

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Consideration	)	DOCKET NO. 08-2469-01
of the Rescission, Alteration or	)	DPU Exhibit 1.0
Amendment of the Certificate of	)	
Authority of All American	)	Direct Testimony of
Telephone Co., Inc. to Operate as a	)	Casey J. Coleman
Competitive Local Exchange Carrier	)	
Within the State of Utah	)	

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DIVISION OF PUBLIC UTILITIES  
DEPARTMENT OF COMMERCE

February 11, 2010

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1                                   **I.     IDENTIFICATION OF WITNESS**

2   **Q.   PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS**  
3   **ADDRESS.**

4   A.   My name is Casey J. Coleman. I am employed by the Division of Public  
5       Utilities (“Division”) for the State of Utah. My business address is 160 East  
6       300 South Salt Lake City, UT 84114.

7   **Q.   BRIEFLY OUTLINE YOUR EMPLOYMENT BACKGROUND.**

8   A.   Before working for the Division, I was employed by a telecommunications  
9       consulting firm as a Financial Analyst. Then for approximately three years I  
10      worked for the Division as a Utility Analyst and now work as a Technical  
11      Consultant for the Division.

12  **Q.   WHAT IS YOUR EDUCATIONAL BACKGROUND?**

13  A.   I received a Bachelor of Science degree from Weber State University in 1996  
14      and a Masters of Business Administration from Utah State University in 2001.

15  **Q.   HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE UTAH PUBLIC**  
16  **SERVICE COMMISSION?**

17  A.   Yes. I testified before the Commission as an expert witness in Docket Nos. 01-  
18      2383-01, 02-2266-02, 02-049-82, 03-049-49, 03-049-50, 05-053-01, 05-2302-01  
19      and 07-2476-01.

20

## II. SUMMARY

21 **Q. PLEASE SUMMARIZE AND DESCRIBE THE PURPOSE OF YOUR**  
22 **TESTIMONY.**

23 A. All American Telephone Co., Inc. (“AATCO”) filed an Amended Petition  
24 requesting that its Certificate of Public Convenience and Necessity (CPCN)  
25 granted March 7, 2007 by the Utah Public Service Commission (the  
26 “Commission”) be expanded to allow AATCO the ability to operate as a  
27 Competitive Local Exchange Carrier (“CLEC”) in the area currently  
28 certificated by Beehive Telephone Co., Inc., (“Beehive”).

29 My testimony will focus on the application filed by AATCO and if its petition  
30 to expand the certificate to include Beehive’s territory is supported by the  
31 Division. I will analyze the managerial expertise of AATCO and if AATCO  
32 has met the public interest standard established by the Commission for rural  
33 Utah.

34 Finally, my testimony covers the method that AATCO followed in attempting  
35 to gain authority to offer service within Beehive’s territory. My testimony  
36 will discuss if this method is an acceptable approach that meets the  
37 application process set forth in the Commission’s rule found at R746-349-4.

38 My testimony recommends that the Commission deny the application of  
39 AATCO to serve in Beehive’s service territory. AATCO does not meet the  
40 managerial expertise or the public interest standard. In addition, because  
41 AATCO is not serving customers within Qwest’s territory and AATCO was  
42 violating the terms of its original CPCN by offering service within Beehive’s

43 territory, the Division recommends rescinding the CPCN granted to AATCO  
44 to serve in Qwest's territory.

45 **III. PROCESS FOR COMPETITIVE ENTRY**

46 **Q. WHAT IS THE PROCESS FOR A CLEC TO GAIN PERMISSION TO**  
47 **SERVE WITHIN AN INCUMBENT LOCAL EXCHANGE PROVIDER'S**  
48 **SERVICE TERRITORY?**

49 A. The Commission has specific guidelines that any Competitive Local  
50 Exchange Carrier ("CLEC") must follow when applying to serve in an  
51 Incumbent Local Exchange Carrier's ("ILEC") service territory. Those  
52 guidelines are found in the Commission's rules § R746-349-4 Competitive  
53 Entry Filing Requirements. This Commission rule outlines 18 different  
54 items applicable to each telecommunications corporation applying to be a  
55 provider of local exchange services or other public telecommunications  
56 services in all or part of the service territory of an incumbent telephone  
57 corporation.

58 **Q. ARE YOU AWARE OF ANY CPCN APPLICATIONS WHERE THE**  
59 **COMMISSION HAS DEVIATED FROM THIS APPLICATION**  
60 **PROCESS?**

61 A. No.

62 **Q. DO YOU THINK THAT IT IS UNORTHODOX FOR AATCO TO TRY TO**  
63 **OBTAIN AUTHORITY TO SERVE IN A RURAL ILEC SIMPLY BY**  
64 **ASKING THE COMMISSION TO EXPAND ITS PREVIOUS CPCN**  
65 **APPLICATION?**

66 A. Yes.

67 **Q. WHY IS IT UNORTHODOX? DO YOU SEE POTENTIAL PROBLEMS**  
68 **WITH THE COMMISSON TAKING THIS APPROACH TO A CPCN**  
69 **APPLICATION OR EXPANSION OF AUTHORITY GRANTED IN A**  
70 **PREVIOUS CPCN DOCKET?**

71 A. The approach would be unorthodox simply because all interested parties may  
72 not be given an opportunity to discuss the merits of expanding the service  
73 territory of a CLEC. R746-349-4 sets forth the specific items required in an  
74 application to allow the Division to properly evaluate the strength of the  
75 petitioning company and its ability to serve the customers in the state of Utah.  
76 Simply allowing for an increase in authority above what was granted or  
77 reviewed in another CPCN application would eliminate this crucial review  
78 process. Although the Division is not interested in creating additional  
79 regulatory burdens on potential competitors, the review of the application  
80 should still be required to protect consumers within the state of Utah and  
81 ensure that each consumer will have reliable local phone service.

82 Currently, the Commission seems to apply a more stringent requirement for  
83 a company that would want to compete in rural Utah, compared to a  
84 company that would want to serve in Qwest's territory. Although all of the  
85 same items outlined in R746-349-4, are used in either application, the public  
86 interest standard is higher in rural Utah. Later in my testimony I will  
87 discuss the higher standard the Commission requires for rural ILEC's  
88 territory. If the Commission allowed a company to file, first for a CPCN  
89 within Qwest's territory, then later to apply to expand that certificate to

90 include a rural ILEC's territory, that company might be able to side-step the  
91 higher public interest criteria.

92 In Qwest's territory many CLEC's applications have been submitted and  
93 approved. During this application process the standard used to determine a  
94 public interest was the presence of competition in those exchanges. Because  
95 the Division was involved with those CPCN applications to serve within  
96 Qwest's territory, when reviewing other CLEC applications the Division is  
97 able to clearly determine the public interest standard in urban areas of Utah.  
98 Conversely, the public interest standard is higher for rural areas, and the  
99 Division has only had one case where the Commission has granted a CPCN  
100 in rural Utah. The single case provided some direction and guidelines for the  
101 Division to follow when evaluating CPCN applications, but a clear standard  
102 that is well defined and accepted by everyone has not been established.

103 Because of this dichotomy, if the Commission granted an expanded CPCN to  
104 serve within rural Utah without examining the application again, a company  
105 could receive authority to serve on a lower public interest standard.  
106 Therefore allowing a company to side-step the higher requirements required  
107 for rural service territories by the Federal Communications Commission and  
108 the Commission.

109 **Q. IN MR. GOODALE'S DIRECT TESTIMONY, LINES 53-84, HE**  
110 **SUGGESTS THAT THE COMMISSION IMPLICITLY DETERMINED**  
111 **THAT AATCO "HAD SUFFICIENT TECHNICAL, FINANCIAL, AND**  
112 **MANAGERIAL RESOURCES AND ABILITIES TO PROVIDE THE**  
113 **SERVICES OUTLINED IN ITS APPLICATION...[AND] ISSUING THE**  
114 **CPCN WAS IN THE PUBLIC INTEREST". DO YOU AGREE WITH**  
115 **MR. GOODALE'S SUGGESTION?**

116 A. It depends on the territory and the public interest standard being used. The  
117 premise that Mr. Goodale is proposing in his testimony lines 53-84 would be  
118 accurate if he were talking about serving within what is known in Utah as  
119 the “rural carve-out.” The CPCN granted to AATCO for all intents and  
120 purposes allowed AATCO to serve within Qwest’s service territory. Where  
121 his testimony misses the mark is when he tries to extrapolate that same  
122 authority granted by the Commission to include Beehive’s service territory,  
123 or exchanges that have fewer than 5,000 access lines. Never at any time  
124 have the Division, Commission, or any party, other than Beehive  
125 recommended granting a CPCN to AATCO to serve in Beehive’s exchanges.  
126 In his testimony he erroneously implies that the Division, because no  
127 objection was raised within the 90 day period for review of the  
128 interconnection agreement, does not oppose AATCO serving in Beehive’s  
129 territory.

130 **Q. HAS THE DIVISION EVER EXPRESSED CONCERN WITH AATCO**  
131 **SERVING WITHIN BEEHIVE’S SERVICE TERRITORY?**

132 A. Yes. On January 16, 2007 as part of the original CPCN application filed by  
133 AATCO, the Division filed a memorandum with the Commission in Docket  
134 No. 06-2469-01. The memorandum outlines three specific areas of concern  
135 with the AATCO application. Those concerns were:

136 **Statewide Issue**

137 The All American petition is the first request in Utah by a CLEC to  
138 enter a rural ILEC territory. As a result, determinations made in this  
139 proceeding will set precedents for future requests. The Division  
140 recommends that the associated issues be heard by the Commission.

141 **Universal Service Fund**



142 In general, allowing CLEC entry into the territory of any rural ILEC  
143 that receives Universal Service (“USF”) support can impact the USF.  
144 The probability of USF support increases when any rural ILEC loses  
145 customers and revenues to a CLEC.

146 **Telecommunications Rates**

147 Generally, allowing CLEC entry into the territory of any rural ILEC  
148 can result in an increase of telecommunication rates. In this instance,  
149 it is possible that existing ILEC customers will subscribe to the CLEC,  
150 which will result in a loss in revenue to the ILEC. To meet its rate of  
151 return, an ILEC could increase service rates to offset revenue loss.

152 With these comments, it was obvious to AATCO and anyone else monitoring  
153 the proceedings, that the Division had some questions and concerns with  
154 the application. In 2006, the Commission had not granted authority to any  
155 CLEC to serve in rural Utah. Allowing AATCO the authority to serve  
156 within Beehive’s territory would be a first for the Commission. Therefore,  
157 more information was needed from AATCO for the Division to be able to  
158 determine if granting the CPCN to serve within Beehive’s territory was in  
159 the public’s interest.

160 The recommendation in the Division’s memo was to hold a hearing so that  
161 the competitive issues outlined could be litigated by all interested parties.

162 **Q. DID THE COMMISSION HOLD A HEARING TO DETERMINE THE**  
163 **MERITS OF AATCO SERVING IN BEEHIVE’S TERRITORY?**

164 A. No.

165 **Q. WHY DID THE COMMISSION NOT HOLD A HEARING?**

166 A. Shortly after the Division had filed the memorandum expressing concerns  
167 with AATCO's desire to serve within Beehive's territory, AATCO filed an  
168 amended petition requesting to serve **only** within Qwest's territory.  
169 Because the Division had already recommended that a CPCN be granted in  
170 Qwest's service area, no hearing was needed. The amended application had  
171 postponed any need to examine the merits of AATCO serving in rural Utah.

172 **Q. SO YOU BELIEVE AATCO IS STILL REQUIRED TO PROVE THAT**  
173 **ITS APPLICATION MEETS THE CRITERIA FOR GRANTING A**  
174 **CPCN TO SERVE IN BEEHIVE'S SERVICE TERRITORY?**

175 A. Yes.

176 **IV. CRITERIA FOR GRANTING A CPCN**

177 **Q. WHAT CRITERIA DOES THE COMMISSION CONSIDER IN**  
178 **GRANTING A CPCN TO A COMPETITIVE TELECOMMUNICATIONS**  
179 **CORPORATION?**

180 A. In Utah Code Annotated § 54-8b-2.1 the Utah Legislature provided a dual test  
181 that the Commission must consider when reviewing a CPCN application.  
182 Those items are whether:

183 (a) the applicant has sufficient technical, financial, and managerial  
184 resources and abilities to provide the public telecommunications  
185 services applied for; and

186 (b) the issuance of the certificate to the applicant is in the public interest.

187 **Q. HAS AATCO DEMONSTRATED SUFFICIENT TECHNICAL,**  
188 **FINANCIAL, AND MANAGERIAL RESOURCES TO PROVIDE**  
189 **TELECOMMUNICATION SERVICES IN THE BEEHIVE SERVICE**  
190 **TERRITORY?**

191 A. No. The Division has reviewed the application originally submitted April 19,  
192 2006 and AATCO's subsequent amendments. In that final amended  
193 application AATCO indicated that they would provide:

194 "[A]ll forms of resold local exchange services, which will allow customers to  
195 originate and terminate local calls to other customers served by All American  
196 as well as customers served by all other authorized local exchange carriers. All  
197 American will also provide switched access services to interexchange carriers,  
198 which will allow All American's customers to originate and terminate  
199 intrastate and interstate calls to and from customers of all interexchange  
200 carriers. All American seeks to provide resold local exchange services to  
201 business and residential customers in Qwest Communication's service  
202 territories as well as interexchange services (intraLATA and interLATA)  
203 throughout the state of Utah, excluding those exchanges with less than 5,000  
204 access lines that are served by incumbent telephone corporations with fewer  
205 than 30,000 access lines in the state. Resale authority is sought for Qwest's  
206 service territory for local exchange services."

207 Although the CPCN was granted by the Commission to serve within Qwest's  
208 service territory, AATCO has not been successful in getting customers to  
209 accept any service offerings of AATCO. Despite statements provided by  
210 AATCO in its application affirming its desire to serve customers in the State of

211 Utah, it appears from its actions that it has either, not attempted to obtain  
212 clients or has been unsuccessful in its product marketing. Either way, having  
213 no customers in Qwest territory per their approved CPCN undermines the  
214 managerial expertise claims of the officers of AATCO. The actions exhibited by  
215 AATCO since the Commission granted their CPCN questions if the  
216 management team of AATCO ever intended to offer service to any of Qwest's  
217 customers. From AATCO's lack of efforts it appears that there was no interest  
218 in serving in Qwest's territory, but the application was a sham to provide  
219 AATCO a CPCN of some kind.

220 Additionally, there seems to be confusion within the company as to whether  
221 the services offered by AATCO would be subject to Utah's state USF fund. In  
222 Data Responses to the Division's Third Data Request, AATCO stated that "all  
223 of its intrastate revenues from 2008 were derived from wholesale services to  
224 which the Universal Service Fund surcharge does not apply. Therefore,  
225 AATCO does not intend to pay any assessments on such revenue." When  
226 AATCO was asked essentially the same question in the Division's First Set of  
227 Data Requests, the response was as follows: "AATCO understands that its  
228 required contributions to the Fund are de minimus and therefore no payment  
229 has been required. However, AATCO intends to make a monthly filing for  
230 August 2008". In Attachment 1 included as part of my testimony the Division  
231 received a letter dated August, 4 2008 from Donald Surrat the Controller for  
232 AATCO. In that letter from Mr. Surrat he "respectfully requests to remit the  
233 Utah Universal Service Support Fund Surcharge Remittal Statement every six  
234 months due to the fact that [AATCO's] surcharge billings average less than  
235 \$50 per month." Staff members of AATCO don't seem to have the same

236 understanding as the classification of their services and the parameters those  
237 services fit within the requirements of the Utah USF.

238 **Q. ARE THERE OTHER INSTANCES WHERE AATCO'S EXPERTISE**  
239 **COULD BE QUESTIONED?**

240 A. Yes. When AATCO was granted a CPCN, part of the requirements imposed by  
241 the Commission was to file before March 31 of each year an Annual Report and  
242 Annual Revenues for the company. AATCO did not file either of those reports  
243 as required in 2007. When contacted by the Division, AATCO indicated it  
244 would file the reports by the end of August 2008. The Division understands  
245 that companies might miss the filing deadline by a few days, but to ignore the  
246 filing requirement until contacted by the Division and then file almost six  
247 months later brings into question management's expertise.

248 A final area where AATCO has been slipshod is in the filing of price lists with  
249 the Commission. Currently the Division has no price lists or tariffs on file with  
250 the Division, although such filings are required by the statute and rules. In  
251 information provided by AATCO in response to the Division's data requests,  
252 AATCO shows minutes of use for both Intrastate and Interstate traffic.  
253 AATCO is unable to charge any intrastate rates without those price lists being  
254 files with the Commission for the public to view and understand those rates.

255 Missing filing dates, not having price lists filed with the Commission, or even  
256 confusion about the classification of services offered by a CLEC, each alone  
257 probably might not be enough to call into question the managerial expertise of  
258 a company. But when there are repeated instances of mismanagement, it is

259 impossible to conclude that a company has the needed expertise to operate a  
260 telecommunications company.

261 **V. THE PUBLIC INTEREST STANDARD**

262 **Q. IS THE REMAINING QUESTION FOR THE COMMISSION IS**  
263 **WHETHER AATCO'S APPLICATION PASSES THE PUBLIC INTEREST**  
264 **STANDARD?**

265 A. Yes.

266 **Q. HAS THE COMMISSION EVER HAD ANY PROCEEDINGS TO**  
267 **ESTABLISH THE PUBLIC INTEREST STANDARD IN A CPCN**  
268 **APPLICATION?**

269 A. Yes. Bresnan applied for a CPCN in the Vernal Exchange and was granted the  
270 CPCN in Docket No. 07-2476-01. Although the Vernal Exchange was above  
271 the 5,000 line threshold, the ILEC in that Docket did not have 30,000 access  
272 lines. In that Docket the public interest standard for rural ILECs was an  
273 important consideration. In the Bresnan order, the Commission established, at  
274 minimum, two criteria that could be used to evaluate the value of granting a  
275 CPCN in rural Utah. Those criteria are a) Competitive Choice and b) Effect on  
276 the USF.

277 **Q. DOES AATCO'S APPLICATION PASS THE PUBLIC INTEREST TEST?**

278 A. No.

279 **Q. WHAT IS THE MAIN REASON YOU BELIEVE AATCO'S APPLICATION**

280 **DOES NOT PASS THE PUBLIC INTEREST TEST.**

281 A. Basically, if you look at any CPCN application that the Commission has  
282 granted, one component that the Commission looks at is “whether said  
283 certification would provide a wider range of choices and would support the  
284 development of competition”. It is clear that AATCO’s application will not do  
285 neither of these things. AATCO does not intend to offer service to any  
286 customers besides its current customer Joy Enterprises. Current Beehive  
287 customers would not get a wider range of choices for their communication  
288 needs if AATCO is granted a CPCN, but instead would only have the existing  
289 one choice for local phone service - Beehive. Additionally, AATCO has stated  
290 numerous times that it will not be “competing” with Beehive. AATCO fails at  
291 providing a wider range of choices or developing competition in any manner in  
292 Beehive’s territory. Therefore, the public interest test is not met because there  
293 is no competitive advantage to allowing AATCO to offer service in Beehive’s  
294 territory.

295 **Q. ARE THERE ANY OTHER REASONS AATCO’S APPLICATION DOES**  
296 **NOT PASS THE PUBLIC INTEREST TEST?**

297 A. Yes. In its amended application for a CPCN, AATCO indicated it would be  
298 offering a wide variety of services to customers within Qwest’s exchanges.  
299 Those services were supposed to meet the public interest standard required for  
300 approval within Qwest’s service territory. Even though AATCO indicated that  
301 they would offer a wide variety of services, the exact opposite has happened.  
302 The company did not offer any services in Qwest’s territory but instead claims  
303 to offer interexchange services and connectivity to one customer within

304 Beehive's service territory. This apparent disregard for commitments stated in  
305 earlier applications and the willful indifference of AATCO, makes the Division  
306 skeptical of other obligations promised.

307 **Q. DO YOU AGREE WITH MR. GOODALE'S TESTIMONY STATING WHY**  
308 **AATCO HAS MET THE PUBLIC INTEREST STANDARD?**

309 A. No. In his testimony, Mr. Goodale discusses how the public would benefit by  
310 granting this CPCN to AATCO. He opines that AATCO provides a service to  
311 the public "that allow persons from around the country who might be isolated  
312 or who may be thousands of miles apart to communicate with one another".  
313 Another benefit he proposes is the promotion of entrepreneurship and the free  
314 market. This public benefit happens as a result of a business arrangement  
315 between Joy Enterprises, AATCO, and Beehive, where these companies have  
316 "figured out how to provide free group conference calling".

317 The use of "public interest" can seem nebulous and vague at times, but both of  
318 the arguments summarized above are a stretch in fitting within the  
319 parameters of "public interest". First, if AATCO was not granted a CPCN to  
320 offer services in Beehive's territory, the Division does not see how that  
321 determination would impact persons around the country who might be isolated  
322 or who may be thousands of miles apart. The free conferencing calling service  
323 will not suddenly cease just because AATCO is not allowed within Beehive's  
324 territory. The public would not even realize AATCO was not offering services  
325 if the CPCN was not granted.

326 Finally, I believe the Commission has a different responsibility when looking at



327 the “public” than evaluating the standard proposed by AATCO. Because the  
328 jurisdiction of the Commission deals almost exclusively with the State of Utah,  
329 I believe the “public” the Commission is gauging are those within the State of  
330 Utah. When granting a CPCN the Commission is reviewing each applicant on  
331 the benefits gained by consumers and customers within the State not on some  
332 national public benefit. Specifically, would consumers in Ticaboo have greater  
333 choices by granting the CPCN to AATCO or would a customer in Garrison be  
334 able to choose a telecommunications service that is currently not offered by the  
335 incumbent phone company? In the testimony provided by Mr. Goodale I did  
336 not see many explicit benefits to citizens in Beehive’s service territory or to  
337 customers of local exchange services within the State of Utah. Even if you  
338 argued that Utahns would want the benefit of public chat rooms, free  
339 conference calling services or any other services offered by AATCO, the data  
340 provided by AATCO does not support this claim. As Mr. Goodale testifies on  
341 lines 247-249 “only four percent of AATCO’s revenues in 2008 were derived  
342 from intrastate calls”. The vast majority of the callers using AATCO’s services  
343 are not located within the state. Therefore, the percentage of Utahns  
344 benefitting from AATCO is minimal.

345 **VI. OTHER CONCERNS WITH ALL AMERICAN’S APPLICTION**

346 **Q. BESIDES AATCO’S APPLICATION NOT MEETING THE PUBLIC**  
347 **INTEREST STANDARD WHAT OTHER CONCERNS DOES THE**  
348 **DIVISION HAVE WITH THE APPLICATION?**

349 **A.** As discussed in greater detail below, the Division is concerned both that  
350 AATCO’s offering is not a local exchange service or other telecommunication

351 service and that Joy Enterprises does not fit a traditional definition of  
352 customer. Additionally, the Division is uncomfortable with the inference that  
353 by filing an interconnection agreement with the Commission, that  
354 interconnection agreement would provide explicit authority to serve within the  
355 areas agreed to within an interconnection agreement.

356 **Q. WHY DOES THE DIVISION DISAGREE THAT AATCO IS OFFERING A**  
357 **LOCAL EXCHANGE SERVICE OR OTHER TELECOMMUNICATIONS**  
358 **SERVICE?**

359 A. From the responses and data provided by AATCO it is unclear which if any  
360 calls are terminated within the Garrison exchange. The Division's  
361 understanding of how calls are routed is that an interexchange carrier ("IXC")  
362 such as Sprint, AT&T, Qwest, or Comcast would have a customer throughout  
363 the nation that would dial one of AATCO's ten digit numbers. AATCO has  
364 these numbers assigned to one of the call connection services. When an IXC  
365 transfers a call onto AATCO's network, AATCO transfers that call to Joy  
366 Enterprises. From information provided, it is impossible for the Division to  
367 ascertain for sure, but the belief of the Division is that those calls being  
368 transferred to Joy Communications are not "terminating" within the State of  
369 Utah but are sent elsewhere. AATCO's response to the Division's Third Data  
370 Request basically admits the calls are not terminating in Utah. AATCO stated  
371 that "all of its intrastate revenues from 2008 were derived from wholesale  
372 services to which the Universal Service Fund surcharge does not apply". If  
373 they are not local exchange services, the Division believes the application for  
374 expansion of the CPCN becomes unsupportable.

375 **Q. WHY WOULD JOY ENTERPRISES NOT BE DEFINED AS A**  
376 **TRADITIONAL CUSTOMER?**

377 A. Because AATCO responded extremely late to the Division's requests asking for  
378 copies of any price lists or tariffs that AATCO might have, the Division is using  
379 other information available to determine exactly how AATCO would define a  
380 customer. The Division looked to other sources like the Beehive Tariffs. The  
381 Beehive interstate tariff terms state that an "End User" must be a "customer."  
382 "Customer" is defined as an entity "which subscribes to the services offered  
383 under this tariff." NECA Tariff F.C.C. No 5 § 2.6. Likewise, in Sprint<sup>1</sup> quotes  
384 AATCO's federal tariff prior to June 2008 which required connection to a  
385 customer for access charges to be imposed, and defined a customer as an entity  
386 ordering service and responsible for the **payment of charges**. However, Joy  
387 Enterprises is not actually subscribers of local phone service from AATCO at  
388 all. AATCO does not require Joy Enterprises to "pay" for their services but  
389 instead refunds money back to Joy Enterprises for any calls that AATCO  
390 routed to Joy Enterprises and received access charges from other  
391 telecommunications providers. As Mr. Goodale describes in his testimony  
392 lines 263-271, the arrangement between Joy Enterprises, AATCO, and Beehive  
393 is that when AATCO receives payment for a call it terminated to Joy  
394 Enterprises, AATCO then pays a marketing fee to Joy Enterprises for the call.  
395 Additionally, Joy Enterprises does not get billed monthly for any services or  
396 use of AATCO's network.

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<sup>1</sup> Sprint's Motion for Leave to File a Pleading Case No. 2:08-cv-00380 filed in the United States District Court for the District of Utah, Central Division pages 12-13.

397 This arrangement does not fit the definition of a customer. Implicit in  
398 AATCO's definition for a "customer" is the idea that an entity paying for  
399 charges yet Joy Enterprises does not get billed for any services. The Division  
400 struggles to accept that Joy Enterprises is a customer when they get paid from  
401 AATCO a marketing fee. In his testimony it appears that Mr. Goodale  
402 concedes this point when he states on lines 346-347 that "Joy Enterprises, All  
403 American and Beehive have developed a business arrangement". Even the  
404 parties involved do not consider Joy Enterprises a customer but a business  
405 partner involved in a joint venture of all the parties involved.

406 **Q. WHY IS THE DIVISION SO CONCERNED ABOUT A COMPANY**  
407 **SERVING IN A TERRITORY WHERE THE COMMISSION HAS NOT**  
408 **GRANTED EXPLICIT AUTHORITY?**

409 A. There are a few different reasons the Division is concerned about AATCO and  
410 its application to provide service within Beehive's service territory. First,  
411 AATCO should have known that serving within Beehive's territory was  
412 something in which a variety of parties would be interested. When AATCO  
413 filed their original petition to serve in the entire state of Utah, there were  
414 parties who intervened in that application, just to monitor what AATCO was  
415 going to do. Obviously this interest was generated because it wanted authority  
416 to serve in rural Utah. The concerns of the interveners and the Division were a  
417 matter of public record, consequently, AATCO had to know that serving within  
418 Beehive's exchanges would not be supported by the Division without further  
419 discovery, investigation and clarification of the purposes of AATCO. Instead of  
420 trying to face those challenges and follow the regulatory process that was

421 known by AATCO, the company opted instead to try another approach to be  
422 granted CLEC status within Beehive's territory. That approach was to file an  
423 interconnection agreement showing it was proposing to serve within Beehive's  
424 territory. If the Commission were to grant the CPCN amendment as requested  
425 by AATCO without a full application and review of the company, a potentially  
426 dangerous precedent would be set.

427 AATCO understood the application process CLEC's must follow to be granted a  
428 CPCN. They followed this process in the original application when requesting  
429 to serve in Qwest's territory. The Division feels that it is a huge inference to  
430 file an interconnection agreement in a territory that the Commission has not  
431 granted authority to AATCO to serve in to begin with. Then to believe,  
432 because there was no stated "opposition", that by a procedure of law the  
433 submitted interconnection agreement gives explicit authority to serve in that  
434 rural area.

435 The Division believes AATCO violated the terms of the CPCN granted by the  
436 Commission. The order of the Commission clearly defined the areas AATCO  
437 was able to offer service in, and the areas did not include Beehive's service  
438 territory. AATCO admitted it and Beehive had been operating under the  
439 terms of the interconnection agreement on the assumption that AATCO had  
440 authority to operate as a CLEC in the area certificated to Beehive, but  
441 technically may be deemed to lack authority to operate as a CLEC certificated  
442 to Beehive. In the Report and Order dated June 16, 2009 the Commission  
443 admits "it is investigating any alleged violation of the petitioner's certificate  
444 and determin[ing] whether the granting or maintenance of the CPCN is still in

445 the public interest.” The Division believes AATCO has been in violation of the  
446 CPCN granted by the Commission. The Division accepted in good faith the  
447 statements made by management of AATCO that they would offer services to  
448 customers of Qwest. Those statements were relied upon by the Division to find  
449 granting the CPCN was in the public interest. The investigation by the  
450 Division and responses by AATCO has shown that AATCO never intended to  
451 fulfill those admissions made at the time of its application.

## 452 VII. CONCLUSION

453 **Q. WHAT IS THE DIVISIONS RECOMMENDATION FOR THIS**  
454 **PETITION?**

455 A. The Division recommends that the Commission deny the petition of AATCO to  
456 expand its CPCN to include Beehive’s service territory. First, the Division  
457 does not believe that AATCO, over the last few years, has been serving as a  
458 CLEC in non-rural ILEC’s territory. AATCO’s lack of service in those areas  
459 has done nothing to further or promote competition in those areas. Because of  
460 this lack of competition in non-rural areas, it seems unwise to allow a local  
461 exchange provider to compete in rural Utah.

462 Second, the Division does not believe that AATCO has met the public interest  
463 standard that the Commission has set for granting authority to serve within a  
464 rural ILEC’s exchanges. Instead, the Division can find few benefits to  
465 customers of Beehive or the citizens of Utah that would be gained by granting  
466 the expanded CPCN.

467 Third, AATCO over the last few years has not shown expertise in managing  
468 their CLEC. It has missed filing deadlines required by the Commission when  
469 first granted the CPCN. Two different statements regarding their  
470 understanding which services would be subject to state USF charges have been  
471 submitted by AATCO. The management staff has either purposely chosen to  
472 not file price lists and tariffs with the Commission, or was unaware that those  
473 items needed to be supplied to the Commission if intrastate services were  
474 offered to the public. Looking at the sum of these items, casts doubt as to the  
475 management expertise of AATCO.

476 Finally, whereas AATCO has admitted numerous times that it is not serving  
477 customers within non-rural ILEC's exchanges, the Division recommends that  
478 the Commission revoke the CPCN that was originally granted to AATCO.  
479 AATCO is not offering any local exchange services that would necessitate the  
480 need of a CPCN.

481 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

482 A. Yes it does.