

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 to Operate as a Competitive Local Exchange Carrier within the State of Utah	Docket No. 08-2469-01
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QWEST’S RESPONSIVE BRIEF

Qwest submits this responsive brief in the above-styled matter and states that none of the advocacy All American Telephone Company (“AATCO”) advances in its post-hearing brief contests these facts admitted at hearing and in pleadings:

- AATCO was operating without a certificate in Beehive’s service territory from at least 2004 until the present.
- AATCO continued to operate in Beehive’s service territory after 2007 without authority even though its CPCN was limited solely to operations in the Qwest Utah service territory.

These facts alone make clear that for at least six years, AATCO routinely flouted Utah statutes and this Commission’s rules governing its operations. AATCO has abused the certification process, deliberately misused their Commission-granted CPCN, made misrepresentations to the PSC in applying for the granted certificate, conducted a vigorous campaign to resist discovery by the parties hereto about their business relationships, and then attempted to lay blame for AATCO’s abuses on one of its lawyers and its former consultants. The Commission should reject AATCO’s petition to expand

its service territory and revoke its current certificate to stop AATCO's continued unauthorized and fraudulent conduct.

This brief takes issue only with those arguments made in AATCO's post-hearing brief. The arguments Qwest made in its initial brief will not be repeated here, but are incorporated by reference as applicable. Qwest also notes its general agreement with the arguments made and the relief sought in the initial briefs submitted by the DPU, the Office of Consumer Services, and AT&T.

In its brief, AATCO admits plainly its misrepresentation to the Commission regarding its intentions when filing its application for its existing CPCN.¹ Then AATCO dismisses its admitted lies to this Commission because it was only a "mistake" that occurred "three or four years ago".

AATCO continues to pretend that it petitioned the Commission to resolve these issues, while failing to recite the steps it took to attempt to avoid a full hearing in this case. What AATCO really did by filing a petition in this docket was to craft a procedural argument that the PSC must act on their petition without the opportunity for the other parties here to create a record of their six-plus year history of operating in defiance of the rules of this Commission. This procedural maneuver failed before the Commission, so now those issues are in front of the Utah Supreme Court. These procedural maneuvers make plain that AATCO never wanted to be in the position of defending their actions in a contested hearing before this Commission. And with good reason – their open defiance of the rules of this Commission, continuous history of defrauding IXCs by traffic pumping, and failure to provide parents any means to protect their children from

¹ All American Telephone Company's Post-Hearing Brief, p. 9.

unfettered access to adult and pornographic chat are all grounds to dismiss their petition and to revoke their CPCN.

Arguing that a company forced into a proceeding after six years of defiance of the PSC's rules is now "exhibiting its desire to comply with the law now and in the future"² simply ignores six unbroken years of non-compliance. AATCO quotes Mr. Goodale when he said during the hearing that "I want to know what I can do right now to make things right and move forward". Qwest submits that the answer to Mr. Goodale's question is that AATCO can voluntarily surrender its CPCN, and cease its fraudulent business practices in Utah by removing its equipment from Beehive's central office.

AATCO's argument that the statutory language referring to "flexibility" requires that the PSC ignore AATCO's past actions defies logic, particularly when AATCO argues elsewhere that Mr. Goodale's past experience exceeds the statutory certification requirement for managerial expertise. If Mr. Goodale's 20-plus years of experience are relevant to his managerial expertise, then his 6-plus year unbroken string of defying this Commission's rules is also relevant. And that 6-plus years period does not take into account Mr. Goodale's testimony about his operating Joy Enterprises through Beehive's switch (apparently also without PSC authority) since 1994.³ Whether or not to grant the petition at issue, or to revoke AATCO's CPCN, is a function of all the facts developed in this record, not just AATCO's preferred set of facts. Relying solely on forward-looking representations by Mr. Goodale about AATCO's impending miraculous transformation into a compliant carrier ignores most of the record and would result in an unjust and unreasonable outcome in this docket.

² All American Telephone Company's Post-Hearing Brief, p. 10.

³ Id., p. 15.

Nor has AATCO proven any concrete public interest benefit to the citizens of Utah residing in Beehive's service territory. In fact, Mr. Goodale admitted (referring to Garrison, Utah) that AATCO's presence has "no economic benefit at all."⁴ There are obviously none of the expected benefits of competition, and there will be none in the future, given AATCO's representations under oath that they will continue to serve only their single business partner, Joy Enterprises, rather than any Utah resident or business located in the Beehive exchanges. The record is replete with facts regarding the value of AATCO's representations to this Commission over the last several years. The PSC has no choice but to carefully consider all the facts in the record.

AATCO also decries the relief requested by four of the parties, that of revoking its CPCN. The fact that the Commission might decide, based on the record and the evidence of AATCO's continuing misconduct, that punitive measures are called for is simply no more than the appropriate exercise of its powers. Some of AATCO's practices are contrary to Utah law. For instance, Mr. Goodale testified that his agreement with Joy required revenue sharing with Beehive and Joy Enterprises.⁵ Mr. Goodale also testified that AATCO had no Utah filed tariffs, and that AATCO has failed to bill Joy Enterprises for a number of local exchange services that would demonstrate that Joy is a bonafide end user. Utah law is clear that these are violations and constitute a misdemeanor:

54-3-7. Charges not to vary from schedules -- Refunds and rebates forbidden -- Exceptions.

Except as provided in this chapter or Chapter 8b, Public Telecommunications Law, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such products or commodity or service as specified in its schedules on file and in effect at the time; nor shall any such public utility refund or remit, directly or indirectly, in any

⁴ TR, p. 132, ll. 9 – 13.

⁵ TR, pp. 66 – 67, ll. 23 -25 and 1 – 22.

manner or by any device, any portion of the rates, tolls, rentals and charges so specified; nor extend to any person any form of contract or agreement, or any rule or regulation, or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons; provided, that the commission may, by rule or order, establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to any public utility.

AATCO has admitted both that it rebates money to Joy and Beehive, and that it provides local exchange services to Joy without the benefit of a local exchange tariff filed in Utah.

AATCO misses the point when discussing the public interest. AATCO tries to imply that they, like the IXC's, have no control over the content of calls.⁶ That ignores the reality (and sworn testimony) that AATCO and Joy Enterprises provide no practical way for parents to block their children's access to pornographic chat rooms. The best Mr. Goodale could do was to testify that if a monitor detects a minor on the line, they would take some unspecified action to disconnect that person.⁷ This is a far cry from the standard protections local exchange carriers have to allow parents themselves to block access to 900 numbers.

AATCO makes the incredibly false argument that "Joy Enterprises is no different than these IXC's, other than the fact that their customers communicate with one another on a group basis." Joy Enterprises, unlike Qwest and AT&T, the IXC's in this docket, is not licensed to do business in the state of Utah, and is not certificated by this Commission. Joy Enterprises does not charge the people who use their service; instead, they bill the IXC's for a service the IXC's never wanted or asked for. Joy, in partnership with AATCO, exploits the IXC's' regulatory requirement that they not block traffic and must carry calls to AATCO's numbers, in order to pump traffic. AATCO's and Joy's

⁶ Id., p. 14

⁷ Id., p. 17.

practices allow minors access to adult chat lines without 900 number protections and parental blocking. No IXC advertises “free” conference calling like Joy does. Joy is nothing like an IXC. Joy is a business with the sole aim of fraudulently bilking IXCs out of money.

AATCO also mischaracterizes Lisa Hensley Eckert’s testimony. AATCO claims Qwest found only one AATCO number linked to pornographic chat. Ms. Hensley Eckert testified that she found many more than just one link to adult chat lines using AATCO’s numbers in a Google search.⁸ In fact, she had to omit the additional links because of the danger of a computer virus that infected her machine when she was investigating those AATCO numbers.⁹

Mr. Coleman’s testimony eviscerated AATCO’s advocacy that their operations somehow benefit the USF.¹⁰

Finally, even Mr. Meredith testified regarding AATCO’s track record of operating without a CPCN that “the facts are not good in that particular situation.” He went on to say that in his opinion, AATCO had not complied with any of the criteria that URTA would request the PSC to apply in determining whether AATCO should remain in Beehive’s service territory in Garrison.¹¹

Instead of granting All American the relief it seeks, the Commission should send a clear message to anyone who intends to operate in Utah that their rules are there to be complied with, not flaunted. The Commission should rescind All American’s CPCN and end the abuses and fraud in rural Utah by All American, Beehive, and Joy Enterprises.

⁸ TR, pp. 201 – 202, ll. 1 – 25 and 1 – 25.

⁹ Id.

¹⁰ TR, pp. 220 – 221.

¹¹ TR, p. 272, ll. 5 – 25.

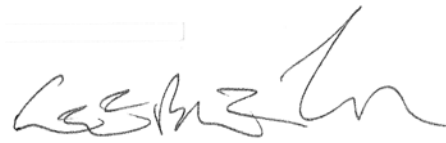
Conclusion.

All American, through its testimony in the instant docket and in a statement of stipulated facts filed with the FCC (Exhibit A to Qwest's Initial Brief), admits a number of facts that should lead the Commission not only to deny the requested expansion into Beehive's territory, but to revoke All American's authority to operate anywhere in Utah. David Goodale's lengthy string of admissions about All American's improper, illegal, and unauthorized conduct in Utah call into question All American's managerial and technical capability to hold a CPCN at all. All parties (except AATCO) believe the testimony demonstrates Mr. Goodale lacks the managerial abilities to follow the Commission's regulations and Utah statutes. The Commission has promulgated rules in that require any CLEC wishing to compete anywhere in Utah to apply for and be granted a CPCN. All American, under the leadership of Mr. Goodale, ignored or defied those rules from at least 2004 until the present.

WHEREFORE, Qwest respectfully renews its requests that the Commission:

1. Deny All American's proposed amendment to its certificate of authority to operate as a CLEC; and,
2. Revoke All American's current certificate based on the facts set out in the record.

Respectfully Submitted,



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