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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 Pro Tunc</i> Amendment of its Certificate of Authority to Operate as a Competitive Local Exchange Carrier within the State of Utah	DIVISION OF PUBLIC UTILITIES' RESPONSE TO MOTION TO STAY DISCOVERY
	Docket No. 08-2469-01

The following is a response by the Division of Public Utilities (Division or DPU) in opposition to the request of All American Telephone Company, Inc (All American) to stay discovery until the Utah Supreme Court has ruled on two Motions pending before the Utah Supreme Court.

On November 9, 2009 All American filed a Motion with the Commission to stay discovery. Their basis for this Motion is that a Motion to Stay administrative proceedings is currently pending before the Utah Supreme Court and a Motion to Dismiss their appeal is also pending before the Utah Supreme Court. The basis of their request is that soon the Utah Supreme Court will rule on the Commission's Motion to Dismiss the appeal and All American's Motion to stay further Administrative Proceedings pending the appeal. The Motion to Dismiss filed by the Commission is based on the premise that

the Commission's June 16th and August 24th decisions were not final agency action. All American has asked the Supreme Court to stay this proceeding pending resolution of their appeal. The Commission has opposed the Motion to stay this proceeding.

Discovery requests by both the Division and Qwest are outstanding and past due. The Division sent a data request on October 8, 2009 and Qwest sent a discovery request on October 19, 2009. Both are now over due. A scheduling conference is currently scheduled for December 7, 2009.

The Division opposes any Stay on discovery pending action by the Supreme Court. The only action by the Supreme Court that could affect this proceeding would be if the Court issued some type of Stay of this proceedings pending resolution of All American's appeal. The Motion to dismiss the appeal filed by the Commission, if granted, would only mean that the proceedings envisioned by the Commission's earlier Orders would continue. In the unlikely event that the Motion to Stay is granted, the Commission would have to determine what further proceedings could take place. The Division does not believe that these possible future decisions by the Court should in any way stay discovery. Time is of the essence. The procedural Order issued October 28, 2009 notes that the 240-day statutory time period for a decision on the Amended Application for a Certificate ends on April 28, 2010. Testimony by DPU and others is due in early February, 2010. Further, independent of the request to Amend All American's Certificate to serve in Beehive's territory, this proceeding is also an investigation into whether All American's existing Certificate should be altered or rescinded. All American has already failed to timely answer the discovery that has been

sent out. Further delays in answering the discovery will make it more difficult to submit follow up data requests and have them answered in a timely way.

In an attempt to get the answers to its discovery, the Division sent an e-mail to All American attorney trying to determine the status of the data request. This e-mail was sent on November 4, 2009. All American responded on November 9th that the responses would be provided to the DPU by the end of that week. No responses were filed but instead this Motion to stay was submitted. Therefore, if the Commission denies the request to stay discovery, All American should need no time to finally respond to the outstanding discovery.

The Division urges the Commission to deny the Motion to Stay and order All American to immediately file the responses to the discovery requests from both the DPU and Qwest. We also request that the discovery turn around be reduced to 14 days in the future.

RESPECTFULLY SUBMITTED, this 24th day of November, 2009.

/s/Michael L. Ginsberg
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Attorneys for the Division
of Public Utilities

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing DIVISION OF PUBLIC UTILITIES' RESPONSE TO MOTION TO STAY DISCOVERY was sent by electronic mail and mailed by U.S. Mail, postage prepaid, to the following on November 24th, 2009:

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