

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of All)
American Telephone Co., Inc., for a *nunc*) DOCKET NO. 08-2469-01
pro tunc Amendment of its Certificate of)
Authority to Operate as a Competitive)
Local Exchange Carrier within the State) REPORT AND ORDER
of Utah)

ISSUED: January 20, 2009

By The Commission:

BACKGROUND

All-American Telephone, Co., Inc. (Company) filed its Petition on or about April 23, 2008, asking the Commission to amend its certificate, *nunc pro tunc*, and permit it to operate as a competitive local exchange carrier within areas certificated to Beehive Telephone Company, Inc. (Beehive). During these proceedings, the Division of Public Utilities (Division) sent data requests to which the Company responded. The Company did not respond to the Division's second set of data requests because it viewed these proceedings as informal, and contended it had no obligation to respond to any requests. In response, the Division filed a Request moving for dismissal of the Company's Petition (Request), or in the alternative, an order designating these proceedings as formal. Additionally, the Division requested the Commission compel the Company's response to the second set of data requests.

On November 10, 2008, the Company filed a request for an extension of time. It represented that it and the Division had agreed to attempt to resolve concerns the Division raised in its Request. Based on these representations, the Company requested its response be continued until further negotiations have been completed and after a scheduling conference could be held. Based on those representations, the Commission granted the Company an extension of time and set a scheduling conference.

The Administrative Law Judge conducted a duly noticed scheduling conference on December 2, 2008, with counsel for the Company and also counsel for the Division present. Counsel and representatives for other parties were also present. Apparently, the Company had reached no resolution with the Division concerning its Request and their dispute over the status of these proceedings, i.e. whether they were formal or informal. Given that circumstance, the Commission had to postpone the proceedings to resolve the dispute between the parties before other substantive issues were resolved.

The Commission issued an Interim Scheduling Order governing briefing concerning the status of this matter. The Company filed its Response to the Division's Request, and the Division replied. In the meantime, the Committee of Consumer Services (Committee) filed its Response to the Company's Petition and also filed a Motion to Dismiss. Additionally, Beehive filed what it terms a position statement regarding the formality or informality of these proceedings, and also concerning other

matters in this docket. Meanwhile, other proposed intervenors filed their Motions to Intervene, with the Company filing opposing Responses to each of those.

ANALYSIS

The Administrative Procedures Act (Act), *Utah Code Ann.* § 63G-4-101 *et seq.*, governs these proceedings, in part. The Act provides for informal proceedings at the Commission, and in fact, the Commission has in the past designated certain proceedings as informal. The Act states the Commission “may, by rule, designate categories of adjudicative proceedings to be conducted informally according to the procedures set forth in rules enacted under the authority of this chapter” *Utah Code* § 63G-4-202(1). If the Commission “enacts rules designating one or more categories of adjudicative proceedings as informal” it must then enact rules for governing those proceedings. *Utah Code* § 63G-4-203(1).

Here, however, the Commission has no rules designating a proceeding to amend a certificate *nunc pro tunc* as informal. In fact, the Act plainly states that absent such a rule “all agency adjudicative proceedings not *specifically* designated as informal proceedings by the agency’s rules *shall be conducted formally* in accordance with the requirements of this chapter.” *Utah Code* § 63G-4-202(2). Therefore, the petition to amend the certificate *nunc pro tunc*, is conducted formally, until it is designated informal by the Commission (if at all).

The Company correctly states that under R746-110-1, a matter *may* be adjudicated informally. The Company also correctly points to R746-110-2 to show how

an otherwise formally adjudicated proceeding *may* be converted to an informally adjudicated proceeding. Although the applicant files supporting statements and documents *moving* for informal adjudication, however, the Commission—not the applicant or another party, designates the proceedings as informal. *R746-110-2*. That rule states the Commission “*may, without hearing, enter its Report and Order*” designating the proceeding as informal. Here, the Commission has not entered an order designating these proceedings as informal, nor has the Commission, in any order, suggested they were informal.

Therefore, the Commission finds these proceedings are formal proceedings. The Company’s basis for refusing to respond to the Division’s second set of data requests, was their contention that these proceedings were informal. Now that the Company is aware these proceedings are formal proceedings, the Division’s Motion to Compel, at this point, is moot.

ORDER

Therefore, the Commission Orders as follows:

1. The Company’s request to designate these proceedings as informal is denied;
2. The Company shall respond to the Division’s second set of data requests;
3. Proposed intervenors, to the extent they have not already done so, may move to intervene in this docket no later than two weeks from the date of issuance of this Order. The parties should refer to R746-100-4(E) for

questions regarding computation of time. If the due date falls on a Friday, the proposed intervenors shall file an electronic copy of their motions with the Commission on Friday, with a hard copy to be submitted the next day that is not a Saturday, Sunday or holiday;

4. Parties and proposed intervenors may Respond to motions to intervene made in this docket to date, and shall do so in compliance with R746-100-4(D). The Commission realizes that some Motions to Intervene have already been made, to which parties or proposed intervenors may not have responded given the uncertainty of the status of these proceedings. For those Motions to Intervene already submitted, the date of issuance of this Order shall serve as the date of service of the Motion.¹ Otherwise, for any new motions to intervene, the parties shall follow the Rules governing response and reply times;
5. Once the pleading is closed, the Commission will issue an Order granting or denying the various proposed intervenors' Motions;
6. Thereafter, consistent with the Commission's Interim Scheduling Order issued December 3, 2008, the Commission will set a scheduling

¹ For example, Beehive has not had opportunity to support or oppose AT&T's proposed intervention filed December 24, 2008. If this Order is issued January 13, 2009, then January 13, 2009 would serve as the service date of AT&T's motion, and Beehive and AT&T would have the time allowed by R746-100-4(D) to respond and reply, respectively.

DOCKET NO. 08-2469-01

-6-

conference to schedule other matters as needed, including those dealing with any additional discovery;

7. Responses to the Committee's Motion to Dismiss are stayed pending further Order of the Commission.
8. Pursuant to Utah Code § 63G-4-301 and 54-7-15, an aggrieved party may request agency review or rehearing of this Order by filing a written request for review or rehearing with the Commission within 30 days after the issuance of the Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Utah Code §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 20th day of January, 2009.

/s/ Ruben H. Arredondo
Administrative Law Judge

DOCKET NO. 08-2469-01

-7-

Approved and confirmed this 20th day of January 2009, as the Order of the
Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#60400