

**EXHIBIT A**

**TO**

**QWEST'S INITIAL BRIEF**

**DOCKET NO 08-2469-01**

**Filed March 24, 2010**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
AT&T CORP.	)	
	)	
Complainant,	)	
	)	
v.	)	File No. EB-09-MD-010
	)	
ALL AMERICAN TELEPHONE CO.,	)	
e-PINNACLE COMMUNICATIONS,	)	
INC., and CHASECOM	)	
	)	
Defendants.	)	

**JOINT STATEMENT OF STIPULATED FACTS**

AT&T Corp. (“AT&T”), and All American Telephone Co., e-Pinnacle Communications, Inc., and ChaseCom (collectively with AT&T, the “Parties”), in accordance with the Enforcement Bureau’s February 19, 2010 letter ruling in the above-captioned matter,<sup>1</sup> respectfully submit the following Joint Statement of Stipulated Facts relevant to all of the issues that have been referred, in accordance with 47 C.F.R. §§ 1.732(h) and 1.733(b)(1)(v).<sup>2</sup>

The Parties have defined stipulated facts to be facts upon which both Parties agree, but the inclusion of any fact as a stipulated fact does not constitute an admission by any Party that the fact is relevant or admissible to the legal issues in dispute.

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<sup>1</sup> See Letter from Anthony J. DeLaurentis (FCC) to James F. Bendernagel, Jr. (counsel for AT&T) and Jonathan Canis (counsel for All American Telephone Co., Inc., ChaseCom, and e-Pinnacle Communications, Inc.), File No. EB-09-MD-010, Feb. 19, 2010 (“Letter Ruling”).

<sup>2</sup> The parties are also, simultaneous with this Joint Statement of Stipulated Facts, each filing statements with respect to their respective positions regarding the issues referred to this Commission by the Southern District of New York on February 5, 2010.

The Parties have defined disputed facts to be: facts upon which the Parties cannot agree or facts for which a party states that it does not have information sufficient to allow for a stipulation.

## STIPULATED FACTS

### Parties

1. AT&T (“AT&T”) is a New York corporation with its principal place of business at One AT&T Way, Bedminster, New Jersey 07921.

2. All American Telephone Co., Inc. (“All American”) is a Nevada corporation with its principal place of business at 8635 West Sahara Avenue, Suite 498, Las Vegas, NV 89117. All American was granted a certificate of public convenience and necessity (“CPCN”) to operate as a competitive provider of telecommunications services in Nevada by the Nevada Public Utilities Commission on March 5, 2001. All American was granted a certificate of public convenience and necessity to provide public telecommunications services 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 by the Public Service Commission of Utah on March 7, 2007.

3. e-Pinnacle Communications, Inc. (“e-Pinnacle”) was a Utah corporation whose principal place of business was at 400 N. 300 W., Suite 114, Provo, Utah. On October 20, 2004, e-Pinnacle obtained a CPCN from the Utah PSC.<sup>3</sup> The CPCN states that e-Pinnacle is authorized to “provide public telecommunications services within the State of Utah, excluding those local exchanges of less than 5,000 access lines of incumbent telephone corporations with fewer than

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<sup>3</sup> Ex. 9, Report and Order, *Application of e-Pinnacle Commc'ns, Inc. for a Certificate of Public Convenience and Necessity to Provide Local Exchange Services within the State of Utah*, Docket No. 04-2433-01, 2004 Utah PUC LEXIS 242 (Utah P.S.C. Oct. 20, 2004);

30,000 access lines in the state.”<sup>4</sup> e-Pinnacle, of its own accord, ceased providing service in May 2007, and its certificate was cancelled on February 11, 2008.

4. ChaseCom is a California corporation with its principal place of business at 612 State Street, Santa Barbara, California. The sole shareholders of ChaseCom are Herb Levitin and Joanne Masotta. On July 13, 2005, ChaseCom obtained a CPCN from the Utah PSC.<sup>5</sup> The CPCN states that ChaseCom is authorized to “provide public telecommunications services 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.”<sup>6</sup>

5. Hereinafter, All American, e-Pinnacle, and ChaseCom are referred to as “the CLECs.”

#### Non-Parties

6. Beehive Telephone Company, Inc., Nevada, and Beehive Telephone Company, Inc., Utah (collectively, “Beehive”), are incumbent local exchange carriers that serve approximately 800 to 1000 access lines in rural territories in Nevada and Utah. Each of Beehive’s local exchanges in Utah have less than 5,000 access lines, and Beehive serves fewer than 30,000 access lines in Utah.

7. Joy Enterprises, Inc. (“Joy”) is a Nevada corporation, with its principal place of business at 8635 West Sahara Avenue, Suite 498, Las Vegas, NV 89117.

8. Joy and All American have the same business address, and have common directors, officers, and ownership. David Goodale is the President of All American and is a past

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<sup>4</sup> *See id.*

<sup>5</sup> Ex. 12, Report and Order, *Application of Chase Com for a Certificate of Pub. Convenience and Necessity to Provide Local Exch. Servs. within the State of Utah*, Docket No. 05-2453-01, 2005 Utah PUC LEXIS 143 (Utah P.S.C. July 13, 2005).

<sup>6</sup> *Id.*

president of Joy. Joy Boyd is the second ranking officer of All American and is the Secretary of Joy. Gayla Doucet is the President of Joy and the third ranking company officer of All American. Wesley Doucet is a director of Joy and of All American. Donald Surratt is the Treasurer of Joy and CFO of All American. All American and Joy Enterprises share common ownership.

9. David Goodale has been associated with Joy as an officer, director, or owner since Joy began using telephone numbers associated with Beehive in the mid-1990's.

10. CHR Solutions, Inc. ("CHR") is a Texas entity that provided telecommunications consulting services to the CLECs.

### **Procedural History**

11. On February 5, 2007, the three CLECs filed suit against AT&T in the U.S. District Court for the Southern District of New York ("the Court"). The Amended Complaint asserted three claims: (i) a collection action for access services provided pursuant to interstate and intrastate tariffs; (ii) claims that AT&T violated 47 U.S.C. § 201(b) and 203(c) by invoking "self-help" and failing to pay for the tariffed services; and (iii) a quantum meruit claim.

12. AT&T filed an answer and counterclaims, asserting federal law claims that the CLECs had violated Sections 201(b) and 203 of the Communications Act, and state law fraud, civil conspiracy, and unjust enrichment claims. AT&T alleged that the CLECs had not provided switched access services consistent with the terms of their tariffs. AT&T also claimed that, regardless of whether or not access services had been provided pursuant to tariffs, the CLECs had committed unreasonable practices through "sham" arrangements designed for the purpose of inflating access charges.

13. On March 14, 2008, the CLECs moved for judgment on the pleadings. On July 24, 2008, the Court issued an order that granted Plaintiffs' motion, but allowed AT&T to replead

its counterclaims within 10 days of the order. On August 7, 2008, AT&T repleaded its counterclaims. AT&T also moved on that date for reconsideration of the Court's order granting the CLECs a judgment on the pleadings.

14. On March 16, 2009, in response to AT&T's motion for reconsideration of the Court's order granting the CLECs a judgment on the pleadings, the Court reversed itself, denied the CLECs' motion for judgment on the pleadings, and refused to dismiss AT&T's counterclaims. The Court also referred AT&T's § 201(b) "unreasonable practice" "sham entity" counterclaim to the Commission. The Court retained jurisdiction over the counterclaim pending the outcome of the Commission's determination.

15. AT&T filed an informal complaint with the Commission on April 15, 2009, which was docketed as File No. EB-09-MDIC-003.

16. On May 20, 2009, the CLECs filed a Petition for Declaratory Ruling in response to AT&T's informal complaint.

17. AT&T converted its informal complaint to a formal complaint on November 16, 2009.

18. On February 5, 2010, the Court referred additional, specific issues to the Commission. The Court retained jurisdiction over the claims in the lawsuit, pending the outcome of the Commission's determinations.

#### **Arrangements Between Beehive, Joy, and All American from 1994 to 2005**

19. Prior to March 31, 1994, Beehive charged interexchange carriers ("IXCs") access rates at the levels contained in the interstate access tariff filed by the National Exchange Carrier Association ("NECA"), which amounted to an interstate access rate of about 7 cents per minute.<sup>7</sup>

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<sup>7</sup> *AT&T Corp. v. Beehive Tel. Co., Inc.*, 17 FCC Rcd. 11641, ¶ 5 (2002) ("*AT&T v. Beehive*").

In 1994, Beehive withdrew from the NECA tariff and filed its own interstate access tariff pursuant to 47 C.F.R. § 61.39.<sup>8</sup>

20. In October 1994, Beehive and Joy entered into an access revenue-sharing arrangement.<sup>9</sup> Pursuant to the terms of the arrangement, Beehive initially paid Joy 4 cents for every minute of long distance traffic routed to Joy.<sup>10</sup> In October 1995, Beehive and Joy adjusted the compensation to a flat-rate of \$84,000 per month. In January 1997, the amount was further reduced to \$42,000 per month.<sup>11</sup>

21. As a result of Beehive's arrangement with Joy, Beehive's interstate local switching minutes of use ("MOUs") increased from about 3.6 million in 1994 to 25.4 million in 1995 and 30.1 million in 1996.<sup>12</sup>

22. In 2001, after All American received its certificate of public convenience and necessity to operate as a competitive provider of telecommunications services in Nevada, Beehive stopped directly paying Joy, and instead began paying All American pursuant to invoices that All American provided to Beehive.<sup>13</sup> These invoices were issued beginning in approximately July 2001, and ended in approximately October 2007.

23. All American and Joy have an oral agreement which contemplates that All

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* ¶ 6.

<sup>10</sup> See *Beehive Tel. Co., Inc.*, 13 FCC Rcd. 12275, ¶ 15 (1998) ("*Beehive June 1998 Order*"); see also *AT&T v. Beehive* ¶ 6.

<sup>11</sup> *Id.*

<sup>12</sup> See *In re Beehive Tel. Co.*, 13 FCC Rcd. 2736, ¶ 10 (1998) ("*Beehive Jan. 1998 Order*")

<sup>13</sup> See, e.g., Ex. 19, BEE-001238 (fax from Beehive dated Aug. 22, 2001 stating "Please be advised to change the name of 'Joy Enterprises' to 'All American Telephone Co.'"); Ex. 20, BEE-001240 (fax dated Aug. 22, 2001, asking for payment of \$47,215.61 to "All American Telephone Company – former 'Joy Enterprises.' Please be sure to include the following message – 'Lease of equipment.'"); Ex. 38, BEE-001014; Ex. 37, CHR-0004887, at 4888.

American will share access revenue with Joy.

24. All American has only routed calls to telephone numbers associated with Joy, and all of the amounts billed to AT&T by All American, and in dispute in these proceedings, are for calls that All American routed to telephone numbers associated with Joy. At the present, All American "does not have any plans to expand its services in Beehive's territory."<sup>14</sup>

25. According to NECA, in 2000, Beehive routed approximately 26,015,000 minutes of use from interexchange carriers, and then approximately 47,493,000 minutes in 2001, approximately 84,329,000 minutes in 2002, approximately 91,571,000 minutes in 2003, 147,454,000 minutes in 2004, and approximately 313,529,000 minutes in 2005.<sup>15</sup>

26. Since 2001, Beehive's rates for the end office switching rate element of switched access services have gradually declined: on July 1, 2001, Beehive's end office rate was 4.59 cents per minute.<sup>16</sup> Over the next four years, Beehive's rates decreased to: 4.25 cents per minute on January 1, 2002; 2.03 cents per minute on July 1, 2002; 1.52 cents per minute on July 1, 2003; and 1.02 cents per minute on July 1, 2005.<sup>17</sup>

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<sup>14</sup> All American Responses to the Division's Fifth Set of Data Requests, Request No. 5.8, at 4, Docket No. 08-246901 (P.S.C. of Utah, Feb. 23, 2010).

<sup>15</sup> See Ex. 40, Summary of the listing for Beehive Telephone in Utah and Nevada, excerpted from Network Usage by Carrier, Annual submission by NECA of Access Minutes of Use, File NETWU08.ZIP, et al., Tab 6, available at <http://www.fcc.gov/wcb/iatd/neca.html>.

<sup>16</sup> See Beehive Tel. Cos., Tariff F.C.C. No. 1, 10<sup>th</sup> Rev. Page 11 (eff. July 3, 2001).

<sup>17</sup> See Beehive Tel. Cos., Tariff F.C.C. No. 1, 11<sup>th</sup> Rev. Page 11 (eff. Jan. 1, 2002); Beehive Tel. Cos., Tariff F.C.C. No. 1, 12<sup>th</sup> Rev. Page 11 (eff. July 1, 2002); Beehive Tel. Cos., Tariff F.C.C. No. 1, 13<sup>th</sup> Rev. Page 11 (eff. July 1, 2003); Beehive Tel. Cos., Tariff F.C.C. No. 1, 14<sup>th</sup> Rev. Page 11 (eff. July 1, 2005).



**Arrangements Between Beehive and the CLECs during and after 2005.**

27. Beehive played an active role in directing the CLECs' initial operations.<sup>18</sup>

Beehive initially paid the fees for CHR to assist the CLECs in filing tariffs and in making other regulatory filings.<sup>19</sup>

28. None of the officers or directors of e-Pinnacle has ever been an officer or director of Beehive or has ever owned shares of Beehive. None of the officers or directors of Beehive has ever been an officer or director of e-Pinnacle or has ever owned shares of e-Pinnacle.

29. None of the officers or directors of ChaseCom has ever been an officer or director of Beehive or has ever owned shares of Beehive. None of the officers or directors of Beehive has ever been an officer or director of ChaseCom or has ever owned shares of ChaseCom.

30. Since June 30, 2007, Beehive has charged rates under the NECA interstate access tariff.<sup>20</sup>

31. AT&T is not challenging Beehive's interstate access tariff rates in this proceeding.

32. All American now owns two conference bridges associated with the Joy traffic.

33. ChaseCom owned conference bridge equipment made by Spectel and Think Engine. ChaseCom no longer has a bridge in Utah.

34. None of the CLECs connect directly to AT&T. The CLECs connect indirectly to AT&T through other carriers and Beehive.

35. All American filed an interstate access tariff, Tariff FCC No. 1, with the Commission on June 29, 2005. That tariff became effective on July 1, 2005.

36. On April 18, 2008, All American filed Tariff FCC No. 2.

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<sup>18</sup> Answer ¶ 18.

<sup>19</sup> See, e.g., Ex. 52, CHR-0004230; Ex. 53, CHR-0004233; Ex. 55, CHR-0000071.

<sup>20</sup> Beehive Telephone Companies, Tariff FCC No. 1, Transmittal No. 34 (June 15, 2007).

37. On June 16, 2008, All American filed tariff revisions to its Tariff F.C.C. No. 1.

38. e-Pinnacle filed an interstate access tariff, Tariff FCC No. 1, with the Commission on October 12, 2005. That tariff became effective on October 13, 2005. e-Pinnacle has not sought to revise its tariff and has filed no other interstate tariffs.

39. ChaseCom filed an interstate access tariff, Tariff FCC No. 1, with the Commission on October 12, 2005. That tariff became effective October 13, 2005. ChaseCom has not sought to revise its tariff, and has filed no other interstate tariffs.

40. For the periods prior to July 1, 2008, and after January 31, 2009, the CLECs' rate for the end office local switching rate element matched the applicable end office local switching rate element in Beehive's switched access tariff. In the period from July 1, 2008, to January 31, 2009, All American's bills to AT&T did not reflect the Beehive end office local switching rate element, as set forth in the NECA tariff.

41. All American applied for a certificate of public convenience and necessity (CPCN) from the Public Service Commission of Utah ("Utah PSC") on April 19, 2006.

42. Since August 2008, Beehive has provided technical and operational assistance with All American equipment. Beehive has not billed and All American has not paid charges for this assistance.

#### **The CLECs' Bills To AT&T**

43. The CLECs each sent bills to AT&T that indicated that they were for the provision of switched access services. AT&T did not pay the bills, except for a few invoices that AT&T alleges that it paid by mistake. AT&T has requested the CLECs to refund the payments. The CLECs have not issued any refunds.

44. All of the bills sent by the CLECs to AT&T are for terminating switched access services, and none of the bills are for originating switched access services.

45. The calls for which the CLECs billed AT&T were to telephone numbers associated with chat line and conferencing service providers (“CSPs”).

46. All American’s first bill to AT&T for terminating switched access services was dated April 1, 2006.

47. From April 2006 through September 2009, All American billed AT&T for approximately \$10,789,379 in terminating switched access services, plus late payment penalties of about \$3,446,169. In addition to these amounts, All American also provided AT&T with four additional invoices with bill dates prior to All American’s submission of its Utah CPCN application. These additional invoices are identified as follows: P-AA-00001-00015 (\$44,202.46); P-AA-00016-00030 (\$84,175.68); P-AA-00031-00037 (\$12,721.07); and P-AA-00038-00044 (\$2,086.86). All American continues to bill AT&T each month for such services.<sup>21</sup> AT&T has paid All American \$249,015. AT&T has withheld payment of the balance. AT&T has not disputed the number of minutes of traffic associated with the Joy telephone numbers.

48. ChaseCom’s first bill to AT&T for terminating switched access services was dated April 1, 2006.

49. Between April 2006 and July 2007, ChaseCom billed AT&T for \$44,240 in terminating switched access services. Between April 2006 and June 2009, ChaseCom billed AT&T \$24,566 in late payment penalties. AT&T has paid ChaseCom \$336.<sup>22</sup> AT&T has

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<sup>21</sup> Ex. 8, Expert Report of David I. Toof, Ph.D., ¶ 10, Ex. DIT-4 (Aug. 7, 2009) (“Toof Report”); Ex. A, Supplemental Expert Report of David I. Toof ¶ 7, Ex. DIT-2 (“Toof Supp. Report”).

<sup>22</sup> Ex. 8, Toof Report ¶ 26, Ex. DIT-11.

withheld payment of the balance. AT&T has not disputed the number of minutes of traffic associated with calls to CSP telephone numbers.

50. e-Pinnacle's first bill to AT&T for terminating switched access services was dated April 1, 2006.

51. Between April 2006 and May 2007, e-Pinnacle billed AT&T for \$196,744 in terminating switched access services, plus late payment penalties of \$8,519.<sup>23</sup> AT&T has paid e-Pinnacle \$3,145. AT&T has withheld payment of the balance. AT&T has not disputed the number of minutes of traffic associated with calls to CSP telephone numbers.

52. All American's bills for the provision of services use CLLI codes associated with Beehive's Irapah, Garrison, Park Valley, West Wendover, and Burbank offices. e-Pinnacle's bills for the provision of services use a CLLI code associated with Beehive's Park Valley office. ChaseCom's bills for the provision of services use CLLI codes associated with Beehive's Park Valley and Garrison offices.

53. AT&T has paid some tandem switching and transport charges to Beehive for traffic destined to the CLECs.

**The CLECs' Relationships With Chat Line and Conference Calling Service Providers ("CSPs")**

54. All American does not have a written agreement with Joy regarding its business arrangements with Joy or for the provision of local telecommunications service.<sup>24</sup>

55. ChaseCom does not have written agreements with any CSP for the provision of local telecommunications service.

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<sup>23</sup> Ex. 8, Toof Report, ¶ 10, Ex. DIT-9.

<sup>24</sup> See All American's Responses to the Division's Fourth Set of Data Requests, Response 4.2.a, at 2, Docket No. 08-246901 (P.S.C. of Utah, Feb. 11, 2010).

56. e-Pinnacle does not have written agreements with any CSP for the provision of local telecommunications service.

57. The CLECs did not market or offer local exchange services to residents or businesses that were not CSPs in Utah or Nevada.

58. The CLECs do not have written orders from any CSP for the provision of local telecommunications services.

59. The CLECs did not enter the names of any CSP into any ordering, billing, or accounting system.

60. The CLECs did not provide any CSP with dialtone to place outgoing local or long distance calls, including emergency 911 calls.

61. The CLECs did not provide the names and locations of any CSP to entities responsible for providing emergency 911 calls.

62. The CLECs did not issue any invoices to any CSP for the provision of local telecommunications services.

63. The CLECs did not list any CSP in any telephone directory, nor did the CLECs charge any CSP a fee to be "unlisted."

64. To the extent any CSP or CLEC maintained telecommunications equipment to provide chat line or conference calling services within the Beehive local exchanges, the equipment was located in a central office owned by Beehive.

65. All American has no documents that relate to its business relationship with Joy.<sup>25</sup>

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<sup>25</sup> See All American's Responses to the OCS's Third Set of Data Requests, Response No. 6, at 2, Docket No. 08-246901 (P.S.C. of Utah, Feb. 23, 2010).

**All American's Operations In Utah.**

66. All American issued two invoices to AT&T for terminating switched access services dated April 1, 2006 and May 1, 2006. These invoices included charges for services in Utah. After these two bill dates, All American did not bill AT&T any charges for services in Utah until August 2007.

67. All American's April 19, 2006 application for a Utah CPCN was submitted by "Judith O. Hooper, Attorney for All American Telephone Company, Inc."<sup>26</sup> Judith Hooper is a past officer of Beehive.

68. After objections were received on All American's application for a CPCN in Utah, All American amended its application on August 28, 2006 and again on February 20, 2007.

69. All American's second amended application was approved by the Utah PSC on March 7, 2007, and the resulting CPCN states that All American is authorized to "provide public telecommunications services 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."<sup>27</sup>

70. On June 11, 2007, All American and Beehive filed an interconnection agreement with the Utah Public Service Commission.

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<sup>26</sup> *Id.*

<sup>27</sup> See Ex. 6, Report and Order, *Application of All American Tel. Co., Inc., for a Certificate of Pub. Convenience and Necessity to Provide Local Exch. Servs. within the State of Utah*, Docket No. 06-2469-01, 2007 WL 5527292 (Utah P.S.C. March 7, 2007).

71. In April 2008, All American filed a petition with the Utah PSC asking for a “*nunc pro tunc* amendment” to its CPCN, in which All American asked for retroactive approval to operate as a local carrier within Beehive’s territory.<sup>28</sup>

72. On January 7, 2009, Beehive filed a Position Statement with the Utah PSC supporting All American’s *nunc pro tunc* petition.

73. On June 16, 2009, the Utah PSC denied All American’s petition.<sup>29</sup>

74. In an order dated August 24, 2009, the Utah PSC denied All American’s and Beehive’s petitions for reconsideration and affirmed its initial order.<sup>30</sup>

75. The Utah PSC matter is still ongoing and a hearing was recently held on March 3, 2010 in which the Administrative Law Judge scheduled post-hearing briefing with deadlines in late March 2010.

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<sup>28</sup> Ex. 68, Petition of All American, *Petition of All American Tel. Co. Inc. for a Nunc Pro Tunc Amendment of Its Certificate of Authority To Operate as a Competitive Local Exch. Carrier Within the State of Utah*, Docket No. 08-2469-01, at 1 (filed Apr. 23, 2008).

<sup>29</sup> Ex. 71, Report and Order, *In re Petition of All American Tel. Co. Inc. for a Nunc Pro Tunc Amendment*, Docket No. 08-2469-01 (June 16, 2009).

<sup>30</sup> Ex. 7, Report and Order, *In re Petition of All American Tel. Co. Inc. for a Nunc Pro Tunc Amendment*, Docket No. 08-2469-01 (Aug. 24, 2009).

March 19, 2010

Respectfully submitted,



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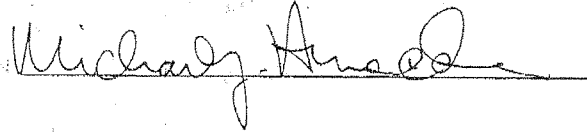
*Counsel for AT&T*



CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2010, I caused a copy of the foregoing Joint Statement to be served on the following as indicated below:

Lisa Griffin  
A.J. DeLaurentis  
Market Disputes Resolution Division  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street, S.W., Room 5A-848  
Washington, D.C. 20554  
*Via email*

A handwritten signature in cursive script, appearing to read "Michael A. Ansd", is written over a horizontal line.