

George Baker Thomson, Jr.  
Corporate Counsel  
Qwest Corporation  
1801 California St., 10<sup>th</sup> Floor  
Denver, CO 80202  
Telephone: (303) 383-6645  
FAX: (303) 383-8588  
E-Mail:

Attorney for Qwest Corporation

**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 <b>QWEST RESPONSE TO PETITION</b>
---	--

Qwest Corporation and Qwest Communications Company, LLC (collectively, “Qwest”) hereby submit this response to the petition of All American Telephone Co., Inc. (“All American”) for a *nunc pro tunc* amendment of its Certificate of Authority. The Public Service Commission of Utah (“Commission” or “PSC”) granted Qwest’s petition for intervention in this case via an Order Granting Intervention on February 18, 2009.

Qwest generally agrees with the positions taken by the Utah Committee of Consumer Services (“CCS”) in their filing of January 7, 2009; and with the positions taken by the Department of Public Utilities (“DPU”) regarding All American’s petition. In sum, Qwest believes the Commission should (1) dismiss the petition, or (2) formally adjudicate whether All American’s present Certificate should be amended. In addition,

even if the petition is dismissed, Qwest believes the Commission should formally investigate All American's conduct regarding whether All American has violated the terms of its Certificate granted on March 7, 2007 at any time from that date until the present, and if so, craft an appropriate remedy including consideration of whether their Certificate should be cancelled.

Qwest concurs with the CCS filing by noting the various Beehive and All American dockets in which those utilities approached or exceeded the limits of their granted authority. *See, e.g., Docket No. 06-051-01.*

Qwest also concurs with CCS that All American's request for informal, expedited consideration is inappropriate and distorts the procedures by which a certificate of public convenience and necessity is considered and its terms enforced, particularly if All American has knowingly exceeded the scope and terms of its Certificate. Uncontested matters are the only matters appropriate for informal treatment under Rule R476-110. The issues raised in this proceeding by CCS, DPU, AT&T, and Qwest clearly indicate that this is not an uncontested proceeding, and therefore informal proceedings are inappropriate.

In addition, the questions concerning where in Utah All American is actually operating raises issues regarding their Certificate. Their practices may run afoul of provisions in Rules R476-349-3, -4, and -8. CCS correctly recites (in Section I of their Response) the evolution of All American's pleadings regarding its twice-amended application for its certificate. However, the evolving intent as expressed in the original application and changed in the two revisions thereto raise questions which have yet to be

addressed in any forum, and which All American seeks to bury by urging the Commission to proceed informally.

Even if the Petition at issue here is dismissed, because All American has apparently exceeded its March 7, 2007 certificate's terms, the Commission should initiate a formal proceeding examining, among other things, whether their CLEC certificate should be cancelled. Qwest agrees with CCS that All American's apparent position that a Certificate's terms can be changed or amended via an interconnection agreement without further proceedings by this Commission is ludicrous. Were that the case, agreements that are "not consistent with the public interest, convenience and necessity" within the meaning of 47 U.S.C. § 252(e)(2) could significantly affect the terms (particularly the definition of service territory) of state Commission-issued Certificates without those issues first being scrutinized by those Commissions.

Qwest concurs with the position of the DPU that focuses on the impact that granting the relief All American seeks would have on the Commission's long-held policy of restricting CLECs from competing in rural ILEC territory in exchanges of less than 5,000 access lines. As recently as March 26<sup>th</sup> of this year, the Commission upheld this consistent policy and rejected an interconnection agreement between Frontier and Beehive.<sup>1</sup> At the very least, All American should be compelled to demonstrate in a formal proceeding how their requested relief is consistent with the public interest, why the Commission should change the existing "rural exemption", and whether any Commission action can obviate the statute.

---

<sup>1</sup> Docket No. 09-2218-01, In the Matter of the Interconnection Agreement between Citizens Telecommunications Company of Utah, d/b/a Frontier Communications of Utah, and Beehive Telecom, Inc., Report and Order Rejecting Interconnection Agreement, issued March 26, 2009.

Finally, a formal proceeding would allow Qwest and other parties the ability to conduct discovery into specific facts that will reveal the extent to which All American has been operating outside the terms of its certificate. DPU has expressed its frustration with All American's refusal to answer earlier, formal data requests designed to shed light on the nature of the services to be provided to, and the business conducted by All American with Beehive. Qwest has experienced the same frustrations. It follows as a matter of course that if the Commission decides to initiate a formal proceeding in this case, or in a separate proceeding, that discovery will be permitted and the Commission will have the ultimate power to determine whether All American's data responses are responsive and complete. Qwest urges the Commission to allow discovery via a formal proceeding that will lift the veil of secrecy about the business relationship between All American and Beehive, and provide facts about the extent to which All American has been operating in violation of its Certificate.

WHEREFORE, Qwest respectfully requests that:

1. The Commission dismiss the petition; or,
2. Formally adjudicate whether All American's present Certificate should be amended; and,
3. Even if the instant petition is dismissed, Qwest requests the Commission formally investigate All American's conduct regarding, *inter alia*, whether All American misrepresented its intent in its applications to the Commission, and whether All American has violated the terms of its Certificate granted on March 7, 2007 at any time from that date until the present, and if so, craft an appropriate remedy including consideration of whether All American's Certificate should be cancelled.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of April 2009.

---

George Baker Thomson, Jr.  
Corporate Counsel  
Qwest Corporation

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 April 7, 2009:

Michael Ginsberg  
Patricia Schmid  
ASSISTANT ATTORNEYS GENERAL  
Division of Public Utilities  
Heber M. Wells Building, 5<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84111

Janet I. Jenson  
Gary R. Guelker  
Jenson & Guelker  
747 East South Temple, Suite 130  
Salt Lake City, UT 84102

Roger Moffitt  
AT&T Communications  
PO Box 11010  
Reno, NV

Alan L. Smith  
Beehive Telephone  
1492 East Kensington Ave.  
Salt Lake City, UT

Judith Hooper  
Beehive Telephone  
2000 E. Sunset Road  
Lake Point, UT 84074

Stephen F. Mecham  
Callister Nebeker & McCullough  
10 East South Temple, Suite 900  
Salt Lake City, Utah 84133

Attorneys for the Utah Rural Telecom  
Association

---

Christine Lovato