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**BEFORE THE
UTAH PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE PETITION OF
ALL AMERICAN TELEPHONE CO., INC.
FOR A *NUNC PRO TUNC* AMENDMENT
OF ITS CERTIFICATE OF AUTHORITY TO
OPERATE AS A COMPETITIVE LOCAL
EXCHANGE CARRIER WITHIN THE
STATE OF UTAH

)DIVISION OF PUBLIC UTILITIES'
)REQUEST FOR DISMISSAL, OR IN THE
)ALTERNATIVE, REQUEST FOR FORMAL
)ADJUDICATION AND REQUEST TO
)COMPEL ANSWERS TO DISCOVERY
)REQUESTS
)

PETITION TO INTERVENE

Qwest Corporation and Qwest Communications Corporation (collectively "Qwest"), pursuant to R476-100-7 and Utah Code § 63-46b-9, respectfully petition the Utah Public Service Commission to allow intervention in the above-styled docket. As grounds for such intervention, Qwest states that it has legal rights or interests that are or may be substantially affected by these proceedings; that there are facts which support this position detailed below; and that Qwest requests that it be allowed intervention and discovery to determine if its rights or interests are or may be jeopardized by approval of the petition.

BACKGROUND. Qwest is presently litigating in several different jurisdictions against a number of rural incumbent telephone companies ("ICOs"), and CLECs, regarding a scheme

where these ICOs and CLECs engage in an illegal, unfair and fraudulent practice of obtaining terminating switched access charges from Qwest and other Interexchange Carriers (“IXCs”) to which the ICOs and CLECs are not entitled. Specifically, the ICOs and CLECs have conspired to create, and indeed created, a scheme to set up “free” conference calls, “free” chat rooms, “free” adult content calling, “free” podcasts, “free” voice mail and “free” international calling services. Those ICOs and CLECs, providers of local exchange telephone service, charge Qwest exorbitant rates for their routing of calls to companies that advertise free chat room services, conference bridge services, adult content site services, podcasts, voicemail or international calling (hereinafter the “Free Calling Service Companies” or “FCSCs”). Then, the ICOs and CLECs provide kickbacks of a portion of the terminating access revenues paid by long distance providers like Qwest to the Free Calling Service Companies. This “traffic pumping” scheme – which has caused significant injury to Qwest and other IXCs – constitutes a violation of a number of state statutes, state and federal tariffs, and common law principles. Qwest seeks to intervene to discover whether All American may be positioning itself to participate in this type of scheme, or whether All American’s petition may be intended to strengthen its putative claims against Qwest or other IXCs. Aspects of All American’s petition in this docket, and statements made in the application by All American resulting in the PSC’s Order approving All American’s CLEC application, give rise to reasonable concerns that they are engaging in or may be preparing to engage in schemes similar to those being litigated before the Iowa Utilities Board, the US District Court for the Southern District of Iowa, the US District Court for the District of South Dakota; the US District Court for the Southern District of New York; and the Federal Communications Commission.

THE ALL AMERICAN PETITION AND CONCERNS ABOUT TRAFFIC PUMPING

All American's petition raises inferences that the application may be designed in whole or in part to facilitate participation in traffic pumping schemes. When the application is examined along with All American's approved interconnection agreements with Beehive Telephone Company and Beehive Telecom, Inc., those concerns rise to a level sufficient under the statute and rule to allow intervention by Qwest in these proceedings to protect its rights and property.

All American's apparent close business relationship with Beehive is a concern, especially considering the long history Beehive has before the FCC and this Commission regarding traffic stimulation relationships with chat line providers (e.g., Joy Enterprises ("JEI")). See among others FCC CC Docket 97-237, released January 6, 1998. The fact that both David W. Goodale and Joy Boyd, the listed directors of All American, are also listed on the Nevada Secretary of State's website as directors of JEI raises the likelihood that All American intends to participate in a scheme to share terminating access revenues with one or both of the Beehive affiliates. See <https://esos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpDetails.aspx?lx8nvq=rChjmCx4%252fZicuPVJbiY8yg%253d%253d>.

All American's CLEC application stated that they intend to "provide switched access services to interexchange carriers, which will allow All American's customers to originate and terminate intrastate and interstate calls to and from customers of all interexchange carriers." Tellingly, All American (at footnote 1, p. 5 of their application) plans to provide local exchange services in Beehive Telephone Co., Inc.'s territory. All American's plans to deploy "gateway switching equipment" (application, p. 8) is consistent with traffic pumping arrangements and would injure Qwest by facilitating a sharp, unforecast increase in terminating switched access traffic to take advantage of very high per-minute charges which rural ICOs (like Beehive Telephone Co., Inc.) and CLECs (like Beehive Telecom Inc.) have tariffed or price-listed. Other

aspects of All American's application, like their claim to be "an innovative company that has developed a variety of innovative marketing approaches" (application, p.9) is consistent with traffic pumping, and Qwest should be allowed intervention and discovery to learn precisely the nature of these claimed innovative marketing approaches. Traffic pumpers associated with ICOs in Iowa have made similar representations, and point to their use of websites touting "free" conference calling, "free" international calling, "free" chatlines, etc., as innovative marketing techniques.

All American's request for financial reporting waivers and relief from tariff filings may also mask efforts to illegally and improperly stimulate terminating switched access traffic. Given the petitioner's directors past involvement with earlier traffic stimulation schemes in partnership with Beehive, and the FCC's findings that Beehive engaged in inconsistent and irregular accounting practices, Qwest believes that intervention and discovery is proper to allow it and other interested IXC parties, as well as regulatory agencies, to analyze the intended practices of All American in its business dealings with Qwest and other IXCs, as well as its business relationship with both Beehive affiliates.

The terms of All American's interconnection agreements with Beehive Telephone Co., Inc. and Beehive Telecom, Inc. include contractual obligations by both Beehive affiliates making telephone numbers available to All American (see p. 5, paragraph 4 of both documents). Most of the "innovative marketing" partners of the rural ICOs Qwest is litigating against rely on changing the posted numbers for "free" services on their websites frequently (sometimes daily) to make it more difficult for Qwest and other IXCs to track and prevent fraud. This is another hallmark of traffic pumpers, and provides yet another reason to allow intervention and discovery in this proceeding. The fact that All American is assigned thousand number blocks by the Beehive

affiliates (see p. 6, paragraph 5 of both interconnection agreements) is a technique identical to that used in Iowa, South Dakota, and elsewhere by the rural ICOs and FCSCs, and is another reason why more questions need detailed answers before this petition is approved.

Qwest's Petition to Intervene is in accordance with Utah Code § 63-46b-9. Qwest has demonstrated *supra* how its legal interests are substantially affected by the proceedings. All American's interests will not be materially impaired by this intervention, because their CLEC application stated that "All American does not currently own property in the state of Utah and has not yet completed plans for construction of voice or data transport facilities in Utah." (application, p. 4) All American's tentative implementation schedule at Exhibit G of the CLEC application indicates the beginning of switch deployment and collocation will not start until "within 3 – 5 years of CPCN grant". Therefore, Petitioner will suffer no impact to an on-going business, and no delay of future plans as set out in Exhibit G to the CLEC application by granting this Petition to Intervene and allowing Qwest to conduct discovery.

WHEREFORE, Qwest respectfully requests that the Utah Public Service Commission: (1) grant Qwest immediate intervention in this proceeding and any others related; (2) grant authority to Qwest to pursue discovery according to Commission rules; and (3) grant such other relief as it deems necessary and appropriate.

Respectfully submitted,

George Baker Thomson, Jr.
Corporate Counsel
Qwest Corporation

Dated: December 23, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December 2008, the foregoing PETITION TO INTERVENE was sent by electronic mail and hand delivered to the Commission.

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