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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' INITIAL POST-HEARING BRIEF
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I. INTRODUCTION

Perhaps more than any other, this docket is a reminder that the public interest can be served only by the diligent enforcement of the statutes and rules governing utilities that wish to and are operating in Utah. The interests of utility consumers and the State of Utah as a whole are dependent upon the thorough and purposeful scrutiny of applications such as All American filed in Docket No. 06-2469-01, Docket No. 07-051-03, and in this docket. These interests require that the Division of Public Utilities, the Office of Consumer Services, utility and

industry groups, and most of all, the Commission, judiciously supervise and regulate all of the business of every public utility in Utah. This docket plainly demonstrates why the zeal with which information is sought from a utility operating under the Commission's authority must be proportional to the reluctance of the utility to provide it.

II. THE COMMISSION SHOULD DENY ALL AMERICAN'S REQUESTED RELIEF AND ORDER ALL AMERICAN TO WITHDRAW FROM BEEHIVE EXCHANGES BECAUSE ALL AMERICAN ABUSED THE PROCESS TO OBTAIN A CPCN IN DOCKET NO. 06-2469-01.

The Commission's examination of the evidence in this docket must necessarily begin with a review, albeit brief, of the underlying docket in which All American asked for and was granted a certificate of public convenience and necessity to operate as a competitive local exchange carrier in Utah. All American requested and the Commission granted a CPCN that unambiguously excluded All American from "providing local exchange service within any local exchange with fewer than 5,000 access lines that is owned or controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the state." Utah Code §54-8b-2.1(1) (Supp.2009). Beehive Telephone Company's Garrison, Utah exchange was expressly excluded from All American's CPCN.

Evidence admitted at the hearing conclusively establishes that Beehive knew the limits to All American's CPCN. Beehive's Executive Vice President and Chief Counsel Judith O. Hooper represented All American in the initial CPCN

application and filed the interconnection agreement for Beehive and All American. Ms. Hooper's knowledge as an attorney and corporate officer is imputed to All American and Beehive. *Wardley v. Better Homes and Gardens*, 2002 Utah 99 ¶ 16, 61 P.3d 1009, 1014 (Utah 2002) "Under longstanding Utah law, "the knowledge of [an] agent concerning the business which he is transacting for his principal is to be imputed to his principal"; *Hardy v. Prudential Insurance Co.*, 763 P.2d 761, 767 (Utah 1988); Restatement (Third) of Agency § 5.03.

David Goodale, All American's president, admitted in cross-examination that Beehive was made aware of the exclusion before executing the interconnection agreement. Moreover, from the evidence it must be assumed that Joy Enterprises, Inc. (JEI), knew the limits to All American's CPCN.¹

All American's February 20, 2007 Amended Application, upon which the CPCN is based, stated: "All American currently does NOT plan to provide local exchange services in the service areas of small or rural local exchange carriers ("LECs") as defined by the Telecommunications Act of 1996." February 20, 2007 Amended Application, ¶ 7. (b), ft. note 1. All American referred to this clause as "the standard rural carve-out." *Id.*, page 2. However, All American admits:

¹ The evidence indicates that All American and JEI operate as a unified commercial enterprise in which there is no managerial, operational, accounting, financial or contractual separation between the two companies. All American's witness David Goodale admitted that JEI has funded All American's legal action here and elsewhere. The only party to benefit from this proceeding is JEI.

“From the time All American first considered operating in Utah, the company’s intent was to operate in Beehive’s territory in the manner in which it is currently operating.” *David W. Goodale Rebuttal Testimony line 25 to 27.*²

Based upon this evidence alone, the Commission may find that the CPCN was obtained by making false material statements and inconsistent material statements, under oath, in an official proceeding. This evidence, without more, is sufficient for the Commission to deny All American’s requested relief and order All American to withdraw from Beehive exchanges.

III. THE COMMISSION SHOULD DENY ALL AMERICAN’S REQUESTED RELIEF AND ORDER ALL AMERICAN TO WITHDRAW FROM BEEHIVE EXCHANGES BECAUSE THE EVIDENCE IN DOCKET NO. 08-2469-01 CONVINCINGLY DEMONSTRATES ALL AMERICAN’S PROCEDURAL AND SUBSTANTIVE VIOLATIONS OF UTAH LAW.

Keeping in mind the record in Docket No. 06-2469-01, the Commission can next examine All American’s application in this docket and the evidence that describes the true operation and activities of All American, Beehive and JEI. Two fundamental conclusions appear from this examination. First, the applications and filings in this docket, in Docket No. 06-2469-01, and in Docket No. 07-051-03, the interconnection agreement, did not disclose the history and true nature of the three

² Incredibly, in the immediately following rebuttal testimony, Mr. Goodale suggests that All American acted on the advice of its Utah attorney and that the advice was faulty. At the hearing Mr. Goodale blamed Ms. Hooper for causing All American to violate its certificate. However, Mr. Goodale admitted that he knew Beehive exchanges were excluded. Blaming its lawyer for having acquired the CPCN that conformed to Utah law, but that All American always intended to and was discovered violating, demonstrates that All American’s witness and evidence are not credible.

companies' operations and activities in Utah. Second, the application for informal, *nunc pro tunc* relief was constructed to avoid scrutiny and prevent the parties and the Commission from discovering the truth.³

All American and Beehive commenced this docket to amend the CPCN as of the date it was first issued, March 7, 2007, based upon their "assumption" that All American was authorized to operate in Beehive exchanges. They claimed that the interconnection agreement between them was approved by operation of law effective September 10, 2007. They requested the following:

Because this petition affects only two parties, AATCO and Beehive, both of whom favor the action requested, the petitioner represents that there is no reasonable expectation of opposition to petitioner's request and therefore requests that the petition be adjudicated informally under Utah Code Ann. § 63-46b-5 and R746-110 of the Commission's Rules. Petitioner has supplied, concurrently with this petition, a draft order which petitioner requests be issued without a hearing and to be effective upon issuance." April 23, 2008 Petition ¶ 7.

This is a disingenuous declaration within a materially misleading petition. As to the original CPCN application, All American knew but omitted the fact that

³ Though David Goodale denied it, the evidence as a whole, and Mr. Goodale's responses to AT&T's cross examination on the issue, convincingly demonstrate that interexchange carriers sued by All American for unpaid, Utah, access revenues became aware of and asserted as a defense to those claims, the fact that All American was not authorized to do business in Beehive's exchange. This was the motive for All American and Beehive to prevent scrutiny and to seek retroactive relief. See also, Attachment 3 to Direct Testimony of Michele Beck, wherein Beehive's Chuck McCown describes the litigation that caused Beehive to restructure its relationship with JEI and to install All American in the Garrison, Utah exchange. Had All American not been discovered operating in Garrison, Utah, no doubt it would not have initiated any proceeding.

All American's request for a CPCN for Beehive exchanges was opposed in Docket No. 06-2469-01, by the Division and the Utah Rural Telecom Association, and that All American abandoned the request in its February 7, 2007 amended application.

As to the interconnection agreement upon which All American and Beehive rely for relief in this docket, both companies were aware that the CPCN expressly excluded operations in Beehive exchanges. Ms. Hooper prepared and filed the February amended application in 06-2469-01. She knew the boundaries of the CPCN when she submitted in Docket No. 07-051-03 on behalf of Beehive and All American, the June 2007 interconnection agreement. Yet, the preambles to the interconnection agreement represent that "All American is authorized by the Utah Public Service Commission ("PSC") and the Federal Communications Commission ("FCC") to provide CLEC service," by interconnecting with Beehive in the Beehive service areas or via a Beehive tandem switch. The interconnection agreement is signed by Mr. Goodale as President of All American, and is signed by Chuck McCown, as Vice President and Chief Engineer of Beehive. These facts implicate Ms. Hooper and both companies in filing with the Commission, materially misleading if not false documents.⁴

⁴ Mr. Goodale described his knowledge of the CPCN at the time he signed the interconnection agreement as follows: "Q. Now, at that time did you know, were you aware of, the limits to your certificate to operate as a CLEC within the State of Utah? A.

The interconnection agreement is expressly subject to the Commission's jurisdiction. Paragraph 37 Regulatory Agency Control states: "This Agreement shall at all times be subject to changes, modifications, orders, and rulings by the FCC and/or the PSC to the extent the substance of this Agreement is or becomes subject to the jurisdiction of such agency." When the interconnection agreement was executed by the parties and filed with the Commission, the substance of the agreement, All American's authority to operate as a CLEC, was subject to Commission jurisdiction and an order defining that authority had been issued but a few months before.

Further, in the interconnection docket, No. 07-051-03, Qwest was granted intervention and opposed the agreement. The Commission directed the Division to investigate and Qwest submitted discovery requests to Beehive and All American.⁵ Not until November 14, 2007 did Beehive submit a proposed order with respect to the agreement. The Commission scheduled a status conference for

At that time I don't recall that I was aware of the fact that I wasn't complying with the law completely. And that we had to re-file our application." Transcript Page 134 Line 14-20.

⁵ It should come as no surprise that Beehive and All American did not respond to the requests.

November 26, 2007. The petition commencing this docket did not disclose these actions.⁶

It is particularly important if not conclusive that All American and Beehive concealed the truth about the motive for Beehive and JEI to establish All American's operations in Garrison, Utah. In his direct testimony, Mr. Goodale stated: "the relationship between All American and Beehive is limited to and governed by an interconnection agreement between the two companies. In short, it requires All American and Beehive to compensate each other for terminating local telecommunications traffic that originates on the other company's network." *Goodale Direct, lines 85 to 89.*

All American failed to disclose in any filing with the Commission, nor did Mr. Goodale explain in his direct testimony, the following relevant facts. All American had been operating in Garrison, Utah since February 2006. *Transcript Page 121.* Qwest documented that All American operated in Garrison, Utah as early as 2004. *Qwest Exhibit 1 Page 6.* It had used Beehive equipment prior to 2008, for which it did not pay. *Transcript Page 123.* An oral agreement with Beehive, separate from the interconnection agreement, governed the services provided and payment to or from either party. *Transcript Page 111.* All American does not compete with Beehive. *Transcript Page 122.* Its sole

⁶ These facts call into question the argument that the Commission did not take action on the interconnection agreement. These facts belie the argument that under Utah law the CPCN was implicitly expanded to include exchanges that had been explicitly excluded.

customer JEI had been a Beehive Utah customer since 1994. *Transcript Page 101.* And, the sole owner of JEI is the sole owner of All American.

Even in rebuttal testimony, Mr. Goodale omitted all testimony describing the factual reasons All American began operating in Garrison, Utah and why it later requested a CPCN. Beehive's Chuck McCown did offer some explanation, but not in testimony filed with this Commission. Attachment 3 to Michele Beck's direct testimony is Mr. McCown's December 7, 2009 declaration in *Beehive Telephone v. Sprint Communications v. All American*, Civil No. 2:08cv00380 in the Utah Federal District Court. Mr. McCown explains that Beehive rejoined the National Exchange Carriers Association (NECA) to avoid a suspension and investigation of its terminating access tariffs and the claims that access traffic stimulation through affiliations with conference calling companies such as JEI was unlawful under Federal telecommunications law. Mr. McCown stated in paragraph 15:

As noted in my previous testimony, Beehive had anticipated these developments, and, indeed, even before they occurred, had taken steps to become a participant in the NECA pool and a joint issuer of NECA 5 [Tariff]. Beehive believed that, as a result of taking these steps, it would be getting out of and away from the entire access stimulation debate.

Mr. McCown further admits in paragraph 17 that "Beehive re-structured its relationship with so called conference calling companies which had been customers within Beehive's territory." The conference calling traffic, which

would include JEI traffic, was handed to All American, which he described as a competitive LEC, pursuant to an interconnection agreement. But, Beehive omits important details in this declaration filed with the Federal court and provided no evidence of any type to the Commission.⁷

Neither Beehive nor All American disclosed in this docket or in the Sprint litigation that Beehive and JEI's relationship dates back to 1994. Attachment 1 to Ms. Beck's testimony, In the Matter of Beehive Telephone Company, Federal Communications CC Docket No. 97-237, concerns allegations that Beehive shared terminating access revenues with JEI in exchange for JEI stimulating calling in to Beehive's territory. Beehive admitted that its arrangement with JEI substantially increased its interstate local switching minutes over 800%. In a January 6, 1998 memorandum opinion and order, the FCC concluded that Beehive's interstate terminating access rates were not just and reasonable due to unjustified operating expenses and an unauthorized rate of return.

⁷ Interestingly, Mr. McCown described All American's customer as "probably a conference calling company." Declaration ¶ 20. No less interesting is Mr. McCown's September 21, 2009 statement to the FCC in Comments of Beehive Telephone Company, Inc. in Support of Preemption, In re Petition of Great Lakes Communications Corp. and Superior Telephone Cooperative, WC Docket No. 09-152: "In one of those remote wire centers, Beehive interconnects with All American Telephone Company ("AATCO"), a CLEC that has wholesale business customers. Beehive has no relationship with AATCO other than the physical interconnection with its switch." Mr. McCown is quoted as saying; "Beehive has no connection to All American Telephone other than providing its facilities with service. He said companies such as All American locate in rural areas because they are allowed to charge higher rates there than in urban areas." Tom Harvey, Tiny network may cut off Sprint from customers in rural areas, Salt Lake Tribune, December 11, 2009.

The FCC again addressed Beehive and JEI in its June 1, 1998 memorandum opinion and order; In the Matter of Beehive Telephone Company, Federal Communications Commission CC Docket No. 97-249, Attachment 2 to Ms. Beck's direct testimony. This opinion establishes that Beehive's withdrawal from the NECA pool in 1994 coincided with the arrangement with JEI. AT&T, a complainant in the case, alleged that ". . . the debits and credits in Beehive's general ledgers are an accounting fiction set up to mask the fact that Beehive is the owner of JEI, which generates 95% of the traffic that terminates in Beehive's territory." Memorandum Opinion and Order, CC Docket No. 97-249, ¶ 11.

The FCC found that Beehive's cost data showed numerous inconsistent, questionable, unexplained, or inadequately explained entries. Those questionable entries raised "serious questions regarding whether Beehive's proposed rates are based on costs legitimately related to the provision of interstate access services" including "substantial, inadequately explained payments to JEI." *Id.* ¶ 15. For example, Beehive's switch lease agreement requiring a payment to JEI of approximately \$1 million had "few of the normal terms and conditions of an operating lease, such as term and descriptions of the switches or capabilities that will be provided." *Id.*

Of particular significance to this docket is the FCC finding that “Beehive also recorded other payments to JEI in Account 5082 (Access Revenue).” *Id.* ¶

16.

Beehive’s general ledger for its Utah company reflect debits attributable to JEI which are subsequently nullified by credits in various amounts. Beehive explains these entries as corrections, but it is not clear why these entries for JEI should appear in Beehive’s regulated accounts at all or why they were posted as debits when entries to a revenue account are normally posted as credits. As a whole, these entries raise substantial questions of whether Beehive’s apparent lack of a regular accounting system leaves ratepayers unprotected from paying imprudent expenses or expenses unrelated to regulated interstate access service. Beehive has not provided any explanation for its relationship with JEI that would rebut concerns raised by its accounting treatment of JEI-related costs. *Id.*

These findings are significant in that they mirror the evidence in this docket: All American’s description of its technical, financial, and managerial resources and abilities is implausible at best. Its accounting and reporting systems are incomprehensible and unreliable as indicated by Mr. Goodale’s explanation of the underlying accounting methods and the revenue sources and expenses used in both versions of the 2007 Annual Report.⁸ Its business with Beehive and JEI does not conform to any standard, reliable and auditable practice. It is effectively impossible to accurately evaluate whether All American is complying with the financial and reporting requirements imposed on all public telecommunications

⁸ The first version of the 2007 Annual Report was provided to the parties February 23, 2010. It is unsigned and undated with no indication it was filed with the Commission. The Second version was signed March 1, 2010 and differs substantially from the first version.

corporations. Circumstantial but persuasive evidence supports a finding that Beehive and JEI colluded to install All American in Garrison, Utah in order to perpetuate unjust and unreasonable rates and practices. These findings and the evidence in this docket establish that Beehive's ratepayers are at risk now as they were in 1998.

For example, as Mr. Goodale acknowledged, a core issue in the litigation with Sprint referred to above was All American's unauthorized entry into Beehive's Garrison, Utah exchange. *Transcript Page 145*. Beehive took the extraordinary step of disconnecting its customers from access to Sprint and all Sprint customers when the Federal court denied Beehive's claims. Beehive's blocking its own customers access to Sprint's network is directly attributable to All American's irregular if not illegal operations supported by Beehive and JEI as described in Docket No. 06-2469-01, Docket No. 07-051-03, and in this docket.

IV. ARRANGEMENTS BETWEEN LOCAL EXCHANGE CARRIERS SUCH AS ALL AMERICAN AND CONFERENCE CALLING COMPANIES SUCH AS JEI VIOLATE ARE UNJUST AND UNREASONABLE UNDER FEDERAL LAW.

The Commission may also rely on contemporary FCC opinions that All American's entry into and operations in Garrison, Utah violates both Federal and Utah law.⁹ On November 25, 2009, the FCC released FCC 09-103, its Second

⁹ See also *In Re: Qwest Communications Corporation v. Superior Telephone Cooperative, et. al*, State of Iowa Utilities Board Docket FCU-07-2, Final Order September 21, 2009.

Order on Reconsideration, In the Matter of Qwest Communications Corporation v. Farmers and Merchants Mutual Telephone Company, File No. EB-07-MD-001. The FCC found that commercial arrangements with conference calling companies for the purpose of increasing interstate switched access traffic and revenues, such as All American, Beehive and JEI's oral arrangements, are unjust and unreasonable practices under Federal law. Simply comparing the FCC's findings with the evidence in this docket proves that All American violated Utah telecommunications law, both substantive and procedural, pertaining to competitive local exchange services, certificates of public convenience and necessity, and interconnection agreements by and among public telecommunications corporations. The comparison provided in the following paragraphs describes the evidence in this docket with a citation to the applicable paragraph of the FCC order.

The FCC's November 2009 order came about from a reconsideration of an earlier order that, based upon Farmer's representations, concluded that conference calling companies were end users and that Farmers could impose access charges on Qwest. Soon after this order was issued, Qwest argued that newly available information may demonstrate that the conference calling companies were not customers but "business partners working together with Farmers in its deliberate

scheme to manipulate the Commission's rules and exceed the authorized rate of return." FCC Order ¶ 7.

The petition in this docket, 08-2469-01, caused the Commission and parties to reconsider All American's representations in the CPCN and interconnection dockets. The newly-identified evidence from this docket, as in the FCC proceeding, has raised questions about the integrity of the process by which a CPCN was granted, about the reliability of All American's representations, and the possibility that All American and JEI procedurally and substantively abused the authority granted by the Commission. FCC Order ¶ 8.

In the February 2007 amended CPCN application, All American stated that it would not provide local exchange services in the service areas of small or rural local exchange carriers. However, All American always intended to operate as it does in Beehive's Garrison, Utah exchange. *Goodale Rebuttal line 25 to 27*. It has been determined that All American began its Garrison operations in 2006, before any CPCN was granted. All American has no tariff or price list applicable to Utah. JEI is All American's only customer. All American does not bill and JEI does not pay for any telecommunications or related services such as line charges, collocation space, internet access, electrical power or any installation, maintenance or monthly recurring charges. FCC Order ¶ 12 and Ft. Note 48. JEI has no customer designated premises in Garrison, Utah. In Garrison, JEI has only a voice

response system and a conference bridge through which JEI sends traffic to chat lines JEI or others own and operate. JEI can make no outgoing calls on its own or All American's facilities. *Transcript Page 128 to 129; See All American v. AT&T 2d Interrogatory 8 in DPU Exhibit 6.* All American provided a new high capacity Taqua 7000 switch for JEI traffic, apparently at no cost. FCC Order ¶ 13.

The commercial arrangement between All American and JEI can only take place outside of the NECA traffic-sensitive cost and revenue pool. FCC Order ¶ 4. Because Beehive needed to avoid scrutiny of its contract with JEI, Beehive rejoined the pool and installed All American in its place. *See Transcript Page 101, 109 to 110.* Rather than tariffs, the business arrangements between All American and Beehive and JEI are governed by oral contracts for which there are no records demonstrating terms or performance. The contract between All American and JEI provides JEI with a superior right to appropriate All American's revenues.¹⁰ FCC Order ¶ 11.

JEI is neither a customer nor an end user of telecommunications services offered under a tariff. FCC Order ¶ 10. All American's agreement NOT to compete with Beehive and All American having absolved Beehive's \$1 million debt for switched access services is antithetical to Utah's legislative policy on telecommunications. *Transcript Page 107 to 109.* FCC Order ¶ 14. All

¹⁰ Mr. Goodale's testimony in this regard is particularly confusing. *Transcript Page 103 to 107.*

American represented itself as a legitimate CLEC until it tried to collect on the traffic stimulation plan. When revealed for what it actually is, All American filed its petition to amend the CPCN. FCC Order ¶ 15. However, to this day, All American's business in Garrison, Utah is inconsistent with the provision of local exchange services or any public telecommunications services. Its business arrangement with JEI and Beehive is evidence that from the beginning All American had no intention of operating in accordance with its CPCN and Utah telecommunications law. FCC Order ¶ 18.

All American's representations about its technical, financial and managerial capabilities, the services it would provide and the exchanges within which it would operate were self-serving. All American withheld and in this docket attempted to conceal, its violation of the CPCN, its true intent, and the true nature of its arrangement with Beehive and JEI. FCC Order ¶ 25.

V. THE COMMISSION SHOULD DENY ALL AMERICAN'S REQUESTED RELIEF AND ORDER ALL AMERICAN TO WITHDRAW FROM BEEHIVE EXCHANGES BECAUSE THE EVIDENCE IN DOCKET NO. 08-2469-01 CONVINCINGLY DEMONSTRATES ALL AMERICAN'S OPERATIONS ARE NOT IN THE PUBLIC INTEREST.

All American's original request that its petition be adjudicated under Utah Code §63-46b-5 and Utah Admin. Code R. 746-110 demonstrates that All American wanted to conceal the facts from the parties to Docket 06-2469-01 and

the Commission.¹¹ The informal adjudication that All American requested does not require the petitioner to provide notice of its filing, may limit those who are permitted to testify, present evidence and comment, prohibits discovery, prohibits intervention, does not require a public hearing or any hearing, and allows for an immediately and automatically effective order.¹²

The March 3, 2010 hearing was intended to examine the evidence and determine if All American's certificate of public convenience and necessity should be rescinded, altered, or amended. The evidence pertaining to the initial application for the CPCN, the certificate's scope, the interconnection agreement, and the content and character of All American's evidence in this docket, demonstrate that All American, Beehive and JEI purposefully omitted accurate information required by Utah law and necessary for the Commission to determine whether All American operations in Utah are in the public interest.

All American offers no judicious explanation or evidence that its continued operations in any rural exchange is in the public interest. As the Commission recognized in its June 16, 2009 Report and Order, the scope of this proceeding

¹¹ Utah Code §63-46b-5 is renumbered as Utah Code §63G-4-203 (Supp. 2009).

¹² Throughout this proceeding, All American and Beehive have persisted in their attempts to prevent an examination of their application and operations by seeking to prohibit discovery, delaying discovery, seeking stays, and seeking to exclude parties who have a statutory right to intervene. Had All American wanted to be forthright in any petition to amend the CPCN, including *nunc pro tunc*, it would have filed in Docket No. 06-2469-01.

includes investigating any alleged violation of the petitioner's certificate and determining whether the granting or maintenance of the CPCN is still in the public interest, including what effect alleged traffic pumping may have, if any, on the public interest. In the August 24, 2009 Report and Order on Reconsideration, the Commission outlined the importance of a decision in this case to the public interest.

Our resolution in this docket will impact how public telephone utilities obtain amended certificates and how those utilities—specifically Beehive and All American, operate within the bounds of their certificates. The ultimate outcome of these issues will necessarily impact ratepayers and likely the public interest. Additionally, the process by which we decide issues in this docket (e.g. finding that a utility may expand its certificate via the simple filing of an interconnection agreement as opposed to petitioning for amendment of the certificate through a public process, etc.) is also a regulatory action that will impact residential and small utility customers of public telephone utilities. Report and Order on Reconsideration, August 24, 2009, pages 14-15.

The Office requested that the Commission scrutinize All American's certificate of public convenience and necessity and the interconnection agreement with Beehive against both the obligations as public telephone utilities and tested by the public interest in a thorough and public process. The Office is concerned not only with specifically how an All American/Beehive interconnection agreement will impact rates for ratepayers, but also generally with the process by which public telephone companies may alter the terms of their certificates and

abide by the Commission's orders. Certainly, violating the certificate is not grounds for expanding it.

Mr. Goodale takes credit for inviting intervention and initiating scrutiny in a public forum on the public record. *Goodale Rebuttal, lines 63 to 65*. While not entirely true given All American's attempts to exclude the Office, thwart discovery, and in the final days before hearing, prohibit all opposition from the Office and Division, there has been a public hearing and there is now a public record documenting this company's defiant and planned violation of Commission orders and Utah law.

Operating as a public utility before obtaining a CPCN and then operating in areas prohibited by the CPCN are not technical violations as All American claims. These facts indicate that the representations made in every version of the CPCN application were made to acquire a CPCN that the company knew at the time it was violating. All American and Beehive entered into the interconnection agreement knowing it violated the CPCN to place a cloak of legitimacy over a sham transaction. All American claims those technical violations occurred because the company naively relied upon its attorney. But the amendments to the original CPCN application excluding all rural exchanges and expressly excluding Beehive, and the interconnection agreement, were not the product of innocent misunderstandings or harmless oversights. The purpose of All American's filings

with the Commission was to make it appear that All American operated as a competitive carrier under the authority of the Commission and in compliance with FCC rules. However, the realities of its operations are very different.

“From the time All American first considered operating in Utah, the company’s intent was to operate in Beehive’s territory in the manner in which it is currently operating.” *Goodale Rebuttal line 25 to 27*. The company’s operations are marked by the absence of traditional agreements to provide public telecommunications services and agreements obligating a customer to pay for the services. All American’s accounting system includes no customer accounts and is apparently inadequate as a source for accurate financial reporting, as indicated by the 2007 Annual Report supplied in discovery. All American did not report its Utah income on tax returns and schedules filed with Utah taxing authorities. *Transcript Page 189*. All American has no traditional agreements with other utilities for purchase, sale or interchange of services, and no traditional agreements for supplying, leasing, or selling equipment to or from utilities and customers, including investments required by customer service demands. And, All American has no billing system for JEI, its only customer, albeit one that has no authority to conduct business in Utah. *OCS Exhibit 1*. Under an oral agreement JEI provides marketing services to All American that Mr. Goodale, All American’s president,

could not describe and for which All American pays a fee about which Mr. Goodale had no working knowledge. *Transcript Page116, 138.*

VI. CONCLUSION.

The record substantially evidences that All American's actual Utah operations have no connection to the provision of high quality, affordable public telecommunications services to all Utah residents and businesses. It does not provide wider customer choices; it provides nothing to Utah citizens. All American does not facilitate or promote the development and deployment of advanced telecommunications infrastructure. All American does not encourage new technologies, enhance the general welfare or encourage the growth of Utah's economy. All American provides no services to any resident or business in Garrison and provides no economic benefit to Garrison, Utah. *Transcript Page 131.* All American does not serve the public interest.

Dated this 24th day of March 2010.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion was served upon the following by electronic mail sent March 24, 2010:

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