

- 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 ) DOCKET NO. 08-2469-01  
Certificate of Authority of All American to )  
Operate as a Competitive Local Exchange ) REPORT AND ORDER  
Carrier within the State of Utah )  
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ISSUED: April 26, 2010

SYNOPSIS

*All American Telephone Company, Inc. (AATCO) petitioned the Commission for a nunc pro tunc amendment to its CPCN, authorizing it to operate as a competitive local exchange carrier (CLEC) in the territory certificated to Beehive Telephone Co., Inc. (Beehive). The Commission denied the nunc pro tunc aspect of the petition. With this order, the Commission denies the amendment, revokes AATCO's CPCN, and orders AATCO's withdrawal from Utah.*

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By The Commission:

This matter is before the Commission on AATCO's petition for amendment of its CPCN to serve as a CLEC in territory certificated to Beehive, i.e. the Garrison exchange and also the Commission's consideration of revocation of AATCO's CPCN for violations of its CPCN.

BACKGROUND

*The Original Certificate Proceeding, Docket No. 06-2469-01*

On April 19, 2006, AATCO applied for a CPCN. AATCO, however, had been operating in Beehive territory at least two years prior to applying for its CPCN—in 2004, *Qwest Exhibit 1, p.6, ll.113-120*, and operating in the Garrison exchange of Beehive's territory at least

as of February 2006. *Transcript, p.120, ll.21-24, p.124, ll.5-9.* In its original application, it stated that it sought authority “to operate as a provider of local exchange telecommunications services in the State of Utah. All American also intends to provide intrastate interexchange services within and throughout the State of Utah.” *Original Application, Docket No. 06-2469-01, April 19, 2006, p.1.* AATCO made other representations as well:

7. R746-349-3(A)(4). Services to be offered. *All American seeks authority to provide all forms of resold local exchange services, which will allow customers to originate and terminate local calls to other customers served by All American as well as customers served by all other authorized local exchange carriers. All American will also provide switched access services to interexchange carriers, which will allow All American’s customers to originate and terminate intrastate and interstate calls to and from customers of all interexchange carriers. All American seeks to provide resold local exchange services to business and residential customers in Qwest Communication’s service territories as well as interexchange services (intraLATA and interLATA) throughout the state of Utah. Resale authority is sought for the entire state for interexchange services and for Qwest’s service territory for local exchange services.*

All American specifically seeks authority to resell Qwest’s, other incumbent LECs and authorized CLECs’ local exchange services and IXCs’ interexchange services to business and residential customers throughout the state of Utah. All American intends to resell both local exchange services and switched and dedicated interexchange carrier services.

(7) (a) R746-349-3(A)(4)(a). Classes of customers. All American will be *servicing business and residential customers.*

(7)(b) R746-349-3(A)(4)(b). Location of Service. All American will provide service *to and from all points in Utah.*<sup>1</sup> (fn.1. All American currently does 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.)

7. (c) R746-349(A)(4)(c). Types of service. Local exchange services will include, but will not be limited to the following: (i) local exchange access services to single-line and multi-line customers (including basic access lines, direct inward-outward PBX trunk service, Centrex services, and ISDN and DSL); and (ii) local exchange usage services to customers of All American’s

end-user access line services. All American intends to offer both inbound and outbound intraLATA services. This will be accomplished primarily through the resale of the facilities of ILECs and/or CLECs. Applicant's services will be available on a full-time basis — 24 hours a day, seven days a week.

8. R746-349-3(A)(5). Access to standard services. All American will provide access to ordinary intraLATA and interLATA message toll calling, operator services, directory assistance, directory listings, and emergency services such as 911 and E911 either through its own operations or by purchasing those services from ILECs, certificated CLECs and other companies specializing in providing these services on a competitive basis.

*Id.* at ¶¶ 7-8 (emphasis added).

AATCO further affirmed:

10. R746-349-3(A)(1), R746-349-3(A)(8)–(10). Financial Abilities. All American is financially qualified to provide local exchange telecommunications services in Utah. In particular, All American has access to the financing and capital necessary to conduct its telecommunications operations as specified in this application.

....  
10. (b) R746-349-3(A)(9)(a)–(c). Balance sheet. Applicant's balance sheet prepared *according to Generally Accepted Accounting Principles* ("GAAP") and a letter from management attesting to the accuracy, integrity, and objectivity of the balance sheet and attesting that the balance sheet was prepared in accordance with GAAP are attached hereto as **Exhibit D**. In accordance with R746-349-3(A)(11)(a), this balance sheet shows that All American has a positive net worth.

....  
11.(a) R746-349-3(A)(11)(a) Income and cash flow statements. Please find as **Exhibit F**<sup>1</sup> a five-year projection of expected operations including *pro forma* income statements and *pro forma* cash flow statements. . . .

....  
14. R746-349-3(A)(1), R746-349-3(A)(14). Public interest. All American is an innovative company that has developed a variety of innovative marketing approaches. All American is precisely the kind of innovative start-up envisioned by Congress when they enacted the 1996 Telecommunications Act. Approval of All

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<sup>1</sup>Exhibit F was apparently never actually included with the Original Application or in subsequent applications.

*American's application will serve the public interest by creating greater competition in the local exchange marketplace for both business and residential customers. Applicant anticipates that its proposed service will provide its subscribers with better quality services and enhanced user features and will increase consumer choice through Applicant's reliable service offerings.* The public convenience and necessity, therefore, will be served by the issuance of a Certificate of Public Convenience and Necessity to Applicant authorizing it to provide the services described in this application.

*Id.* at ¶¶ 10, 11, 14 (emphasis added).

The Original Application contained a sworn statement from AATCO chief executive officer and general manager David Goodale that “that I have read the foregoing application and exhibits and know the content thereof; that the same are true and correct to the best of my knowledge, information, and belief.” *See Original Application, Verification.*

On June 9, 2006, the Utah Rural Telecom Association (URTA) intervened. It petitioned the Commission to exclude AATCO from entering exchanges serving fewer than 5,000 access lines, effectively the rural areas of the state, e.g. Beehive's Garrison exchange, etc.

On August 26, 2006, after two procedural conferences held with the Administrative Law Judge, AATCO amended its application to exclude “service areas of small or rural local exchange carriers as defined by the Telecommunications Act of 1996, except in Beehive Telephone Co., Inc. Territory . . . .” *First Amended Application*, page 5, fn.1. Therefore, it manifested its intent that the only rural areas it intended to serve were in Beehive territory, and that it would file subsequent petitions if it desired to serve other rural areas.

On January 16, 2007 the Division of Public Utilities (Division) filed a recommendation for approval of the CPCN as to Qwest certificated territories, but voiced concerns over allowing AATCO entry into the Beehive territory before the Commission held

hearings on the precedential nature of considering CLEC entry into a rural incumbent local exchange carrier's (ILEC) territory, impact on Universal Service Fund, and impact on telecommunication rates on ILEC customers. *Division Recommendation of January 16, 2007, Docket No. 06-2469-01, p.2.* Until those issues were resolved, the Division recommended disallowing entry into the Beehive territory. *Id. at p.3.*

Upon reviewing the Division's recommendation, AATCO filed its Second Amended Application *and Request for Expedited Consideration* on February 20, 2007. (emphasis added). In this application, AATCO explicitly stated that it "does not plan to provide local exchange services in the service area of small or rural local exchange carriers . . . ." It represented it would not serve in Beehive territory. Thus, the application requested a CPCN to serve only in Qwest's service territory. Based on these representations, i.e. that AATCO would only serve in Qwest certificated areas and not in the Beehive territory, the Division recommended approval of the CPCN and URTA withdrew its objections. The Second Amended Application was also verified by Goodale.

On March 7, 2007, the Commission, based on AATCO's representations, granted the CPCN. It granted authority to serve in Utah but specifically excluded AATCO from serving in "those exchanges with less than 5,000 access lines that are served by incumbent telephone corporations with fewer than 30,000 access lines in the state", such as the Garrison exchange. *Report and Order, Exhibit A-Certificate of Public Convenience and Necessity, March 7, 2007, Docket No. 06-2469-01.*

*The Interconnection Agreement, Docket No. 07-051-03*

Three months after the Commission granted the CPCN, and explicitly disallowed AATCO from entering Beehive territory, Beehive and AATCO submitted a purported interconnection agreement between the two. In the interconnection agreement, AATCO states that it is granted permission to operate as a CLEC, but nowhere does the interconnection agreement state the limitations of the CPCN, i.e. exclusion from serving in Beehive's area. *See Interconnection Agreement, Docket No. 07-051-03, p.1.* AATCO was serving in Beehive territory even before the interconnection agreement was filed.

Since it began operating illegally in Utah, AATCO has had one customer, and only one customer, Joy Enterprises (Joy). *See AATCO Exhibit P-1, ll.179-182.* Joy owns AATCO. *See Transcript, p. 55, ll.13-25, p.56, ll.1-6.* AATCO represented it did not "have any plans of doing anything else" besides serving only Joy, and only in Garrison, Utah and not entering anyone else's territory, *see AATCO Exhibit P-1, ll.179-182, Transcript, p.123, ll.9-18,* and "no intent of ever taking customers away from Beehive." *Id. at p.123, ll.19-20.*<sup>2</sup>

*The Current Proceedings*

On April 23, 2008, the petitioner filed what it termed a petition for a *nunc pro tunc* amendment of its certificate of public convenience and necessity. In support of its petition, the petitioner alleged:

1. AATCO was granted a Certificate of Public Convenience and Necessity in Docket No. 06-2469-01 on March 7, 2007, authorizing it to operate as a CLEC within the state of Utah, excluding those local exchanges of less

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<sup>2</sup> The Commission recognizes every CLEC at some point will only have one customer. But usually, they do not intend to have only one customer but in fact intend to compete for customers. AATCO intends only to serve Joy.

- than 5,000 access lines of incumbent telephone corporations with fewer than 30,000 access lines in the state.
2. On June 11, 2007, AATCO and Beehive Telephone Co., Inc. (“Beehive”) filed an interconnection agreement with the Commission. This interconnection agreement was deemed approved by the Commission on September 10, 2007 pursuant to 47 U.S.C. § 252(e)(4).
  3. AATCO and Beehive have been operating under the terms of this interconnection agreement on the assumption that AATCO had authority to operate as a CLEC in the area certificated to Beehive.
  4. If the terms of the March 7, 2007 Certificate are viewed in isolation, independently of the interconnection agreement, AATCO technically may be deemed to lack authority to operate as a CLEC in the area certificated to Beehive.
  5. In order to conform AATCO’s CLEC certificate to the facts of the arrangements that have existed between the two companies since the certificate was granted, AATCO hereby requests that the Commission amend AATCO’s certificate *nunc pro tunc*, as of the date the certificate was issued so as to grant AATCO the authority to operate as a CLEC in the area certificated to Beehive, at least to the extent of the terms and conditions of that interconnection agreement.
  6. Such an amendment will make certain the implicit operating authority already granted by the Commission, and will not operate to extend AATCO’s operating authority into any other local exchange carrier’s certificated territory. Beehive has filed, concurrently with this application, its consent to AATCO’s petition.

*Current Petition, Docket No. 08-2469-01, pp. 1-2.*

Despite the fact that URTA and the Division both opposed AATCO’s entry into Beehive territory in the original certificate proceeding, and despite the fact that AATCO knew of their opposition, AATCO—inexplicably, stated there would be no reasonable expectation of opposition. It moved the Commission to designate the current proceedings as informal stating:

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.

*Id.* at ¶ 7 (emphasis added).

On October 27, 2008—before the 240-day time period<sup>3</sup> Beehive and AATCO argued applied, the Division moved to dismiss All American's petition because All American had not provided the Division with responses to data requests. Those responses would have assisted the Division in ascertaining “the nature of the services that AATCO provides to Beehive.” *Division's Request for Dismissal, p.4*. All American further refused to provide responses to a second set of data requests. Before the end of the 240-day time period, the Division moved for dismissal because All American failed “to provide the necessary information to determine if the requested Amendment should be granted.” *Id.* In a letter to the Division's counsel, All American proposed staying briefing and hearing to try and resolve the Division's concerns informally, and stated that if the concerns were not resolved, then the parties could continue the formal resolution. All American's counsel then stated: “Finally, you previously raised concerns about delaying this matter in light of the 240-day time period set forth in Utah Code Ann. § 54-8b-2.1(3)(d). *It is my position that this time limit has no application to the subject matter of this proceeding.* Therefore I am willing to sign a waiver which states that a decision on the Petition need not be made within this time frame.” *See Petitioner's Request for*

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<sup>3</sup> Utah Code Ann. § 54-8b-2.1 states that when a “competitive telecommunications corporation” files an application to “compete in providing local exchange service or other public telecommunications services in all or part of the service territory of an incumbent telephone corporation”, “the commission shall approve or deny the application under this section within 240 days after it is filed.”



*Extension of Time to Respond to the Division's Request for Dismissal and Request for Scheduling Conference, Exhibit A: November 6, 2008 Letter from Gary Guelker, Esq. to Michael Ginsberg, Assistant Attorney General, p.2* (emphasis added). Additionally, subsequent to the letter sent to the Division's counsel, in its November 2008 Request for Extension of Time to the Commission, it stated the following:

Finally, Petitioners hereby stipulate and agree that the 240-day deadline set forth in Utah Code Ann § 54-8b-2.1(3)(d) *does not apply to* this proceeding. As such, Petitioners stipulate and agree that the Commission *is not required to approve or deny the Petition in this matter* within 240 days of its filing and that *the Petition will not be considered granted* if it is not acted upon within 240 days of its filing.”

(emphasis added). After AATCO made that affirmative representation, and based on current and past Commission practice allowing petitioners/applicants to waive the 240-day time period, the Commission did not act on the petition within 240 days (which AATCO and Beehive later said it should have). It granted AATCO's request for extension of time and took administrative notice of its waiver of the 240-day time period.

On January 14, 2009, the Commission issued an order reaffirming the formality of the proceedings, denied the petitioner's request to designate them as informal, and set deadlines for all parties and intervenors to respond to the Division's and the Office of Consumer Services' Motions, as well as deadlines for the petitioner and Beehive to file their own dispositive motions.

On or about April 7, 2009, several parties, including the OCS, URTA, AT&T Communications of the Mountain States, Inc. and TCG Utah (AT&T), Qwest Corporation and Qwest Communications Company, LLC (Qwest), and Beehive filed

motions or responses to motions. The Commission's June 16, 2009 Report and Order summarizes the parties' arguments in their various moving and responding papers. In sum, the Commission denied AATCO and Beehive's Motions to Strike the OCS's Motions, and denied their motions for summary judgment—holding the Commission could not grant the petition on a *nunc pro tunc* basis. The Commission also found that the interconnection agreement submitted by Beehive and AATCO did not expand AATCO's territory. It also found that AATCO had to file an amended petition, asking the Commission to amend its CPCN prospectively to allow service in the Beehive territory. The Commission gave notice on June 16, 2009 to AATCO that, together with AATCO's petition to amend its CPCN, the Commission would also consider whether the CPCN should be revoked. The Commission stated:

To the extent not done previously, the Commission gives notice to All American that this docket shall consider to what extent its certificate should be rescinded, altered, or amended, and whether its certificate should permit it to operate in Beehive's territory or to what extent it should be excluded from serving local exchanges with less than 5,000 access lines controlled by incumbent telephone corporations with fewer than 30,000 access lines. The caption in this docket shall be changed to be as follows: "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."

*Report and Order, June 16, 2009, p.19, ¶ 3.*

AATCO contradicted its affirmative representations that the 240-day time period could be waived—after the 240-day time period had passed. It made various representations to the Commission that it would appeal the issue. Without prior case law on the issue, the Commission treated the new amended petition as subject to a new 240-

day time period.

On July 14, 2009, the Commission, in an interim scheduling order, ordered AATCO to file an amended petition by August 5, 2009. That amended petition, however, was not filed until August 31, 2009. Assuming the 240-day time period applied, the Commission began the running of the 240-time period from that date.

On August 5, 2009, the Commission granted Beehive's Request for Reconsideration and AATCO's Request for Review and Reconsideration. On August 24, 2009, the Commission issued its order on those Requests. The Commission reaffirmed its June order denying their motions for summary judgment and motions to strike and also denied their motions for stay pending an appeal to the Supreme Court.

On October 28, 2009, the Commission set a scheduling order for the conducting of discovery and filing of testimony in the matter, as well as setting a hearing date and schedule for post-hearing briefing.

The parties conducted discovery and filed testimony before the hearing, which was set for March 3, 2010. Beehive did not participate in discovery and did not file any testimony previous to the hearing.

On March 1, 2010—two-days before the hearing, AATCO filed a Motion in Limine, seeking to prevent the Division and the OCS from opposing AATCO's proposed amendment, seeking the rescission of AATCO's CPCN at the hearing, and/or introducing any evidence at the hearing in support of these positions. At the hearing, that Motion was denied and an order was read from the bench. (A written version of the order

denying the Motion in Limine was issued as well).

A hearing was conducted by the ALJ of the Commission on March 3, 2010. Gary Geulker and Janet Jenson represented AATCO. David Goodale testified on behalf of AATCO. Beehive did not participate in the hearing, nor did it file pre- or post-hearing testimony, although Alan Smith, its counsel, was present in the courtroom, identified himself as Beehive's counsel and observed the proceedings. Michael Ginsberg, assistant attorney general, represented the Division. Casey Coleman testified for the Division. Paul Proctor, assistant attorney general, represented the OCS. Michele Beck testified for the OCS. Stephen Mecham was counsel for the URTA. Douglas Meredith testified for the URTA. George Baker Thompson, Jr. was counsel for Qwest. Lisa Hensley Eckert testified for Qwest. William J. Evans was counsel for AT&T. Jack Habiak submitted pre-filed testimony for AT&T, but did not testify at the hearing.

#### ANALYSIS

##### *Legislative Policy Declarations and Competitive Entry*

In passing the state's Public Telecommunications Law, the Legislature declared the underlying policy of the state in Utah Code Ann. § 54-8b-1.1:

The Legislature declares it is the policy of the state to:

- (1) endeavor to achieve the universal service objectives of the state as set forth in Section 54-8b-11;
- (2) facilitate access to high quality, affordable public telecommunications services to all residents and businesses in the state;
- (3) encourage the development of competition as a means of providing wider customer choices for public telecommunications services throughout the state;
- (4) allow flexible and reduced regulation for telecommunications corporations and public telecommunications services as competition

develops;

(5) facilitate and promote the efficient development and deployment of an advanced telecommunications infrastructure, including networks with nondiscriminatory prices, terms, and conditions of interconnection;

(6) encourage competition by facilitating the sale of essential telecommunications facilities and services on a reasonably unbundled basis;

(7) seek to prevent prices for tariffed public telecommunications services or price-regulated services from subsidizing the competitive activities of regulated telecommunications corporations;

(8) encourage new technologies and modify regulatory policy to allow greater competition in the telecommunications industry;

(9) enhance the general welfare and encourage the growth of the economy of the state through increased competition in the telecommunications industry; and

(10) endeavor to protect customers who do not have competitive choice.

In the Public Telecommunications Law (Law), Utah Code Ann. § 54-8b-1 *et seq.*, there is no statute squarely dealing with the process of amending a CPCN that has already been granted. When considering whether to amend a certificate, however, the Commission is guided by the provisions of Utah Code Ann. § 54-8b-2.1, governing competitive entry by a telecommunications corporation into an incumbent telephone corporation's service territory. The Commission may amend the CPCN if it determines that: "(a) the applicant has sufficient technical, financial, and managerial resources and abilities to provide the public telecommunications services applied for; and (b) the issuance of the certificate to the applicant is in the public interest." *Utah Code Ann. § 54-8b-2.1(2)(a)-(b).*

*AATCO's Provision of Local Exchange or Other Public Telecommunications Services*

At the outset, the Commission notes there is dispute as to whether AATCO indeed provides local exchange service or public telecommunications service as

defined in the Law. The Law defines local exchange service as “the provision of telephone lines to customers with the associated transmission of two-way interactive, switched voice communication within the geographic area encompassing one or more local communities as described in maps, tariffs, or rate schedules filed with and approved by the commission.” *Utah Code Ann. §54-8b-2(10)*. The Law further defines public telecommunications service as “the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.” *Utah Code Ann. §54-8b-2(16)*.

When it initially applied for a CPCN, AATCO affirmed it planned to offer “all forms of resold local exchange services, which will allow customers to originate and terminate local calls to other customers served by [AATCO] as well as customers served by all other authorized local exchange carriers.” However, AATCO concedes that since it began operating in Utah without authority for almost three years before being issued its CPCN, and since being issued its CPCN, it has only one customer—Joy Enterprises (Joy). *Pre-filed Direct Testimony of David Goodale, ll.179-182; Transcript, p.53, ll.14-17, 22-25, p.123, ll.9-24*. And the primary service it claims to provide is the ability to provide conference calling service. *Transcript, p.53, ll.22-25, p. 54, ll.9-13*. That service, however, does not provide for “transmission of two-way interactive, switched voice communication” or “the two-way transmission of signs, signals, writing, images, sounds, messages, data,” etc. There is no dispute that Joy could receive incoming calls

from those using its services. As to out-going calls, Mr. Goodale at first testified that Joy could make outbound calls. *Transcript*, p.73, ll. 21-25. The Division on cross-examination, however, submitted Mr. Goodale's responses to interrogatories made in a matter pending in the U.S. District Court for the Southern District of New York indicating otherwise. *See DPU-6, All American's Response to AT&T Corp.'s Second Set of Interrogatories, Response to Interrogatory No. 8(e)*. There the interrogatory propounded asked: "whether you provided Free Calling Provider [Joy] with the capability to place outgoing calls to all entities receiving local exchange services in the same local exchange ; . . ." Mr. Goodale answered "no." *See id.* Mr. Goodale testified at various points that Joy could make outgoing calls if it desired. *Transcript*, p.81, ll.13-15, p.83, ll.12-15. But he also testified, that although Joy has been operating in the Beehive area for at least six years, Joy has *not made one* single outbound call during that time. *See e.g. Transcript*, p.81, ll.9-11 ("As I mentioned earlier, to the best of my knowledge, Joy Enterprises has never made any outgoing calls."), p.83, ll.12-13 (" . . .like I said, I don't believe that they've ever made any outgoing calls." ). If Joy has been operating in Utah for six years, with the capability to make outbound calls, and it never did so, it must be because Joy in fact did not have the capability to provide outbound calls. Mr. Goodale's contentions stating there were two-way transmissions are not credible. Further, notwithstanding the Original Application, it appears there never was an intention by AATCO to provide customers with a service permitting both the origination and termination of local calls. Given Mr. Goodale's statement made in the Southern District

of New York, and given other portions of his testimony, and other evidence, it is clear there was no “two-way transmission” required to deem the conference calling service as a local exchange service or public telecommunications service as defined in the Law.

AATCO suggested that if it was not a local exchange service or public telecommunications service, then it would not need a CPCN and could operate “outside the jurisdiction of the Commission.” *Transcript, p.235, ll.4-17*. But if it indeed did not provide a local exchange service or public telecommunications service, then it obviously would not be entitled to access charges, order number blocks, etc. *See Transcript, p.239, ll.1-21*.

Even assuming, *arguendo*, that the conference calling service could be considered a local exchange service or public telecommunications service, AATCO admitted that Joy provides the service, not AATCO. *Transcript, p.167, ll. 20-25, and AATCO Exhibit P-1, ll. 185-209*. Additionally, even if AATCO did provide such service, it provided no Utah tariff, competitive contract, or price list by which it could determine how it would even provide such service to Joy. *DPU Exhibit 1, Transcript, p.86, ll.7-12, p.153, ll.25-p.154, ll.1-4*.

Regardless, however, AATCO should still not be allowed to amend its CPCN or even to maintain it. It lacks sufficient technical, financial, and managerial resources and abilities to expand or maintain its CPCN. Also, allowing AATCO to amend or maintain its CPCN would not be in the public interest.

*AATCO Lacks Technical Resources and Abilities*



AATCO claims it has the technical resources and abilities to operate in Utah. It bases this primarily on the fact that the Commission, in its March 2007 issuance of the CPCN found that AATCO did have technical resources and abilities. This finding was made primarily after the Division and URTA waived objections it had to AATCO serving in the Beehive territory, and after AATCO made a *prima facie* showing it had such abilities through its verified Original Application.

AATCO does not, however, have the technical resources and abilities to provide local exchange service or public telecommunications service in Utah. Despite its representations that it would provide “all forms of resold local exchange services” to “business and residential customers . . . to and from all points in Utah.” *Original Application*, ¶¶ 7, it has only served one customer, and only been able to help it provide one type of service—its conference calling service. AATCO has not had the ability to provide the services nor serve the customers it stated in its Original Application. Therefore it could not meet its “obligation to provide public telecommunications services to any customer or class of customers who requests service within the local exchange.” *Utah Code. Ann. § 54-8b-2.1(4)*. Mr. Goodale claimed that it had a state of the art Taqua 7000 switch that it used to serve Joy. *AATCO Exhibit P-1, ll.238-244*. Using that switch, he claimed they had never had a complaint from its sole customer, Joy. *Transcript, p. 44, ll.18-24*. But it is not likely it would receive any complaints by its parent company. He also stated that when AATCO was originally granted its CPCN, it did not have its own switches but merely leased them from Beehive, *Id. at p. 69, ll.1-6*, paid nothing for the

lease under the lease terms. *Id.* AATCO has only four employees, *Transcript, p.176, ll.4-5*, one of them apparently an accountant, leaving only three employees in Nevada but none in Utah. AATCO claims it uses independent contractors for technical services in Utah, *Id. at p.176, ll.8-13*, but has no employees who can do those technical services. Additionally, Mr. Goodale stated it paid Beehive for “general overhead . . . management fees, and consulting fees and contract service fees for equipment . . . .” *Transcript, p.67, ll.2-11*. It also stated it did not pay its own legal fees, but those were paid by Joy—its parent company. *Transcript, p.141, ll.23-25, p.142, ll.1-3*. The evidence portrays AATCO as a mere shell company, paying others for technical services, management fees, consulting fees and equipment fees. There is no evidence that AATCO has its own ability to function, given its inability to serve customers as it represented it would and could in its Original Application. It lacks technical resources and abilities to provide local exchange service or telecommunications service under Utah laws.

*AATCO Lacks Sufficient Financial Resources and Abilities*

AATCO lacks the financial resources to operate in Utah. Despite its representations in the Original Application that it is “financially qualified to provide local exchange telecommunications services” and “has access to the financing and capital necessary to conduct its telecommunications operations”, *Original Application, ¶ 10*, the evidence here shows it lacks financial resources or abilities to conduct its operations—even assuming they are “telecommunications services.”

Mr. Goodale repeatedly testified that AATCO has no income to conduct its operations. He stated AATCO lacked the funds to pay their costs. When questioned why he did not pay Beehive any amount for co-location, he stated “under the circumstances there’s no income . . . And our fees and costs have been deferred till there is some income.” *Transcript, p.60, ll.13-16*. When questioned whether AATCO had billed its sole customer, Joy, anything, Mr. Goodale responded that it had not. *Transcript, p.65, ll.24-25*. Mr. Goodale also testified that Joy had not paid AATCO “anything . . . recently” and had not paid anything “in quite a long time.” *Id., p.66, ll.1-5; see also p.104, ll.6-9, and p.105, ll.13-15*. He stated that even when Joy was paying AATCO at the commencement of their business relationship, Joy had only paid “some money . . .but not on a regular basis and not recently.” *Id. at p.67, ll.17-22*. In fact, he later said that when AATCO and Joy first entered into their business relationship, “there [were] no payments made initially . . .” *Id. at p.104, ll.14*. Goodale also stated Joy had no obligation to pay AATCO anything. *Id. at p.84, ll.1-2*. Goodale also stated that under their business arrangement, AATCO’s share of the terminating access revenues it billed to interexchange carriers “would have been a small portion of the revenues received.” *Id. at p.104, ll.21-22; see also p.106, ll.5-8*. He also testified that AATCO’s income from interexchange carriers was small. He said only a “very few” interexchange carriers were paying “very little.” *Id. at p.67, ll.12-13*. Mr. Goodale also stated that even though Beehive apparently owed it money—over a million dollars, *Id. at 110, ll.1-11*, AATCO had made no efforts to collect that amount. *Id. at p.111, ll.12-15*.

Another concern regarding AATCO's financial resources and abilities is its ability to measure its actual or potential revenue or determine what financial obligations it has. Besides the curious question of why a service provider has obligated itself to pay most of its revenue (if not all) to its sole customer, there remains the question of how AATCO could calculate revenue it earned, increasing the likelihood that it could rarely, if ever, retain or collect revenues properly earned by it. Mr. Goodale testified that AATCO does not enter Joy "into any of [their] ordering, billing, or accounting systems." *Transcript, p.83, ll.18-22; see also p.84, ll.16-25, p.85, ll.1*, making it unlikely AATCO can even know what Joy owes. He stated that under the terms of the agreement, Joy received "probably between 20 and 50 percent" portion of the revenues paid to AATCO. *Transcript, p.105, ll.1-5 (emphasis added)*. Later, when asked how the payments to Joy were calculated, he commences by talking in percentages, *Id. at p. 164, ll.19-20*. But then when asked about the percentages paid to Joy he contradicts himself and states: "I don't know that it was ever referred to in percentages, but more in per minute. Half a penny per minute, penny per minute, penny and-a-half per minute." *Id. at p. 164, l.25, 165, ll.1-3*. He continued saying that the rate "fluctuated, depending on the volume of traffic," *Id. at 165, ll.13-14*, but then when asked about the particulars of the specific ranges of "fluctuations", he could not answer. *Id. at p.165, ll.15-25, p. 166, ll.1-17*. Mr. Goodale stated that "operating costs and profitability of service and the volume of service and ratio to cost" governed the agreement, but how they governed costs was not even reduced to writing, *Id. at p.105, ll.6-12*. When questioned about the purported marketing

fee paid by AATCO to Joy, he agreed that it would pay Joy the revenues it received “minus what you *think* they owe[d]” AATCO. *Id. at p. 84, ll.6 (emphasis added)*. He—the officer in charge of the company, never had an adequate answer for how the marketing fee operated and was calculated, or how other financial obligations were calculated, however. AATCO cannot accurately measure its financial resources or abilities.

The Commission also does not believe AATCO makes entirely credible statements in its annual reports or that the annual reports are entirely reliable. For example, Mr. Goodale tried to minimize significant distinctions between the first unsigned 2007 annual report that appeared for the first time in responses to discovery, *Transcript, p.93, ll.24-25, p.94, ll.1-12*, and the second 2007 annual report that was amended and filed. *Transcript, p.94, ll.5-6*. Goodale stated AATCO filed the original 2007 annual report but had no idea when it was filed. *Id. at p.1-12*. However, neither the Division nor the Office had any record of that report being filed. *See id.* When asked why AATCO refiled the annual report, he stated it was simply because the first annual report was not signed, and AATCO was submitting a signed report. *Id. at p.94, ll.17-19*. But on cross-examination, Goodale later admitted that there were also “accounting factors” that were changed, not just the addition of signatures. *Id. at ll. 20-23*. Goodale went back and forth on whether the 2007 annual report was based on a cash or accrual basis. Despite the fact that AATCO, when it filed its Original Application, stated it had a five-year projection of income and cash flow, Goodale at one point stated that the 2007

annual report's statement of gross revenue of about \$2.6 million was based on accrual accounting, *see Id. at p.107, ll.17-18* and not actual cash flow. But he admitted that when the 2007 Annual Report was first filed in response to discovery requests, it was prepared on a cash basis. *Transcript, p.140, ll.16-18*. Later Goodale backtracked again, saying the annual report was based on accrual income, *Id. at p.14-15, ll.22-24*, but then seeming unsure when pressed to give a concrete answer. *Id. at p. 140, ll.22-25, p.141, ll.1-7, p.141, ll.1-7*. Mr. Goodale's explanations of the 2008 annual revenues were similarly lacking in reliability. For example, when questioned about the 2008 annual report and the reported \$2.8 million overhead allocation, he stated the payments were not payments to Joy, but that they were for "excessive legal costs that have taken up the majority of [AATCO's] budget." *Transcript, p. 141, ll.21-22*. This statement contradicted his previous statement that Joy had actually been funding the litigations costs for AATCO, *Id. at ll.23-25, p.142, ll.1-3*, and also representations in the annual report that professional fees expense was only \$28 in at the end of 2007 and \$0 in 2008. *Id. at p. 142, ll.4-11*. Given Goodale's contradicting statements, the contradictions between his statements and those representations found in the annual reports, and the unreliability of the annual reports, the Commission finds that AATCO does not have a credible or reliable basis to claim its has adequate financial resources and abilities.

Other factors show AATCO lacks sufficient financial resources and abilities. Goodale also stated that AATCO never collected or paid taxes in Utah since it commenced operating. *Id. at p.126, ll.17-23, p.126, ll.1-4*. He did state that they were

“reviewing changes in our procedures so that we would be billing for services and paying appropriate taxes on that billing.” *Id. at p. 84, ll.23-25, p.85, l.1.* But given his statements on how the company’s finances were accounted for and continue to be accounted for, its unclear how AATCO could even determine its tax obligations, or how any taxing entity could audit AATCO or identify its obligations. The evidence cited above shows AATCO lacks the financial ability and resources to operate in Utah.

*AATCO Lacks Sufficient Managerial Resources and Abilities*

AATCO claims its management, including Mr. Goodale, has adequate managerial resources and abilities to operate in Utah. The Commission disagrees. Under AATCO’s current management’s (including Mr. Goodale) leadership, AATCO ignored rules and violated statutes governing the company’s operations and continued to do so even after they “discovered” they were operating illegally.

The Commission does not find Mr. Goodale’s claims of adequate managerial expertise credible. Mr. Goodale, throughout cross-examination, seemed very unsure about the provisions governing the purported agreement between AATCO and Joy. He stated the agreement, which governed potentially millions of dollars in revenue and the operations of the relationship in both Utah and Nevada was nothing more than a verbal agreement. *Transcript, p.103, ll.15-20.* When Goodale, *the head of AATCO* was pressed about the particulars of the verbal agreement, or for general information about the financial status of the company, he seemed perplexed about many of the answers, frequently commencing each statement with a long pause, as if he was guessing his

answers. Many times his answers were contradictory, and he often did not know or was unclear about the answers, saying he had to “refer to his notes” or saying he had to refer to his accountant. If this verbal agreement and business arrangement governed the companies since they began their relationship over 15 years ago, *Id. at p. 177, ll.9-24*, and Mr. Goodale knew so little, he was either being untruthful about his level of knowledge or in fact did not have a true grasp of his responsibilities as head of the company.

Also, AATCO’s management failed to show its competence when it failed to comply with the regulations governing entities granted a CPCN. For example:

- AATCO failed to file an intrastate access tariff, price list, or competitive contract per Utah Code Ann. § 54-8b-2.3 and 54-3-7, *DPU Exhibit 1, Transcript, p.86, ll.7-12, p.153, ll.25-p.154, ll.1-4*;
- failed to file annual reports with the Commission, *Transcript, p.161, ll.20-25; see also p.162, ll.1-13*;
- failed to file proper interstate access tariffs for services to be provided in Utah, *Transcript, p.151, ll.12-15; see also p.86, ll.7-12, and DPU Exhibit 7*;
- entered into an interconnection agreement without the authority or subsequently seeking proper authority to serve in the area of the ILEC it was interconnecting with, *Transcript, pp. 135-136*;
- operated in Utah before it had a CPCN, *Transcript, p.124, ll.5-9*;



- failed to maintain accounting records in accordance with GAAP, *Transcript*, p.83, ll.18-22; *see also* p.84, ll.16-25, p.85, ll.1;
- failed to pay taxes, *Transcript*, p.126, ll.10-15; *see also* p.127, ll.1-4;
- entered into a business operation with an entity that lacks authority to operate in Utah, *See OCS Exhibit 1*; and
- made payments to Joy and Beehive without a local exchange tariff filed in Utah—in violation of Utah Code Ann. § 54-3-7, *Transcript*, p.66, ll.23-25, p.67, ll.1-22.

AATCO also has unusual billing and charging arrangements with Joy and Beehive, and not even filed a competitive contract, which is unusual. If there was to arise a dispute between the parties, the Commission could likely not resolve the issue. AATCO's lack of sufficient managerial resources and abilities is evident.

*Allowing AATCO to Amend or Maintain its CPCN is not in the Public Interest*

Allowing AATCO to amend its CPCN would not serve the public interest, nor would allowing AATCO to maintain its CPCN be in the public interest. In deciding whether AATCO's CPCN should be amended or revoked, the Commission is guided in part by the policies stated by the legislature and embodied in state laws. *See, e.g. Utah Code Ann. § 54-8b-1.1, etc.* Below are reasons why the Commission finds AATCO's CPCN should not be amended, but should be revoked.

AATCO does not facilitate access to public telecommunications services

First, allowing AATCO a CPCN amended, or otherwise, would not facilitate access to high quality, public telecommunications services to any resident or business in the state. The only customer served by AATCO is Joy and the only service to Joy is capability to provide the conference calling service. *Transcript, p. 53, ll.21-24.* Even assuming the service AATCO provides Joy is a local exchange service or a public telecommunications service, any benefit to any other resident or business in the state besides Joy does not exist. AATCO argued that the free conference calling service was a valuable service that allows consumers to participate in client meetings or sales presentations, entertainment or social purposes, prayer groups, or twelve-step recovery programs without having to be in the same location. *See AATCO's Post-hearing Brief, p.13-14.* But AATCO's own witness, Mr. Goodale, admitted that AATCO did not provide the conference call services, but that Joy was offering them. *Transcript, p.167, ll. 20-25, and AATCO Exhibit P-1, ll. 185-209.* In fact, he even admitted the conference calling service was available before AATCO started serving Joy. *Id. at ll.10-13.*

AATCO also argued that its operations provide revenue to Beehive, which allows Beehive to "upgrade its switches and other infrastructure, lay miles of fiber optic cable to provide better service and clarity to its customers and keep its customers' rates low." *AATCO's Responsive Post-Hearing Brief, p.9.* AATCO also argued its operations directly benefitted the state Universal Service Fund (USF) because as it provides revenue to Beehive, Beehive does not draw from the state USF. *Id.* Because Beehive does not draw down the USF, it allows monies to remain available for usage by other rural

telecommunications corporations to keep rates lower and make other improvements. *Id.*

However, these claims depend on whether AATCO is actually paying any revenue to Beehive. Mr. Goodale, however, testified that AATCO is not receiving any income, and not paying anything to Beehive, which makes the claims implausible. He plainly stated “there’s no income” *Transcript, p.60, ll.13-16, see also Id. at p.65, p.67,* that AATCO has “no economic benefit at all. Not even for ourselves” *Id. at p.132, ll.12-13,* and that despite the statement in the 2007 annual report, that AATCO has not “collected \$2 million in cash.” *Id. at p.141, 6-7.* AATCO’s revenues do not directly nor indirectly facilitate access to high quality, public telecommunications services to any resident or business in the state.

AATCO does not help encourage competition

Second, AATCO does not encourage the development of competition as a means of providing wider choices for public telecommunication services in Utah. AATCO said it would serve customers, but in fact intended to not compete, and to serve just one customer. In its Original Application AATCO represented it sought to provide “all forms of resold local exchange services” to “business and residential customers . . . to and from all points in Utah.” *Original Application, ¶¶ 7.* It also represented that approval of its application would serve the public interest “by creating greater competition in the local exchange marketplace for both business and residential customers” and that its service “will increase consumer choice through Applicant’s reliable service offerings.” *Id. at ¶ 14.*

AATCO's representations, however, were and are not true. It does not provide all forms of resold local exchange service and what service it provides it does to only one customer. Mr. Goodale admitted it only allows Joy to provide the conference calling service and provides nothing else. *Transcript, P. 172, ll.22-25, p. 173, ll.1.*

AATCO is not serving the business and residential customers it represented it would be, but is only serving one customer. *Transcript, p.53, ll.21-24.* Mr. Goodale further represented AATCO did not "have any plans of doing anything else" besides serving only Joy, and only in Garrison, Utah and not entering anyone else's territory. *See AATCO Exhibit P-1, ll.179-182, Transcript, p,123, ll.9-18.* He stated that even if AATCO is permitted to enter Beehive territory as a *competitive* LEC, AATCO has "no intent of ever taking customers away from Beehive." *Id. at p.123, ll.19-20.* Mr. Goodale even stated that despite the *verified* representations in the Original Application that they would compete in Utah by providing all forms of local exchange service to residential and business customers, he later stated in his testimony that "from the time [AATCO] 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." *AATCO Exhibit P-2, ll.25-27.*

AATCO never had an intent to provide the services and serve the customers it stated in its Original Application and has no intent to do so. Since it provides service to only one customer, and has no intent to serve any other customer, it cannot provide wider customer choices and does not do anything to promote the competition encouraged by the Law.

Allowing flexible and reduced regulation does not mean ignoring blatant legal violations

Third, allowing flexible and reduced regulation does not mean allowing or condoning blatant violations of the Law and other provisions of Utah laws. AATCO claims the Commission should heed the state's policy contained in the Law allowing for "flexible and reduced regulation." *Utah Code Ann. § 54-8b-1.1(4)*. The Commission did allow that flexible and reduced regulation when AATCO first applied for its CPCN. AATCO avoided a complex and lengthy inquiry into its ability to provide the services it stated it would. The Commission relied upon its verified Original Application wherein it stated it would provide the services, serve the customers, and serve the geographic territories it said it would. When it amended its Application to get a CPCN on an expedited basis, and expressly affirmed it would not serve in Beehive territory, the Commission and other parties relied upon its assertions. However, the majority of the representations made were either misleading or even false. Indeed, the findings and conclusions made by the Commission in issuing the original CPCN were based on false and misleading representations. They were reached after AATCO made representations to the Commission, which induced the Division and URTA to end their objections and avoid a hearing on the merits. AATCO took advantage of the "flexible and reduced regulation" to obtain what it desired through misrepresentations and should not be rewarded for that.

AATCO does not enhance the general welfare and encourage economic growth

Fourth, AATCO provides no benefit to the general welfare nor encourage

economic growth in Utah. AATCO contends it provides a financial benefit to the Beehive territory and other rural territories and argues that if the Commission does not amend the CPCN or if it revokes it, AATCO will be forced to move its income to Nevada. AATCO also contends its presence has been a benefit to the community. *Transcript, p.131, ll.7-12.* These contentions are without merit.

AATCO admits it has no economic benefit to the state. When asked what economic benefit AATCO provides to the residents of Garrison, Utah, Mr. Goodale admitted: “Currently we have no economic benefit at all. Not even for ourselves.” *Transcript, p.132, ll.9-13.* He even admitted that AATCO has no benefit, in “income and general economic growth” to Garrison, Utah. *Transcript, p.132, ll.1-13.* AATCO serves only one customer, Joy, for which service AATCO is paid nothing. *Id. at p.66, ll.1-5.*

Additionally, AATCO’s services, if anything, increases the cost of telecommunications to the customers of interexchange (IXC) carriers in the state and provide no significant benefit. Qwest described generally how AATCO’s services operate and how it earns revenue. *Qwest’s Initial Brief, p.7, pp.7; see also Qwest Exhibit 1, ll.128-148.* AATCO allows Joy to offer free conference calling services to stimulate traffic to the Garrison, Utah exchange. *Qwest’s Initial Brief, p. 7, ¶7.a; Qwest Exhibit 1, ll.160-163.* AATCO uses Beehive’s network so it may charge high access rates imposed by rural ILEC’s. *Id. at 7.b., Id. at ll.173, 178-190.* The access rates of rural ILEC’s are not cost-based but include “significant subsidies to help keep the local service rates of their customers relatively low because of the high-cost nature of the service territory for a

rural ILEC.” *Qwest Exhibit 2, p.2*. Rural ILEC rates assume that, historically, usage in rural areas is lower than in more populated urban areas. *Qwest Exhibit 1, ll.188-190*.

With the increased traffic coming through on the free conference calling lines, the traffic results in a “higher per minute cost to Qwest and other IXC’s to terminate traffic to or carry traffic out of Beehive’s service territory.” *Id.* Since AATCO mirrors the access rates of the rural ILEC, it can bill those higher access rates. *Id. at ll.191-192*. This process is often referred to as “traffic pumping.” Mr. Goodale admitted that, ultimately, the “free” conference calling service AATCO claims it is helping to provide, is not free at all, but is paid for by the IXC’s, whose customers are the general ratepayers in Utah. *See Transcript, p.153, ll.4-8*. These increased costs to Utahns produce no significant benefit, if any benefit at all. First, there are no customers, besides Joy, who receive the benefit of this so-called service. There is no increase in services in Garrison or other parts of Utah. Local residents see no benefits of competition as a result of the arrangement between Beehive and AATCO. The revenue AATCO is to receive will be paid to Joy, which is an entity based out of Nevada. Given that AATCO is completely owned by Joy, *see Transcript, p.55, ll.21-25, p.56, ll.1-6*, little revenue earned (besides any amounts paid to Beehive—which it now does not even pay) even stayed in Utah, and which would counter any of the negative aspects. The traffic pumping arrangement increases costs to Utah ratepayers while funneling money out of the state or into the hands of only a few, without promoting true competition or technological improvement, or serving any other public interest. There is little or no benefit served through AATCO’s operation and nothing that

furtheres Utah's public policies or public interest without countervailing detriments.

*The Relevance of these Proceedings to Future Determinations of CLEC's Entering Rural ILEC Territory*

The Commission also finds that the underlying facts of these proceedings are so atypical, especially given the actions and nature of AATCO, that they are not adequately suited to determine the factors for determining whether a CLEC should enter a rural ILEC's territory. The Commission, using this company as a basis, cannot adequately determine what factors should guide the Commission in identifying the public interest as stated in Utah Code Ann. § 54-8b-2.1(3) for entry into a rural area. Given that AATCO has not in fact the technical, financial, and managerial resources and abilities needed to operate a telecommunications corporation, and in fact is not offering a Utah price-listed, tariffed, or contracted local exchange service or public telecommunication service, these proceedings will have limited applicability to future proceedings.

Additionally, because AATCO serves only one customer, the unusual manner in which it serves, and because it lacks a Utah-based service, this matter does not serve to adequately determine the public interest criteria for a CLEC entering small rural exchanges.

One factor, however, that will guide the Commission in future proceedings for entry of a CLEC into a rural ILEC's territory, is whether the company has abided, abides, and is willing to abide by the laws governing telecommunications corporations in Utah. AATCO has made much of the fact that it depended on bad advice from counsel, when it filed its Original Application and when it afterwards amended it. It



claims counsel's bad advice led it to apply to provide services in "Qwest service territory when it actually intended to provide services in Beehive's territory." *AATCO's Post-hearing Brief*, p.9, and see *AATCO Exhibit P-2*, ll.24-27. It also argues the Commission must "take into consideration the significant efforts [AATCO's] management has taken to try to rectify the company's mistakes and voluntarily bring itself into compliance." *AATCO's Post-hearing Brief*, p.9. The fact remains though, that AATCO broke the law for several years and admitted that fact.<sup>4</sup> AATCO's attempts at painting its illegal actions as simply a mistake, and that it is now deserving of the Commission's condonation of six years of illegal behavior, however, are not credible.

AATCO has never complied with nor intended to comply with Utah law, nor the limits of its CPCN, nor to comply with representations it makes to the Commission. See *Transcript*, p.98, ll.24-25, p.99, ll.1-10; p.123, ll.5-8. AATCO made a series of representations in its verified Original Application regarding the services it planned to provide, the territory in which it planned to provide those services, and the customers it intended to serve. It also made a series of representations as it twice amended its Original Application, finally representing it would only serve in Qwest territory and explicitly agreeing not to serve in Beehive territory. Despite these representations, it has failed to provide the services it stated it would provide. It has failed to serve the area it stated it would serve. It has failed to serve any residential or

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<sup>4</sup> See e.g. *Transcript*, p.99, ll.1-10, p.123, ll.5-8, p.136, ll.14-25, p.137, ll.1-7, p.158, ll.7-19, etc.

business customers—besides Joy, that it said it would. It expressly stated it would not serve in Beehive territory and yet did serve there from the very beginning.

AATCO was operating illegally for a *about three years prior to even obtaining its CPCN*. It operated illegally in Beehive territory *while it was applying for a CPCN*. *Transcript, p.124, ll.5-9. From the date it was granted its CPCN explicitly prohibiting it from entering Beehive territory, it was already operating there illegally.* Even when it supposedly realized it “technically may be deemed to lack authority to operate as a CLEC in the area certificated to Beehive,” *Current Petition, Docket No. 08-2469-01, pp. 1-2, it did not stop operating illegally in Beehive territory, but continued to operate in the Garrison exchange*. Even though it argues the interconnection agreement granted it the authority to serve in Beehive territory, *it was already serving in the exchange, even before it filed the interconnection agreement*. Mr. Goodale admitted that he was aware of the “contents of the [amended] February 20<sup>th</sup> application . . . where [it] indicated that [AATCO] would not serve in the Beehive area” even before it filed its interconnection agreement that it claimed would allow it to serve there. Mr. Goodale also admitted that before the company became embroiled in a series of lawsuits nationwide, the company took no measure to correct the fact that it was operating illegally in Utah until it was sued. *Transcript, p.158, ll.15-19. At no time while it operated in Utah has AATCO operated legally*. It either operated without a CPCN, it acted outside the scope of its CPCN, and continues to serve outside the scope of its CPCN throughout these entire proceedings. Regardless of “the bad counsel” former

counsel gave AATCO, *Transcript*, p. 136, ll.14-15, it would have made little or no difference, as AATCO “intended” to operate illegally in Utah. *Transcript*, ll.24-27. In addition, it is clear that even though AATCO derived some funds—potentially millions of dollars from its operations in Utah, it has failed to pay any taxes to the state.

*Transcript*, p.126,ll.10-15, p. 127, ll.1-4. Also, its sole client, with whom it entered into a business relationship, has no authority or qualification to transact business in Utah. *See OCS Exhibit 1*. AATCO has left the Commission with no basis upon which to conclude it will operate within the bounds of any CPCN, even if it is amended or limited.

ORDER

For the foregoing reasons, the following is ordered by the Commission:

1. AATCO’s Petition to amend its CPCN is denied;
2. AATCO’s CPCN is hereby revoked;
3. AATCO shall cease operating in Utah within 30 calendar days of the entry of this order. Pursuant to Utah Code Ann. § 54-7-25, should AATCO continue to operate beyond that time, it shall be assessed a penalty for each day that it operates beyond that time.

Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing

within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah this 26<sup>th</sup> day of April, 2010.

/s/ Ruben H. Arredondo  
Administrative Law Judge

Approved and confirmed this 26<sup>th</sup> day of April, 2010 as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#66296