

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE PETITION OF)
ALL AMERICAN TELEPHONE CO.,) Docket No. 08-2469-01
INC. FOR A *NUNC PRO TUNC*)
AMENDMENT OF ITS CERTIFICATE)
OF AUTHORITY TO OPERATE AS A)
COMPETITIVE LOCAL EXCHANGE)
CARRIER WITHIN THE STATE OF)
UTAH.)
)

PRE-FILED REBUTTAL TESTIMONY OF

DAVID W. GOODALE

ON BEHALF OF

ALL AMERICAN TELEPHONE COMPANY, INC.

February 26, 2010

1 **Q. Would you state your name, please?**

2 A. My name is David W. Goodale.

3 **Q. Are you the same David W. Goodale who submitted sworn testimony in this matter**
4 **on January 19, 2010, on behalf of All American Telephone Company, Inc.?**

5 A. Yes, I am.

6 **Q. Since filing your testimony, have you had an opportunity to review the direct**
7 **testimony that was submitted by Casey J. Coleman in this matter on February 11,**
8 **2010, on behalf of the Utah Division of Public Utilities?**

9 A. Yes, I have reviewed Mr. Coleman's testimony.

10 **Q. And have you had an opportunity to review the direct testimony that was submitted**
11 **by Michele Beck in this matter on February 12, 2010, on behalf of the Utah Office of**
12 **Consumer Services?**

13 A. Yes, I have reviewed Ms. Beck's testimony.

14 **Q. Both of these witnesses refer to All American's amended application for a CPCN**
15 **that All American filed with the PSC on August 28, 2006. In that amended**
16 **application, All American indicated its intent to provide telecommunications**
17 **services only in the Qwest service territory, and not in any rural areas, correct?**

18 A. Correct.

19 **Q. Both Mr. Coleman and Ms. Beck state in their testimony that All American is not**
20 **providing any services in the Qwest territory as All American stated it would do in**
21 **its application. Is this true?**

22 A. Yes. It is true.

23 **Q. Would you like an opportunity to explain this apparent discrepancy?**

24 A. Yes. This is important because the Commission needs to understand why All American
25 has proceeded in the way it has in this proceeding. From the time All American first
26 considered operating in Utah, the company's intent was to operate in Beehive's territory
27 in the manner in which it is currently operating. All American knew it needed a
28 certificate from the PSC in order to begin providing services in the State. In order to do
29 so, All American consulted a local Utah attorney to assist it through the process and
30 advise the company as to Utah law.

31 The attorney we consulted prepared All American's initial application for a CPCN and
32 filed it with the PSC on April 19, 2006. Based on the advice from the attorney, we
33 sought a CPCN that allowed us to operate throughout the entire state of Utah. All of the
34 factual information regarding All American's technical, financial, and managerial
35 resources and abilities was true and correct.

36 A few months after All American filed its initial CPCN application, the attorney advised
37 us to file an amended application that limited the scope of All American's proposed
38 service territory. All American agreed to this based on the advice of the attorney.

39 However, the application still identified the types of services All American intended to
40 provide and accurately described the technical, financial, and managerial resources and
41 abilities. Furthermore, All American still intended to operate in Beehive's territory and
42 the attorney advised us that we would still be able to do so if our amended application

43 was granted.

44 **Q. Is this the amended application that was ultimately granted by the Commission on**
45 **March 7, 2007, in docket number is 06-2469-01?**

46 A. Yes.

47 **Q. Why did All American decide to come back to the Commission in 2008 and seek an**
48 **amendment to its CPCN that would allow it to operate as a CLEC in Beehive's**
49 **territory?**

50 A. In my previous testimony, I indicated that All American is involved in multiple lawsuits
51 in which IXCs have challenged their obligation to pay All American's switched access
52 service charges. During the course of preparing for and litigating these cases, an issue
53 arose as to whether All American was technically authorized to operate in Beehive's
54 territory, even though the Utah PSC had approved the two companies' interconnection
55 agreement. Therefore, in an effort to ensure that All American was in compliance with
56 Utah law, it retained a different attorney to assist the company in amending its CPCN so
57 as to include Beehive's territory. It was this decision that precipitated the current
58 proceeding.

59 **Q. Mr. Coleman and Ms. Beck's testimony seems to suggest that the process All**
60 **American followed in order to obtain its proposed amendment was intentionally**
61 **designed to avoid the proper review of its operations by the Commission. Is this**
62 **true?**

63 A. Absolutely not. It think it is important to remember that All American itself initiated this

64 matter, and that we did so in a *public* forum, on the *public* record, and by doing so, All
65 American has opened itself to scrutiny and the intervention of other parties. It is worth
66 noting also that All American filed this matter almost *two* years ago, and it has remained
67 on the public record for all that time. All American has taken the affirmative steps
68 necessary to ensure its compliance with Utah law. This is not a situation where the
69 Division or some other third party tried to challenge All American's operations in
70 Garrison. In fact, if it was All American's desire to avoid regulation or certification, it
71 simply could have continued with its operations under its previous certificate and
72 presumably gone unnoticed. But it chose not to do so, and instead voluntarily opened
73 itself up to further regulation and certification by the PSC. That is hardly the type of
74 conduct one would expect from a company that is intentionally violating the law or
75 avoiding scrutiny.

76 **Q. I would like for you to now focus on some of the more specific concerns raised in**
77 **Mr. Coleman and Ms. Beck's testimony. The issue is addressed on page 11, line 132,**
78 **of Mr. Coleman's testimony and on page 4, line 72, of Ms. Beck's testimony. In**
79 **these portions of their testimony, Mr. Coleman and Ms. Beck discuss the reasons**
80 **why the Division and URTA had concerns regarding All American's initial CPCN**
81 **application and its proposed entry into areas of rural Utah that are outside of the**
82 **Qwest service territory. Do you have an understanding of what those concerns were**
83 **at that time.**

84 **A.** Yes, I do. The first concern was that any decision to allow All American to enter into a

85 rural territory would be a precedent and therefore a full hearing needed to be held in order
86 to allow all interested parties to voice their concerns. The second concern was that All
87 American's entry into a rural territory would have a negative impact on the Universal
88 Service Fund ("USF") because the probability of USF support increases when any rural
89 ILEC loses customers and revenues to a CLEC. The final concern was that allowing All
90 American's entry into a rural territory would result in increased telecommunications rates
91 because the ILEC would be required to increase its service rates in order to offset revenue
92 lost to All American.

93 **Q. Based on the facts that have been presented in this matter, do you believe All**
94 **American has successfully addressed the first concern regarding the precedential**
95 **effect of All American's proposed entry into Beehive's territory?**

96 A. Yes, I do. After All American's petition was filed in this matter, the Commission
97 allowed the Utah Rural Telecom Association ("URTA") to intervene in this matter and to
98 review all pertinent discovery and testimony. Based on these facts, URTA has submitted
99 pre-filed testimony wherein it indicates that URTA's members do not oppose All
100 American's entry into Beehive's territory, provided that certain conditions are met. The
101 first condition would be to recognize that this case presents a unique set of facts and that
102 it would not set any precedent for determining the public interest criteria for a CLEC's
103 entry into a rural ILEC's territory. The second condition would be that any amendment to
104 All American's CPCN would limit All American's authority to the conferencing service
105 it is currently providing in Beehive's territory. All American believes that URTA's

106 proposed conditions are legitimate responses to its members' concerns regarding
107 competitive entry. Therefore, All American does not oppose these proposed conditions
108 and would not oppose their adoption by the Commission.

109 **Q. Based on the facts that have been presented in this matter, do you believe All**
110 **American has successfully addressed the parties' second concern regarding the**
111 **potential impact on the USF?**

112 A. Yes, I do. I addressed this in more detail in my initial testimony. All American does not
113 believe that its entry into Beehive's territory would negatively impact Beehive's existing
114 customers so as to require Beehive to access the USF. This is because All American's
115 only customer is Joy Enterprises, Inc. ("JEF"). Furthermore, All American is not seeking
116 to serve any other Beehive customers. All American is not competing against Beehive in
117 any way for any of Beehive's current or potential customers. This is evidenced by All
118 American's activity in Beehive's territory since the approval of the interconnection
119 agreement, which has not caused any loss of customers to Beehive or otherwise required
120 additional disbursements from the USF.

121 To the contrary, All American's entry into Beehive's territory will actually benefit
122 Beehive and its ability to serve its current customers. As a transiting carrier of calls made
123 to Joy Enterprises, Beehive is entitled to charge IXCs for the switched access service it
124 provides in carrying these calls. Therefore, the increased traffic to Beehive's network that
125 results from calls made to Joy Enterprises will actually lead to an increase in income to
126 Beehive and Utah Fiber Network. This increased income will allow Beehive to make

127 increased investments towards the improvement of its network infrastructure and to
128 improve the quality of its coverage, service and capacity – all without having to access
129 the USF.

130 **Q. Based on the facts that have been presented in this matter, do you believe All**
131 **American has successfully addressed the parties' third concern regarding increased**
132 **telecommunications rates?**

133 A. Yes, I do. For the reasons I just stated, All American's entry into Beehive's territory has
134 not and will not cause Beehive to suffer a loss of customers. Therefore, since Beehive
135 will not suffer any revenue loss as a result of All American's operations, there is no
136 reason to expect that Beehive would need to increase its telecommunications rates.

137 **Q. I would like now for you to review Mr. Coleman's testimony beginning on page 4,**
138 **line 71, where he discusses the procedural approach All American has taken in**
139 **attempting to amend its CPCN. Do you have any response to the concerns he raises**
140 **regarding All American's approach.**

141 A. Yes, I do. I believe Mr. Coleman's concerns have been rendered moot by the manner in
142 which this proceeding has progressed since its inception. For example, Mr. Coleman first
143 states that a CLEC should not be allowed to seek an expansion of an existing CPCN that
144 was granted in a previous docket because "all interested parties may not be given an
145 opportunity to discuss the merits of expanding the service territory of a CLEC." In this
146 case, there has been more than ample opportunity for all interested parties to have their
147 interests heard. While the initial petition involved only All American and Beehive, the

148 Commission has since permitted URTA, the Office of Consumer Service (“OCS”), Qwest
149 and AT&T to intervene. They have all participated in the discovery process and will be
150 given an opportunity to have their interests heard. Therefore, there is no basis for Mr.
151 Coleman’s concern.

152 Mr. Coleman’s other concern is that “[i]f the Commission allowed a company to file, first
153 for a CPCN within Qwest’s territory, then later to expand that certificate to include a rural
154 ILEC’s territory, that company might be able to side-step the higher public interest
155 criteria” for entry into a rural territory. As an initial matter, I am not a lawyer and I do not
156 have the expertise to determine whether the Commission’s rulings in other matters
157 require a heightened public interest standard in this case. The same would seem to be
158 true for Mr. Coleman, as he does not appear to have a law degree either. In any event,
159 when the time comes for the Commission to rule on All American’s petition, I assume
160 that it will apply the appropriate standard of review based on the law and Commission
161 precedent. Therefore, I do not see how All American’s approach has allowed it to “side-
162 step” the appropriate legal standard.

163 **Q. I would like now for you to review Mr. Coleman’s testimony beginning on page 10,**
164 **line 220, where he alleges that there is “confusion” within All American as to**
165 **whether its services are subject to the state USF fund. He then points to seemingly**
166 **conflicting statements made by All American concerning this issue. Do you have**
167 **any response to these allegations?**

168 A. Yes. I do. There is no confusion within All American regarding the extent to which its

169 services are subject to the USF. It is All American's understanding that it is obligated to
170 collect USF surcharges from "customers" that are based on a percentage of the rates it
171 charges its "customers." It is All American's further understanding that these charges do
172 not apply to wholesale services, including access and interconnection.

173 Based on this understanding, the representations made by All American are true and
174 correct. As I testified previously, All American's only customer is Joy Enterprises, Inc.
175 ("JEI") and All American does not charge JEI a fee for the services it receives from All
176 American. As such, there have been no end-use charges upon which All American can
177 impose any USF surcharges. This is why All American previously stated that its required
178 contributions to the fund were "de minimus" and "less than \$50 per month."

179 These representations also do not conflict with All American's subsequent response to the
180 Division's Third Data Request. In that request, All American was asked to explain why it
181 had not collected any USF surcharges on the intrastate revenue it had reported for the year
182 2008. During that year, All American had not collected any retail charges from JEI and
183 all of the revenue it reported was derived from access charges. As such, All American
184 correctly responded that "all of its intrastate revenues from 2008 were derived from
185 wholesale services to which the Universal Service Fund surcharge does not apply." This
186 was true and correct based on the context of the question asked.

187 **Q. Mr. Coleman also references All American's annual reports for 2007 and 2008 and**
188 **states that they were filed after the applicable deadline. Have these reports been**
189 **completed?**

190 A. Yes. All American has completed its 2007 and 2008 annual reports and has produced
191 them to all of the parties in this proceeding during the course of discovery.

192 **Q. Beginning on page 12, line 269, of his testimony, Mr. Coleman testifies that the**
193 **Commission’s decision in Docket No. 07-2476-01 (“Bresnan decision”) established a**
194 **higher “public interest” standard for CLECs seeking to enter a rural ILEC’s**
195 **territory and that All American has not met that standard in this case. What is your**
196 **reaction to this testimony?**

197 A. I am not a lawyer and I am not qualified to opine on the precedential effect of prior
198 decisions by the Commission on this proceeding. However, I also question the reliability
199 of Mr. Coleman’s testimony on this subject, as he is not a lawyer either. However, even
200 as a non-lawyer I can recognize obvious differences between this case and the *Bresnan*
201 case. In that case, Bresnan was seeking permission to operate as a CLEC in another
202 ILEC’s rural territory. However, unlike this case, both the ILEC and URITA objected to
203 Bresnan’s proposed entry and opposed its application. Furthermore, Bresnan was seeking
204 to provide a full array of telecommunications services and intended to compete directly
205 against the ILEC for retail customers. In this case, All American has agreed not to
206 expand the scope of its services beyond the conference call services it is providing right
207 now, and All American does not in any way compete against Beehive.
208 Where Bresnan sought to compete head-to-head against a rural ILEC, I could see why the
209 Commission might have wanted to impose a higher public interest standard that closely
210 examined the competitive effect of the CLEC’s entry into an ILEC’s territory. But here, I

211 do not believe that higher standard should apply because Beehive and URTA do not
212 oppose All American's operations, All American doesn't compete against Beehive, and
213 All American's operations have no negative impact on Beehive or Beehive's customers.

214 **Q. Beginning on page 13, line 281, of his testimony, Mr. Coleman opines that All**
215 **American's entry into Beehive's territory does not satisfy the public interest test**
216 **because there is allegedly no "competitive advantage" to allowing such entry. Ms.**
217 **Beck echos this argument in portions of her testimony as well. What is your**
218 **reaction to this argument?**

219 A. My reaction is that Mr. Coleman and Ms. Beck's concept of the "public interest" is
220 entirely too narrow. If the Legislature wanted the focus in these types of cases to be
221 solely on the "competitive advantage" of a CLEC's proposed entry into a rural territory, it
222 would have used that term. It did not. Therefore, its use of the word "public interest"
223 necessarily encompasses something different or broader.

224 In my previous testimony, I detailed a number of affirmative reasons why I believe that
225 All American's services were in the public interest. I think it is also important for the
226 Commission to understand that All American's operations in Beehive's territory will not
227 have any negative effect on Beehive's existing customers. Their rates will not increase.
228 Their quality of service will not be diminished. I do not understand why the Commission
229 would want to implement regulatory barriers prohibiting a telecommunications company
230 from operating where there is no negative impact on the public at large or the incumbent
231 carrier.

232 **Q. Mr. Coleman’s final concern is that All American’s petition should be denied**
233 **because calls to the numbers assigned to JEI are allegedly not terminated in the**
234 **state of Utah, but rather are sent elsewhere. In turn, he argues that All American is**
235 **not providing an actual local exchange service that would justify the issuance of a**
236 **CPCN. As support for this argument, he alleges that JEI is not an actual end user**
237 **of All American’s services. What is your reaction to this?**

238 A. Under All American’s current federal tariff, calls made to one of the numbers assigned to
239 JEI are considered to be terminated once they are connected with JEI’s intelligent voice
240 response system. This is because JEI’s system falls within the definition of an “end-user”
241 contained in All American’s tariff:

242 End User: Any person, firm, partnership, corporation or other entity, including,
243 but not limited to conference call providers, chat line providers, ... and residential
244 and/or business service subscribers, which uses the service of the Company under
245 the terms and conditions of this tariff.

246
247 Therefore, since All American is, in fact, terminating calls in Utah, Mr. Coleman’s
248 conclusion that All American is not providing local exchange services in Beehive’s
249 territory is erroneous.

250 **Q. I would like now to focus on Ms. Beck’s testimony. What is your reaction to the fact**
251 **that she and the OCS are opposing All American’s petition?**

252 A. Based on the scope of OCS’s responsibilities, I do not understand why the OCS believes
253 that its involvement in this matter is necessary. Ms. Beck states that the OCS’s
254 responsibilities are: (1) to represent residential and small commercial utility consumers in
255 Utah, and (2) to represent the interests of residential and small commercial utility users.

256 Based on the facts and evidence in this case, I do not see how the interests of residential
257 and small commercial utility users are negatively impacted – or impacted whatsoever – by
258 All American’s entry into Beehive’s territory. I am unaware of any complaints received
259 by the OCS regarding All American’s business practices. The OCS has not shown that
260 their constituents’ telecommunication rates will rise or that the services their constituents
261 receive will be diminished. OCS seems to have no legal or justifiable basis at all to
262 involve itself in this proceeding. It seems to have as its sole purpose an intention to
263 ensure that All American follows the appropriate legal steps in its attempts to amend its
264 CPCN. But these types of issues are appropriately handled by the Division, which of
265 course is already involved in this matter.

266 **Q. I would now like for you to focus your attention to the pre-filed testimony submitted**
267 **by Lisa Hensley Eckert in this matter on February 10, 2010 on behalf of Qwest**
268 **Corporation. Have you had an opportunity to review Ms. Eckert’s testimony?**

269 A. Yes. I have reviewed it.

270 **Q. In her testimony, Ms. Eckert repeatedly accuses All American of engaging in a**
271 **“traffic pumping scheme.” She further alleges that such conduct is fraudulent and**
272 **illegal. What is your response to this?**

273 A. Ms. Eckert’s premise that All American’s conferencing arrangement with JEI equates to
274 fraudulent, unlawful, or irregular “traffic-pumping” is false and misleading. As an initial
275 matter, the term “traffic-pumping” is not a generally recognized term of art. Rather, it is
276 phrase invented by IXC’s which they use to describe legitimate efforts by rural

277 telecommunications companies to increase traffic in their local exchanges.
278 Rural telcos, like the IXC's, are profit-seeking businesses that are always striving to
279 increase traffic over their networks. In fact, the IXC's engage in traffic stimulation all of
280 the time through advertising gimmicks and other artificial stimulants in order to garner
281 customers who will use their services. The IXC's, while claiming the right to increase
282 sales for themselves, apparently do not want to extend the same liberty to others.

283 **Q. Ms. Eckert also alleges that All American, by providing its services in a rural**
284 **ILEC's territory so as to obtain higher access fees, is making a profit "at the**
285 **expense of other companies, like [Qwest] and other long distance providers." Do**
286 **you agree with this characterization?**

287 A. It is true that conferencing systems may increase traffic which terminates at local
288 exchanges which, in turn, could cause the IXC's to incur additional access charges.
289 However, the IXC's profit as well because they charge their customers for the long
290 distance calls made to these exchanges. Now, in an effort to boost their own profits even
291 more, the IXC's are refusing to pay the local exchange carriers' access charges, while at
292 the same time pocketing the fees they receive from their customers from these calls.
293 They try to legitimize their campaign against these small exchange carriers by using
294 derogatory terms like "fraudulent," "unlawful," or "irregular." But simply characterizing
295 a business practice as some thing does not make it so.

296 **Q. All American is currently involved in multiple lawsuits with certain IXC's regarding**
297 **the legitimacy of the access charges All American is charging in connection with**

298 **conference call services in rural exchanges, correct?**

299 A. Yes. All American is a party to a federal lawsuit with AT&T that is pending in federal
300 district court in New York. It is also a party to a federal lawsuit with Sprint that is
301 pending in Utah's federal district court. All American is also actively involved in
302 administrative proceedings that are pending before the FCC regarding this issue.

303 **Q. Has there been any resolution of this issue in any of these forums?**

304 A. No. All of these proceedings are active and ongoing, although we are optimistic that the
305 relevant issues will ultimately be resolved in All American's favor.

306 **Q. I would now like to direct your attention to Ms. Eckert's testimony beginning at**
307 **page 12, line 252. In her testimony, Ms. Eckert alleges that she discovered an**
308 **internet posting which referenced a single All American telephone number as one**
309 **where individuals could engage in "adult chat." What is your response to this?**

310 A. First, I question the legitimacy of this internet posting and the innuendo Ms. Eckert
311 attempts to create through its use. I find it interesting that Ms. Eckert did not print out the
312 entire internet page and that the alleged quote is filled with ellipses. As such, it is
313 impossible to place this alleged quote in its full context or verify its accuracy. There is
314 certainly no reason to believe that the posting was created by or prompted by JEI or All
315 American.

316 Second, the fact that Ms. Eckert did a Google search of All American's entire phone
317 number clock and could only find a single reference to the one numbers allegedly being
318 used to engage in "adult chat" is hardly indicative of a concerted effort by JEI to promote

319 a so-called porn service. To the contrary, it supports the fact that JEI's conferencing
320 communication services are topic neutral and are not promoted by JEI as porn or adult
321 sex services.

322 **Q. Does this conclude your testimony Mr. Goodale?**

323 **A. Yes. It does.**

DECLARATION

I, David Goodale, state that I have reviewed the foregoing pre-filed rebuttal testimony that is being filed on my behalf this matter. Pursuant to Utah Code Ann. § 78B-5-705, I state under criminal penalty of the State of Utah that the foregoing pre-filed testimony is true and correct.

Executed on February 26, 2010

DAVID GOODALE

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May 2010, the foregoing PRE-FILED REBUTTAL TESTIMONY OF DAVID W. GOODALE was sent by electronic mail to the following:

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