Roger Moffitt
Utah State Bar No. 05320
645 East Plumb Lane, B132
P.O. Box 11010
Reno, Nevada 89520
Telephone: (775) 333-3114
Facsimile: (775) 333-2175
E-mail: roger.moffitt@att.com
Attorney for AT&T Communications of the Mountain States, Inc. and TCG Utah

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

	)	DOCKET NO. 08-2469-01
In the Matter of the Petition of	)	
ALL AMERICAN TELEPHONE CO., INC.,	)	RESPONSIVE POST-HEARING
for a *nunc pro tunc* Amendment of its Certificate	)	BRIEF OF AT&T COMMUNICATIONS
of Authority to Operate as a Competitive Local	)	OF THE MOUNTAIN STATES, INC.
Exchange Carrier within the State of Utah	)	AND TCG UTAH

Pursuant to the Amended Scheduling Order in this docket dated March 4, 2010, AT&T Communications of the Mountain States, Inc., and TCG Utah (collectively the "AT&T Companies"), submit this Responsive Post-Hearing Brief. The AT&T Companies will not repeat the arguments of their initial brief, but will instead focus on the briefs submitted by other parties, as well as clarifying the positions of the AT&T Companies in this docket.

First, the AT&T Companies support the arguments advanced by the Utah Office of Consumer Services, the Division of Public Utilities, and Qwest Corporation in their initial post-hearing briefs, and concur with the request of these entities that All American Telephone Co. Inc.'s ("AA") petition to amend its certificate be denied, and that AA's

certificate be revoked. Second, the AT&T Companies wish to address the arguments of AA in its initial post-hearing brief.

A. AA misconceives the legal standards applicable to rural CLEC certification.

AA erroneously reduces the legal standards it must satisfy in order to operate in Beehive's territory to only two general questions: (1) whether it has the technical, financial, and managerial resources to provide the "limited" service it wants to "offer," and (2) whether the issuance is in the public interest. See AA Initial Brief at pages 2-3.[1] As the AT&T Companies noted in their initial brief, there are actually several other legal questions and standards to be addressed, that are particularly important in this docket because of the unusual nature of the "customer" and "services" AA claims to "offer."

As the AT&T Companies have noted, AA must also demonstrate that it provides cognizable "public telecommunications service" that is generally offered to the public, in order to satisfy Utah law. See Utah Code 1953 section 54-8b-2 (13). AA, however, openly concedes that it does *not* generally offer services to the public, and that its putative services are "limited" as to type and to a single purported customer, its affiliate and alter ego Joy

[1] To avoid any later attempts at obfuscation by AA, the AT&T Companies would like to confirm and clarify that although AA and Joy Enterprises Inc. ("JEI") have characterized their business arrangement as that of a carrier providing purported "terminating switched access services" to its "end user customer," AT&T vigorously disputes that characterization. AT&T contends, among other things, that All American did not provide local telecommunications services to JEI, and did not treat JEI as a local exchange customer or as an "end user" as that term is defined in AA's tariffs. In this regard, it is not disputed that AA never billed JEI for local services. *Cf.* Order on Reconsideration, *Qwest Commc'ns Corp.* v. *Farmers & Merchants Mut. Tel. Co.*, 24 FCC Rcd 14801 (2009) (free conference service provider was not an "end user" or a "customer" under a local exchange carrier's tariffs when the carrier did not bill for or intend to provide local exchange services and instead operated pursuant to individualized contracts); *In re Qwest Commc'ns Corp.* v. *Superior Tel. Coop., et al.*, 2009 WL 3052208 (Ia. Utils. Bd., Sept. 21, 2009), *rehearing granted in part on other grounds*, 2009 WL 4571832 (Ia. Utils. Bd., Dec. 3, 2009) (conference and chat line companies were not "end users" or customers of LECs but were more like partners). While the Commission need not address or resolve this issue in this proceeding, and AA's Petition fails for a number of other reasons, it is important to note that it would be inaccurate to characterize JEI as a customer of AA

Enterprises, Inc. ("JEI"). See AA Initial Brief at page 4. Consequently, it is indisputable that AA cannot satisfy the obligation of rural CLECs to serve "any customer or class of customers." See Utah Code 1953 Section 54-8b-2.1(4). AA cannot be allowed to construe R746-349-8, which provides limitations on CLEC's obligations to provide services, so as to obviate entirely AA's statutory obligations to serve any members of the public or to provide generally available telecommunications service. AA's brief does nothing to offer up any activities that can be legally recognized as public telecommunications services that are generally available to the public in Beehive's territory or anywhere else in the state of Utah.

Further, AA's self-serving "offer" to limit its services to only purported terminating switched access services to only one related entity does not cure the infirmities in its Petition, but only serves to heighten them. All rhetoric aside, AA is essentially asking the Commission to water down its standards for granting authority to operate to allow applicants to pick and choose only the elements of service applicants want to offer. If AA's gambit is accepted, it will only be a matter of time before Utah becomes a haven for other carriers wishing to provide only purported terminating switched access services, to only a single related entity, solely in high-cost access territories, solely in order to take advantage of higher access rates.

That is most evident if one were to accept the unsupported proposition that the Commission is required to determine if AA has the "resources" to provide only purported terminating switched access services, to only one entity, in only one place. As AA's testimony makes clear, at most, AA placed a single piece of equipment in the same building to which the traffic had been delivered for years, and arranged to "move" that traffic from

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or as an "end user" of AA's local services or to accept blindly the notion that AA is providing tariffed "switched access services".

one point in that building to another point in the same building, which was probably only a few feet away. To make matters worse, at first AA did not even buy its own equipment, but merely used the Beehive equipment that was already there. Thus, it took, and continues to take, very little in the way of "resources" for AA to do what it is doing and has been doing in patent violation of the Commission's prior rulings. If this thin gruel of a "standard" is accepted and adopted, then practically any applicant could take unfair advantage of it.

B. AA has not demonstrated the public interest served by AA in itself.

AA's brief continues the same error from its prior position of relying on the activities of JEI and Beehive to support its argument that it serves the public interest. JEI's so-called "free" services, which merely seek to leverage high access rates to shift the costs of the services to others, do not serve the public interest. Regardless of that fact, however, JEI's operations obviously do nothing to show how AA, as a competitive provider, serves the public interest.

AA also attempts to rail against the concept of "traffic pumping" in an effort to avoid the real purpose and negative impact of its business. While the AT&T Companies agree that this Commission need not decide the issues arising out of other litigations involving AA's tariffs and whether AA is complying with its own tariffs, neither can AA beat a retreat from the true nature of its activities. So, we will use a term that not even AA can disagree with because it is used by the FCC -- "access arbitrage." In its recent plan submitted to Congress, entitled "Connecting America: The National Broadband Plan,"[2] the FCC clearly stated as follows at page 142 :

[2] Available online at http://download.broadband.gov/plan/national-broadband-plan.pdf.

> Most ICC [intercarrier compensation] rates are above incremental cost, which creates opportunities for access stimulation, in which carriers artificially inflate the amount of minutes subject to ICC payments. *For example, companies have established "free" conference calling services, which provide free services while the carrier and conference call company share the ICC revenues paid by interexchange carriers. Because the arbitrage opportunity exists,* investment is directed to free conference calling and similar schemes for adult entertainment that ultimately cost consumers money, rather than to other, more productive endeavors (emphasis added).

In short, AA is asking the Commission to sanction the very activity that the FCC -- not just IXCs -- says should not be sanctioned, and to extend the very same arbitrage opportunities the FCC has said should not be extended. We respectfully submit that the Commission should not grant AA this gambit, no matter how many buzz words it uses in its attempt to claim the "public interest" or to how it attempts to shoe horn its activities into the rules. Instead, AA's Petition should be denied, as part of the growing effort to stop the conduct that AA is vainly trying to perpetuate.

In conclusion, AA cannot meet its burden of showing that its activities, considered by themselves, serve any material public interest. Its petition to amend should be denied, and its certificate revoked.

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By: /s/

Roger Moffitt
Utah State Bar No. 05320
645 East Plumb Lane, B132
P.O. Box 11010
Reno, Nevada 89520
Telephone: (775) 333-3114
Facsimile: (775) 333-2175
E-mail: roger.moffitt@att.com
Attorney for AT&T Communications of the Mountain States, Inc. and TCG Utah