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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE PETITION OF
ALL AMERICAN TELEPHONE CO., INC.
FOR A *NUNC PRO TUNC* AMENDMENT
OF ITS CERTIFICATE OF AUTHORITY TO
OPERATE AS A COMPETITIVE LOCAL
EXCHANGE CARRIER WITHIN THE
STATE OF UTAH

DIVISION OF PUBLIC UTILITIES'
REQUEST FOR DISMISSAL, OR IN THE
ALTERNATIVE, REQUEST FOR FORMAL
ADJUDICATION AND REQUEST TO
COMPEL ANSWERS TO DISCOVERY
REQUESTS

Docket No. 08-2469-01

The following is a Request for Dismissal or in the alternative a Request for formal Adjudication and a Request to Compel answers to Data requests by the Division of Public Utilities (DPU or Division):

Background

All American Telephone Co., Inc. ("AATCO" or "All American"), has petitioned the Commission for a *nunc pro tunc* amendment to its Certificate of Public Convenience and Necessity, dated March 7, 2007 (Docket No. 06-2469-01), authorizing AATCO to operate as a competitive local exchange carrier ("CLEC" hereinafter) within the state of Utah, excluding those local exchanges of less than 5,000 access lines of incumbent telephone corporations with fewer than 30,000 access lines in the state.

On June 11, 2007, AATCO and Beehive Telephone Co., Inc. (“Beehive”) filed an interconnection agreement with the Commission. This interconnection agreement was deemed approved by the Commission on September 10, 2007 by operation of law.

AATCO and Beehive have been operating under the terms of this interconnection agreement on their assumption that AATCO had authority to operate as a CLEC in the area certificated to Beehive. However, AATCO correctly observes that it may lack the authority to operate as a CLEC in the area certificated to Beehive.

Therefore, in its petition (“Petition”), AATCO is requesting that the Commission amend AATCO’s certificate *nunc pro tunc* to the date the certificate was issued to grant AATCO the authority to operate as a CLEC in the area certificated to Beehive to the extent of the terms and conditions of AATCO’s and Beehive’s interconnection agreement and promises not to extend AATCO’s operating authority into any other local exchange carrier’s certificated territory. As AATCO notes Beehive has filed, concurrently with this application, its consent to AATCO’s petition. Beehive and AATCO believe that the petition only affects each other, and therefore, should be approved without a hearing.

Analysis

Service in Beehive’s Territory

When AATCO filed its Request for a Certificate the DPU raised concerns about a Certificate being issued to provide telecommunications services in the Beehive service area. (See attached January 16, 2007 Memorandum to the Commission). As a result, on February 20, 2007 AATCO filed an Amended Application for a Certificate that limited where it could provide service to exchanges above 5,000 access lines.¹ The Certificate

¹ Docket 06-2469-01 Order p. 2.

was granted, without objection, on the basis of AATCO's Amended Application for a Certificate.

Now, All American in its Petition provides no new information as to why it is in the public interest to allow it to provide service in the Beehive service area. All American makes no attempt to address the issues raised by the Division in its January 16, 2007 Memorandum to the Commission raising issues about providing competitive services in exchanges of less than 5,000 access lines or to meet the requirements of the Commission's rules on application for CLEC certificates. The Division has reviewed All American's petition to revise its CPCN to include the authority to operate as a competitive local exchange company, not only in the Qwest service area, but also to do business in Beehive Telephone Company's service area. The Division believes that operating as a CLEC in a rural ILEC territory in exchanges of less than 5,000 access lines of incumbent telephone corporations with fewer than 30,000 access lines in the state certainly is a potential violation of AATCO's Certificate. More importantly, such a major change in policy should be heard formally by the Commission in a proceeding where the Applicant meets its burden to show that it is in the public interest for such competition to occur. Such a change should not occur through a *nunc pro tunc* Petition. In the earlier proceeding, Utah Rural Telephone Association ("URTA") was an intervener. The Division believes that the "rural exemption" was put in the statutes for a reason and to allow those reasons to be disregarded is unreasonable without a hearing and proof that a change is warranted.

AATCO and Beehive believe that, by approving the interconnection agreement between AATCO and Beehive, the Commission implicitly authorized AATCO to operate

as a CLEC in the area certificated to Beehive. The Division believes that is not the case. First, this interconnection agreement went into effect by operation of law. Nowhere, did the interconnection agreement assert that it was intended to allow AATCO to violate its Certificate that limited where it could provide service. Nowhere did the Commission address the public interest issues associated with granting a certificate in a rural exchange. Second, at the most, the Commission only acknowledges interconnection agreements. Such an acknowledgement cannot be implied to act as an authorization to amend its Certificate. In order for AATCO to be able to amend its Certificate, it should be required to comply with all the Commission's Rules and respond to the issues raised by the Division in the original Certificate proceeding.

Through formal data requests, the Division has tried to ascertain what the nature of the services are that ATTCO provides to Beehive. ATTCO will not define the nature of its business with Beehive and, in fact, refuses to answer a second data request trying to clarify its services in the Beehive territory. (See letter from ATTCO attached and a copy of the Division's second set of data requests. In addition AATCO has not filed this Petition in compliance with R746-349-3.

Recommendation

At this point the Division opposes any amendment to ATTCO's Certificate to operate as a CLEC in Utah which would now include Beehive Telephone's territory. We recommend that the Commission Dismiss this Application for failure to provide the necessary information to determine if the requested Amendment should be granted. At a minimum, AATCO should be required to file in compliance with R746-349 and to address the issues raised by the Division in its January 16, 2007 Memorandum.

Alternatively, if the Commission does not dismiss this Petition, the Division recommends that the Commission set this matter for formal adjudication and compel AATCO to answer the DPU second set of data request (attached) and provide Notice of this proceeding to URTA and Qwest.

RESPECTFULLY SUBMITTED, this _____ day of October, 2008.

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of Public Utilities

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing RESPONSE BY DEPARTMENT OF PUBLIC UTILITIES was sent by electronic mail and mailed by U.S. Mail, postage prepaid, to the following on October ____, 2008:

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