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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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	Docket No. 08-2469-01
	UTAH COMMITTEE OF CONSUMER SERVICES' RESPONSE TO PETITION AND MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

The Utah Committee of Consumer Services at this time enters its appearance in this docket as authorized by Utah Code 54-10-4. The Commission and all parties are requested to provide notices, pleadings, filings and correspondence produced in or pertinent to this docket to:

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The Committee's statutory duties and responsibilities include assessing the impact of utility rate changes and *other regulatory actions* on residential and small commercial utility consumers. The Committee has participated in Beehive and All American dockets in which the utilities approached or exceeded the limits of their granted authority. *See Docket No. 06-051-01.* The Committee contends that the petition in this docket, and the request for informal, expedited consideration, distorts the procedures by which a certificate of public convenience and necessity is considered and its terms enforced.

First, the Committee contends that this docket must be dismissed because it is an attempt to sidestep All American's representations in its original April 19, 2006 Application for a Certificate of Public Convenience and Necessity to Provide Local Exchange Services, Docket No. 06-2469-01 and thereby evade the Commission's certificate granted on March 7, 2007. An amendment to the certificate of convenience and necessity must be adjudicated formally within the original Docket No. 06-2469-01.

Second, because All American knowingly exceeded the March 7, 2007 certificate's terms, the Commission should consider in a formal proceeding whether the certificate should be cancelled. Only in a formal proceeding can the

Commission and regulatory agencies determine whether the evidence described in Section II below compels a cancellation of the certificate.

I

All American's April 19, 2006 Application, its August 28, 2006 Amended Application and its February 20, 2007 Amended Application in Docket No. 06-2469-01 each stated that "All American will provide service to and from all points in Utah" to describe the location of service required by Utah Administrative Rule R746-349-3 (A)(4)(b). However, the footnoted description of the service to be provided evolved as follows, with emphasis added in each case:

April 19, 2006 Application (initial): "All American currently **does plan** to provide local exchange services in the service areas of small or rural local exchange carriers ("LECs") as defined by the Telecommunications Act of 1996."

August 28, 2006 Amended Application: "All American currently **does NOT plan** to provide local exchange services in the service areas of small or rural local exchange carriers ("LECs") as defined by the Telecommunications Act of 1996, **except in Beehive Telephone Co., Inc. territory, or as applied for in the future before the Utah Public Service Commission.**"

February 20, 2007 Amended Application: "All American currently **does NOT plan** to provide local exchange services in the service areas of small or rural local exchange carriers ("LECs") as defined by the Telecommunications Act of 1996."

The Commission granted a certificate of convenience and necessity based upon the February 20, 2007 Amended Application. In this docket, All American and Beehive admit that they knowingly exceeded these representations and the certificate itself when they entered and submitted to the Commission, the June 11, 2007 interconnection agreement. *See Petition ¶ 2 and 4, Docket No. 08-2469-01.* Nothing within Utah law permits a utility to unilaterally expand its authority by

violating the terms of the authority originally granted. This strategy is more intolerable when the utility asserts that the simplified act of filing an interconnection agreement has the effect of expanding a certificated territory. All American and Beehive are exploiting the Commission's procedures that are intended to ease a utility's administrative burden for complying with the certificate. This docket should be dismissed and the original certificate should be reconsidered in the original docket.

II

Using publicly available resources, the Committee discovered facts and circumstances that should cause the Commission to scrutinize with utmost care the relationship between Beehive and All American; scrutiny that can only occur within a formal proceeding in the original docket. In a June 20, 2002 opinion the Federal Communications Commission addressed AT&T's complaint that Beehive's revenue sharing agreement with an information service provider to which Beehive terminated traffic, violated the Communications Act of 1934. *In the Matter of AT&T Corporation v. Beehive Telephone Company*, 17 F.C.C.R. 11641 (June 20, 2002). In reaching the conclusion that Beehive violated parts of the Act, the Commission considered evidence that Beehive had improperly imposed access charges on AT&T; that Beehive did not comply with its published tariff billing requirements; and, that Beehive exceeded its authorized rate of return by as much as 56.7%.

The information service provider, Joy Enterprises, Inc., with which Beehive shared revenues leading to the AT&T complaint, is affiliated or associated with All American through a shared manager or director, Joy Boyd. Ms. Boyd is identified as an All American director in Docket No. 06-2469-01 and is the contact for Joy Enterprises on the North American Numbering Plan Administration 555 Line Numbers resource list. Information service providers use 555 numbers.¹

The Committee has not concluded that the All American/Beehive interconnection agreement is intended to establish an access charge business that can be characterized as “traffic pumping”. The Committee does conclude that the All American certificate and the interconnection agreement with Beehive must be scrutinized against both the obligations as public telephone utilities and tested by the public interest in a thorough and public process.

RESPECTFULLY SUBMITTED this 7th day of January 2009.

Paul H. Proctor
Assistant Attorney General
Utah Committee of Consumer Services

¹ This issue is related to access charge schemes in which rural exchanges acquire phone numbers far in excess of those needed to serve a certificated territory and then partners with an information service provider to charge interexchange carriers, such as Qwest and AT&T, for terminating calls to those numbers. This practice of “traffic pumping” is the subject of on-going regulatory scrutiny.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion was served upon the following by electronic mail sent January 7, 2009:

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