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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 <i>nunc pro tunc</i> Amendment of its Certificate of Authority to Operate as a Competitive Local Exchange Carrier within the State of Utah	DOCKET NO. 08-2469-01 Response of the Utah Rural Telecom Association to All American Telephone Co., Inc. and Beehive Telephone
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In accordance with the Second Interim Scheduling Order issued in this proceeding April 1, 2009, the Utah Rural Telecom Association (“URTA”) submits the following response to the Motion for Summary Decision filed by All American Telephone, Co. (“All American”) and the Memorandum Supporting Motion to Strike Pleadings filed by Beehive Telephone Company, Inc. (“Beehive”):

All American argues “...that it is entitled to a summary decision granting its Petition [for *nunc pro tunc* authority to operate in Beehive’s territory] as a matter of law.”<sup>1</sup> This simply is not true. All American’s argument puts the cart before the horse. In Docket No. 06-2469-01, the Public Service Commission (“Commission”) authorized All American to serve in the state of Utah excluding exchanges with fewer than 5,000 access lines owned or controlled by incumbent telephone corporations with fewer than 30,000.<sup>2</sup> By definition, this excluded Beehive’s service territory.

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<sup>1</sup> All American Memorandum, pp. 4, 6.

<sup>2</sup> URTA withdrew its objection to All American’s application in that docket when All American agreed to limit its service territory in this way.

In order for All American to serve customers in Beehive's territory, All American is obligated to first seek an amendment to its certificate from the Commission. Before doing so, it has no authority to provide any service in Beehive's territory, with or without Beehive's consent. Additionally, All American's authority under its state certificate could not expand by operation of law by the Commission's inaction on the interconnection agreement All American and Beehive filed under § 252 of the Federal Telecommunications Act of 1996 ("Federal Act"). Certification is a state requirement under the jurisdiction of the state Commission. The Federal Act cannot expand or contract the service territory of a state certificated local exchange carrier by operation of law or otherwise.<sup>3</sup> All American's state certificate excluded Beehive's territory; until it had that authority, any interconnection agreement enabling All American to provide service in that territory cannot be effective. As a result, the Commission could not approve the agreement.

The simplest solution for All American now is to seek an amendment in this docket or in a new docket to serve in Beehive's territory prospectively. Without legal authority to enter into an interconnection agreement, it is impossible for All American's proposed amendment to be effective *nunc pro tunc*.

URTA recommends that the Commission treat this proceeding as a request for an amendment to All American's certificate to provide service in Beehive's service territory prospectively. The proceeding can occur in this docket, in All American's certification docket, or in a new docket. If the Commission determines that the amendment is in the public interest,

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<sup>3</sup> No authority is cited because none is available, most likely because the principle is axiomatic and has not been raised before.

URTA requests that the Commission establish clear criteria for entering exchanges with fewer than 5,000 access lines owned or controlled by providers with fewer than 30,000 access lines.

Respectfully submitted this 22<sup>nd</sup> day of April, 2009.

CALLISTER NEBEKER & MCCULLOUGH

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Stephen F. Mecham

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing response of URTA was served upon the following by electronic mail sent April 22, 2009:

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