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November 6, 2006

ORIGINAL

Our File No. 20945-00102-60

Ms. Marlene H. Dortch, Secretary
 Federal Communications Commission
 c/o Natek, Inc.
 236 Massachusetts Avenue, NE, Suite 110
 Washington, DC 20002

FILED/ACCEPTED

NOV - 6 2006

Federal Communications Commission
 Office of the Secretary

Re: WC Docket No. 06-134

Dear Madam Secretary:

Submitted herewith are an original and fourteen (14) copies of an Application to Review the staff's Memorandum Opinion and Order in the above-referenced matter.

Should you have any questions, please communicate directly with this office.

Respectfully submitted,

**AUTOTEL, INC. AND WESTERN
 RADIO SERVICES COMPANY, INC.**

By: 
 Henry A. Solomon
 Their Attorney

Enclosure

NOV 14 2006 0414

NOV - 6 2006

Before the
Federal Communications Commission
Washington, D.C. 20544

Federal Communications Commission
Office of the Secretary

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In the Matter of)
)
 Petition of Autotel Pursuant to Section 252(e)(5))
 of the Communications Act of 1934, as Amended,)
 for Preemption of the Jurisdiction of the)
 Arizona Corporation Commission Regarding)
 Arbitration of an Interconnection Agreement with)
 Qwest Corporation)
)
 Petition of Autotel Pursuant to Section 252(e)(5))
 of the Communications Act of 1934, as Amended,)
 for Preemption of the Jurisdiction of the)
 Colorado Public Utilities Commission Regarding)
 Arbitration of an Interconnection Agreement with)
 Qwest Corporation)
)
 Petition of Autotel Pursuant to Section 252(e)(5))
 of the Communications Act of 1934, as Amended,)
 for Preemption of the Jurisdiction of the)
 New Mexico Public Regulation Commission)
 Regarding Arbitration of an Interconnection)
 Agreement with Qwest Corporation)
)
 Petition of Western Radio Pursuant to Section)
 252(e)(5) of the Communications Act of 1934, as)
 Amended, for Preemption of the Jurisdiction of the)
 Oregon Public Utility Commission Regarding)
 Arbitration of an Interconnection Agreement with)
 Qwest Corporation)
)
 Petition of Autotel Pursuant to Section 252(e)(5))
 of the Communications Act of 1934, as Amended,)
 for Preemption of the Jurisdiction of the Utah)
 Public Service Commission Regarding Arbitration)
 of an Interconnection Agreement with)
 Qwest Corporation)

WC Docket No. 06-134

TO: THE COMMISSION

APPLICATION FOR REVIEW

Autotel, Inc., and its affiliate Western Radio Services Company, Inc., ("Petitioners"), acting pursuant to 47 C.F.R. §1.115(a) respectfully seek review of the action of the Chief, Wireline Competition Bureau (the "Bureau") declining to preempt the interconnection jurisdiction of five state regulatory commissions (the "Commissions"). *Memorandum Opinion and Order*, WC Docket No. 06-34, DA 06-1997, released October 6, 2006 ("MO&O").¹ The MO&O declined to preempt the Commissions; jurisdiction relating to the interconnection of Petitioners' telecommunications systems and the systems of Quest Corporation ("Quest").

In denying preemption pursuant to 47 U.S.C. 252(e)(5), the FCC failed to comply with its own statute and with relevant precedents.

ARGUMENT

Section 252(b) of the Communications Act, provides:

(4) Action by State Commission

- (C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) of this section upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not late than 9 months after the date on which the local exchange carrier received the request under this section.

Section 252(b)(4)(C) gave each of the Commissions nine months following the date it received a request to resolve each of the issues raised in a interconnection petition and the responses thereto. In the instant case, the Commissions failed to carry out their responsibilities under Section 252. Petitioners had filed with each of the Commissions a Petition for Arbitration pursuant to Section 252(b). The Commissions erred in rejecting those requests and in granting Quest's Motion to Dismiss.

¹ This Application is timely filed within the next succeeding 30-day period.

In dismissing the Petitioners' interconnection petitions, the Commissions failed to resolve the substantial substantive issues raised by Petitioners. The Commissions did not schedule proceedings in order to complete their duties under Section 252(b)(4). The Commissions ordered no hearings and requested no briefings on the issues presented in Petitioners' interconnection requests. Nor did the Commissions seek any information from Petitioners which would have been required to resolve interconnection issues. Further, the Commissions made no determinations whether the interconnection terms and conditions advocated by Petitioners met the requirements of Section 251 of the Communications Act of 1934, as amended. Finally, the Commissions failed to incorporate the rates they established into proposed interconnection agreements between Petitioners and Qwest.

In each state, at least nine months elapsed between the time Qwest received Petitioners' requests for negotiation of interconnection agreements and the time Petitioners sought preemption and related relief with the FCC.

The FCC not only ignored its statutory mandate but failed to follow relevant precedents. *See In re Petition of MCI for Preemption Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, 12 F.C.C.R.15594 (1997). In that case the FCC explained that a state regulatory agency may have failed to act under Section 252(e)(5) even when it has issued an arbitration order, if that order does not resolve all issues "clearly and specifically" presented. *Id.* at 15611.² *See also Global NAPS, Inc. v. Federal Communications Commission*, 291 F.3d 832 (D.C. Cir. 2002) ("The FCC's interpretation thus suggests that only if the state commission either does not respond to a request, *or refuses to resolve a particular matter raised in a request*, does preemption become a viable option"(emphasis added).)

² Petitioners complied with the substantive and procedural rules of the five Commissions.

WHEREFORE, THE PREMISES CONSIDERED, the FCC should hear and decide
Petitioners' request for interconnection as provided in Section 252.

Respectfully submitted,

AUTOTEL, INC., and
WESTERN RADIO SERVICES COMPANY,
INC.


Marianne Dugan, Esq. *By HKS*
Their Attorney

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November 6, 2006

CERTIFICATE OF SERVICE

I, Henry A. Solomon, hereby certify that on November 6, 2006, I sent the foregoing document via first-class U.S. Mail to:

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Federal Communications Commission
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Washington, DC 20554 (hand delivered)

Daphne E. Butler and Craig J. Brown, Counsel for Qwest
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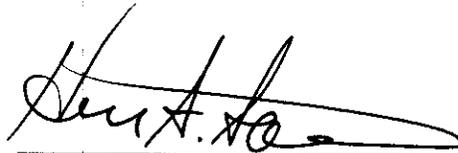
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Henry A. Solomon