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Before the
Federal Communications Commission
Washington, D.C. 20554

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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	)	WC Docket No. 06-134
	)	
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	)	
	)	

Petition of Autotel Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Public Utilities Commission of Nevada Regarding Enforcement of Interconnection Agreement with Embarq (formerly Central Telephone of Nevada d/b/a Sprint of Nevada)	)	WC Docket No. 07-240

ORDER ON REVIEW

Adopted: September 16, 2010 **Released: September 17, 2010**

By the Commission:

I. INTRODUCTION

1. This Order addresses two applications for review filed by Autotel, Inc., and its affiliate Western Radio Services Company, Inc. (collectively, "Autotel").[1] pursuant to section 1.115 of our rules.[2] In its two applications, Autotel requests review of the Wireline Competition Bureau's (Bureau) two orders denying Autotel's petitions seeking to preempt the jurisdiction of six separate state commissions over the arbitration of five disputes between Autotel and Qwest Corporation (Qwest),[3] and one dispute between Autotel and Embarq[4] under section 252(e)(5) of the Communications Act of 1934, as amended (Act).[5] In the *Five-State Autotel Preemption Order* and the *Nevada Autotel Preemption Order*, the Bureau found that each of the six state commissions carried out its responsibilities to act under section

[1] Autotel, Inc. and Western Radio Services Company, Inc. Application for Review, WC Docket No. 06-134 (filed Nov. 6, 2006) (Autotel Five-State Application for Review); Autotel Application for Review, WC Docket No. 07-240 (filed Feb. 19, 2008) (Autotel Nevada Application for Review). Qwest filed an opposition to the Autotel Five-State Application for Review; no replies were filed. The Nevada Commission and Embarq filed oppositions to the Autotel Nevada Application for Review; no replies were filed.

[2] 47 C.F.R. § 1.115(a) ("Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission.").

[3] *See 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, the Colorado Public Utilities Commission, the New Mexico Public Regulations Commission, the Oregon Public Utility Commission, and the Utah Public Service Commission Regarding Arbitrations of Interconnection Agreements with Qwest Corporation*, WC Docket No. 06-134, Memorandum Opinion and Order, 21 FCC Rcd 11301 (WCB 2006) (*Five-State Autotel Preemption Order*). In that proceeding, Autotel sought preemption of the jurisdiction of the Arizona Corporation Commission (Arizona Commission), the Colorado Public Utilities Commission (Colorado Commission), the New Mexico Public Regulation Commission (New Mexico Commission), the Oregon Public Utility Commission (Oregon Commission), and the Utah Public Service Commission (Utah Commission).

[4] *See Petition of Autotel Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Public Utilities Commission of Nevada Regarding Enforcement of Interconnection Agreement with Embarq (formerly Central Telephone of Nevada d/b/a Sprint of Nevada)*, WC Docket No. 07-240, Memorandum Opinion and Order, 23 FCC Rcd 1 (WCB 2008) (*Nevada Autotel Preemption Order*). In that proceeding, Autotel sought preemption of the jurisdiction of the Public Utilities Commission of Nevada (Nevada Commission). Embarq now does business as CenturyLink. *See Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238, Memorandum Opinion and Order, 24 FCC Rcd 8741 (2009); Application of Qwest Communications International Inc., Transferor, and CenturyTel, Inc. d/b/a CenturyLink, Transferee, for Consent to Transfer Control, WC Docket No. 10-110, Exh. 3 n.1 (filed May 10, 2010).

[5] 47 U.S.C. § 252(e)(5).

252 by dismissing the Autotel arbitration petition before that commission on procedural grounds.[6] Autotel's two applications for review argue that the Bureau's two orders conflict with the Act and Commission precedent.[7] Because Autotel does not persuade us of any conflict, we affirm the *Five-State Autotel Preemption Order* and the *Nevada Autotel Preemption Order*, and deny Autotel's two applications for review.

II. BACKGROUND

2. ***Statutory Provisions and the Commission's Rules.*** Pursuant to section 252 of the Act, when a requesting telecommunications carrier and an incumbent local exchange carrier cannot reach a voluntary arrangement for interconnection, either party may petition the relevant state commission to arbitrate the dispute.[8] When arbitrating a dispute over a new interconnection agreement, the state commission must "resolve each issue set forth in the petition and the response" and must "conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request [for interconnection]."[9] Once a state commission has approved an interconnection agreement – whether arrived at through negotiation, mediation, or arbitration – its duties do not necessarily end. Instead, the parties to an approved interconnection agreement may file complaints with the state commission for adjudication of disputes regarding enforcement or interpretation of the interconnection agreement.[10]

3. A party unsatisfied with a state commission's actions – or lack thereof – regarding a new or existing interconnection agreement has one of two paths to seek recourse. If the state commission "makes a determination" on an issue, the "aggrieved" party may seek review of that determination in federal district court.[11] In contrast, if the state commission "fails to act to carry out its responsibility under [section 252],"[12] any party may petition the Commission to preempt the state commission's jurisdiction.[13] In doing so, the party seeking preemption bears the burden of "prov[ing] that the state has failed to act to carry out its responsibilities under section 252 of the Act."[14] Because a state commission cannot both act

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[6] *Five-State Autotel Preemption Order*, 21 FCC Rcd at 11302, para. 1 (citing 47 U.S.C. § 252); *Nevada Autotel Preemption Order*, 23 FCC Rcd at 4, para. 9.

[7] *See* Autotel Five-State Application for Review at 2; Autotel Nevada Application for Review at 1.

[8] 47 U.S.C. § 252(b)(1).

[9] 47 U.S.C. § 252(b)(4)(C).

[10] *See Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, CC Docket No. 00-52, Memorandum Opinion and Order, 15 FCC Rcd 11277, 11279-80, para. 6 (2000) (*Starpower Order*) (citing *Southwestern Bell Tel. Co. v. Public Util. Comm'n of Tex.*, 208 F.3d 475, 479-80 (5th Cir. 2000), and *Illinois Bell Tel. Co. v. WorldCom Techs., Inc.*, 179 F.3d 566, 574 (7th Cir. 1999)). One exception to the general rule is where the "parties [are] bound by dispute resolution clauses in their interconnection agreement to seek relief in a particular fashion, and, therefore, the state commission would have no responsibility under section 252 to interpret and enforce an existing agreement." *Starpower Order*, 15 FCC Rcd at 11280, para. 6 n.14.

[11] 47 U.S.C. § 252(e)(6).

[12] 47 U.S.C. § 252(e)(5).

[13] *See* 47 U.S.C. § 252(e)(5); 47 C.F.R. § 51.803(a).

[14] *See* 47 C.F.R. § 51.803(b); *see also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Services Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16128, para. 1285 (1996) (*Local Competition Order*) (subsequent history omitted).

and "fail to act," section 252(e)'s remedies are mutually exclusive,[15] and the Commission will not review the validity of a state commission's determination of an issue presented to that state commission.[16]

4. ***Factual and Procedural History***. In 2004 and 2005, Autotel filed petitions with the state commissions in Arizona, Colorado, New Mexico, Oregon, and Utah for arbitration of interconnection disputes with Qwest. In 2006, Autotel submitted a complaint seeking arbitration of a dispute with Embarq to the Nevada Commission. Each of these state commissions dismissed Autotel's petition on procedural grounds.[17] On July 10, 2006, and October 18, 2007, Autotel petitioned this Commission to preempt the jurisdiction of each of these six state commissions.[18] In its petitions, Autotel argued that preempting each of the state commissions was appropriate because each had "fail[ed] to act to carry out its responsibility" either by dismissing Autotel's complaint on procedural grounds, by failing to resolve the substantive issues raised in the complaints, or by failing to schedule proceedings in order to complete its duties.[19]

5. In the *Five-State Autotel Preemption Order* and the *Nevada Autotel Preemption Order*, the Bureau rejected Autotel's arguments. Relying on Commission and federal judicial precedent, the Bureau held that each of the six state commissions acted to carry out its responsibility under section 252 by dismissing the petition before it on procedural grounds.[20] The Bureau also rejected Autotel's argument that the *MCI Preemption Order* supported Autotel's petitions, reasoning that that order merely clarified that a state commission cannot be expected to act on issues that were never "clearly and specifically presented" to it and that a petitioner must abide by the state commission's procedural rules for arbitration.[21]

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[15] *See Global NAPs, Inc. v. FCC*, 291 F.3d 832, 836-37 (D.C. Cir. 2002) ("Both the plain language and structure of [section 252(e)] suggest that the remedies it authorizes are distinct and mutually exclusive. If a state commission fails to act, preemption is a viable option; however, if the state agency takes final action disposing of the pending claim, that action can be undone only by direct judicial review in the appropriate forum.") (affirming *Global NAPs, Inc. Petition for Preemption of Jurisdiction of the Massachusetts Department of Telecommunications and Energy Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, CC Docket No. 99-354, Memorandum Opinion and Order, 15 FCC Rcd 4943 (CCB 2000)); *cf.* 47 U.S.C. § 252(e)(6) ("[T]he proceeding by the Commission . . . and any judicial review of the Commission's actions shall be the exclusive remedies for a State commission's failure to act.").

[16] *See, e.g.*, *Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with Ameritech Illinois Before the Illinois Commerce Commission; Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with BellSouth Before the Georgia Public Service Commission; Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with GTE South Before the Public Service Commission of South Carolina*, CC Docket Nos. 97-163, 97-164, 97-165, Memorandum Opinion and Order, 13 FCC Rcd 1755, 1774, para. 36 (1997) (*Low Tech Designs Order*) ("[W]e do not see a basis under our rules for examining the underlying reasoning of these state commissions' decisions."), *recon. denied*, 14 FCC Rcd 7024 (1999).

[17] *See Five-State Autotel Preemption Order*, 21 FCC Rcd at 11304-07, paras. 6-7, 9, 11, 13; *Nevada Autotel Preemption Order*, 23 FCC Rcd at 3-4, para. 7.

[18] *See Five-State Autotel Preemption Order*, 21 FCC Rcd at 11307, para. 14; *Nevada Autotel Preemption Order*, 23 FCC Rcd at 1, para. 1.

[19] *See* Autotel Five-State Application for Review at 3; Autotel Nevada Application for Review at 5.

[20] *See Five-State Autotel Preemption Order*, 21 FCC Rcd at 11307-08, paras. 15-16; *Nevada Autotel Preemption Order*, 23 FCC Rcd at 4-5, paras. 9-10.

[21] *See Five-State Autotel Preemption Order*, 21 FCC Rcd at 11308-09, para. 17; *Nevada Autotel Preemption Order*, 23 FCC Rcd at 5-6, para. 11.

6. On November 6, 2006, and February 19, 2008, Autotel filed applications for review seeking review of the Bureau's decisions in the *Five-State Autotel Preemption Order* and the *Nevada Autotel Preemption Order*, respectively. In its applications for review, Autotel argues that the Bureau failed to follow the statute or relevant precedent, and reiterates the same brief arguments it made in the underlying proceedings.[22] Specifically, Autotel argues that section 252(b)(4) of the Act requires a state commission to resolve the substance of each issue presented to it for arbitration, that section 252(b)(4) requires a state commission to "schedule proceedings in order to complete [its] duties," and that the Commission committed itself to this interpretation of the Act in the *MCI Preemption Order*.[23]

III. DISCUSSION

7. Autotel has not persuaded us that the *Five-State Autotel Preemption Order* or the *Nevada Autotel Preemption Order* was "in conflict with [any] statute, regulation, case precedent, or established Commission policy."[24] Upon review of the two orders and the record, we agree with the Bureau that procedural dismissal of Autotel's requests for arbitration by the relevant state commissions fulfilled the commissions' responsibility to act under section 252(e)(5).[25] The Bureau's decisions are squarely supported by relevant Commission and judicial precedent,[26] and Autotel does not identify anything in section 252(b)(4) that would lead us to a different conclusion on the facts of these cases. Thus, the Bureau properly denied Autotel's requests for preemption of the jurisdiction of these state commissions because Autotel did not meet its burden to show that the state commissions "failed to act" within the meaning of section 252(e)(5) of the Act. As explained in detail below, we affirm the Bureau's two orders.

8. Our rules provide, in relevant part, that "a state commission fails to act if the state commission fails to respond, within a reasonable time, to . . . a request for arbitration . . . or fails to complete an arbitration within the time limits established in section 252(b)(4)(C) of the Act."[27] As this Commission has recognized, "a state commission carrie[s] out 'its responsibility [under section 252]' when it resolves the merits of a section 252 proceeding *or dismisses such a proceeding on jurisdictional or procedural grounds*."[28] To be clear, "a state commission does not 'fail to act' when it dismisses or denies an arbitration petition on the ground that it is procedurally defective."[29] Moreover, section 252(e)(5) of the Act "does not empower the Commission to look behind a state agency's dismissal of a carrier's claim to evaluate the substantive validity of that dismissal."[30] As the United States Court of Appeals for the District of Columbia Circuit has affirmed, "[i]t does not matter whether the state agency's position is correct on the merits. Rather, . . . what matters is that [the state commission] did not fail to act,

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[22] *See generally* Autotel Five-State Application for Review; Autotel Nevada Application for Review.

[23] *See* Autotel Five-State Application for Review at 2–3; Autotel Nevada Application for Review at 5.

[24] 47 C.F.R. § 1.115(a)(2)(i).

[25] *See Five-State Autotel Preemption Order*, 21 FCC Rcd at 11307-08, para. 15; *Nevada Autotel Preemption Order*, 23 FCC Rcd at 4, para. 9; *see also* 47 C.F.R. § 51.801(b).

[26] *See supra* nn.20-21.

[27] 47 C.F.R. § 51.801(b).

[28] *Starpower Order*, 15 FCC Rcd at 11280-81, para. 8 (emphasis added).

[29] *Low Tech Designs Order*, 13 FCC Rcd at 1773-74, para. 33; *see also Global NAPs South, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Bell Atlantic-Virginia, Inc.*, CC Docket No. 99-198, Memorandum Opinion and Order, 15 FCC Rcd 23318, 23326, 23327, paras. 16, 19 (CCB 1999) (*Global NAPS Virginia Order*).

[30] *Global NAPs v. FCC*, 291 F.3d at 833.

so the . . . Commission has no basis upon which to preempt the regulatory authority of the state agency."[31] When a state commission has acted on a timely basis to resolve an interconnection dispute, section 252(e)(6) provides solely for federal district court review of the state action; section 252(e)(5) provides no alternative forum for appeal to the Commission.[32] This precedent resolves all of Autotel's arguments.

9. First, in its applications for review, Autotel argues that the Bureau failed to follow relevant precedent in the *MCI Preemption Order*.[33] Autotel contends that the *MCI Preemption Order* held "that a state agency can fail to act under section 252(e)(5) even if it has issued an arbitration order, if that order is a general dismissal that does not resolve all issues 'clearly and specifically' presented to it."[34] In support of its argument, Autotel also quotes *Global NAPs v. FCC* for the proposition that "[t]he 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."[35] We do not find that the *MCI Preemption Order* supports Autotel's contentions.

10. In the *MCI Preemption Order*, the Commission determined that a state commission may not be found to have "failed to act" within the meaning of section 252(e)(5) in cases involving arbitration proceedings "if the issue or issues that are the subject of the preemption petition were never clearly and specifically presented to the state commission *in accordance with any procedures set forth by the state commission*."[36] As the Commission has also held, "a state commission does not 'fail to act' when it dismisses or denies an arbitration petition on the ground that it is procedurally defective."[37] The record before us demonstrates that each of the state commissions responded to Autotel's request not by issuing a "general dismissal" that refused to act on a properly filed request, as Autotel suggests, but by rejecting it on procedural grounds.[38] The six state commissions acted by dismissing the requests after either finding that Autotel had not identified open issues for arbitration or finding that Autotel had failed to follow state procedures.[39] Contrary to Autotel's contention, the *MCI Preemption Order* supports the Bureau's decision in these cases. The Commission in the *MCI Preemption Order* did not "so much as suggest that a state agency's [procedural] dismissal of an issue on the merits constitutes a failure to act. Quite the

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[31] *Id.* at 833-34.

[32] 47 U.S.C. § 252(e)(6); *see also Global NAPs v. FCC*, 291 F.3d at 836-37; *Low Tech Designs Order*, 13 FCC Rcd at 1775, para. 37; *Petition of Supra Telecommunications & Information Systems, Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Florida Public Service Commission*, WC Docket No. 02-238, Memorandum Opinion and Order, 17 FCC Rcd 22884, 22891, para. 13 (WCB 2002) (*Supra Florida Preemption Order*) ("[A]ny grounds for seeking review of the Florida Commission's action – whether alleging substantive or procedural flaws – are properly addressed to a federal district court pursuant to section 252(e)(6) of the Act.").

[33] *See* Autotel Five-State Application for Review at 3; Autotel Nevada Application for Review at 5-6.

[34] Autotel Nevada Application for Review at 5-6; *see* Autotel Five-State Application for Review at 3.

[35] Autotel Five-State Application for Review at 3 (quoting *Global NAPs v. FCC*, 291 F.3d at 837); Autotel Nevada Application for Review at 5-6 (same) (emphasis added by Autotel).

[36] *Petition of MCI for Preemption Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, CC Docket No. 97-166, Memorandum Opinion and Order, 12 FCC Rcd 15594, 15611, para. 27 (1997) (*MCI Preemption Order*) (emphasis added).

[37] *Low Tech Designs Order*, 13 FCC Rcd at 1773-74, para. 33; *see also Global NAPs Virginia Order*, 15 FCC Rcd at 23326, 23327, paras. 16, 19.

[38] *See Five-State Autotel Preemption Order*, 21 FCC Rcd at 11308-09, para. 17; *Nevada Autotel Preemption Order*, 23 FCC Rcd at 5-6, para. 11.

[39] *See Five-State Autotel Preemption Order*, 21 FCC Rcd at 11308-09, para. 17; *Nevada Autotel Preemption Order*, 23 FCC Rcd at 4-6, paras. 10-11.

opposite."[40] Indeed, the *MCI Preemption Order* affirms that parties must comply with "any procedures set forth by the state commission."[41] Thus, we conclude that the Bureau's orders were fully consistent with the *MCI Preemption Order*, and other Commission and judicial precedent on this point.

11. Second, in the Autotel Nevada Application for Review, Autotel argues that the Bureau erred by basing its decision solely on the Nevada Commission's "conclusory rejection" of Autotel's petition on "vague grounds."[42] Autotel further argues that the Bureau should have addressed the Nevada Commission's assertion that its prior order had resolved the issues Autotel was raising before the state commission.[43] As discussed above, section 252(e)(5) "does not empower the Commission to look behind a state agency's dismissal of a carrier's claim to evaluate the substantive validity of that dismissal."[44] "It does not matter whether the state agency's position is correct on the merits. Rather, . . . what matters is that [the state commission] did not fail to act, so the . . . Commission has no basis upon which to preempt the regulatory authority of the state agency."[45] Therefore, Autotel's assertions that it complied with the procedural rules are not relevant to our preemption analysis.[46] In the order we review here, the Bureau properly concluded, based on the record before it, that the Nevada Commission acted by administratively rejecting the Autotel petition on procedural grounds. The Commission's statutory authority over this matter stops there.

12. Third, Autotel argues that because of the Nevada Commission's administrative rejection of the Autotel complaint, "[t]he only remedy available for Autotel now is preemption by the FCC."[47] The record demonstrates that in response to the complaint filed by Autotel, the Nevada Commission, through its Legal Case Manager, administratively rejected the complaint *without prejudice* because it did not meet the minimum requirements to be accepted for filing under the Nevada Commission's rules and regulations.[48] When "the state agency actually 'makes a determination' under [section] 252 – there is no statutory basis for FCC preemption."[49] Based on the record, the Bureau properly found that the Nevada Commission's administrative rejection of Autotel's complaint on procedural grounds, without addressing the possible merits of Autotel's issues, was a "determination" by the Nevada Commission and cannot be deemed a "failure to act" under section 252 of the Act.[50] When, as in this case, a state commission has acted on a timely basis to resolve an interconnection dispute, section 252(e)(6) provides a remedy in the form of federal court review; section 252(e)(5) provides no alternative forum for appeal.[51]

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[40] *Global NAPs v. FCC*, 291 F.3d at 839.

[41] *MCI Preemption Order*, 12 FCC Rcd at 15611, para. 27.

[42] Autotel Nevada Application for Review at 6.

[43] *See id.*

[44] *Global NAPs v. FCC*, 291 F.3d at 833.

[45] *Id.* at 833-34.

[46] *See* Autotel Nevada Application for Review at 5-6; *see also* Autotel Five-State Application for Review at 3 n.2.

[47] Autotel Nevada Application for Review at 6.

[48] *See Nevada Autotel Preemption Order*, 23 FCC Rcd at 5-6, para. 11.

[49] *Global NAPs v. FCC*, 291 F.3d at 836.

[50] We note that the Nevada Commission characterizes the Legal Case Manager's administrative rejection of Autotel's complaint as a "dismissal." *See* Nevada Commission Comments, WC Docket No. 07-240, at 2 (filed Feb. 28, 2008); Nevada Commission Comments, WC Docket No. 07-240, at 5 (filed Nov. 2, 2007); *see also id.* at 3 (stating that the Legal Case Manager sent a letter "administratively rejecting the filing").

[51] *See Global NAPs v. FCC*, 291 F.3d at 836-37; *Low Tech Designs Order*, 13 FCC Rcd at 1775, para. 37; *Supra Florida Preemption Order*, 17 FCC Rcd at 22891, para. 13 ("[A]ny grounds for seeking review of the Florida

(continued....)

13. Because the state commissions acted here, the Bureau's "determination[s] that it lacked the authority under [section] 252(e)(5) to second guess the validity of the state agenc[ies'] decision[s] under the guise of preemption [were] neither contrary to the statute nor to the Commission's past practices."[52] For these reasons, we agree with the Bureau that Autotel has not met its burden of demonstrating that the state commissions "failed to act" within the meaning of section 252(e)(5). Therefore, we affirm the Bureau's two orders, and we deny Autotel's applications for review.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to section 252 of the Communications Act of 1934, as amended, 47 U.S.C. § 252, and sections 1.115 and 51.801(b) of the Commission's rules, 47 C.F.R. §§ 1.115, 51.801(b), the Application for Review filed by Autotel in WC Docket No. 06-134 on November 6, 2006, IS DENIED.

15. IT IS FURTHER ORDERED that, pursuant to section 252 of the Communications Act of 1934, as amended, 47 U.S.C. § 252, and sections 1.115 and 51.801(b) of the Commission's rules, 47 C.F.R. §§ 1.115, 51.801(b), the Application for Review filed by Autotel in WC Docket No. 07-240 on February 19, 2008, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

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Commission's action – whether alleging substantive or procedural flaws – are properly addressed to a federal district court pursuant to section 252(a)(6) of the Act."). We note that the Nevada Commission administratively rejected the complaint without prejudice. Although Autotel disputes that its filing was deficient, the record does not reflect that Autotel made any attempt to remedy the procedural deficiencies of its filing or seek review of the Legal Case Manager's decision. *See Nevada Autotel Preemption Order*, 23 FCC Rcd at 5, para. 10. We recognize that Autotel may be required to exhaust Nevada Commission procedures before its case is ripe for review in federal court. This, however, does not alter our conclusion that the Nevada Commission's administrative rejection on procedural grounds was not a failure to act for the purposes of section 252(e)(5), and therefore we do not preempt the regulatory authority of the Nevada Commission in this case.

[52] *Global NAPs v. FCC*, 291 F.3d at 839.