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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE PETITION OF)	ALL AMERICAN TELEPHONE
ALL AMERICAN TELEPHONE CO.,)	COMPANY’S RESPONSE TO THE
INC. FOR A <i>NUNC PRO TUNC</i>)	PETITION TO INTERVENE OF THE
AMENDMENT OF ITS CERTIFICATE)	UTAH RURAL TELECOM
OF AUTHORITY TO OPERATE AS A)	ASSOCIATION
COMPETITIVE LOCAL EXCHANGE)	
CARRIER WITHIN THE STATE OF)	Docket No. 08-2469-01
UTAH.)	
)	
)	

Petitioner, All American Telephone Company, Inc. (“All American”), by and through undersigned counsel, hereby submits the following response to the Petition to Intervene of the Utah Rural Telecom Association (“URTA”).

ARGUMENT

I. URTA May Not Intervene If the Commission Designates This Matter As An Informal Adjudicative Proceeding.

The majority of URTA’s Petition to Intervene discusses whether or not All American’s Petition for *Nunc Pro Tunc* Amendment of its Certificate of Public Convenience and Necessity (“CPCN”) should be handled as a formal or informal adjudicative proceeding. On

December 23, 2008, All American submitted a response to a Request for Formal Adjudication filed by the Division of Public Utilities (“Division”) in which All American discussed in detail why this matter should be handled as an informal adjudicative proceeding pursuant to Utah Admin. R746-110-1.¹ All American hereby incorporates those arguments by reference and will not reiterate them herein.

If the Commission denies the Division’s request and designates this matter as an informal proceeding, then URTA’s Petition to Intervene must also be denied. This is because the Utah Administrative Procedures Act (“UAPA”) states that “[i]ntervention is prohibited” in matters that have been designated as informal adjudicative proceedings. Utah Code Ann. § 63G-4-203(1)(g). Accordingly, it would be premature for the Commission to act on URTA’s Petition to Intervene before it has determined whether or not All American’s Petition should be treated informally.

II. URTA Has Not Shown That it Is Entitled to Intervene in this Matter.

Even if the Commission designates this matter as a formal adjudicative proceeding, URTA’s Petition to Intervene must still be denied. This is because URTA has failed to make a requisite showing as to why its members are entitled to participate in this matter.

According to UAPA, a petition for intervention may only be granted if (a) the petitioner’s legal interests may be “substantially affected” by the proceeding, and (b) “the

¹ This rule states that “[w]hen a request for agency action is filed with the Commission and the party filing the request anticipates and represents in the request that the matter will be unopposed and uncontested, ... the request may be adjudicated informally in accord with [Utah Code] Section 63G-4-203....”

interests of justice and the orderly and prompt conduct” of the proceeding will not be “materially impaired.” Utah Code Ann. § 63G-4-207(2). In other words, while UAPA “does not grant an absolute right to intervene, it does establish a conditional right if the requisite legal interest is present.” *Millard County v. Utah State Tax Comm’n*, 823 P.2d 459, 462 (Utah 1991). However, that right is still subject “to the condition that the interests of justice and orderly conduct of the administrative proceedings will not be impaired.” *Id.*

In this case, URTA’s Petition does not discuss how its members’ legal interests would be affected if the Commission amended All American’s CPCN so as to authorize All American to operate as a CLEC in Beehive Telephone Company’s (“Beehive”) territory. Rather, URTA assumes that it is automatically entitled to intervene in this matter because it was allowed to intervene in a previous docket in which All American applied for a CPCN to operate throughout the entire State. *See* Docket No. 06-2469-01. However, there are significant differences between the two proceedings that preclude URTA from intervening in the present matter.

In Docket No. 06-2469-01, All American submitted an application for “a certificate of public convenience and necessity authorizing Applicant to operate as a provider local exchange telecommunications services in the State of Utah.” *See* Docket Entry No. 1 (April 19, 2006). In other words, All American was not seeking to operate as a CLEC in one particular territory, but rather throughout the entire state of Utah. Accordingly, since All American was seeking to operate as a CLEC in rural territories that had previously been

certificated to URTA's members, URTA was entitled to intervene in the docket as a matter of law. *See* Utah Code Ann. § 54-8b-2.1(3)(b). (“Each telecommunications corporation holding a certificate to provide public telecommunications service within the geographic area where an applicant is seeking to provide telecommunications service shall be ... granted automatic status as an intervenor.”). In fact, the Petition to Intervene filed by URTA in Docket No. 06-2469-01 expressly states that it was seeking “*automatic intervention* ... pursuant to Utah Code Ann. § 54-8b-2.1(3)(b).” *See* Docket Entry No. 3 (June 9, 2006) (emphasis added). In this case, All American is not seeking to operate as a CLEC in any of the rural territories certificated to URTA's members. Rather, All American's Petition requests an amendment to its CPCN that grants it “the authority to operate as a CLEC in the area certificated to Beehive.” Petition at ¶ 5. Therefore, unlike the situation in Docket No. 06-2469-01, URTA is not automatically entitled to intervene in this proceeding as a matter of law. Rather, it must make a factual showing as to how its members legal interests will be “substantially affected” by this proceeding.

Other than referencing its status as an intervenor in Docket No. 06-2469-01, URTA's Petition does not discuss or explain what interests its members have in this particular proceeding.² This is consistent with All American's position that the *only* other party whose legal interests will be affected by its Petition is Beehive. In fact, state law recognizes that a

² In its Petition, URTA does make a vague reference to its belief that this docket may “establish[] precedent for applicants entering rural areas in Utah to provide telecommunications services.” However, URTA's brief does not discuss why the relief All American is seeking would have any precedential effect, or what this precedential effect would be. In any event, the rural ILEC in this case, Beehive, has consented to All American's entry into its territory. Therefore, this proceeding will have no bearing on instances in which an ILEC objects to a CLEC's entry into the ILEC's existing territory.

CLEC's attempt to enter a territory may normally be opposed only by the carrier or carriers that are currently operating in the territory. For example, state law identifies those parties that may intervene when a carrier initially seeks to provide telecommunications services in a new area:

(b) Each telecommunications corporation *holding a certificate to provide public telecommunications service within the geographic area where an applicant is seeking to provide telecommunications service* shall be provided notice of the application and granted automatic status as an intervenor.

(c) An intervening incumbent telephone corporation serving fewer than 30,000 access lines in the state may petition the commission to exclude from an application ... any local exchange with fewer than 5,000 access lines *that is owned or controlled by the intervening incumbent telephone corporation.*

Utah Code Ann. § 54-8b-2.1(3) (emphasis added). If the State believed that third-party ILEC's had any interest in a CLEC's entry into another ILEC's territory, it presumably would have required the CLEC to provide the third-party ILEC's with notice of its application.

In sum, even state law recognizes that the only entities who would have a "substantial" interest in opposing a company's entry into a new area are the entities that already provide services in that particular area. The standard should be no different in this matter. The only entity that will be impacted by the proposed amendment to All American's CPCN is Beehive. Therefore, since Beehive has no objection to the proposed amendment, URTA's Petition to Intervene in this matter should be denied.

CONCLUSION

Based on the foregoing, All American respectfully requests that URTA's Petition to Intervene be denied.

Dated this 7th day of January 2009.

JENSON & GUELKER, LLC

By: _____/s/
JANET I. JENSON
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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May 2009, the foregoing **ALL AMERICAN TELEPHONE COMPANY'S RESPONSE TO THE PETITION TO INTERVENE OF THE UTAH RURAL TELECOM ASSOCIATION** was sent by electronic mail and mailed by U.S. Mail, postage prepaid:

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