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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE PETITION OF)	ALL AMERICAN TELEPHONE
ALL AMERICAN TELEPHONE CO.,)	COMPANY’S RESPONSE TO THE
INC. FOR A <i>NUNC PRO TUNC</i>)	PETITION TO INTERVENE OF AT&T
AMENDMENT OF ITS CERTIFICATE)	COMMUNICATIONS OF THE
OF AUTHORITY TO OPERATE AS A)	MOUNTAIN STATES, INC. AND TCG
COMPETITIVE LOCAL EXCHANGE)	UTAH
CARRIER WITHIN THE STATE OF)	
UTAH.)	Docket No. 08-2469-01
)	
)	

Petitioner, All American Telephone Company, Inc. (“All American”), by and through undersigned counsel, hereby submits the following response to the Petition to Intervene of AT&T Communications of the Mountain States, Inc. and TCG Utah (collectively the “AT&T Companies”).

ARGUMENT

I. The AT&T Companies May Not Intervene If the Commission Designates This Matter As An Informal Adjudicative Proceeding.

Before discussing the merits of the AT&T Companies’ Petition to Intervene, All American must emphasize that the companies’ request may be rendered moot by the pending Request for Formal Adjudication filed by the Division of Public Utilities (“Division”) in this matter.

The Division filed this request because All American contends that its Petition for *Nunc Pro Tunc* Amendment of its Certificate of Authority must be considered an informal adjudicative proceeding pursuant to Utah Admin. R746-110-1.¹

If the Commission denies the Division's request and designates this matter as an informal proceeding, then the AT&T Companies' Petition to Intervene must also be denied. This is because the Utah Administrative Procedures Act ("UAPA") states that "[i]ntervention is prohibited" in matters that have been designated as informal adjudicative proceedings. Utah Code Ann. § 63G-4-203(1)(g). Accordingly, it would be premature for the Commission to act on the AT&T Companies' Petition to Intervene before it has determined whether or not All American's Petition should be treated informally.

II. The AT&T Companies Have Not Shown That They Are Entitled to Intervene in This Matter.

Even if the Commission designates this matter as a formal adjudicative proceeding, the AT&T Companies' Petition to Intervene must still be denied. This is because the companies have failed to make a requisite showing as to why they are entitled to participate in this matter.

According to UAPA, a petition for intervention may only be granted if (a) the petitioner's legal interests may be "substantially affected" by the proceeding, and (b) "the interests of justice and the orderly and prompt conduct" of the proceeding will not be "materially impaired."

¹ This rule states that "[w]hen a request for agency action is filed with the Commission and the party filing the request anticipates and represents in the request that the matter will be unopposed and uncontested, ... the request may be adjudicated informally in accord with [Utah Code] Section 63G-4-203...."

Utah Code Ann. § 63G-4-207(2). In other words, while UAPA “does not grant an absolute right to intervene, it does establish a conditional right if the requisite legal interest is present.” *Millard County v. Utah State Tax Comm’n*, 823 P.2d 459, 462 (Utah 1991). However, that right is still subject “to the condition that the interests of justice and orderly conduct of the administrative proceedings will not be impaired.” *Id.*

In this case, the AT&T Companies’ Petition to Intervene fails to show how their legal interests will be “substantially affected” if the Commission agrees to amend All American’s Certificate of Authority. Rather, the AT&T Companies’ proposed intervention is based on an unsubstantiated allegation that All American has wrongfully billed the companies for calls under a supposed “traffic pumping” arrangement. In other words, the AT&T Companies claim to have a billing dispute with All American regarding the rates and minutes the companies are being charged.

This proceeding is not the proper forum for the AT&T Companies to pursue their private billing dispute with All American. When deciding whether a telecommunications company should be issued a certificate authorizing it to compete in an incumbent company’s service territory, the Commission is only required to make two determinations: (a) whether the applicant “has sufficient technical, financial, and managerial resources and abilities to provide the public telecommunications services applied for;” and (b) whether “the issuance of the certificate to the applicant is in the public interest.” Utah Code Ann. § 54-8b-2.1(2). In this case, the Commission implicitly made these determinations regarding All American’s entry into Beehive’s territory when it approved the interconnection agreement between the companies on September 10, 2007. *See*

Docket No. 07-051-03.² Therefore, the purpose of All American's Petition is to simply formalize a relationship that was previously deemed by the Commission to be in the public interest.³

Issues surrounding All American's technical resources and the overall public interest have no bearing on the AT&T Companies' private billing dispute with All American. Rather, this is an independent issue that is separate and distinct from the question of whether All American should be permitted to operate in Beehive's territory. Nevertheless, it is believed that the AT&T Companies want to use this proceeding as a vehicle to conduct copious discovery in the hopes of finding information that could be used against All American in connection with the parties' billing dispute. However, the question of whether All American is entitled to an amendment to its Certificate of Authority should not be delayed while the AT&T Companies engage in drawn-out litigation regarding an unrelated issue. *See* Utah Code Ann. § 63G-4-207(2) (request for intervention may only be granted if "the orderly and prompt conduct" of the proceeding will not be "materially impaired.").

The AT&T Companies' attempt to inject their private billing dispute with All American into this proceeding is especially inappropriate because almost all of the disputed charges involve interstate telephone calls. As such, the access charges that apply to the disputed calls fall exclusively under the jurisdiction of the Federal Communications Commission ("FCC") and are

² The Commission's implicit approval of All American's operations in the Beehive territory is more fully explained in All American's Response to the Division of Public Utilities' Request for Formal Adjudication, filed in this matter on December 23, 2008.

³ It should be noted that the AT&T Companies did not seek to intervene in the matter regarding the approval of the interconnection agreement between Beehive and All American. *See* Docket No. 07-051-03.

subject to federal tariffs. The FCC has determined that disputes over federal tariff charges are not to be handled administratively, but rather judicially. *See US. Telepacific Corp. v. Tel-American of Salt Lake City, Inc.*, 19 FCC Rcd 24552 (2004), ¶ 8 (citing "long-standing Commission precedent" holding that the FCC does not act as a collection agent for carriers with respect to unpaid tariffed charges, and that such claims should be filed in the appropriate state or federal courts). In other words, a state public service commission is not the appropriate forum for the AT&T Companies to pursue and investigate their dispute with All American over interstate billing charges.

Finally, even if the Commission does have the authority to review the AT&T Companies' allegations regarding traffic pumping, the issue should not be raised as part of this proceeding. Rather, the companies should be required to file a separate request for agency action that is limited to its traffic pumping allegations. This would allow the Commission to rule on All American's requested amendment to its Certificate of Authority in a prompt and orderly fashion while the AT&T Companies' concerns are being investigated.

CONCLUSION

Based on the foregoing, All American respectfully requests that the AT&T Companies' Petition to Intervene be denied.

Dated this 6th day of January 2009.

JENSON & GUELKER, LLC

By: _____/s/
JANET I. JENSON
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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November 2009, the foregoing **ALL AMERICAN TELEPHONE COMPANY'S RESPONSE TO THE PETITION TO INTERVENE OF AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC. AND TCG UTAH** was sent by electronic mail and mailed by U.S. Mail, postage prepaid:

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