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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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| IN THE MATTER OF THE PETITION OF) | MEMORANDUM IN SUPPORT OF |
| ALL AMERICAN TELEPHONE CO.,) | ALL AMERICAN'S MOTION FOR |
| INC. FOR A <i>NUNC PRO TUNC</i>) | STAY |
| AMENDMENT OF ITS CERTIFICATE) | |
| OF AUTHORITY TO OPERATE AS A) | Docket No. 08-2469-01 |
| COMPETITIVE LOCAL EXCHANGE) | |
| CARRIER WITHIN THE STATE OF) | |
| UTAH.) | |

Petitioner, All American Telephone Company, Inc. ("All American"), by and through undersigned counsel, hereby submits the following Memorandum in Support of Motion for Stay.

DISCUSSION

In its Petition, All American seeks a *nunc pro tunc* amendment to its Certificate of Public Convenience and Necessity ("CPCN") that authorizes it to operate as a competitive local exchange carrier ("CLEC") in the area currently certificated to Beehive Telephone Co., Inc. ("Beehive"). All American requests that the authorization be dated as of September 10, 2007, which is the day on which the Commission approved an interconnection agreement between All American and Beehive and found that All American's proposed activity in Beehive's territory would be consistent with the public interest.

On April 7, 2009, All American and Beehive filed separate motions requesting the Commission to grant All American's Petition as a matter of law. These motions were based primarily on two separate arguments. The first was that All American's Petition had already been granted as a matter of law because the Commission did not expressly deny the Petition prior to the 240-day deadline in Utah Code Ann. § 54-8b-2.1(3)(d). The second argument was that even if the 240-day deadline did not apply, principles of res judicata required that the Petition be granted because the Commission had already made all the factual determinations necessary to grant the Petition when it approved All American and Beehive's interconnection agreement.

On June 16, 2009, the Commission issued an Order denying the motions for summary decision. In response, All American and Beehive have filed applications for rehearing and review pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15. If these applications are denied, the parties expect to seek judicial review of the Order.

Based on the foregoing, All American respectfully requests the Commission to stay any further proceedings in connection with its Petition until the resolution the parties' applications for rehearing and review, as well as any subsequent judicial review. The crux of the parties' motions is that they should not be required to participate in discovery and a formal hearing because All American is entitled to relief as a matter of law. If All American and Beehive are required to engage in litigation while the Commission's Order is under review, the legal rights they are seeking to secure will be significantly diminished. In fact, the argument as to whether the 240-day deadline applies goes directly to the Commission's jurisdiction over this matter.

Courts should at least have an opportunity to address this jurisdictional issue before the Commission continues to assert its jurisdiction over the parties.

Finally, practical issues of efficiency and economy weigh heavily in favor of a stay. If All American and Beehive are ultimately successful, then any costs the parties will have incurred in connection with ongoing litigation will have been wasted. The most practical course of action would be for the Commission to stay the proceedings until All American and Beehive have exhausted their rights to review so as to ensure that any further litigation and related costs are necessary.

CONCLUSION

Based on the foregoing, All American respectfully requests the Commission to grant its Motion for Stay.

Dated this 15th day of July 2009.

JENSON & GUELKER, LLC

By:
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May 2009, the foregoing **MEMORANDUM IN SUPPORT OF ALL AMERICAN’S MOTION FOR STAY** was sent by electronic mail and mailed by U.S. Mail, postage prepaid:

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