's Motion to Dismiss on or before September 15, 2010, and to address whether Autotel  
13 intends to provide telecommunications services in Arizona, whether Autotel's request for termination  
14 of exemption is moot and an analysis, including citations to case law, Statutes and/or Rules, to  
15 support Autotel's position that the ICA filed by Frontier is not binding on Autotel.

16 **II. BACKGROUND.**

17 Prior to its filings in this matter, on March 27, 2003, Autotel filed with the Commission a  
18 Petition for Arbitration of interconnection rates, terms and conditions with Citizens pursuant to 47  
19 U.S.C. § 252(b) of the Telecommunications Act of 1996 ("1996 TCA"), in Docket No. T-03234A-  
20 03-0188 ("the 2003 action"). The Commission resolved the issues raised by Autotel in Decision No.  
21 67273 ("the 2004 Decision") on October 5, 2004, adopting the terms of the arbitration as  
22 recommended by the administrative law judge, and directed the parties to prepare, sign and file a  
23 final agreement within 30 days. Frontier/Citizens prepared a form of agreement, but Autotel has  
24 refused to sign that document.

25 On May 5, 2005, Autotel filed a Complaint in the United States District Court for the District  
26 of Arizona, appealing the Commission's Decision and pursuing a private action against  
27 Frontier/Citizens. Autotel alleged that the Commission's Decision and the ICA violate the 1996  
28 TCA; that Citizens failed to negotiate in good faith and that Autotel was denied due process and

1 equal protection under 42 U.S.C. § 1983. Frontier and the Commission moved to dismiss Autotel's  
2 complaint and, on March 8, 2007, the United States District Court for the District of Arizona granted  
3 the motion to dismiss. Autotel attempted to appeal the United States District Court opinion to the  
4 United States Court of Appeals for the 9<sup>th</sup> Circuit but the appeal was not properly filed.

5 While that appeal was still pending, on November 21, 2005, Autotel filed with the  
6 Commission a Notice of Bona Fide Request and Request for Termination of Exemption with CURC,  
7 Citizens' subsidiary, in Docket No. T-01954B-05-0852 ("the 2005 action"). The Commission  
8 determined that the issues raised in the petition, which are the same issues raised in this matter, were  
9 determined by Decision No. 67273, entered October 5, 2004. The Commission found that Citizens  
10 had not invoked the rural exemption provided under 47 U.S.C. § 25 1(f) and that the ICA which  
11 resulted from that Decision is "binding on both parties and may not be ignored by either party." The  
12 Commission then dismissed Autotel's petition, stating:

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

22 On April 7, 2006, Autotel filed a third Petition for Arbitration with the Commission seeking  
23 an ICA with Citizens, in Docket No. T-01945B-06-0232 ("the 2006 action"). Oral argument was  
24 held in that matter on June 5, 2006. At that time, Autotel first asserted that the ICA prepared by  
25 Citizens pursuant to Decision No. 67237 was not prepared in accordance with that Decision. The  
26 Administrative Law Judge dismissed Autotel's Petition, noting:

27 It is clear that Autotel is unhappy with the outcome of its Original Petition, as Mr.  
28 Oberdorfer has stated on the record, and Autotel has taken steps for redress by filing  
with the federal court for relief. Autotel's insistence in continuing to file successive  
petitions with the Commission is perplexing in light of the outcome of the Second  
Petition, which admonished Autotel for prematurely requesting arbitration of an ICA  
while the initial ICA sits idle pending the outcome of Autotel's federal appeal.

27 ...  
28 ...

1 On February 29, 2010, Autotel initiated this case by filing a Notice of Bona Fida [sic] Request  
2 and Request for Termination of Exemption with respect to the Frontier, followed by Petitions for  
3 Arbitration filed on June 30, 2010 and July 7, 2010.

4 **III. DISCUSSION.**

5 Autotel's Request and Petition appear to be identical to those filed in each of the three prior  
6 matters addressing the same issues. Autotel continues to assert that there is no ICA in place and it is  
7 seeking to have a new ICA put in place with Frontier. Alternatively, Autotel asserts that, if it is  
8 determined that there is a binding ICA, then the Request and Petition should be considered an attempt  
9 to renegotiate the 2004 Decision approving the terms of the interconnection. It is Staff's position  
10 that, regardless of which interpretation Autotel applies, Autotel failed to comply with the  
11 requirements of the 1996 Act and the Commission's rules and its Petition should be dismissed.  
12 Further, the Commission is under no obligation to undertake a second arbitration proceeding where  
13 Autotel refused to sign the ICA resulting from the first arbitration proceeding and where Autotel is  
14 raising the exact same issues that were addressed in the first arbitration proceeding.

15 **A. Frontier is not Invoking the Rural Exemption and Therefore There is No Need**  
16 **for the Commission to Undertake a Time Consuming Proceeding At this Time to**  
17 **Terminate It.**

18 Frontier has stated on the record and in its filings that it is not invoking the Rural Telephone  
19 Company exemption under 47 U.S.C. 251(f) in this case.<sup>1</sup> In other words, Frontier is willing to  
20 negotiate an ICA and is not using the exemption to shield it from doing so. Nor are its arguments for  
21

22  
23 <sup>1</sup> The relevant provisions of 47 U.S.C. § 251(f) provide: (1) EXEMPTION FOR CERTAIN RURAL TELEPHONE  
24 COMPANIES.-- (A) EXEMPTION.—Subsection (c) of this section shall not apply to a rural telephone company until  
25 (8) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State  
26 commission determines (under Subparagraph (B)) that such request is not unduly economically burdensome, is  
27 technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof). (B) STATE  
28 TERMINATION OF EXEMPTION AND IMPLEMENTATION SCHEDULE.—The party making a bona fide request of  
a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the  
State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate  
the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the  
State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically  
feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the  
exemption, a State commission shall establish an implementation schedule for compliance with the request that is  
consistent in time and manner with Commission regulations.

1 dismissal of Autotel's Petition based upon the Rural Exemption, but rather upon the fact that  
2 Autotel's Petition is defective in other respects.

3 Autotel argues that the Staff misunderstands the applicability of the Rural Exemption.  
4 Autotel cites to the following language in the unsigned Citizens-submitted ICA:

5 This Agreement does not waive the status of Citizens or any unaffiliated ILEC as a  
6 rural carrier pursuant to the Telecommunications Act. Citizens reserves the right to  
7 respond that it is not required to provide a requested service or Unbundled Network  
8 Element as a result of a rural exemption pursuant to 47 U.S.C. 252(f)(1) or other laws  
9 or regulations or to file a request for suspension or modification of any requirement in  
10 47 U.S.C. 251(b) or (c) pursuant to 47 U.S.C. 251(f)(2) or other laws or regulations.  
11 Carrier reserves its rights to challenge such a response.

12 This is the first time that Autotel has raised this specific objection to the arbitrated agreement  
13 submitted by Frontier. Notwithstanding, to the extent an issue was decided in the arbitration, Frontier  
14 would be unable to invoke the exemption. In addition, to the extent that later Frontier relied upon  
15 this provision to invoke the exemption with respect to an issue between the parties, a proceeding  
16 could be commenced at that time to challenge the exemption. At this point in time, Frontier has not  
17 invoked the exemption and it has several times now entered into negotiations with Autotel. Staff  
18 does not believe that it is necessary therefore to commence a proceeding to terminate the exemption  
19 when Frontier is not invoking it. Proceedings under 47 U.S.C. 251(f)(2) are fact intensive and time-  
20 consuming. It is Staff's understanding that Frontier has negotiated interconnection agreements with  
21 many providers and Staff is not aware that Frontier has ever invoked the § 251(f)(2) exemption.

22 Autotel also argues that it will be prejudiced if the Rural Exemption is not terminated through  
23 a proceeding at the Commission.<sup>2</sup> It argues that the "duty of rural exemption carriers is simply stated  
24 as a duty to interconnect 'directly or indirectly,' whereas the ILEC section requires direct  
25 interconnection at "any technically feasible point within the carrier's network." However, because  
26 Frontier is not invoking the exemption, Staff believes that it would be subject to the same  
27 requirements as any other ILEC under § 251(c). Second, Autotel argues that the rural exemption  
28 allows Frontier to try to argue its way around the good faith negotiation provisions. Autotel  
misconstrues the provisions of the Act once again. Frontier is not invoking the rural exemption.

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<sup>2</sup> Autotel Response at p. 4.

1 Thus, with respect to ICA negotiation, Frontier is under the same duty to negotiate in good faith as  
2 any other provider subject to the Act's requirements.

3 Autotel also argues that there is no provision in the Act allowing the rural telephone  
4 exemption to be voluntarily waived on a case-by case basis and that the Commission must undertake  
5 a proceeding to terminate it in Frontier's case.<sup>3</sup> But the whole purpose of the exemption is to  
6 recognize the unique circumstances of rural carriers by not making them immediately subject to the  
7 additional requirements under § 251(c), unless the State commission determines that the request is  
8 not unduly economically burdensome, is technically feasible and consistent with section 254 of the  
9 Act. Here since Frontier has stated that it will voluntarily negotiate with Autotel and be subject to  
10 § 251(c)'s requirements to the extent they are applicable in this case, there is no need for the  
11 Commission to undertake a proceeding to do what Frontier has already voluntarily agreed to do. This  
12 would be a needless waste of Commission resources.

13 **B. The Commission's Arbitration Order Is Binding Upon Autotel Regardless of**  
14 **Whether it Actually Signed the ICA As Ordered.**

15 To the extent Autotel is attempting to argue that by not signing the agreement reflecting the  
16 resolution of issues in its last arbitration before the Commission, it is simply free to pursue those  
17 exact same issues again, its position is without merit. The Commission has already decided those  
18 issues in an arbitration order, and that order is binding upon Autotel.

19 Even though there is case law suggesting that it was bad faith on Autotel's part not to sign the  
20 interconnection agreement which resulted from its last arbitration, whether this ICA is in effect or  
21 not, the outcome is the same in Staff's opinion. Autotel did not comply with the requirements of the  
22 1996 Act and the Commission's rules and therefore its petition must be dismissed. Moreover, Staff  
23 does not believe that the Commission is required to now undertake a second arbitration when Autotel  
24 refused to sign the agreement resulting from the first arbitration.

25 Autotel argues that the old ICA resulting from its last arbitration is not in effect because it  
26 never signed it and it did not reflect the outcome of the Commission's earlier arbitration proceeding.  
27 If that were the case, it was incumbent upon Autotel in the last Commission proceeding to come

28 \_\_\_\_\_  
<sup>3</sup> *Id.* at 5.

1 forward and state how the Agreement submitted by Frontier did not reflect the Commission's  
2 arbitration order. Autotel never did this. Autotel instead filed a federal district court action and two  
3 more arbitration petitions in an attempt to relitigate the same issues again.

4 However, even if Autotel can evade being a party to the ICA, it cannot evade the  
5 Commission's arbitration order.<sup>4</sup> The *Global NAPS* Court cited the following passage from the  
6 FCC's Local Competition Order:

7 We reject SBC's suggestion that an arbitrated agreement is not binding on the parties.  
8 Absent mutual agreement to different terms, the decision reached through arbitration  
9 is binding . . . We also believe that, although competing providers do not have an  
10 affirmative duty to enter into agreements under Section 252, a requesting carrier  
11 might face penalties if, by refusing to enter into an arbitrated agreement, that carrier is  
deemed to have failed to negotiate in good faith. Such penalties should serve as a  
disincentive for requesting carriers to force an incumbent LEC to expend [sic]  
resources in arbitration if the requesting carrier does not intend to abide by the  
arbitrated decision.

12 The District Court then went on to conclude:

13 The FCC clearly states that the arbitration order is binding on both parties.  
14 Furthermore, under Section 2529b)(5), Global's refusal to cooperate with the  
15 arbitrator's order constitutes a failure to negotiate in good faith. See 47 U.S.C.  
16 Section 252(b)(5) ("The refusal of any other party to the negotiation.. to cooperate  
17 with the State commission in carrying out its function as an arbitrator.. shall be  
18 considered a failure to negotiate in good faith."). Therefore, enforcement of the  
19 arbitration order is an entirely appropriate penalty and serves as a disincentive for a  
CLEC to force an ILEC to arbitrate an agreement while reserving the right to  
withdraw if it does not like the outcome. Finally, DTE correctly ruled that permitting  
Global to ignore its arbitration decision would waste DTE's limited resources and  
impose an unnecessary burden on Verizon.  
*Id.* at \* 3.

20 On October 5, 2004, the Commission entered its orders on these issues, stating that it was  
21 adopting the terms of interconnection recommended by the administrative law judge and that the  
22 companies were to prepare and sign an interconnection agreement incorporating the terms of the  
23 Commission's resolutions. Regardless of whether these steps were taken, the Commission ordered  
24 that the Decision was effective immediately. By its very terms, the effectiveness of the Decision did  
25 not await the submission of the signed agreement. So merely because Autotel refused to sign the  
26 ICA, would have no effect on the binding nature of the arbitration order itself.

27 \_\_\_\_\_  
28 <sup>4</sup> Autotel immediately appealed the Commission's decision before any action was taken on the ICA that had been filed  
by Frontier. It is likely that, had Autotel not immediately filed the appeal, the ALJ would have required Autotel to set  
forth its objections in writing to the ICA that been submitted by Frontier.

1 Autotel's actions are indicative of bad faith. The Commission should not have to continually  
2 undertake arbitration proceedings at Autotel's request until Autotel gets the result it desires.

3 **C. Whether or Not the Current ICA Is In Effect, Autotel's Petition for Arbitration**  
4 **Does Not Comply With the 1996 Act and Should be Dismissed.**

5 Autotel has failed to comply with the requirements of the 1996 TCA, and the Arizona  
6 Administrative Code applicable to arbitration petitions. Section 252(b) of the TCA requires a  
7 petitioner to provide all relevant documents concerning "(i) the unresolved issues; (ii) the position of  
8 each of the parties with respect to those issues; and (iii) any other issue discussed and resolved by the  
9 parties." The Arizona Administrative Code sets forth in detail what must be included with a petition:

- 10 a. A brief or other written statement addressing the disputed issues. The brief  
11 should address, in addition to any other matters, how the parties' positions and  
12 any conditions requested meet or fail to meet the requirements of 47 U.S.C.  
13 251; any applicable Federal Communication Commission regulations; and any  
14 applicable regulation, order, or policy of this Commission.
- 15 b. Where prices are in dispute, the petitioner shall submit its proposed rates or  
16 charges and related supporting materials.
- 17 c. Any conditions which petitioner requests be imposed.
- 18 d. A proposed schedule for implementation of the terms and conditions of the  
19 agreement.
- 20 e. A proposed schedule for implementation of the terms and conditions of the  
21 agreement.
- 22 f. The petition may include a recommendation as to any information which  
23 should be requested from the parties by the arbitrator pursuant to 47 U.S.C.  
24 252(b)(4)(B). The recommendation should state why the information is  
25 necessary for the arbitrator to reach a decision on the unresolved issues.
- 26 g. A proposed interconnection agreement.
- 27 h. Any other documents relevant to the dispute, including copies of all  
28 documents in their possession or control on which they rely in support of their  
positions or which they intend to present at the arbitration. A.C.C. R14-2-  
150(B)(2).

Autotel only complied with subpart f. of the Commission's rules and therefore its petition is  
woefully deficient and should be rejected on this ground alone. The Petition provides no information  
regarding the negotiations between parties or their respective positions or of the disputed issues. It  
merely attaches the ICA which it wants adopted.

1           **D. Autotel is Precluded from Pursuing the Exact Same Issues Already Decided by**  
2           **Decision Nos. 67273 and 68605, as well as by the dismissal of its Petition for**  
3           **Arbitration filed in Docket No. T-01945B-06-0232.**

4           Autotel argues that it previously reviewed Frontier's interconnection agreements with other  
5 wireless carriers and none of the agreements would provide for the interconnection of Autotel's  
6 equipment and facilities.<sup>5</sup> These arguments are similar to those raised by Autotel in its first  
7 arbitration before the Commission. The basic principles of *res judicata* and *collateral estoppel*  
8 preclude Autotel from pursuing the exact same issues that were contained in its original arbitration  
9 and already decided by the Commission. While the Commission's dismissal of Autotel's identical  
10 actions in the 2005 Decision and the 2006 action were based on the pendency of Autotel's appeal, the  
11 Commission made it clear that Autotel would not be able to readdress the same issues presented in  
12 the 2003 action. To the extent that Autotel is seeking to re-litigate the identical issues raised in the  
13 prior cases in 2003, 2005 and 2006, the current request for arbitration should be dismissed.

14           Autotel's appeal was dismissed and the matter was concluded. Twice more Autotel brought  
15 the same matters before the Commission and both were dismissed due to the pendency of the appeal.  
16 Now that the appeal has been dismissed, incredibly, Autotel once again asserts the same matter  
17 before this Commission for yet the fourth time. Autotel does not appear to have asserted any new  
18 facts, law or issues which would warrant the Commission addressing the requests yet again.

19           The law is very clear that the Commission's first arbitration order is binding upon Citizens  
20 and Autotel. See, *Global NAPS, Inc. v. Verizon New England Inc.*, 2004 WL 1059792 (May 2004)  
21 affirmed, 396 F.3d 16 (1st Cir., 2005). Autotel is not free to just ignore the Commission's Order and  
22 attempt to void it by insisting that Frontier negotiate a new agreement with it. Public policy dictates  
23 that the arbitrated agreement be upheld to provide incentive for the CLECs to negotiate in good faith  
24 and to conserve administrative resources. *Id.*

25           Autotel states in its Response that it does intend to provide services in Arizona, but not under  
26 the present ICA; it will only do so if a new ICA with different terms is approved. As Frontier notes,  
27 both case law and public policy dictate that Autotel be precluded from re-litigating the same issues  
28 until it gets what it wants. The Public Service Commission of Utah, in its Order Granting Motion to

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<sup>5</sup> Autotel Response at 10.

1 Dismiss in Docket No. 05-049-95, In re the Matter of the Petition of Autotel for Arbitration of an  
2 Interconnection Agreement with Qwest Corporation stated succinctly:

3 We also base our dismissal on Autotel's continuing failure to file a signed ICA the  
4 terms of which comply with our decision in the Arbitration Order. 47 U.S.C. 8 252(e)  
5 makes clear that if Autotel does not agree with the Commission's decision on issues  
6 arbitrated in Docket No. 03-049-19 it should submit a signed agreement in  
7 accordance with that decision and then appeal to the appropriate federal district court.  
8 Autotel refuses to do so. We refuse to permit Autotel, in contravention of federal  
9 statute, to ignore our previous orders and to, apparently, seek arbitration of previously  
10 settled issues. Because the current Petition appears directly related to the prior  
11 proceedings in Docket No. 03-049-19, we are compelled to remind the parties that we  
12 determined in that docket to undertake no further arbitration of the issues presented in  
13 that docket until the parties submit for approval a signed ICA consistent with our  
14 findings in that docket. While we will entertain requests to arbitrate new issues not  
15 presented in the prior docket, any such arbitration would be confined to only those  
16 new issues; absent presentation to this Commission of a signed ICA as outlined  
17 above, we will not revisit under any guise issues previously arbitrated.

18 Because Autotel's Petition did not contain the detail required by the 1996 Act and the  
19 Commission's rules, it should be dismissed. If Autotel refiles, it will be required to set out in detail  
20 exactly what issues it is seeking arbitration on. To the extent they are the exact same issues dealt  
21 with before by the Commission, this Commission should follow the reasoning of Utah's Public  
22 Service Commission and dismiss Autotel's Request and Petition.

23 **E. Citizens is not Acting in Bad Faith As Alleged by Autotel.**

24 As Autotel asserts, the Commission does have subject-matter jurisdiction to address the issue  
25 of whether Frontier negotiated in good faith. In fact, it has the exclusive jurisdiction to do so.  
26 *Western Radio Services Co. v. West Corporation*, 530 F.3d 1186, 08 Cal. Daily Op. Serv. 8651, 2008  
27 Daily Journal D.A.R. 10,426, 45 Communications Reg. (P&F) 639 (2009).

28 That is not the issue here, however. The issue is whether Autotel is precluded from raising the  
issue by the doctrines of *res judicata* and *collateral estoppel*. In terms of re-opening the 2003 action,  
Autotel is precluded from raising this issue, as the matter has been decided.

To the extent Autotel seeks to arbitrate a new ICA, its petition was defective and it should be  
dismissed. There is absolutely nothing in the record of this case to suggest that Frontier has acted in  
bad faith in its negotiations with Autotel.

27 ...  
28 ...

1           However, Autotel itself has not acted in good faith in its prior efforts before this Commission.  
2 The United States Court of Appeals for the First Circuit pointed out that the obligations contained in  
3 Section 25 l(b) are not asymmetrical, but apply to both parties alike.

4           Section 252(b)( 1) allows either party to the negotiation to petition for arbitration.  
5 Section 252(b)(4) allows the state commission to impose conditions on both parties in  
6 order to carry out the arbitration. And §2529b(5) creates a duty for both parties to  
7 cooperate with the arbitration at the risk of breaching the duty both parties have,  
8 under Section 252(a), to negotiate in good faith. There is no basis for Global NAPs'  
9 reading Section 252(8) as somehow turning the parallel obligations that run  
10 throughout Section 252(b) into merely one-way obligations.

11           *Global Naps, Inc. v. Verizon New England*, 396 F.3d 16'25 (1st. Cir. 2005).

12           Autotel's actions in this matter themselves constitute bad faith. In *Global Naps*, the First  
13 Circuit, in agreement with the District Court, further found that attempting to void the terms of a  
14 valid arbitration order could in itself be construed as a violation of the duty to negotiate in good faith.

15           Further, Global NAPS' reading is in conflict with the statutory duties of good faith  
16 and cooperation with the commission as arbitrator. The TCA, at Section 252(b)(5),  
17 states: The refusal of any other party to the negotiation to participate further in the  
18 negotiations, to cooperate with the State commission in carrying out its function as an  
19 arbitrator, or to continue to negotiate in good faith in the presence, or with the  
20 assistance, of the State commission shall be considered a failure to negotiate in good  
21 faith. In attempting to void the terms of a valid arbitration order, it is clear that Global  
22 NAPs is refusing to cooperate with the DTE, in violation of its duty to negotiate in  
23 good faith. *Id.*

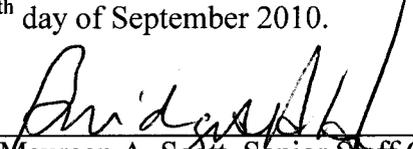
24           The facts of *Global NAPs* are reminiscent of this case. Here, Autotel has refused to sign the  
25 interconnection agreement resulting from the Commission's first arbitration decision. Now, besides  
26 bringing a lawsuit against the Commission and Citizens in District Court, and filing two previous  
27 Bona Fide Requests and Petitions for Arbitration, Autotel is back for a *fourth* time likely raising the  
28 same issues. Once again, it appears that Autotel is attempting to obtain the Commission's assistance  
in getting a new interconnection agreement with Frontier that would, essentially, void the first  
agreement which has been fully litigated. Autotel has also initiated at least three lawsuits in federal  
court against three different ILECs and two PUCs alleging bad faith in negotiations.<sup>6</sup> Each of these  
actions was dismissed by the court.

<sup>6</sup> *Autotel v. Qwest*, 336 Fed.Appx. 666, 2009 WL 1955801, (Not Selected for publication in the Federal Reporter),  
C.A.9 (Ariz.), June 23, 2009 (NO. 07-17112); *Autotel v. Nevada Bell Telephone Co.*, Slip Copy, 2009 WL 250024,  
D.Nev., January 30, 2009 (NO. 2:07-CV-1423-ECR-GWF); and *Autotel v. Central Telephone Co.*, 320 Fed.Appx. 492,

1 **IV. CONCLUSION.**

2 The Commission should dismiss Autotel's Bona Fide Request and Petition for Arbitration,  
3 since Autotel's Petition does not comply with the requirements of the 1996 Act and the  
4 Commission's rules. The issues regarding an interconnection with Frontier were resolved in Decision  
5 No. 67273. Frontier is not required to negotiate a new interconnection agreement with Autotel; given  
6 that Autotel has refused to sign the interconnection agreement resulting from the Commission's last  
7 arbitration, nor is the Commission required to conduct another arbitration on the same issues. As  
8 Frontier has not invoked the exemption and has always been willing to enter into an ICA with Autotel  
9 for interconnection and the exchange of traffic, the Commission should not have to undertake a  
10 lengthy proceeding to do what Frontier has already voluntarily agreed to do.

11 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of September 2010.

12   
13 \_\_\_\_\_  
14 Maureen A. Scott, Senior Staff Counsel  
15 Bridget Humphrey, Staff Counsel  
16 Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007  
(602) 542-3402

17 Original and thirteen (13) copies  
18 of the foregoing filed this 30<sup>th</sup> day  
of September 2010 with:

19 Docket Control  
20 Arizona Corporation Commission  
1200 West Washington Street  
21 Phoenix, Arizona 85007

22 ...  
23 ...  
24 ...  
25 ...  
26 ...  
27 ...

1 Copies of the foregoing emailed and mailed,  
via First Class Mail, this 30<sup>th</sup> day of September,  
2 2010 to:

3 Mr. Richard L. Oberdorfer  
Autotel  
4 Post Office Box 1618  
Bend, Oregon 97709

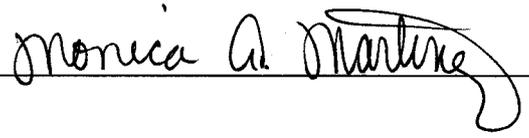
oberdorfer@earthlink.net

5 Ms. Jenny Smith  
6 Manager, Interconnection Services  
Frontier Communications Corporation  
7 9260 East Stockton Boulevard  
Elk Grove, California 95624

jenny.smith@frontiercorp.com

8 Jeffrey W. Crockett  
9 Snell & Wilmer LLP  
One Arizona Center  
10 400 East Van Buren Street  
Phoenix, Arizona 85004-2202

jcrockett@swlaw.com

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