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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Consideration of the Rescission, Alteration or Amendment of the Certificate of Authority of All American Telephone Co., Inc. to Operate as a Competitive Local Exchange Carrier Within the State of Utah	Docket No. 08-2469-01 UTAH OFFICE OF CONSUMER SERVICES' REPLY IN SUPPORT OF MOTION TO SHORTEN TIME TO RESPOND TO DATA REQUESTS
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The Utah Office of Consumer Services requested that the Commission shorten the time within which all parties may respond to data requests submitted after February 1, 2010, 10 days, and after February 26, three days. All American's opposition to this motion is another in a series of groundless objections to providing evidence that is necessary to examine All American's operations in Utah. The pending data requests submitted by both the Division of Public Utilities and the Office pertain to All American's local exchange service provided to end-users in Garrison, Utah, an area expressly excluded from the certificate of public convenience and necessity that is at issue in this proceeding. The requests

pertain to the tariffs, billings, revenues, services, facilities and entry into the Garrison local exchange. Some of the data requests originate with the facts and issues that are subject to other litigation, but all are relevant to direct testimony, rebuttal testimony, and cross examination in these proceedings.

In ruling upon the motion, the Office asks the Commission to consider All American's responses to discovery thus far, responses that the Office contends do not comply with this Commission's rules and orders.

On March 23, 2009 All American asked the Commission to delay discovery in this matter until such time as its proposed motion for summary decision is briefed and decided. The stated purpose of this motion was to avoid the burden and expense associated with discovery that may ultimately become unnecessary if the motion was successful. On April 23, 2009, that Commission entered its order, which stated:

Consistent with the Second Interim Scheduling Order, with regards to discovery, if a party feels it needs additional information during the filing of the responses to pending motions or initial filing of motions, it may conduct *informal* discovery during the filing of the moving and responding papers. Counsel for the Company and Beehive Telephone have stated that they would work with the Committee, AT&T and other parties in the informal exchange of information. All parties should be similarly cooperative in exchanging informal discovery as needed. As counsel for Beehive Telephone stated, "the parties...probably can resolve any discovery differences, as they should, cooperatively and voluntarily with a telephone call or e-mail exchange in the event that additional facts become necessary to process the motions." However, *formal* discovery, e.g. data requests, responses to data requests, etc. is stayed pending the resolution of the motions or until otherwise ordered by the Commission. If a party feels it needs more substantive discovery besides that gathered in informal discovery, it may make a motion asking that formal discovery be had. It should detail why the information is needed for resolution of its motion or

motions, and also detail why or how the existing record fails to provide the information it needs.

Consistent with the Second Interim Scheduling Order, on April 3, 2009, the Office informally but in writing submitted data requests to All American, explaining that responses were needed to respond to All American's motions.

Also consistent with the Second Interim Scheduling Order, the Office relied upon All American's counsel's commitment contained in these e-mails:

April 3, 2009 My secretary sent me an email indicating that you have been trying to get ahold[sic] of me regarding discovery in the All American matter. However, I am defending a deposition and I am unable to call you. Please send me an e-mail outlining your request and I will get back with you as soon as I can.

April 14, 2009 I received your telephone message regarding discovery. I intend to have responses delivered to you no later than tomorrow.

April 15, 2009 Unfortunately, I have not been able to gather the information necessary to answer your discovery requests within the timeframe I anticipated. I will forward responses to you as soon as I am able. Thank you for your patience.

April 16, 2009 My hope is within the next few days, although I hate to give you a firm deadline and then not be able to meet it.

April 21, 2009 I have spoken with my client regarding your request for information, as stated below. My client, "All American Telephone *Company*, Inc." was not a party to the proceeding your [sic] referenced. Rather, the respondent in that proceeding was "All American Telephone, Inc." Although the two entities have similar names, my client informs me that it has no affiliation or association whatsoever with "All American Telephone, Inc." The similarity in names is purely coincidental. I trust this answers your concerns on this particular issue.

On May 7, 2009, after the time for the Office to respond to the motions had passed, All American provided the response attached hereto. This response is non-compliant with the interim order and certainly suggests that Mr. Guelker's e-

mails were misleading. The Division described a similar experience, which is discussed below.

Not until October 27, 2009 did the Commission provide for discovery, establishing a 21-day turnaround. On November 9, 2009 All American again attempted to preclude discovery by moving for a stay of any further discovery until such time as two motions then pending before the Utah Supreme Court are resolved. Responses to both Division and Qwest discovery were then overdue and the Division opposed the stay in a November 24, 2009 response:

In an attempt to get the answers to its discovery, the Division sent an e-mail to All American [sic] 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.

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.

On December 7, 2009, the Commission denied the motion stating, “The compressed schedule, along with the discovery still needed, makes it necessary that this matter move forward to ensure the parties can present the most complete evidence during the filing of testimony and before the Commission at the hearing.” However, the Commission did not address the Division’s request to shorten the time for discovery responses. The Division was forced to file a motion to compel, on its own and Qwest’s behalf. On December 21, 2009, All American

responded to the Division's discovery, but claiming that he had not received Qwest's discovery until December 17, 2009, Mr. Guelker promised "responses in a timely manner." Qwest's discovery was not responded to until January 12, 2010.

In another example of All American's non-compliance, All American did not respond to the Division's January 7, 2010 data requests until February 11, 2010. These responses were not sent to the Office until February 16.

Another example is found in All American's response to the Division's Request 1.21 asking "AATCO did not file an annual report and a gross revenue report with the Commission for 2007. Please explain why it did not file such a report." Mr. Guelker answered on August 9, 2008: "AATCO filed a gross revenue report on July 24, 2008, after receiving a request [sic] Mr. Paul Hicken in early July 2008. AATCO intends to file an annual report by the end of August 2008." No 2007 report has been filed.

In April 2009, the Office informally asked for these annual reports. Again Mr. Guelker provided All American's response. In its informal requests, the Office asked: 8. Provide a copy of each Annual Report filed by All American as required by Exhibit B to the March 7, 2007 Report and Order in Docket No. 06-2469-01. All American did not respond or object; the answer was blank.

All American's purported commitment to cooperate and promises of timely responses, together with excuses for delay and outright refusals to respond, demonstrate that it is All American that has placed the Office and other parties in

the position to require a shorter time for discovery responses. Another complicating factor to All American's discovery responses provided thus far and that are pending is that all responses are signed by Mr. Guelker, contrary to Utah Rules of Civil Procedure Rule 33(b)(2). While the Office's most recent discovery requests that All American identify each person who may testify concerning the matters contained in each response or document produced, the Office has no reason to expect that the responses will be signed by the person making them, i.e. an officer, director or managing agent. Consequently, the Commission should determine whether by signing data responses and under Rule 3.7 of the Rules of Professional Conduct, the Commission should disqualify Mr. Guelker and his firm from acting as All American's counsel.

The Office's motion to shorten the time to respond to discovery is well founded and appropriate under the Commission's prior orders.

Dated this 18th day of February 2010.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing reply was served upon the following by electronic mail sent February 18, 2010:

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