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BEFORE THE ARIZONA CORPORATION COMMISSION

2010 SEP 30 P 4: 33

COMMISSIONERS

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

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

SEP 30 2010

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IN THE MATTER OF AUTOTEL
CORP.'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
**FRONTIER COMMUNICATIONS
CORPORATION OPERATING
COMPANIES OF ARIZONA'S REPLY
TO AUTOTEL'S RESPONSE TO
FRONTIER'S MOTION TO DISMISS**

Snell & Wilmer
LLP
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One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

Pursuant to the Arizona Corporation Commission's ("Commission") Procedural Order dated September 2, 2010, issued by the Administrative Law Judge in the above-captioned matter, Frontier Communications Corporation Operating Companies of Arizona ("Frontier") hereby files its Reply to Autotel's Response to Motion to Dismiss and to Procedural Order ("Response") in the above-captioned matter.

Autotel's Response (1) ignores the threshold legal and factual issues presented in Frontier's Response and Motion to Dismiss ("Motion to Dismiss"), (2) presents convoluted and circular arguments, and (3) cites to case law that is irrelevant to the issues presented in the instant proceeding, all in a feeble attempt to avoid dismissal of its Petition for Arbitration, dated June 29, 2010 ("Arbitration Petition"), and its Request for Termination of the Rural Company Exemption, dated February 2, 2010 ("Request to Terminate") (collectively, the "Petitions") by the Commission. As set forth in the table below, this will be the third time in the last five years that Autotel has improperly filed

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for an arbitration petition and the second time it has filed a request to terminate the exemption:

ACC Docket No.	Type of Filing	ACC Disposition	Date of Disposition
T-03234A-03-0188	Petition for Arbitration	Granted-Decision 67273	10/5/04
T-01954B-05-0852	Petition for Arbitration	Denied-Decision 68605	3/23/06
T-01954B-05-0852	Exemption Termination	Denied-Decision 68605	3/23/06
T-01954B-06-0232	Petition for Arbitration	Denied-Procedural Order	7/28/06
T-03214A-10-0051	Petition for Arbitration	Pending	
T-03214A-10-0051	Exemption Termination	Pending	

Set forth below, Frontier’s Reply will focus on those threshold issues which overwhelming support the Commission’s dismissal of the Petitions.

I. AUTOTEL MAY NOT INITIATE ARBITRATION AND CIRCUMVENT COMMISSION DECISIONS 67273 AND 68605.

As set forth in Frontier’s Motion to Dismiss, the Commission has unequivocally ruled on two prior occasions that pursuant to Commission Decision 67273, a valid Commission-arbitrated interconnection agreement (“ICA”) is in place between Frontier and Autotel. Moreover, the Commission has dismissed with prejudice Autotel’s two prior similar Petitions for arbitration and has admonished Autotel for wasting Commission time and resources. Autotel’s Arbitration Petition and Response provide no new legal or factual arguments that would justify the Commission in departing from its prior determinations.

1 This is now Autotel's fourth bite at the apple in Arizona.¹ Although Autotel
2 considers the issue of whether an ICA is in effect to be an open issue that should be
3 arbitrated, the issue is not an open issue as Commission Decision 68605 and the July 28,
4 2006, Procedural Order dismissing Autotel's subsequent petitions for arbitration clearly
5 show. The circumstances that existed at the time of the two prior Commission rulings are
6 the same today. Moreover, Autotel's Arbitration Petition and Response fail to provide
7 any factual or relevant legal justification in contravention of Frontier's Motion to
8 Dismiss.

9 **II. AUTOTEL DID NOT REQUEST RENEGOTIATION OF THE ICA IN**
10 **FEBRUARY 2010.**

11 As set forth in the Motion to Dismiss, the ICA executed by Frontier was filed with
12 the Commission on January 31, 2005. Pursuant to A.A.C. R14-2-1508, agreements are
13 automatically approved 30 days from the filing date if the Commission has not formally
14 rejected the filing. As the Commission did not reject the filing, the ICA went into effect
15 on March 3, 2005, thirty days after its filing. Following the initial two-year term, the
16 annual expiration date of each subsequent renewal terms is March 2.

17 Autotel asserts in its Response that on February 4, 2010, it sent a request to
18 Frontier for the negotiation of an interconnection agreement. A copy of that request is
19 attached hereto as Exhibit A. Prior to this time, Autotel did not provide Frontier with
20 written notice to either terminate the ICA or for renegotiation of the ICA.² Autotel's
21 purported notice speaks for itself. It states only:

22
23 ¹ As discussed in more detail in the Motion to Dismiss, Autotel similarly refused to sign an
24 interconnection agreement with Qwest in the State of Utah and like the Arizona Commission, the Utah
25 Commission refused to allow Autotel to circumvent previous orders and denied Autotel's request for
26 another arbitration proceeding. See Motion to Dismiss at page 6, line 7 through page 7, line 17.

² See Affidavit of Jenny Smith attached as Attachment 1 to the Motion to Dismiss.

1 *In accordance with 47 USC 251/252, Autotel requests*
2 *interconnection with Frontier's local exchange carrier operating*
3 *entities in the State of Arizona and the negotiation of an*
4 *interconnection agreement with Autotel's CMR facilities and*
5 *equipment.*

6 Autotel maintains in its Response that this language "appropriately expressed its desire to
7 renegotiate."³ Without conceding the validity of the ICA, Autotel further asserts that
8 because its February 4, 2010, letter was sent prior to March 2, 2010, its notice of intent to
9 negotiate was timely sent.⁴ This is simply not the case. First, it is obvious from a plain
10 reading of the above-cited language that Autotel's request for "interconnection" was not a
11 request for renegotiation of the existing ICA. In fact, as discussed above, Autotel had
12 done this on two prior occasions and in at least one other jurisdiction. Second, Autotel
13 asserts that because it provided the notice prior to March 2, 2010, such notice was timely.
14 However, the ICA is clear as to the notice requirement for renegotiation of the ICA,
15 which is 90 days prior to the end of the term. The end of each automatic one-year
16 renewal term is March 2 of each year. Thus, even if Autotel's notice could be interpreted
17 as a request for renegotiation, it was still not timely provided.

18 **III. AUTOTEL IS NOT CURRENTLY PROVIDING WIRELESS SERVICE IN**
19 **ARIZONA YET HAS ALREADY RECEIVED AN ICA THROUGH A**
20 **COMMISSION ARBITRATION PROCEEDING.**

21 In its Response, Autotel states that it intends to provide wireless service in Arizona
22 after receiving the required regulatory approvals⁵, but the ICA does not allow for
23 interconnection of Autotel's facilities. Autotel ignores the fact that it was Autotel that
24 initiated and received an arbitration proceeding before the Commission in Docket T-

25 ³ Response at page 9, line 20.

26 ⁴ *Id.* at page 10, lines 8-11.

⁵ *Id.* at lines 14-15.

1 0324A-03-0188, resulting in Commission Decision 67273. At that time, the Commission
2 ordered the parties to “prepare and sign an interconnection agreement incorporating the
3 terms of the Commission’s resolutions” and that “the signed interconnection agreement
4 shall be submitted to the Commission for its review within thirty days of the date of this
5 Decision.”⁶ Frontier prepared the ICA incorporating the terms and conditions of the
6 Commission’s Order and forwarded the agreement to Autotel for its signature. However,
7 Autotel refused to sign the ICA, as required by the Commission’s order, and has never
8 provided the specific reasons for its refusal. Instead, Autotel attempted to incorporate
9 “additional terms and conditions that were not part of the arbitration proceeding.”⁷ This
10 was, and continues to be, most perplexing as Autotel participated in the arbitration
11 proceeding and had every opportunity to make sure that the ICA would allow for the
12 interconnection of Autotel’s equipment and facilities. It makes no sense for a party to
13 initiate an arbitration proceeding, participate in such proceeding, obtain the relief that was
14 sought, but then ignore that such proceeding occurred.

15 The ICA went into effect on March 3, 2005, pursuant to A.A.C. R14-2-1508. This
16 process, and the ICA, were validated by the Commission in Decision 68605 and the
17 Commission found the ICA to be binding on both parties.⁸ Autotel has still not provided
18 specific examples as to the reasons why it refused to execute the ICA. Nor has Autotel
19 asserted in its filings why and how the ICA, approved by the Commission, is not in
20 conformance with Decision 67273. In taking the position that it is entitled to a new
21 arbitration, Autotel continues to ignore the fact that a Commission-arbitrated ICA is in
22 effect, does permit Autotel interconnection of its facilities, and that Autotel already had
23

24 ⁶ Decision No. 67273 at page 17, Lines 4-9.

25 ⁷ See ¶ 8 of the Affidavit of Jenny Smith attached as Attachment 1 to the Motion to Dismiss.

26 ⁸ See Decision No. 68605 at page 5, lines 1-2.

1 its arbitration before the Commission. Autotel has provided no evidence to support its
2 ridiculous assertions that Frontier has not acted in good faith and that Frontier has
3 somehow been recalcitrate in its dealings with Autotel. In fact, the record is quite clear to
4 the contrary.

5 **IV. AUTOTEL'S ARBITRATION PETITION IS DEFICIENT.**

6 Even if Autotel was entitled to file an Arbitration Petition (which it is not), for the
7 reasons set forth in detail on pages 10-11 of Frontier's Motion to Dismiss, Autotel's
8 Arbitration Petition is deficient under Section 252(b)(2)(A) of the Telecommunications
9 Act of 1996 and A.A.C. R14-2-1505(B) of the Commission's Rules. Autotel's Response
10 does not address this deficiency whatsoever.

11 **V. AUTOTEL'S REQUEST TO TERMINATE IS NOT APPROPRIATELY**
12 **BEFORE THE COMMISSION.**

13 It is not Staff that misunderstands the applicability of the rural exemption, as
14 Autotel alleges, but Autotel that is mistaken about the law. Section 251(f) and of the
15 Telecommunications Act of 1996 provides an exemption for rural telephone companies
16 from the interconnection requirements. This exemption is only effective if (i) the rural
17 telephone company receives a bona fide request for interconnection; and (ii) the rural
18 telephone company asserts the exemption and the State commission determines that the
19 requested interconnection would be unduly economically burdensome or not technically
20 feasible.

21 As evidenced by the fact that following Autotel's initial request for service in
22 2003, Frontier entered into an ICA with Autotel pursuant to Commission Decision 67273.
23 Had Frontier sought to assert the exemption against Autotel, it would have done so at the
24 time Autotel had made its initial request for interconnection. Frontier has never asserted
25 the exemption against Autotel. (*See* Affidavit of Jenny Smith attached as Exhibit B.)
26

1 Notwithstanding, Autotel is asking the Commission for a second time to waste
2 additional time and resources to revoke Frontier's exemption and order interconnection
3 when in fact the Commission has already ordered interconnection by virtue of Decision
4 67273. This would be another waste of time and would be in defiance of common sense
5 and logic. As the Commission stated in Decision 68605 in regard to Autotel's prior
6 efforts to waste the time of Frontier and the Commission:

7 We admonish Autotel for its waste of administrative and judicial
8 resources in the filing of this Notice...Autotel has further wasted
9 Commission resources in failing to send a suitable representative to
10 appear for oral argument. Although this commission does not
11 regulate Autotel apart from its role in arbitration pursuant to the
12 Act, it is our hope that Autotel will take this admonishment into
13 account for purposes of future filings and its department in those
14 proceedings.⁹

15 In regard to this issue, in its July 27, 2010, Response to Autotel's Request and
16 Petition for Arbitration, Staff stated:

17 ... Frontier apparently advised Autotel that [it] has not formally
18 invoked its rights as a rural carrier under §§ 251 and 252 of the
19 1996 Act. Therefore, if this is correct, the rural exemption process
20 would not apply and the Request of Autotel in that regard would be
21 moot and unnecessary.¹⁰

22 Accordingly, Autotel's request to terminate the rural exemption is not necessary or
23 appropriate and should be dismissed.

24 **VI. CONCLUSION.**

25 In this proceeding, as well as in prior proceedings, Autotel has wasted the time,
26 resources, and money of Frontier and the Commission. If Autotel believes that it is
unable to interconnect its facilities, rather than continuing with this harassing and

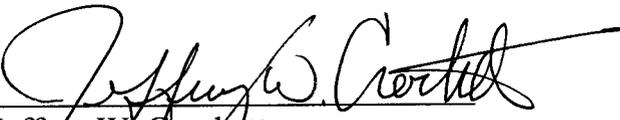
⁹ Decision 68605 at Finding of Fact No. 14 (emphasis added).

¹⁰ Page 2 at lines 7-10 (emphasis added).

1 wasteful conduct by ignoring both contractual and regulatory requirements, it should
2 proceed in accordance with such contractual and regulatory requirements as Frontier has
3 done. Until Autotel comports its conduct accordingly, it is not entitled to the requested
4 relief. On the basis of the foregoing, Autotel's Petitions should be dismissed.

5 RESPECTFULLY SUBMITTED this 30th day of September, 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

14 ORIGINAL and thirteen (13) copies filed
15 this 30th day of September, 2010, with:

16 Docket Control
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington
19 Phoenix, Arizona 85007

18 COPIES of the foregoing hand-delivered
19 this 30th day of September, 2010, to:

20 Yvette B. Kinsey, Administrative Law Judge
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington
23 Phoenix, Arizona 85007

22 Maureen A. Scott, Senior Staff Counsel
23 Legal Division
24 ARIZONA CORPORATION COMMISSION
25 1200 West Washington
26 Phoenix, Arizona 85007

1 Steven M. Olea, Director
2 Utilities Division
3 ARIZONA CORPORATION COMMISSION
4 1200 West Washington
5 Phoenix, Arizona 85007

6 COPY of the foregoing mailed
7 this 30th day of September, 2010, to:

8
9 Richard L. Oberdorfer
10 AUTOTEL
11 P.O. Box 1618
12 Bend, Oregon 97709

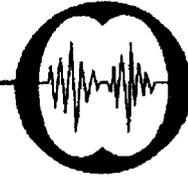
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15 _____
16 12029737.2

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EXHIBIT A

WESTERN RADIO/AUTOTEL

PO Box 1618
Bend, Oregon 97709
(541) 389-5286 Phone
(541) 389-9856 Fax



February 4, 2010

Ms. Jenny Smith
Manager, Interconnection Services
Frontier Communications Corporation
9260 E. Stockton Blvd.
Elk Grove, CA 95624

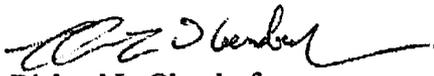
Dear Ms. Smith

In accordance with 47 USC 251/252, Autotel requests interconnection with Frontier's local exchange carrier operating entities in the State of Arizona and the negotiation of an interconnection agreement for Autotel's CMRS facilities and equipment

Autotel's contact information is as follows:

Autotel
P.O. Box 1618
Bend, OR. 97709
541-389-5286 (Voice)
541-389-9856 (Fax)
oberdorfer@earthlink.net

Sincerely


Richard L. Oberdorfer
President

cc:
Arizona Corporation Commission

EXHIBIT B

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

7 IN THE MATTER OF AUTOTEL
8 CORP.'S *BONA FIDE* REQUEST FOR
9 TERMINATION OF EXEMPTION
10 PURSUANT TO SECTION 251(f)(1)(B)
11 OF THE TELECOMMUNICATIONS
12 ACT OF 1996 AND TO PROVIDE
13 COMMERCIAL MOBILE RADIO
14 SERVICES IN ARIZONA.

 DOCKET NO. T-03214A-10-0051
 **SUPPLEMENTAL AFFIDAVIT OF
 JENNY SMITH**

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

15 1. On July 27, 2010, I signed an affidavit captioned *Affidavit of Jenny Smith in*
16 *Support of Frontier Communications Corporation Operating Companies Motion to*
17 *Dismiss Autotel's Arbitration Request.*

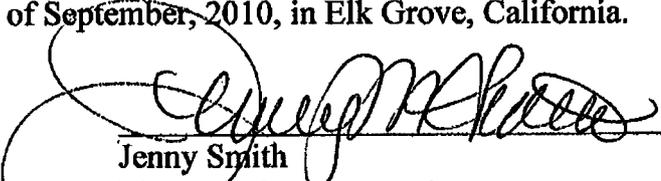
18 2. My July 27, 2010, affidavit was incorporated as Attachment 1 to Frontier
19 Communications Corporation Operating Companies of Arizona's ("Frontier") Response
20 and Motion to Dismiss Autotel's Arbitration Request.

21 3. The purpose of this supplemental affidavit is to supplement my July 27,
22 2010, affidavit as follows:

23 A. Frontier does not assert the rural telephone company exemption
24 ("Rural Exemption") set forth in Section 251(f) of the Telecommunications Act of 1996
25 in any jurisdiction, including the State of Arizona, against any telecommunications
26 carrier; and

1 B. Frontier does not and has not asserted the Rural Exemption against
2 Autotel Corp. ("Autotel"), as evidenced by the fact that an interconnection agreement
3 between Frontier and Autotel was arbitrated and approved by the Arizona Corporation
4 Commission in Decision 67273 (Docket T-03234A-03-0188) effective as of March 3,
5 2005.

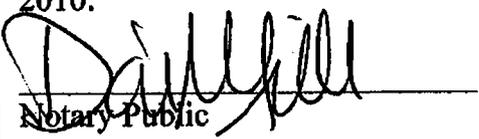
6 I declare under the penalties of perjury that the above is true and correct and that I
7 executed this Affidavit on the 29 day of September, 2010, in Elk Grove, California.

8 

Jenny Smith
Manager, Interconnection
Frontier Communications Corporation
9260 E. Stockton Blvd.
Elk Grove, California 95264
Tel: 916-686-3533
Fax: 916-685-7101
Email: Jenny.Smith@FTR.com

15 STATE OF CALIFORNIA)
16) SS
17 COUNTY OF SACRAMENTO)

18 Subscribed and sworn to before me, a Notary Public on this 29th day of September,
19 2010.

20 
21 Notary Public

Oct 19, 2012
My Commission Expires

