

**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 to Operate as a Competitive Local Exchange Carrier within the State of Utah	<b>Docket No. 08-2469-01</b>
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**QWEST’S RESPONSE TO ALL AMERICAN’S APPLICATION FOR REVIEW  
AND REHEARING ON THE COMMISSION’S ORDER DATED APRIL 26,  
2010**

Qwest submits this response in the above-styled matter and states that neither of the two main grounds All American Telephone Company (“AATCO”) advances in its Application for Review and Rehearing provides a reason for the Commission to review or rehear its April 26, 2010.

**AATCO’s Administrative Due Process Argument Fails on the Facts in the Record.**

AATCO clearly received notice of the Commission’s intent to consider, among other things, the revocation of its CPCN. “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the Commission gives notice to All American that this docket shall consider to what extent its certificate should be rescinded, altered, or amended, and whether its certificate should permit it to operate in Beehive’s territory or to what extent it should be excluded from serving local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.”<sup>1</sup> If that were not notice enough to satisfy administrative due process (which it certainly is), the same Report and

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<sup>1</sup> Report and Order, Docket No. 08-2469-01, issued June 16, 2009.

Order retitled the caption in this docket to the one in the case style above, including the words: “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”.<sup>2</sup> Notice was served by this Commission, at least by June 16, 2009, that one possible outcome of the docket was the rescission of AATCO’s CPCN.

Since the two basic components of administrative due process are (1) notice and (2) the opportunity to be heard, the Commission next must have satisfied AATCO’s opportunity to be heard. This the ALJ and the Commission did throughout the docket, both by accepting a variety of AATCO’s pleadings, and by holding an all-day contested hearing on March 3, 2010 (a full eight-plus months after its notice of potential CPCN rescission to AATCO) at which AATCO’s prefiled testimony and a variety of its hearing exhibits were accepted in the record, AATCO was represented by counsel, cross-examined witnesses against it, and offered their own witness, David Goodale, AATCO’s chief executive. Beginning on April 23, 2008, there have been in excess of 100 pleadings, notices and Orders filed in this proceeding, all of which are listed on the Commission’s website. For AATCO to contend that they had insufficient notice of the issues in this docket is simply incredible.

**AATCO was served with a Variety of Pleadings which Set Out the Allegations Against it in Detail, Beginning as Early as December 2008.**

AATCO maintains that they were unable to resolve unspecified “uncertainty” surrounding the grounds on which the parties would seek to revoke AATCO’s CPCN. All of the parties to this case have filed a multitude of pleadings detailing a wide variety of misconduct engaged in by AATCO, Joy Enterprises, and Beehive concerning

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<sup>2</sup> Id.

AATCO's unauthorized operations in Beehive's Garrison, UT exchange. In fact, Qwest filed a Petition to Intervene which detailed a number of allegations subsequently proved at hearing against AATCO, including a detailed description of AATCO's unlawful traffic pumping activities.<sup>3</sup> Shortly after, on January 7, 2009, the Utah Committee of Consumer Services entered its appearance in this docket and stated that "the Commission should consider in a formal proceeding whether the certificate should be cancelled." That same pleading went on to describe the business relationships between AATCO, Beehive, and Joy Enterprises, all of which featured prominently in testimony at hearing. AATCO itself had full notice of Qwest's intent to raise traffic pumping as an issue related to its fitness to be granted a certificate, as evidenced by one of their own pleadings (All American Telephone Company's Response to the Petition to Intervene of Qwest Communications Corporation, filed January 6, 2009), which states that "Qwest's proposed intervention is based on an unsubstantiated allegation that All American intends to engage in an improper traffic pumping scheme." An almost identical argument was made against AT&T's intervention. AATCO goes on to show they fully understood that their certificate was at issue by stating: "this issue has no bearing on whether All American is entitled to operate as a CLEC in Beehive Telephone Company's territory." AATCO understood (or should have) at the outset that the issues necessarily included an examination of their certificate because they themselves asked for an amendment to their certificate. AATCO even cited (in its January 6 and 7, 2009 filed pleadings) to the same statutory test the Commission applied in its Report and Order when it determined that AATCO lacked sufficient financial resources and abilities, sufficient managerial

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<sup>3</sup> Qwest Petition to Intervene, Docket No. 08-2469-01, filed December 23, 2008.

resources and capabilities, and that allowing AATCO to amend or maintain its CPCN is not in the public interest.

The facts established beyond controversy at hearing make clear that for at least six years, AATCO routinely flouted Utah statutes and this Commission's rules governing its operations. AATCO abused the certification process, deliberately misused their Commission-granted CPCN, made misrepresentations to the PSC in applying for the granted certificate, conducted a vigorous campaign to resist discovery by the parties hereto about their business relationships, and then attempted to lay blame for AATCO's abuses on one of its lawyers and its former consultants.

Even on brief, AATCO admitted plainly its misrepresentation to the Commission regarding its intentions when filing its application for its existing CPCN.<sup>4</sup> AATCO continues to pretend that it petitioned the Commission to resolve these issues, while failing to recite the multiple steps it took to attempt to avoid discovery and a full hearing in this case.

What AATCO really did by filing a petition in this docket was to attempt to lay a foundation for a procedural argument that the PSC must act on their petition without the opportunity for the other parties here to create a record of their six-plus year history of operating in defiance of the rules of this Commission. These procedural maneuvers make plain that AATCO never wanted to be in the position of defending their actions in a contested hearing before this Commission. And with good reason – their open defiance of the rules of this Commission, continuous history of defrauding IXCs by traffic pumping, apparent ignorance of the financial and managerial measures necessary to operate successfully in Utah, and failure to provide parents any means to protect their

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<sup>4</sup> All American Telephone Company's Post-Hearing Brief, p. 9.

children from unfettered access to adult and pornographic chat are all solid grounds to dismiss their petition and to revoke their CPCN.

Nor has AATCO shown any abuse by the ALJ or this Commission of their statutory authority. The Commission had a record replete with admissions that AATCO provides no concrete public interest benefit to the citizens of Utah residing in Beehive's service territory. In fact, Mr. Goodale admitted (referring to Garrison, Utah) that AATCO's presence has "no economic benefit at all."<sup>5</sup> There are obviously none of the expected benefits of competition, and there would have been none in the future, given AATCO's representations under oath that they would continue to serve only their single business partner, Joy Enterprises, rather than any Utah resident or business located in the Beehive exchanges. The record is filled with facts regarding the value of AATCO's representations to this Commission over the last several years. The PSC had no choice but to carefully consider all the facts in the record, which it did within the limits of its statutory authority to grant, amend, or rescind certificates of public convenience and necessity.

The fact that the Commission might decide, based on the record and the evidence of AATCO's continuing misconduct, that punitive measures are called for is simply no more than the appropriate exercise of its powers. Some of AATCO's practices were contrary to Utah law. For instance, Mr. Goodale testified that his agreement with Joy required revenue sharing with Beehive and Joy Enterprises.<sup>6</sup> Mr. Goodale also testified that AATCO had no Utah filed tariffs, and that AATCO has failed to bill Joy Enterprises

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<sup>5</sup> TR, p. 132, ll. 9 – 13.

<sup>6</sup> TR, pp. 66 – 67, ll. 23 -25 and 1 – 22.

for a number of local exchange services that would demonstrate that Joy is a bonafide end user. Utah law is clear that these are violations and constitute a misdemeanor:

**54-3-7. Charges not to vary from schedules -- Refunds and rebates forbidden -- Exceptions.**

Except as provided in this chapter or Chapter 8b, Public Telecommunications Law, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such products or commodity or service as specified in its schedules on file and in effect at the time; nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals and charges so specified; nor extend to any person any form of contract or agreement, or any rule or regulation, or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons; provided, that the commission may, by rule or order, establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to any public utility.

AATCO admitted both that it rebates money to Joy and Beehive, and that it provides local exchange services to Joy without the benefit of a local exchange tariff filed in Utah.

Instead of granting All American the rehearing it seeks, the Commission should stand steadfast behind its clear message to anyone who intends to operate in Utah that its rules are to be complied with, not openly flaunted. The Commission has appropriately rescinded All American's CPCN and ended the abuses and fraud in rural Utah by All American, Beehive, and Joy Enterprises. The Commission did so after well established notice, and with a full opportunity for AATCO to respond.

**Conclusion.**


All American, through its testimony in the instant docket and in a statement of stipulated facts filed with the FCC (Exhibit A to Qwest's Initial Brief), admitted a number of facts that led the Commission not only to deny its requested expansion into Beehive's territory, but to appropriately revoke All American's authority to operate

anywhere in Utah. David Goodale's lengthy string of admissions about All American's improper, illegal, and unauthorized conduct in Utah established beyond question that All American lacks the financial, managerial and technical capability to hold a CPCN at all. The Commission has promulgated rules in that require any CLEC wishing to compete anywhere in Utah to apply for and be granted a CPCN. All American, under the leadership of Mr. Goodale, ignored or defied those rules from at least 2004 until the present, and reaped a just reward. The Commission was well within its statutory authority to consider AATCO's petition and determine, based on a complete and voluminous record, that AATCO failed the statutory test to maintain a CPCN in Utah.

**WHEREFORE**, Qwest respectfully requests that the Commission:

Deny All American's Application for Review and Rehearing of the Commission's Order dated April 26, 2010.

Respectfully Submitted,



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