

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

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

MEMORANDUM OPINION AND ORDER

Adopted: January 16, 2008

Released: January 16, 2008

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address the petition of Autotel1 for preemption of the jurisdiction of the Public Utilities Commission of Nevada (Nevada Commission) pursuant to section 252(e)(5) of the Communications Act of 1934, as amended (Act).2 In its petition, Autotel asks the Commission to preempt the Nevada Commission’s decision to administratively reject a complaint regarding the provisioning of a new mid-span meet point between Autotel’s facilities and a central office of Embarq (formerly, the Central Telephone Company – Nevada d/b/a Sprint of Nevada) (Embarq) pursuant to an existing interconnection agreement between the two parties.3 Because Autotel has not shown that the Nevada Commission failed to act upon Autotel’s complaint, within the meaning of section 252(e)(5) of the Act, we deny Autotel’s petition for preemption.

II. BACKGROUND

2. Statutory Provisions and the Commission’s Rules. Among its other duties under the Act, an incumbent local exchange carrier (LEC) must allow other telecommunications carriers to interconnect with its network “for the transmission and routing of telephone exchange service and exchange access . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory,”4 and it must “negotiate in

1 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 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 (filed Oct. 18, 2007) (Autotel Petition). The Commission established a pleading cycle for comments and reply comments on the Autotel Petition of November 13, 2007, and November 23, 2007, respectively. See Pleading Cycle Established for Comments on Petition of Autotel for Preemption of the Jurisdiction of Public Utilities Commission of Nevada Pursuant to Section 252(e)(5) of the Communications Act, WC Docket No. 07-240, Public Notice, DA 07-4453 (rel. Oct. 29, 2007). The Nevada Commission and Embarq filed comments. No reply comments were filed.

2 47 U.S.C. § 252(e)(5).

3 See Autotel Petition at 1.

4 47 U.S.C. § 251(c)(2).

good faith” whenever another telecommunications carrier requests such interconnection.<sup>5</sup> If voluntary negotiations fail to yield agreement, the parties may “ask a [s]tate commission . . . to mediate” the dispute,<sup>6</sup> or the parties may “during the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation . . . petition a [s]tate commission . . . to arbitrate any open issues.”<sup>7</sup> 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].”<sup>8</sup>

3. 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.<sup>9</sup>

4. A party unsatisfied with a state commission’s actions – or lack thereof – regarding a new or existing interconnection agreement has 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.<sup>10</sup> In contrast, if the state commission “fails to act to carry out its responsibility under [section 252]”<sup>11</sup> any party may petition the Commission to preempt the state commission’s jurisdiction<sup>12</sup> 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.”<sup>13</sup> Because a state commission cannot both act and “fail to act,” section 252(e)’s remedies are mutually exclusive,<sup>14</sup> and the Commission will not review the validity of a state commission’s determination of an issue presented to that state commission.<sup>15</sup>

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<sup>5</sup> 47 U.S.C. § 251(c)(1).

<sup>6</sup> 47 U.S.C. § 252(a)(2).

<sup>7</sup> 47 U.S.C. § 252(b)(1).

<sup>8</sup> 47 U.S.C. § 252(b)(4)(C).

<sup>9</sup> *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*) (quoting *S.W. Bell Tel. Co. v. Pub. Util. Comm’n of Tex.*, 208 F.3d 475, 479 (5th Cir. 2000), and *Ill. 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.” *Id.* at 11280, para. 6, n.14.

<sup>10</sup> 47 U.S.C. § 252(e)(6).

<sup>11</sup> 47 U.S.C. § 252(e)(5).

<sup>12</sup> See 47 U.S.C. § 252(e)(5); see also 47 C.F.R. § 51.803(a).

<sup>13</sup> 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 No. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16128, para. 1285 (1996) (*Local Competition Order*) (subsequent history omitted).

<sup>14</sup> 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 a direct 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

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5. **Procedural History.** On October 11, 2002, the Nevada Commission approved an interconnection agreement between Autotel and Embarq that required Embarq to make interconnection mid-span meet arrangements available to Autotel and partitioned the cost of such arrangements between the parties.<sup>16</sup> On December 16, 2004, Autotel requested a new mid-span interconnection arrangement with Embarq. When voluntarily negotiations ended without agreement on a new mid-span interconnection facility, Autotel requested arbitration of the dispute from the Nevada Commission on February 16, 2005.<sup>17</sup> On September 6, 2005, the Nevada Commission dismissed Autotel's complaint without prejudice, reasoning that the complaint was "premature and not ripe for consideration" because Autotel had "not made a formal request to [Embarq] for an interconnection mid-span meet facility," had not clearly specified what arrangements it wanted, and "ha[d] not followed or fully explored [Embarq's] interconnection process."<sup>18</sup> On that same day, Autotel renewed discussions with Embarq about constructing a microwave mid-span meet interconnection facility.<sup>19</sup>

6. On April 11, 2006, Autotel challenged the Nevada Commission's order in federal district court.<sup>20</sup> Meanwhile, on July 28, Autotel again contacted Embarq about arranging for a new mid-span meet interconnection facility.<sup>21</sup> On August 4, 2006, the district court dismissed Autotel's complaint, and Autotel appealed that decision to the United States Court of Appeals for the Ninth Circuit on August 20.<sup>22</sup> The appeal remains pending in the Ninth Circuit.<sup>23</sup>

7. Again unable to agree upon a solution with Embarq, Autotel requested on September 1, 2006, that the Nevada Commission resolve the dispute.<sup>24</sup> Four days later, the Nevada Commission's Legal Case

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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.").

<sup>15</sup> 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).

<sup>16</sup> See *Autotel vs. Central Telephone Company – Nevada d/b/a Sprint of Nevada, for enforcement of an interconnection agreement*, Public Utilities Commission of Nevada, Docket No. 05-2022, Complaint at 1 (Feb. 16, 2005) (First Autotel Complaint); *Autotel vs. Central Telephone Company – Nevada d/b/a Sprint of Nevada, for enforcement of an interconnection agreement*, Public Utilities Commission of Nevada, Docket No. 05-2022, Order at 8 (Sept. 6, 2005) (*Nevada Commission Order*).

<sup>17</sup> See First Autotel Complaint at 1–2.

<sup>18</sup> See *Nevada Commission Order* at 8.

<sup>19</sup> See *Autotel vs. Central Telephone – Nevada d/b/a Sprint of Nevada for enforcement of an interconnection agreement*, Public Utilities Commission of Nevada, Docket No. 06-09001, Complaint at 2 (Sept. 1, 2006) (Second Autotel Complaint).

<sup>20</sup> See Nevada Commission Comments at 4.

<sup>21</sup> See Second Autotel Complaint at 2.

<sup>22</sup> See Nevada Commission Comments at 4.

<sup>23</sup> See *id.*

<sup>24</sup> *Id.*

Manager administratively rejected the Second Autotel Complaint because it did “not comply with the [Nevada] Commission’s rules and regulations for filings of this nature.”<sup>25</sup>

8. On October 18, 2007, Autotel petitioned this Commission to preempt the jurisdiction of the Nevada Commission with regard to the Nevada Commission’s disposition of the Second Autotel Complaint, claiming that the Nevada Commission “failed to act” under section 252 of the Act, and to arbitrate Autotel’s dispute with Embarq over the provision of a mid-span meet interconnection facility.<sup>26</sup>

### III. DISCUSSION

9. We deny Autotel’s request for preemption of the jurisdiction of the Nevada Commission because Autotel does not meet its burden to show that the Nevada Commission “failed to act” within the meaning of section 252(e)(5) on the Second Autotel Complaint against Embarq. Autotel contends that the Nevada Commission “failed to act” because it did not schedule any proceedings in order to complete its duties under section 252(b)(4); did not request information from either party; and did not make a determination as to whether the contract language proposed by Autotel met the requirements of section 251.<sup>27</sup> As in our previous orders denying Autotel’s petitions for preemption,<sup>28</sup> we find that the Nevada Commission’s administrative rejection of Autotel’s complaint against Embarq does not constitute failure to act under section 252 of the Act.<sup>29</sup> Rather, we find that the Nevada Commission’s action on procedural grounds satisfies its obligation to act under section 252(e)(5).<sup>30</sup>

10. 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.”<sup>31</sup> The record demonstrates that in response to the

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<sup>25</sup> Letter from Luke Busby, Legal Case Manager, Public Utilities Commission of Nevada, to Richard L. Oberdorfer, President, Autotel (Sept. 5, 2006) (administratively rejecting without prejudice the complaint in Docket No. 06-09001) (*Nevada Manager Letter*). The Nevada Commission also noted that “the relief requested in the Complaint has already been granted in the order that the Commission issued under Docket No. 05-2022.” *Id.*

<sup>26</sup> See Autotel Petition at 1.

<sup>27</sup> See *id.* at 3-4.

<sup>28</sup> 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 Arbitration of an Interconnection Agreement with SBC Nevada*, WC Docket No. 04-311, Memorandum Opinion and Order, 19 FCC Rcd 20920 (WCB 2004) (*Nevada Autotel Order*); *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 Order*), *app. for review pending*, Autotel, Inc. & Western Radio Services Company, Inc. Application for Review (filed Nov. 6, 2006) (*Five State Autotel Order Application for Review*); *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 Citizens Utilities Rural Company, Inc.*, WC Docket No. 06-194, Memorandum Order and Opinion, 22 FCC Rcd 289 (WCB 2007) (*Arizona Autotel Preemption Order*).

<sup>29</sup> See generally *Nevada Autotel Order*, 19 FCC Rcd 20920; *Five State Autotel Order*, 21 FCC Rcd 11301; *Arizona Autotel Preemption Order*, 22 FCC Rcd 289.

<sup>30</sup> See 47 C.F.R. § 51.801(b).

<sup>31</sup> *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, 11280-81, para. 8 (2000) (*Starpower Order*); see also *Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.’s Petition for Arbitration with*

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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.<sup>32</sup> Although Autotel disputes that its filing was deficient,<sup>33</sup> the record does not reflect that Autotel made any attempt to remedy the procedural deficiencies of its filing.<sup>34</sup> When "the state agency actually 'makes a determination' under § 252 – there is no statutory basis for FCC preemption."<sup>35</sup> Moreover, 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."<sup>36</sup> Based on the record, we find that the Nevada Commission's 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.<sup>37</sup> When, as in this case, a state commission has acted on a timely basis to resolve an interconnection dispute, section 252(e)(6) provides the basis for federal court review; section 252(e)(5) provides no alternative forum for appeal.<sup>38</sup>

11. We also reject Autotel's argument that the Commission's *MCI Preemption Order* supports Autotel's petition.<sup>39</sup> Autotel argues 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

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*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, 1773-74, para. 33 (1997) (*Low Tech Designs Order*) ("[A] state commission does not 'fail to act' when it dismisses or denies an arbitration petition on the ground that it is procedurally defective . . ."), *recon. denied*, 14 FCC Rcd 7024 (1999); *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).

<sup>32</sup> See *Nevada Manager Letter* at 1.

<sup>33</sup> See Autotel Petition at 3.

<sup>34</sup> See Nevada Commission Comments at 5.

<sup>35</sup> *Global NAPs, Inc. v. FCC*, 291 F.3d at 836.

<sup>36</sup> *Id.* at 837 (upholding the Commission's conclusion that section 252(e)(5) does not authorize preemption to review the substantive validity of a state commission's dismissal of a party's claim); see also *Low Tech Designs Order*, 13 FCC Rcd at 1774-75, para. 36.

<sup>37</sup> 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 at 5; see also *id.* at 3 (stating that the Legal Case Manager sent a letter "administratively rejecting the filing").

<sup>38</sup> See *Global NAPs, Inc. v. FCC*, 291 F.3d at 836-37; see also *Low Tech Designs Order*, 13 FCC Rcd at 1775, para. 37; *Petition of Supra Telecommunications & Information Systems, Inc., (Supra) 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) ("[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(a)(6) of the Act."); see also *Nevada Autotel Order*, 19 FCC Rcd 20920; *Five State Autotel Order*, 21 FCC Rcd 11301; *Arizona Autotel Preemption Order*, 22 FCC Rcd 289. Autotel has already challenged the *Nevada Commission Order* addressing the First Autotel Complaint in federal court. See Nevada Commission Comments at 4 & n.1 (citing *Autotel v. Sprint et al.*, No. 2:06-cv-0422-RCJ-LRL, Order (D. Nev. Aug. 4, 2006), *appeal pending*, *Autotel v. Sprint et al.*, No. 06-16565 (9th Cir. filed Aug. 20, 2006)).

<sup>39</sup> Autotel Petition at 4.

that does not resolve all issues ‘clearly and specifically’ presented to it.”<sup>40</sup> In support of its argument, Autotel also quotes *Global NAPS, Inc. 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.”<sup>41</sup> The record before us demonstrates that the Nevada Commission responded, as required by section 252, to Autotel’s complaint not by issuing a “general dismissal” that refused to act on a properly filed complaint, but by administratively rejecting it on procedural grounds because it did not meet minimum procedural rules for filing of complaints under Nevada rules and regulations.<sup>42</sup> As the Commission has concluded in similar cases, the Nevada Commission’s administrative rejection is a response to Autotel’s request and satisfies the section 252(e)(5) obligation.<sup>43</sup> Thus, we deny Autotel’s petition for preemption of the Nevada Commission’s jurisdiction in this matter.

12. Autotel has now petitioned the Commission to preempt state-commission jurisdiction under section 252(e)(5) eight times, and eight times we have refused. In each of its petitions, Autotel has accused a state commission of failing to act because it dismissed Autotel’s claims on procedural grounds.<sup>44</sup> We note that the instant petition includes facts and legal arguments that closely parallel previous Autotel preemption petitions that have been denied by the Bureau.<sup>45</sup> Although the Bureau previously has issued three separate orders rejecting Autotel’s arguments,<sup>46</sup> Autotel makes no attempt now to distinguish those decisions. In the *Arizona Autotel Preemption Order*, the Bureau suggested that repeated pleading of previously rejected arguments came perilously close to violating the Commission’s prohibition on frivolous pleadings.<sup>47</sup> Indeed, the Nevada Commission and Embarq urge us to impose sanctions on Autotel for violating the Commission’s rule against frivolous pleadings in this proceeding.<sup>48</sup> We again remind the petitioner that the Commission’s rules prohibit the filing of frivolous pleadings or pleadings filed for the purpose of delay in proceedings before the Commission.<sup>49</sup> The Commission has

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<sup>40</sup> *Id.* (quoting *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*)). We note that Autotel’s characterization of the holding of the *MCI Preemption Order* is not fully consistent with the language of that order. Even assuming that Autotel accurately characterized the holding, we do not believe that it supports Autotel’s argument. See *MCI Preemption Order*, 12 FCC Rcd at 15611, para. 27 (concluding 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.”).

<sup>41</sup> See Autotel Petition at 4 (quoting *Global NAPS, Inc. v. FCC*, 291 F.3d at 837) (emphasis added).

<sup>42</sup> See *Nevada Manager Letter* at 1; see also Nevada Commission Comments at 3; Embarq Comments at 4.

<sup>43</sup> See generally *Nevada Autotel Order*, 19 FCC Rcd 20920; *Five State Autotel Order*, 21 FCC Rcd 11301; *Arizona Autotel Preemption Order*, 22 FCC Rcd 289.

<sup>44</sup> See *Nevada Autotel Order*, 19 FCC Rcd at 20923, para. 8; *Five State Autotel Order*, 21 FCC Rcd at 11307, para. 14; *Arizona Autotel Preemption Order*, 22 FCC Rcd at 291-92, para. 8.

<sup>45</sup> We recognize that Autotel has filed an Application for Review of the *Five State Autotel Order*. The Application for Review is currently pending before the Commission. See generally *Five State Autotel Order Application for Review*.

<sup>46</sup> See *Nevada Autotel Order*, 19 FCC Rcd 20920; *Five State Autotel Order*, 21 FCC Rcd 11301; *Arizona Autotel Preemption Order*, 22 FCC Rcd 289.

<sup>47</sup> See *Arizona Autotel Preemption Order*, 22 FCC Rcd at 294-95, para. 14.

<sup>48</sup> See Nevada Commission Comments at 6-7; Embarq Comments at 7-9.

<sup>49</sup> See 47 C.F.R. § 1.52; *Commission Taking Tough Measures Against Frivolous Pleadings*, Public Notice, 11 FCC Rcd 303 (1996).

previously concluded that pleadings may be deemed frivolous if they are “filed without any effort to ascertain or review the underlying facts” or are “based on arguments that have been specifically rejected by the Commission ... or [have] no plausible basis for relief.”<sup>50</sup> Thus, we again urge all parties to consider fully the record of a proceeding and relevant Commission precedent when initiating proceedings before the Commission. We reserve our option to refer violations of this rule for enforcement proceedings and possible sanctions, including for violations in the instant proceeding.

#### IV. ORDERING CLAUSE

13. Accordingly, IT IS ORDERED that, pursuant to section 252 of the Communications Act of 1934, as amended, 47 U.S.C. § 252, and sections 0.91, 0.291, and 51.801(b) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 51.801(b), the petition filed by Autotel on October 18, 2007 for the preemption of the jurisdiction of the Public Utilities Commission of Nevada IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach  
Deputy Chief  
Wireline Competition Bureau

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<sup>50</sup> *Implementation of Cable Television Consumer Protection Act*, MM Docket No. 92-265, Public Notice, 9 FCC Rcd 2642, 2657 (1993); *see also* Nevada Commission Comments at 1; Embarq Comments at 1-3.