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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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IN THE MATTER OF THE  
CONSIDERATION OF THE RESCISSION,  
ALTERATION, OR AMENDMENT OF THE  
CERTIFICATE OF AUTHORITY OF ALL  
AMERICAN TO OPERATE AS A  
COMPETITIVE LOCAL EXCHANGE  
CARRIER WITHIN THE STATE OF UTAH

RESPONSE OF THE DIVISION OF PUBLIC  
UTILITIES TO THE MOTION TO  
PROHIBIT THE DIVISION AND OFFICE  
FROM OPPOSING THE APPLICATION OF  
ALL AMERICAN

Docket No. 08-2469-01

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The following is the response of the Division of Public Utilities (DPU or Division) to All American (AATCO) Motion to prohibit the DPU and the Office of Consumer Services (Office) from opposing the Application of AATCO to serve in the Beehive area and to present any evidence on its position at the hearings.

1. On Friday February 26, 2010, AATCO filed a Motion in Limine (Motion) to prohibit the DPU and the Office from presenting evidence at the hearings and to prevent them from presenting their positions in opposition to the Amended Application of AATCO to continue to serve in the Beehive area. The basis of the Motion is that the DPU did not update its discovery answer asking for its position until it filed its direct testimony. The data request response is attached to AATCO's Motion. The Division

filed its position pursuant to the schedule established in the Docket. The schedule provided no earlier date for parties to present their positions either to AATCO or the Commission. The answer to the discovery request clearly stated that the DPU would provide its position pursuant to the schedule in the docket, which meant, when testimony was due.

2. The Division is the investigative agency for the Commission. It is asked by the Commission to conduct investigations and provide recommendations to the Commission. The Division should not be forced to provide its recommendations prior to them being finalized by the Division. As with any proceedings there may be internal discussion within the Division to discuss the issues presented, but generally the final recommendations of the Division does not occur until the testimony is finalized, the memorandum of the Division is completed or some other formal position statement is finalized and filed with the Commission. Prior to that occurring, the Division discussions are internal only and do not represent the position of the Division.

3. The schedule establishing the filing date for testimony was well known by AATCO. The schedule could have included an earlier date where parties would have to present their positions. That did not happen. AATCO understood the time between the filing of testimony and its time to respond. AATCO understood the discovery turnaround time included in the Order. There is no surprise taking place.

4. AATCO has not shown any prejudice. It is not asking for more time to respond to the testimony of either the DPU or Office. It has asked no discovery of either the DPU or Office since the testimony was filed. In fact, the only discovery AATCO served on the DPU was the discovery attached to its Motion. AATCO in fact opposed

shortening the time for discovery filed by the OCS which could have benefited AATCO. AATCO chose not only to oppose that Motion to shorten the time for discovery but also has not availed itself of the opportunity to ask the Division discovery requests after testimony was filed. It is not clear, therefore, how AATCO can claim it has been prejudiced when the DPU has done nothing more than follow the schedule in this docket.

4. For these reasons the DPU urges the Commission to deny the Motion filed by AATCO.

RESPECTFULLY SUBMITTED, this \_\_\_\_\_ day of March, 2010.

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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 RESPONSE OF THE DIVISION OF PUBLIC UTILITIES TO THE MOTION TO PROHIBIT THE DIVISION AND OFFICE FROM OPPOSING THE APPLICATION OF ALL AMERICAN was sent by electronic mail and mailed by U.S. Mail, postage prepaid, to the following on March \_\_\_\_\_, 2010:

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