

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	Docket No. 08-2469-01
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RESPONSIVE TESTIMONY

OF

LISA HENSLEY ECKERT

FOR

QWEST CORPORATION

FEBRUARY 12, 2010

**TESTIMONY OF LISA HENSLEY ECKERT
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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, TITLE AND ADDRESS.**

3 A. My name is Lisa Hensley Eckert. I am employed by Qwest Corporation (Qwest)
4 as a Staff Director in the Public Policy organization. My work address is 47th
5 floor, 1801 California Street, Denver Colorado, 80202-2658.

6 **Q. PLEASE OUTLINE YOUR EDUCATIONAL BACKGROUND, COMPANY**
7 **WORK EXPERIENCE, AND CURRENT RESPONSIBILITIES.**

8 A. I obtained Bachelor of Science degrees in History, Psychology and Physical
9 Anthropology (general social sciences) from Kansas State University. I then
10 attended and graduated from the University of Denver, College of Law in
11 December 1995 with a Juris Doctorate. I have been a member of the Colorado
12 Bar since 1996.

13 I joined U S WEST in 2000, as a Project Manager in the Network Organization. I
14 then moved to the Network Technical Regulatory team from 2001 to 2003,
15 responsible for addressing network-related questions in the various proceedings
16 on the § 271 applications of Qwest. In particular, I worked with external auditors
17 and internal teams to develop responses to questions regarding internal process
18 and procedures related to § 271, while supporting the lead witnesses on material
19 issues during the § 271 process.

20 In November, 2003, I accepted the position of Staff Director in the Public Policy
21 Organization, responsible for company-wide Intrastate Inter-carrier Compensation
22 issues, such as switched access, reciprocal compensation and SS7 signaling. I
23 have developed the company-wide advocacy concerning the restructuring of
24 access rates, its position on the subsidies included in access rates, and how
25 reforming access should be approached at the state level. In 2006, I took on the
26 additional responsibility of Federal Inter-carrier Compensation advocacy.

27 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS OR OTHER**
28 **COMMISSIONS?**

29 A. Yes, I have filed testimony in Pennsylvania and California on behalf of Qwest
30 Communications Corporation (QCC), I have filed testimony and testified on
31 behalf of QCC in Iowa, and have filed testimony in Arizona, and Colorado, and
32 testified in Nebraska on behalf of Qwest. I have also filed affidavits and
33 presented *ex partes* at the FCC on behalf of both QCC and Qwest.

34

35 **II. PURPOSE OF TESTIMONY AND SUMMARY**

36 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

37 A. The purpose of my testimony is to respond to the testimony of David W. Goodale
38 of All American and explain the reasons why the Commission should not expand
39 the CLEC Certificate of Public Convenience (CPCN) of All American to include
40 the service territory of Beehive Telephone.

41 **Q. PLEASE PROVIDE A SUMMARY OF YOUR TESTIMONY.**

42 A. Qwest can identify no public interest reasons why the Commission should change
43 the existing CLEC certificate for All American and expand it to include the
44 service territory of Beehive Telephone or any rural ILEC. First, such an action
45 would break with past Commission precedent regarding the Utah rural exemption
46 in Utah Statute 54-8b-2.1 and All American has failed to meet the burden of proof
47 that this is in the public interest. Second, to do so does not facilitate competition
48 but instead allows All American to continue to perpetuate its traffic pumping
49 scheme.

50

51 **III. ALL AMERICAN'S REASON TO CHANGE THEIR CPCN**

52 **Q. ACCORDING TO THE TESTIMONY OF MR. GOODALE, WHAT ARE**
53 **THE MAIN REASONS ALL AMERICAN BELIEVES THE COMMISSION**
54 **SHOULD EXPAND THEIR CPCN TO INCLUDE THE BEEHIVE**
55 **TELEPHONE SERVICE TERRITORY?**

56 A. The following outlines the reasons from his testimony.

57 1. All American is not seeking to provide any services inconsistent with
58 those originally outlined in its original CPCN application. (Direct
59 Testimony of David W. Goodale, page 5, lines 75 - 77)

60 2. Beehive has stipulated to the proposed amendment to All American's
61 CPCN. (Direct Testimony of David W. Goodale, page 5, lines 81 – 84)

62 3. All American does not believe this will negatively impact the Utah
63 Universal Service Fund. (Goodale Testimony, pages 16 and 17, lines 303-
64 324)

65 4. All American believes their service to Joy Communications, the only
66 customer All American serves, is consistent with the public interest and
67 provides a public benefit. (Goodale testimony, pages 16 – 18)

68 **Q. DO ANY OF THESE REASONS JUSTIFY THAT THE CPCN OF ALL**
69 **AMERICAN BE AMENDED TO INCLUDE THE TERRITORY OF**
70 **BEEHIVE TELEPHONE?**

71 A. No. None of the reasons provide any public interest support or public benefit.
72 All American has provided no reasons why they should be exempt from the
73 statute, particularly since they have tacitly admitted they exclusively serve only
74 one out-of-state customer – Joy Enterprises. Instead the facts show there is
75 evidence of a traffic pumping scheme that is being perpetuated through the
76 alliance of Beehive Telephone, All American and Joy Enterprises. There is no
77 public interest reason for this Commission to enable a traffic pumping scheme and
78 expand All American's CPCN, and given the nature of much of Joy Enterprises'
79 traffic, there are compelling public interest reasons to deny this modification.

80 **A. Not inconsistent with the original CPCN.**

81 **Q. PLEASE ADDRESS THE FIRST ASSERTION CLAIMING THAT ALL**
82 **AMERICAN IS NOT SEEKING TO PROVIDE ANY SERVICES**
83 **INCONSISTENT WITH THOSE ORIGINALLY OUTLINED IN ITS**
84 **ORIGINAL CPCN APPLICATION.**

85 A. In his direct testimony, Mr. Goodale said no to the question “Is All American
86 seeking to provide any services that are inconsistent with those outlined in its
87 original CPCN application?” This misses the point entirely. All American has
88 been engaging in unauthorized operations outside its Commission-approved
89 service territory. This is actually the relevant issue in determining whether
90 expanding All American’s CPCN is in the public interest. All American carries
91 the burden in this docket of justifying the requested amendment of its CPCN. It
92 also carries the burden of explaining its apparent and admitted violation of its
93 current certificate by conducting operations in Beehive’s service territory. Just
94 because the Commission approved All American’s CPCN for Qwest’s service
95 territory does not mean they should also approve it for Beehive Telephone’s
96 service territory.

97 Commission precedent requires that All American justify why it deserves a
98 waiver of the Commission’s current policy on enforcing the rural exemption. All
99 American has yet to establish that it actually has the ability to “provide public
100 telecommunications services to any customer or class of customers who request[s]
101 service within the local exchange” (54-8b-2.1(4)). In fact, All American’s set up

102 in Qwest's service territory was nothing more than a sham to hide its partnership
103 with Beehive, in an attempt to conduct business through an illegal back door
104 approach. This approach is best illustrated by All American's dubious claim that
105 it could expand its certificated service territory via an interconnection agreement
106 with the Beehive entities, rather than through an explicit Commission order.

107 Because the access rates for Qwest are significantly lower than Beehive
108 Telephone's access rates All American has no incentive to traffic pump if they
109 had actually provisioned numbers in the Qwest Local Calling area. In fact, All
110 American currently appears to have no traffic to any numbers in the Qwest
111 territory. That, however, does not tell the full picture of what, exactly, All
112 American was and is actually doing.

113 In 2004, All American requested the removal of fraud blocks from 72 Beehive
114 numbers, which Qwest granted, per Qwest's fraud policy. On June 6, 2007, All
115 American sent a letter to the FCC, claiming that two additional Utah numbers
116 were being blocked by a number of IXCs. The two numbers which All American
117 claimed were their numbers were: 435-855-3333 and 435-855-5555. Both of
118 these numbers are assigned in the Beehive exchange of Garrison, and are in
119 TELCodata as Beehive ILEC blocks of numbers. Clearly, in 2004, All
120 American was operating in the Beehive Territory, with Beehive's collusion. The
121 435-855-3XXX and 5XXX series of numbers have been long standing "party
122 lines"- a euphemism for adult chat lines. The numbers assigned to All American
123 currently in TELCodata are 435-777-XXXX numbers- which are also located

124 in Garrison UT, in the Beehive territory. So, despite having been issued a CPCN
125 to compete in the Qwest territory, All American has never attempted to provide
126 any legitimate service in Qwest's territory. There are zero Utah consumers
127 benefiting from competition as a result of All American's operations.

128 The reason that All American desires to legitimize its operations in Beehive
129 territory is based on the fact that rural LECs (both ILECs and CLECs) are allowed
130 to charge higher interstate switched access rates by the FCC.

131 Historically, rural ILECs were allowed to jump in and out of the National
132 Exchange Carrier's Association ("NECA") pool, which allowed the Rural ILECs
133 to increase traffic for a period of 2 years while out of the pool, and then dump the
134 high volume traffic causers, allowing the ILEC to rejoin the pool and retain their
135 higher access rates. If the ILEC did not rejoin the NECA pool, they would have
136 to provide a cost basis for the higher access rates, which would not be feasible
137 with the high volumes of traffic being pumped. The FCC stopped this practice by
138 asking the ILECs leaving the NECA pool to certify that they were not
139 participating in access stimulation. Therefore, the business model shifted to
140 CLECs (often with relationships or affiliated with rural ILECs) which began
141 pumping traffic by locating the CLEC within a rural ILEC's territory and taking
142 advantage of the FCC's rural exemption rules for rural CLECs. These rural
143 CLEC rules allow switched access rates to either benchmark to the competing
144 ILEC, or if the competing ILEC is an RBOC, the CLEC is allowed to charge up to

145 the NECA band 8 (the highest band) rate if the community has less than 50,000
146 people. Therefore, CLECs began taking advantage of a loophole in FCC rules in
147 order to engage in traffic pumping while failing to bring the benefits of true
148 competition to the rural area.

149 **B. Beehive Telephone has stipulated with All American.**

150 **Q. DOES THE FACT THAT BEEHIVE HAS STIPULATED TO THE**
151 **PROPOSED AMENDMENT TO EXPAND ALL AMERICAN'S CPCN**
152 **PROVIDE ANY PUBLIC INTEREST SUPPORT?**

153 A. No. To the contrary, it only provides evidence that Beehive is a party to the
154 traffic pumping scheme and is serving its own private interest. Calls that go to
155 All American are routed first through Beehive, serving as a transiting carrier. (see
156 Goodale Direct Testimony, pages 12 and 13, lines 228 – 237)) Beehive is
157 compensated by Interexchange carriers (IXCs) for any traffic that is routed
158 through Beehive's network. The fact that Beehive reimburses All American for
159 this traffic (see Goodale testimony, page 14, lines 266 – 268) demonstrates this is
160 also very beneficial to Beehive. Outside of a traffic pumping scheme, a transiting
161 carrier would have no motivation or reason to compensate another carrier. The
162 only reason Beehive would agree to compensate All American is to encourage All
163 American to stimulate traffic and drive it through Beehive's network. All
164 American claims they share revenue through a "marketing fee" paid to Joy
165 Enterprises. (see Goodale Direct Testimony, page 14, lines 255 - 258) This is

166 clear evidence of a traffic pumping scheme and an alliance between Beehive
167 Telephone, All American and Joy Enterprises.

168 **Q. IN YOUR TESTIMONY YOU REFERENCE A TRAFFIC PUMPING**
169 **SCHEME. PLEASE EXPLAIN TO THE COMMISSION HOW THIS IS A**
170 **TRAFFIC PUMPING SCHEME AND HOW IT IS HARMFUL AND NOT**
171 **IN THE PUBLIC INTEREST FOR THIS COMMISSION TO ENABLE**
172 **THIS TO HAPPEN BY EXPANDING ALL AMERICAN'S CPCN?**

173 A. This a traffic pumping scheme based upon the following:

- 174 1. The offering of "free" services, such as conference call
175 services and chat rooms. This is done to stimulate traffic
176 that otherwise would not be terminated by All American
177 and Beehive.
- 178 2. This involves using a rural ILEC's network so that higher
179 access rates can be charged by both the ILEC and a CLEC
180 operating in the same territory. In this case Beehive is the
181 ILEC and All American is an illegally operating CLEC,
182 since it does not have an amended CPCN that would allow
183 it to operate in Beehive Telephone's territory. The access
184 rates of rural ILECs are not cost-based but provide a
185 significant subsidy to help keep the local service rates of
186 their customers lower because of the high-cost nature of the
187 service territory for rural ILEC. In establishing rural ILEC
188 access rates, this relies upon assumed (historical) usage
189 which is significantly lower than the usage that will be
190 generated through traffic pumping.
- 191 3. The CLEC (All American) is able to mirror the access rates
192 of the rural ILEC.

193 This scheme is not in the public interest for a number of reasons. First, there is no
194 benefit for the local customers in the rural area impacted. There are no additional
195 jobs, since All American is based in Nevada. There is no increase in services for

196 the impacted community. There are no end user customers in the exchange. The
197 local residents see none of the benefits which would normally occur with opening
198 a market to competition. All this scheme does is line the pockets of a few All
199 American and Beehive executives at the expense of other companies, like QCC
200 and other long distance providers.

201 **C. Faulty belief this will not negatively impact the state USF.**

202 **Q. DOES THIS TRAFFIC PUMPING SCHEME NEGATIVELY IMPACT**
203 **THE STATE USF AND UNIVERSAL SERVICE?**

204 A. Yes. Overall, traffic pumping does not further the goal of universal service. In
205 fact, traffic pumping undermines universal service.

206 Because All American is serving Joy Enterprises as its sole customer and is not
207 competing with Beehive Telephone by providing an alternative local exchange
208 service to Beehive's customers, it most likely will not increase Beehive's need for
209 state USF. However, this might be the only way in which it would not negatively
210 impact the state USF.

211 The primary purpose for the state USF is to promote universal service by
212 subsidizing telephone service to high cost areas so that the customers can have
213 affordable telephone service. Having affordable telephone service enables the
214 customers of rural ILECs to make and receive both local and long distance calls.
215 Likewise, switched access is another portion of the subsidy for the local loop.

216 Switched access revenues and the state USF work in tandem to ensure that local
217 rates are affordable.

218 Traffic pumping exploits a subsidy based upon an assumption of significantly
219 lower levels of usage compared to levels reached when traffic pumping is
220 happening. Otherwise the access rates would not be as high if the higher usage
221 that results from traffic pumping was used when the rates were set. Because
222 traffic pumping unjustly enriches those few perpetuating the traffic pumping
223 scheme at the expense of the IXCs, it increases billing disputes between IXCs and
224 rural ILEC and any CLEC allowed to operate in rural ILEC territories. Because
225 of the dispute, some ILECs may block all of the traffic coming from that IXC
226 including non-traffic pumping calls. If the rural ILEC blocks the calls because of
227 a billing dispute with an IXC over traffic pumping, the end-user customer is
228 harmed and the goals of universal service are frustrated.

229 For example, it is Qwest's understanding that Beehive Telephone has recently
230 started to block traffic coming from Sprint because of a traffic pumping dispute.
231 Beehive Telephone also approached Qwest demanding that Qwest block any
232 traffic that is properly routed through Qwest's Cedar City tandem switch coming
233 from Sprint destined for Beehive Telephone. For multiple reasons, including
234 language from a previous Commission order, Qwest refused to block the traffic.
235 (See Docket No. 02-051-02, Order of Dismissal, April 1, 2003, "The DPU
236 recommends that if any such blocking is to be undertaken, that it must be after

237 petition and subsequent order from the Commission, rather than from a unilateral
238 action of the local exchange carrier. The Commission agrees with the DPU's
239 recommendation." "The Commission also agrees that a local exchange carrier's
240 blockage of traffic from another carrier should occur by Commission order, rather
241 than a decision by the local exchange carrier. At this time the Commission
242 believes that this is the appropriate balance of the interests of the local exchange
243 carrier, the other carrier and the customers of both carriers.")

244 To the extent that traffic pumping is allowed to continue, this also increases the
245 pressure for access and USF reform which could negatively impact customers
246 located in high cost areas.

247 **D. Faulty belief this is in the public interest and provides public**
248 **benefit.**

249 **Q. DOES QWEST BELIEVE THAT THE SERVICE PROVIDED BY ALL**
250 **AMERICAN TO JOY COMMUNICATIONS TO BE IN THE PUBLIC**
251 **INTEREST AND PROVIDING A PUBLIC BENEFIT?**

252 A. No. Traffic pumping is not in the public interest and provides only private
253 benefits to those involved in the traffic pumping scheme. While All American
254 chooses to be coy regarding the nature of the traffic, The Beehive numbers
255 claimed by All American at the FCC are among a set of numbers which have long
256 contained adult content. In fact, the menu options on the known numbers (435-
257 855-3333 and 435-855-5555) have only recently changed to state that there is a

258 “code of conduct” and that people should “control their passion”. However, a
259 Google search on February 4, 2010 based on the phone number block claimed by
260 All American shows the following:

261 “
262 Jan 15, 2010 ... I mean, the yahoo **chat rooms** are FULL of guys
263 looking to. Try these: **435-855-3326** 909-661-1234 712-858-
264 9229 775-533-3500 985-425-2617 **Adult Chat** and **Adult Chat**
265 **Line - What Happens On RedHot Stays on RedHot™. ...”**
266

267 There is no ability for a parent to block access to these numbers in the same way
268 that access can be blocked for a 900 number. Because many people now have
269 unlimited calling plans, parents may not double check their phone bills to see if
270 there are long distance calls to numbers they do not recognize.

271 All American may try to couch their service as a public good, but the bottom line
272 is that access by minors (without the ability to install parental controls) to “the
273 hottest party crowd” (per the menu options on the numbers) is not in the public
274 interest.

275 IV. RECOMMENDATION AND CONCLUSION

276 **Q. BASED UPON YOUR TESTIMONY, WHAT DO YOU RECOMMEND TO**
277 **THE UTAH COMMISSION?**

278 A. I recommend that the Utah Commission reject the application by All American to
279 expand its CPCN, which will send a clear signal to Beehive, All American and

280 Joy Enterprises that the Utah Commission will not tolerate traffic pumping

281 schemes.

282 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

283 **A.** It does.