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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Consideration of the Rescission, Alteration or Amendment of the Certificate of Authority of All American Telephone Co., Inc., to Operate as a Competitive Local Exchange Carrier within the State of Utah	Brief of the Division of Public Utilities Docket No. 08-2469-01

The following is the Brief of the Division of Public Utilities (Division or DPU) in this Amended Certificate proceeding for All American Telephone Company (AATCO or All American).

INTRODUCTION

The Division of Public Utilities recommends that the Public Service Commission (Commission or PSC) deny AATCO's request to amend its Certificate to provide service either limited exclusively to Joy Enterprises or generally in the Beehive service territory. In addition, the Division recommends that the Certificate issued to AATCO on March 7, 2007 to provide public telecommunications services throughout the state in exchanges greater than 5,000 access lines be revoked. A summary of the reasons the Division has taken this position is as follows:

> ATTCO violated not only its commitment made in its Application that it would not serve in the Beehive exchange but also, more specifically, has violated the

Commission's March 7, 2007 Order that clearly prohibited it from serving in the Beehive exchanges. From the hearing, it appears that AATCO began to carry traffic to Joy Communications as early as 2004, even before it filed for its Certificate. In addition, AATCO has never provided any service in the areas of the state where it was granted a Certificate, and the record supports the Commission finding that it never intended to offer services anywhere except to Joy Enterprises.

The traffic that AATCO has been carrying to Joy Enterprises for intrastate switched access services has been transported without any tariff or price list for intrastate service on file with the Commission. In addition, it appears from the record that no interstate-switched access service tariff that applied to Utah was in place before mid 2008, and it is questionable if that tariff applies to Utah.

AATCO's filing of an Interconnection agreement between Beehive and AATCO shortly after the Certificate was granted in March 2007, with full knowledge that it had no authority to serve in the Beehive territory, violated its duty to the Commission as a telecommunications corporation.

AATCO has developed an affiliated business relationship with Joy Enterprises and not a relationship as a CLEC and customer. As a result of this relationship, AATCO is not offering local exchange services or public telecommunication services to Joy Enterprises and as such the Commission should not grant a Certificate to authorize such a relationship.

AATCO has not shown that it is in the public interest for it to either provide service exclusively to Joy Enterprises, or to generally offer service in Beehive's exchanges. The DPU recommends that it is not in the public interest to expand Certificates to exchanges of less than 5,000 access lines based on the record in this case.

Even though the March 7, 2007 Order found AATCO qualified to provide public telecommunications service its actions both before the Certificate was granted and subsequent to March 7, 2007 warrant the Commission finding that AATCO does not meet the qualifications for a Certificate under Utah Code Ann. § 54-8b-2.1.

Generally, in order to obtain a Certificate in Utah, the applicant must show that it has sufficient financial, technical and managerial resources and abilities to provide the telecommunication services. In addition, the Commission must find that the application is consistent with the public interest.[1] It is the DPU's position that a more stringent standard applies to rural exchanges regardless of whether the incumbent objects to the issuance of the

[1] Utah Code Ann. § 54-8b-2.1.

certificate or not. The statute almost creates a presumption against granting certificates, at least, in exchanges of less than 5,000 access lines, and the Commission has made it clear in other rural certificate applications that it will evaluate the request more stringently then it would a request only in a Qwest exchange. As will be discussed below, the DPU believes that AATCO has failed by conduct to show that it meets the standard for obtaining a certificate, does not meet the public interest test for granting a certificate in a rural exchange, and may not be providing either local exchange services or public telecommunication services under our statute.

AATCO'S VIOLATION OF THE COMMITMENTS MADE IN ITS APPLICATION FOR A CERTIFICATE AND OF THE COMMISSION'S ORDER OF MARCH 7, 2007 WERE BLATENT AND AATCO SHOULD NOT BE REWARDED BY NOW EXPANDING ITS CERTIFICATE

On February 20, 2007, AATCO filed its Second Amended Application for a Certificate. In this Application AATCO clearly stated that it included the "standard rural carve out"[2] and specifically limited its Application only to exchanges greater than 5,000 access lines. Since All American had now narrowed its Application from its first Amended Application, which specifically included Beehive, the Division, in order that it be made clear that AATCO could not serve in the Beehive area, included in its recommendation to the Commission that the Commission "specifically disallow entry into exchanges with fewer than 5,000 access lines."[3] On May 24 and June 11, 2007, AATCO and Beehive filed their Interconnection agreements with the Commission, which they now argue served as their bases for serving in the Beehive area.[4] The same attorney who represented AATCO in the Certificate proceeding filed those

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[2]Docket No. 06-2469-01, Amended Application for a Certificate dated February 20, 2007 p. 2. In the Application AATCO stated it would not serve in exchanges of less than 5,000-access lines. The Application was filed by Judith Hooper who also was an Attorney for Beehive Telephone Company and who filed the Interconnection Agreements between Beehive and AATCO with the Commission..

[3] February 27, 2007 Memorandum to the Commission, Docket No. 06-2469-01.

[4] The Interconnection Agreement on its face represents that AATCO had authority from the Utah PSC to provide CLEC services. No authorization to provide those services in the Beehive area existed. See AATCO Ex. 1 Interconnection agreement attached and TR 135.

interconnection agreements. AATCO acknowledged in discovery that its February 20, 2007 Application for a Certificate which limited service essentially only to the Qwest area, had been disclosed to Beehive.[5] The Interconnection agreements between Beehive and AATCO probably should have never been filed with the Commission. Both parties knew that the Commission's Order prohibited serving in the Beehive area. To file an Interconnection agreement that they claim now indicates that they would be serving in the Beehive area violated their duty of candor to the tribunal.[6]

From the hearing and the testimony of Qwest it now appears that AATCO started providing service to Joy Enterprises even before it applied for its Utah Certificate. Qwest testified that in 2004 AATCO was operating in Garrison, Utah providing numbers to Joy.[7] Other indications that AATCO was serving even before it applied for its Certificate are billings made to AT&T for April and May 2006.[8]

In his rebuttal testimony and at the hearings, AATCO's President Mr. Goodale appears to claim that he was advised by AATCO's Attorney that the March 7, 2007 Order allowed it to serve in the Beehive area, and that from the beginning AATCO's only intent was to provide the services it currently provides to Joy Enterprises in Beehive's territory. Therefore, AATCO seems to be arguing that now that it understands its mistakes and is trying to become legal, that the Commission should ignore AATCO's past behavior and issue the Certificate. The Division disagrees. From a practical standpoint, AATCO's past behavior goes directly to whether the Commission can find that AATCO has the managerial expertise to provide telecommunication

[5] DPU Ex. 1 OCS second set of discovery request 3.
[6] Salt Lake Citizen Congress v. Mountain Bell, 846 P.2d 1245 (Utah 1992) is instructive on duties owed to the Commission in proceedings. The Court emphasized that Commission proceedings are not to be conducted on the bases of gamesmanship and that in its petition the utility had the duty to bring to light that its filing was not consistent with prior Commission orders, and to request the Commission to change its ruling on the issue.
[7] Qwest Ex. 1 p. 6-7.
[8] DPU Ex. 1. OCS second set of discovery request 7. Mr. Goodale acknowledged during the hearings that AATCO was providing service in Utah prior to even filing for a Certificate. TR 124.

services. Because of its past behavior and other reasons discussed later, the DPU does not believe the Commission can make such a finding. In addition, such a blatant violation of the March 7 Order should not be ignored. The Commission should not allow AATCO to now do what it was prohibited from doing originally.

AATCO HAS BEEN PROVIDING TERMINATING SWITCHED ACCESS SERVICE WITHOUT ANY INTRA-STATE TARIFF OR PRICE LIST AND HAS BEEN OPERATING WITHOUT AN INTERSTATE TARRIFF APPLICABLE TO UTAH

In 2007, AATCO carried 764,764.00 minutes of intra-LATA terminating switched access traffic and 94,507,860.00 minutes of interstate terminating switched access traffic.[9] By 2008, intra-state minutes had increased to 4,516, 986 minutes, and interstate minutes increased to 153,073,047.[10] It is axiomatic that in Utah a telecommunications corporation cannot charge for intrastate-switched access service without having filed with the Commission a price list, a tariff, or a competitive contract.[11] No intrastate tariff or price list or competitive contract has ever been filed with the Commission. How else would an IXC know how much it is going to be charged for carrying a toll call to AATCO without a tariff or price list filed and available to the public?

On an interstate basis, AATCO has also ignored its obligation to have a Utah interstate-switched access tariff in effect. Three interstate-switched access tariffs were provided in response to discovery. They have been provided to the Commission on a CD and a summary of relevant pages was provided in DPU Exhibit 1. In answer to a discovery question from AT&T,[12] AATCO seems to acknowledge that all three tariffs apply only to Nevada and that currently it is billing AT&T under revised Tariff Number 1, which became effective July 17, 2008.[13] It is clear

[9] 2007 Annual Report to the Utah Public Service Commission p. 13.
[10] 2008 Annual Report to the Utah Public Service Commission p. 13. In 2008 AATCO showed accounts receivable of over $4,000,000.
[11] Utah Code Ann. §§ 54-8b-2.3, 54-3-7.
[12] DPU Ex. 7. AT&T's Third set of discovery to AATCO in the US District Court for the Southern District of New York.
[13] Id. p. 3.

from the face of revised Tariff 1 that it only applies to the state of Nevada. The only tariff that might have application in Utah is Tariff Number 2, which became effective in April 2008 and applies to anywhere in the "operating territory of All American."[14]

The DPU believes these facts are relevant to the Commission's decision of whether or not to allow AATCO to amend its Certificate to serve in the Beehive area. It is one more example of AATCO's failure to follow a reasonable standard of conduct that the DPU believes directly relates to its managerial competence.

AATCO HAS NEVER OFFERED SERVICES IN THE QWEST AREA AND IS NOT OFFERING LOCAL EXCHANGE SERVICE OR PUBLIC TELECOMMUNICATIONS SERVICE IN GARRISION BUT INSTEAD HAS DEVELOPED A BUSINESS RELATIONSHIP WITH JOY ENTERPRISES, AN AFFILATED COMPANY, AND BEEHIVE TELEPHONE COMPANY

It is clear from the record, that from the time AATCO was created, its purpose was to be part of a business relationship with Joy Enterprises and Beehive Telephone Company to transport and bill terminating switched access services of inter-exchange carriers whose traffic would be terminated at a free conference calling system owned by Joy Enterprises.[15] There was no intention to serve in areas outside of the Beehive territory. The arrangement that has been created is not that of a customer - telecommunications provider, but instead is a business relationship between some affililiated entities in order to bill terminating switched access to interexchange carriers. As a result of this relationship, AATCO does not appear to be either providing "local exchange services" pursuant to Utah Code Ann. § 54-8b-2(10) or "public telecommunication services" pursuant to Utah Code Ann. § 54-8b-2(16). In order to obtain a Certificate under Utah Code Ann. § 54-8b-2.1 an applicant petitions the Commission to either provide local exchange services or other public telecommunication services in competition with

[14] Cover page AATCO Interstate Access Tariff 2, effective April 21, 2008. It is questionable if this tariff applies to Utah's Beehive territory since AATCO did not have operating authority in the Beehive territory.
[15] See in particular AATCO Ex. 2 p. 2 line 25-28.

an incumbent local exchange provider (ILEC) such as Beehive or Qwest. It is the Division's position that AATCO is in fact not in competition with Beehive, but instead has created a business relationship with Beehive and Joy Enterprises, and has not created a telecommunications corporation that is offering local exchange services or other public telecommunication services.

First, Joy Enterprises and AATCO are affiliated. Joy Boyd is a principal owner of Joy Enterprises and is the sole owner of AATCO.[16] Prior to AATCO being created, Beehive operated its switch in Garrison and terminated the conference calling calls to Joy Enterprises in Garrison. Under the new arrangement between Joy, Beehive and AATCO, AATCO would operate the switch in Garrison that was used to terminate the calls to Joy, and that Beehive would transport those calls through its Wendover tandem to either Garrison or Nevada. Initially, AATCO leased a switch from Beehive. No charges took place under this lease.[17] AATCO in mid-2008 acquired two new switches, which were placed in Beehive offices both in Utah and Nevada. No co-location charges have taken place. Payments to Beehive appear to rest on AATCO receiving payments from the interexchange carriers, who are currently in a number of forums disputing their obligation to pay switched access charges to AATCO. For example, Beehive apparently does the billing for AATCO for the switched access traffic. However, currently Beehive does not bill AATCO for these billing services.[18]

The arrangements with Joy Enterprises are even more nebulous. No price list, tariff, or competitive contract defines the prices, terms, and conditions of service between Joy and AATCO. In fact, the only arrangement that exists is oral. The arrangement appears to be that if AATCO gets paid from the interexchange companies for terminating switched access service to

[16] TR 55-56.
[17] TR 64.
[18] TR 63-64.

Joy, then it will turn over some amount of that money to Joy as a marketing fee.[19] AATCO has indicated that it provides switching services to Joy, co-location services to Joy, connectivity services, and phone numbers that are provided to Joy.[20] For all of these services AATCO has not charged Joy, and, therefore, AATCO has not received any payment for the services it is offering. It is unclear how ATTCO would ever bill Joy or determine how much money to turn over to Joy since AATCO does not in any way keep track of Joy in AATCO's ordering, billing and accounting system.[21]

It also appears that Joy only receives traffic from individuals wishing to join a chat line or a conference call system. No outgoing calls take place. Joy cannot call someone in Garrison. Only incoming calls are switched to Joy. No outgoing calls occur. It appears that calls are not actually terminated to an end user in Garrison but are only reconnected to another caller in a conference or chat room.

The question that exists is this: Does the relationship between Joy Enterprises and AATCO described in this record constitute offering a local exchange service or a public telecommunications service in Utah, and is Joy Enterprises an end user and a customer under the terms and conditions of AATCO's tariffs. The Division does not believe so.

A local exchange service means "the provision of telephone lines to customers with the associated transmission of two-way interactive, switched voice communications within the geographic area encompassing one or more local communities as described in maps, tariffs or rate schedules filed with and approved by the Commission."[22] A public telecommunications service means "two way transmission of signs, signals, writings, images, sounds, messages, data

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[19] TR 66.
[20] TR 64-65.
[21] TR 63. Apparently the arrangement would be that AATCO would never bill Joy for anything but would only pay Joy some portion of the revenues received from the inter-exchange carriers.
[22] Utah Code Ann. § 54-8b-2(10)

or other information of any nature by wire, radio, light waves, or other electromagnetic means offered to the public generally."[23] Neither definition appears to apply to the relationship that has been created between Joy Enterprises and AATCO. Clearly, they are not offering this arrangement to the public. Instead, it is a private oral contract between affiliated companies. The record also seems clear that no local exchange services are being provided by AATCO to Joy.

In his testimony, Division witness Mr. Coleman raised the issue of whether Joy is a customer and end user of AATCO's services.[24] This issue has been a major focus of the litigation both before the FCC and in Iowa. Mr. Goodale attempted to answer the issue in his rebuttal testimony.[25] He pointed out that AATCO's federal tariff definition of an end user was revised, and provided a portion of the revised tariff. The complete revision is that an end user is:

> any person, firm, partnership, corporation or other entity, including but not limited to, conference call provider, chat line provider, calling card provider, call centers, help desk provider, international providers operating within the United States, and residential and/or business service subscribers, which use the services of the company under the terms and conditions of this tariff. The customers may be, but need not be, the customers of an interexchange carrier as well as a customer of the company. End users may be assessed fees and surcharges, including but not limited to Subscriber Line Charges, Federal Universal Service Fund charges, state and federal taxes and regulatory fees.[26]

The definition of a customer and switched access service were also significantly changed in the revisions to Tariff No. 1 to better fit the relationship that actually exists between Joy Enterprises and AATCO. As pointed out earlier, revised Tariff No. 1 only applies in the State of Nevada. In any event these revisions do not apply to Utah, and were not even in place until mid-2008. If

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[23] Utah Code Ann. § 54-8b-2(16)
[24] DPU Ex. 8 pp. 16-18.
[25] AATCO EX. 2 p. 13.
[26] AATCO Ex. 2 p. 13 is the partial quote of this section. The tariff being referred to is FCC Access Service Tariff No. 1 revised effective July 17, 2008 in the State of Nevada. See DPU Ex. 1 Tariff 1 revised p. 12. This tariff also changed the definition of a customer (p. 11) and switched access service (p. 15). These and other definitional changes that occurred in the revised Tariff No. 1 are clearly aimed at trying to make AATCO's tariff fit the relationship between AATCO and Joy Enterprises.

any tariff applies, in Utah, it is Tariff No. 2. The definitions of switched access service, end user, and customer are significantly different from what has been revised and quoted by Mr. Goodale in revised Tarriff No. 1.

A customer under Tariff No. 2 is "a person, firm, or corporation which orders services and is responsible for the payment of charges and compliance with the Company's regulations."[27] End users are "users of local telecommunications carrier's services who are not carriers."[28] Switched Access service is "Access to the Company's local switch network by an interexchange carrier for the purpose of originating and/or terminating jurisdictional communications."[29]

The more traditional definitions of customer and end user included in Tariff No. 2 do not apply to the factual relationship between Joy Enterprises and AATCO. Joy does not order any services from AATCO and is not responsible for payment of any of the services that are provided by AATCO. As discussed earlier, there are no local telecommunications services being offered by AATCO to Joy. Under both ATTCO's Tariff No. 2, which may apply in Utah, and under the definitions in Utah Code Ann. § 54-8b, one is left with the inescapable conclusion that AATCO is not acting as a CLEC but instead has created a business relationship with Joy to share access revenues.

Two decisions in other forums support this conclusion. In November 2009, the FCC issued its Order on Reconsideration in Qwest v. Farmers and Mutual Telephone Company, EB 07—MD-001 (attached). In that decision, under similar tariff language as Tariff No. 2, the FCC found that the relationship between Farmers and the free conference calling company was not a relationship of a customer, and that the free conference calling company was not an end user

[27] DPU Ex. 1 FCC Tariff No. 2 p. 11.
[28] Id. p. 12.
[29] Id. p. 15.

under Farmer's Tariff.[30] The arrangement that exists in Utah between AATCO and Joy is similar to the relationship that is described between Farmers and its free conference calling company. Similarly, in a recent Iowa decision involving numerous rural telephone companies including Farmers, in response to a complaint by Qwest, the Iowa Board foundthat the conference calling companies were not end users under the intrastate access tariffs on file in Iowa. The Board reached this decision because those free conference-calling companies did not order, purchase, get billed for, or pay for local exchange services. A copy of the Iowa decision can be found at: https://efs.iowa.gov/efiling/groups/external/documents/docket/023026.pdf. In this case before the Utah Commission, of course, there is no intrastate access tariff for the Commission to evaluate. None has ever been filed in Utah authorizing any charges for intra-state switched access service. The only tariff that may apply is FCC Tariff No. 2, which was discussed previously and only applies to interstate-switched access service. The point of all of this is that the relationship between Joy and AATCO is not that of a customer telecommunications company but is instead a business relationship.

IT IS NOT IN THE PUBLIC INTEREST TO ALLOW AATCO TO EXPAND ITS CERTIFICATE TO EITHER SERVE IN GARISION GENERALLY OR TO LIMIT THE CERTIFICATE ONLY TO ATTCO'S CURRENT ARRANGEMENT WITH JOY ENTERPRISES

Mr. Coleman, among others, testified that it is not in the public interest to expand AATCO's certificate into the Beehive area. Only one other certificate has ever been adjudicated for a rural area, and that was for Bresnan's request to serve in Vernal, which is a rural exchange but one above 5,000-access lines. No Certificate has ever been granted in a rural exchange of less than 5,000-access lines. Here, Beehive has not objected to the Certificate under Utah Code Ann. § 54-8n-2.1(3)(c) and in fact entered into an Interconnection agreement with AATCO and

[30] See paragraphs 10-15 of the Qwest v. Farmer's Order.

has been part of the development of the arrangement between AATCO, Joy, and Beehive. It is no wonder that the ILEC does not object to this arrangement because the arrangement is not in any way in competition with Beehive.[31] The fact that the ILEC is not objecting to the Certificate under the statute should in no way diminish the ability for the Commission to evaluate the application using the public interest standards that the Commission considers applicable.

First, it is clear that AATCO is not offering a wider variety of services to Beehive customers or in any way competing with Beehive. Mr. Coleman testified that as a result of not providing additional competitive choices in Garrison, that the public interest test is not being met.[32] The whole purpose of allowing a CLEC to enter an ILEC area is that it would create competition between the two providers and that a wider choice of services would become available at a higher quality and at a lower price. AATCO is not providing any benefits to the citizens of Garrison. Calls cannot be completed to end users in Garrison. AATCO has not paid any telecommunications taxes or other state taxes presumably because it does not receive revenues from Joy Enterprises.

Mr. Goodale argues that the public interest is served because of the benefits from the free conference calling services offered by Joy.[33] Regardless of what one may think of the conference calling services described in the hearings, or the chat rooms that may permit minors to participate in inappropriate conduct, it is Joy Enterprises who is providing these services and not AATCO. Prior to AATCO providing the switching, Beehive apparently provided the switching for many years. Presumably, if AATCO is not offering those services in Garrison,

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[31] See in particular Qwest Ex. 1 p. 8, which describes the benefits that Beehive obtains through the arrangement with AATCO and Joy.
[32] DPU Ex. 8 p. 13.
[33] See AATCO Ex. 1 pp. 17-18.

Beehive could. In addition, AATCO is still serving in Nevada and, as Mr. Goodale indicated, if AATCO was not in Utah, the traffic could be switched through Nevada.[34]

As the Commission is aware, the dispute surrounding so called access stimulation or access pumping is currently being litigated in a number of forums. Federal Court actions exist with AATCO in New York and in Utah. Proceedings are pending before the FCC on a referral from the US District Court in New York. The issues surrounding access stimulation have been decided recently by both Iowa and the FCC as discussed previously. The FCC and the Federal Courts may well decide those broader issues. However, the effects of that litigation are negatively affecting the public interest in the Beehive area. Calls either are being blocked or have been blocked by Beehive for Sprint traffic trying to reach customers of Beehive in the Beehive territory.[35] The negative effect on Beehive's customers is obvious since they cannot receive calls carried by Sprint.

AATCO has suggested that it would not oppose its Certificate being limited to what it is doing today and that it not be permitted to serve other customers in the Beehive area. This suggestion was made after they reviewed the testimony presented by URTA witness Mr. Meredith. The Division does not believe this is a reasonable solution to this case. Moreover, such a solution may not even be authorized by the statute. It was envisioned that when a CLEC began to compete in an exchange with less than 5,000 access lines that it would require an obligation on the CLEC to offer public telecommunications services to any customer or class of customer who requests those services.[36] The purpose of this section was to eliminate a CLEC going into a rural exchange and cherry picking off a profitable customer at the expense of the rural company and the state USF fund. Obviously, there are few possible customers in Garrison

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[34] TR 76-77.
[35] See Qwest Ex. 1 p. 12.
[36] Utah Code Ann. § 54-8b-2.1(4).

and such a requirement would likely be meaningless. However, URTA seemed very concerned about precedent being established by this case. Allowing a CLEC to serve only one customer in a rural exchange of less then 5,000 access lines should cause URTA to be concerned about the precedent established by such an Order. In conclusion, the DPU does not believe that the public interest test has been met and the Commission can find, based on this record, that it is not in the public interest to allow expansion of the Certificate into Garrison.

AATCO'S CERTIFICATE ISSUED FOR THE QWEST AREA SHOULD BE REVOKED

When AATCO filed its application for a Certificate, including all of its Amended Applications, it filed them requesting the ability to provide both residential and business services in the Qwest exchanges. It indicated that it would be providing all forms of resold local exchange services. In other words, AATCO represented to the Commission that it would be a standard CLEC competing in all areas of the Qwest territory and also in Beehive's territory.[37] It seems clear from the record that, from the beginning, AATCO's only intent was to enter into the arrangement with Joy and Beehive that is the subject of this proceeding and that AATCO never intended to serve in the Qwest area. ATTCO has not provided service in the Qwest exchanges. No interconnection agreement has ever been negotiated with Qwest. Because of the history that has occurred since the Certificate was issued to serve only in the Qwest area, the DPU recommends that the Certificate issued March 7, 2007 to serve only in the Qwest area be revoked. If All American wishes to provide service in the Qwest area in the future it should re-apply, allowing the Commission to review AATCO in a new docket.

[37] See Applications for a Certificate in Docket No. 06-3469-01. Reference can be made to AATCO Ex. 1 which has an Application attached.

CONCLUSION

For the reasons stated above, the DPU recommends that the Amended Application for a Certificate be denied and that the Certificate issued March 7, 2007 in Docket No. 06-2469-01 be revoked.

Respectfully submitted this ______________ day of March, 2010.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing RESPONSE was sent by electronic mail and mailed by U.S. Mail, postage prepaid, to the following on March ____, 2010.

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