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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

IN THE MATTER OF THE PETITION OF )	<b>ALL AMERICAN TELEPHONE</b>
ALL AMERICAN TELEPHONE CO., )	<b>COMPANY’S MOTION FOR</b>
INC. FOR A <i>NUNC PRO TUNC</i> )	<b>PROTECTIVE ORDER REGARDING</b>
AMENDMENT OF ITS CERTIFICATE )	<b>DISCOVERY</b>
OF AUTHORITY TO OPERATE AS A )	
COMPETITIVE LOCAL EXCHANGE )	Docket No. 08-2469-01
CARRIER WITHIN THE STATE OF )	
UTAH. )	

Petitioner, All American Telephone Company, Inc. (“AATCO”), by and through undersigned counsel, hereby moves the Commission for a Protective Order that delays discovery in this matter until such time as AATCO’s proposed Motion for Summary Decision is briefed and decided. The purpose of this motion is to avoid the burden and expense associated with discovery that may ultimately become unnecessary if AATCO’s Motion for Summary Decision is ultimately successful.

This motion is more fully supported by the argument presented below.

**ARGUMENT**

AATCO has petitioned the Commission to grant a *nunc pro tunc* amendment to its Certificate of Public Convenience and Necessity (“Certificate”) so as to grant AATCO the authority to operate as a competitive local exchange carrier (“CLEC”) in the area certificated to

Beehive Telephone Co., Inc. (“Beehive”). Since this Petition was filed, several parties have intervened in the matter and have expressed a desire to conduct discovery regarding AATCO’s request.

Despite the intervenors’ desire to conduct discovery, AATCO believes that it is entitled to the proposed amendment to its Certificate as a matter of law. This is because the Commission has already approved an interconnection agreement between Beehive and AATCO which presumed that AATCO would be operating as a CLEC in Beehive’s territory. AATCO contends that the approval of this interconnection agreement has a *res judicata* effect on the current proceeding that requires AATCO’s petition to be granted. Furthermore, and in the alternative, AATCO contends that the Commission’s ability to deny AATCO’s entry into Beehive’s territory is preempted by the federal Telecommunications Act of 1996.

AATCO intends to file a Motion for Summary Decision that raises the foregoing issues. It further intends to establish a time-frame for resolving this motion at the upcoming Scheduling Conference. In the meanwhile, AATCO is requesting a protective order that prohibits the parties from conducting any discovery until the foregoing issues are resolved. This request is consistent with Utah R.Civ. P. 26(c)(1), which allows for an order that “discovery not be had” if such an order would protect a party “from undue burden or expense.”

In this case, if AATCO’s Motion for Summary Decision is successful, then it will be unnecessary for the intervening parties to conduct discovery. Therefore, in an effort to avoid the burden and expense associated with potentially unneeded discovery, AATCO simply requests

that discovery be delayed until its Motion for Summary Decision is resolved. Such relief would not be prejudicial to any party, because discovery would simply commence if and when AATCO's motion is denied.

Dated this 23rd day of March 2009.

**JENSON & GUELKER, LLC**

By: \_\_\_\_\_/s/  
JANET I. JENSON  
GARY R. GUELKER  
Attorneys for Petitioner

### CERTIFICATE OF SERVICE

I hereby certify that on this 23d day of May 2009, the foregoing **ALL AMERICAN TELEPHONE COMPANY'S MOTION FOR PROTECTIVE ORDER REGARDING DISCOVERY** was sent by electronic mail and mailed by U.S. Mail, postage prepaid:

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\_\_\_\_\_/s/  
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