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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 <i>Nunc</i>)	Docket No. 08-2469-01
<i>Pro Tunc</i> Amendment of Its Certificate)	
of Authority to Operate as a Competitive)	<u>Amended Petition</u>
Local Exchange Carrier Within the)	
State of Utah.)	

All American Telephone Co., Inc. (“AATCO”), by and through its counsel, hereby petitions the Commission for a *nunc pro tunc* amendment to its Certificate of Public Convenience and Necessity, dated March 7, 2007, authorizing AATCO to operate as a competitive local exchange carrier (“CLEC” hereinafter) within the state of Utah. In the alternative, and pursuant to the ALJ’s instructions at the July 9, 2009 Scheduling Conference, AATCO petitions the Commission for an amendment to its Certificate of Public Convenience and Necessity that authorizes AATCO to operate as a CLEC in the area currently certificated Beehive Telephone Co., Inc., in the future. This Petition is based upon the following:

1. AATCO was granted a Certificate of Public Convenience and Necessity in Docket No. 06-2469-01 on March 7, 2007, authorizing it to operate as a CLEC within the state of Utah, excluding those local exchanges of less than 5,000 access lines of incumbent telephone corporations

with fewer than 30,000 access lines in the state.

2. On June 11, 2007, AATCO and Beehive Telephone Co., Inc. (“Beehive”) filed an interconnection agreement with the Commission. This interconnection agreement was deemed approved by the Commission on September 10, 2007 pursuant to 47 U.S.C. § 252(e)(4).

3. If the terms of the March 7, 2007 Certificate are viewed in isolation, independently of the interconnection agreement, AATCO technically may be deemed to lack authority to operate as a CLEC in the area certificated to Beehive.

4. In order to conform AATCO’s CLEC certificate to the facts of the arrangements that have existed between the two companies since the certificate was granted, AATCO hereby requests that the Commission amend AATCO’s certificate *nunc pro tunc*, as of the date the certificate was issued so as to grant AATCO the authority to operate as a CLEC in the area certificated to Beehive, at least to the extent of the terms and conditions of that interconnection agreement.

5. Such an amendment will make certain the implicit operating authority already granted by the Commission, and will not operate to extend AATCO’s operating authority into any other local exchange carrier’s certificated territory. Beehive has filed its consent to AATCO’s petition.

6. Because this petition affects only two parties, AATCO and Beehive, both of whom favor the action requested, the petitioner originally requested that this matter be adjudicated informally under Utah Code Ann. § 63-46b-5 and R746-110 of the Commission’s Rules. The Commission denied this request on January 20, 2009.

7. On May 2, 2009, AATCO filed a Motion for Summary Decision in this proceeding seeking a ruling that granted the aforementioned *nunc pro tunc* amendment as a matter of law. This

motion was denied by the Commission in an Order dated June 16, 2009 (the “June 16 Order”). In its Order, the Commission made the following determinations:

(a) AATCO is not entitled to a *nunc pro tunc* amendment to its CLEC certificate under principles of *res judicata* because the findings made by the Commission in approving AATCO’s interconnection agreement with Beehive do not have preclusive effect in this action.

(b) The Commission cannot grant AATCO’s Petition because it does not have the authority to grant *nunc pro tunc* relief.

(c) The 240 day deadline set forth in Utah Code Ann. § 54-8b-2.1 does not apply to this matter and therefore AATCO’s Petition has not already been granted as a matter of law.

8. On July 9, 2009, the parties conducted a scheduling conference in this matter. During this conference, the ALJ determined that AATCO needed to file an amended petition for relief that conformed to the Commission’s June 16 Order. The ALJ also set a firm deadline by which this amended petition needed to be filed.

9. Pursuant to the ALJ’s instructions at the July 9 scheduling conference, and in the event AATCO is unable to obtain a *nunc pro tunc* amendment to its certificate, AATCO seeks alternative relief in the form of an amendment to its certificate that authorizes it to operate as a CLEC in the area currently certificated to Beehive in the future.

10. AATCO’s alternative request for relief should be granted for the following reasons:

(a) Beehive has no objection to the proposed amendment;

(b) AATCO has sufficient technical, financial, and managerial resources and abilities to operate as a CLEC in Beehive’s territory; and

(c) The proposed amendment is in the public interest.

11. By petitioning the Commission for alternative relief, AATCO is not abandoning its original request for a *nunc pro tunc* amendment to its certificate; nor is it waiving any legal claims or defenses that it has raised in the past, or may raise in the future, in support of its request for a *nunc pro tunc* amendment.

12. By petitioning the Commission for alternative relief, AATCO is not abandoning its right to seek judicial review of the June 16 Order or the Commission's August 24, 2009 Order affirming the June 16 Order. Likewise, this Amended Petition should not be construed as an admission that either of these two Orders did not constitute final agency actions.

Dated this 31st day of August, 2009.

JENSON & GUELKER, LLC

By: _____
JANET I. JENSON
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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of July 2009, the foregoing **AMENDED PETITION** was sent by electronic mail and mailed by U.S. Mail, postage prepaid:

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