

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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| <p>In the Matter of the Consideration of the Rescission, Alteration or Amendment of the Certificate of Authority of All American Telephone Co., Inc. to Operate as a Competitive Local Exchange Carrier Within the State of Utah</p> | <p>Docket No. 08-2469-01</p> <p>DIRECT TESTIMONY OF MICHELE BECK FOR THE UTAH OFFICE OF CONSUMER SERVICES</p> |
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February 12, 2010

1 **Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS AND ON**
2 **WHOSE BEHALF ARE YOU TESTIFYING?**

3 A. My name is Michele Beck. I am the director of the Utah Office of
4 Consumer Services. My business address is 160 East 300 South, Salt Lake
5 City, Utah, 84111.

6 **Q. WHAT WAS THE ORIGINAL SCOPE OF YOUR POSITION?**

7 A. Governor Huntsman appointed me to this position in November 2006 and I
8 began work in January 2007. At that time, this position was tasked to carry
9 out the policies and directives of the Committee of Consumer Services,
10 made up by six laypersons from specified geographic and consumer
11 interests. My duties included (1) *representing* residential and small
12 commercial utility consumers in Utah, and (2) representing the *interests* of
13 residential and small commercial utility consumers, as directed by the
14 Committee.

15 **Q. HAS THE NATURE AND SCOPE OF YOUR POSITION**
16 **CHANGED?**

17 A. Yes. Effective May 12, 2009, the Office was created as a state agency
18 within the Department of Commerce. The director, on behalf of the Office,
19 represents residential and small commercial utility consumers and their
20 interests. Within the Office, the Committee, composed of nine laypersons,
21 advises the director and provides direction on policy objectives that serve
22 the needs of residential and small commercial utility consumers. The

23 Office director is responsible for assessing the impact of utility rate changes
24 and regulatory actions on those consumers and to take such action before
25 the Utah Public Service Commission or Federal agencies, as the director
26 deems necessary to advocate for those consumers.

27 **Purpose and Summary of Testimony**

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

29 A. The purpose of my testimony is to review the proceedings in Docket No.
30 06-2469-01 wherein the Commission granted All American a certificate of
31 public convenience and necessity; describe what the Office has learned
32 about All American's compliance and non-compliance with the terms and
33 conditions of the CPCN; and to outline the evidence that the Office
34 contends is material to the Commission's decision whether to rescind, alter
35 or amend the CPCN. In regard to this issue, I will describe the interests of
36 residential and small commercial consumers in the Commission's
37 consideration of the CPCN granted in Docket no. 06-2469-01, and in the
38 application in this docket.

39 **Q. PLEASE SUMMARIZE THE OFFICE'S RECOMMENDATION**
40 **REGARDING ALL AMERICAN'S APPLICATION IN THIS**
41 **DOCKET.**

42 A. All American petitioned the Commission to amend its CPCN to include
43 Beehive Telephone Company's rural exchange in Garrison, Utah. From the
44 onset of its knowledge of and participation in this docket, the Office's

45 position has been that a retroactive, informal and expedited proceeding to
46 amend the March 7, 2007 CPCN granted in Docket No. 06-2469-01 is not
47 proper given All American's breach of its terms. The Office requested that
48 the Commission conduct a formal proceeding to consider whether All
49 American's compliance or non-compliance with the CPCN justified its
50 cancellation. The Office asked that this docket be dismissed and that the
51 proceedings occur in Docket No. 06-2469-01, because the Office believed
52 that the evidence in the original docket was important to All American's
53 new application.

54 **Q. DID THE COMMISSION RULE UPON THESE REQUESTS?**

55 A. Yes. The Commission determined that the issues would proceed within this
56 docket as a formal proceeding. The Commission defined the scope of this
57 docket in its June 16, 2009 and August 24, 2009 orders to include the
58 compliance or non-compliance with the March 7, 2007 CPCN, whether the
59 June 2007 All American/Beehive interconnection agreement altered the
60 CPCN, and whether All American's actions regarding the CPCN and its
61 operations in Beehive's rural exchange are in the public interest.

62 **Q. HAS THE OFFICE DEVELOPED ANY RECOMMENDATIONS AT**
63 **THIS TIME BASED UPON ITS REVIEW OF THE APPLICATION?**

64 A. Yes. The Office believes that the weight of the evidence recommends that
65 All American's CPCN not be amended and that All American be ordered to
66 comply with its existing CPCN, which would include a withdrawal from

67 the Beehive rural exchange in which it is doing business. The Office
68 believes that the public interest is not served by permitting All American to
69 continue its operations in Beehive's rural exchange.

70 **Background Description of Original CPCN Process**

71 **Q. WHAT IS THE SIGNIFICANCE OF DOCKET 06-2469-01?**

72 A. All American's first requested CPCN covered the entire state of Utah,
73 including all incumbent rural carriers' service territories. The Division of
74 Public Utilities and the Utah Rural Telecom Association expressed
75 concerns for the broad application, including the precedence of this first
76 request in Utah by a CLEC to enter a rural ILEC territory; the impact upon
77 the Universal Service fund and support caused by allowing CLEC entry
78 into the territory of any rural ILEC; and, the impact on rates caused by
79 allowing CLEC entry into the territory of any rural ILEC.

80 **Q. WHAT WAS THE COMMISSION'S RESPONSE TO THESE**
81 **CONCERNS?**

82 A. The Commission began the process to provide parties an opportunity to
83 address these issues. However, All American then submitted an amended
84 application wherein it stated it no longer sought to provide services in any
85 local exchanges of less than 5,000 access lines of incumbent telephone
86 corporations with fewer than 30,000 access lines in the state, except for the
87 territory of Beehive. All American subsequently amended its application
88 once again to exclude *all* local exchanges of less than 5,000 access lines of

89 incumbent telephone corporations with fewer than 30,000 access lines in
90 the state, including Beehive's territory, and requested *expedited*
91 consideration of its amended application.

92 **Q. WHAT IS THE SCOPE OF ALL AMERICAN'S CPCN?**

93 A. As All American expressly requested, the CPCN authorizes All American
94 to provide public telecommunications services within Utah, excluding those
95 local exchanges of less than 5,000 access lines of incumbent telephone
96 corporations with fewer than 30,000 access lines in the state.

97 **Q. WHY IS A CPCN IMPORTANT TO THE INTERESTS OF
98 RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS?**

99 A. In my experience, a CPCN serves to define service territories and authorize
100 construction of facilities so that they do not conflict and do not duplicate
101 existing facilities. It also represents a determination based upon evidence
102 that the proposed service, system or plant is necessary to provide safe,
103 reliable and cost effective utility service. And, a CPCN represents a
104 determination that the proposed service, system or plant benefits the public
105 generally, equally to all consumers within the authorized territory, and
106 enhances the well-being of the communities at large. In addition, from the
107 view of a government agency such as the Office, the procedures for
108 considering a CPCN application and the CPCN itself provide a regulatory
109 framework within which the utility's performance of its public duties can
110 be examined, initially and on an on-going basis.

111 **Q. WILL YOU PLEASE EXPLAIN THE REGULATORY**
112 **FRAMEWORK?**

113 A. A CPCN is the first step in the process that will eventually result in
114 providing consumers with a public utility service and setting the rates to be
115 charged for the service. The CPCN therefore defines for the consuming
116 public, what services they can expect to receive and whether they may
117 expect to pay more or less for the service. Another way of looking at the
118 CPCN is as a description of the benefit consumers may expect to receive
119 and as a foundation for the Commission's scrutiny of the rates necessary to
120 support the services, and as a standard to determining whether the utility
121 has acted prudently and consistently in the public interest.

122 **Q. CAN A CPCN GRANTED TO A COMPETITIVE LOCAL**
123 **EXCHANGE CARRIER SUCH AS ALL AMERICAN BE**
124 **DISTINGUISHED FROM A CPCN FOR AN ELECTRIC**
125 **GENERATION PLANT OR TRANSMISSION LINE, FOR**
126 **EXAMPLE?**

127 A. Yes, and the distinctions are found in Utah's public telecommunications
128 statutes. The stated Utah public telecommunications policy is to provide
129 for wider customer choices, the development and availability of advanced
130 telecommunications infrastructure, and to facilitate access to high quality,
131 affordable telecommunications services to all residents and businesses in
132 Utah by encouraging competition. Therefore, the process requirements for

133 considering a CPCN for competitive local exchange carriers are different
134 than for other CPCN applications. However, the public interest remains a
135 foremost consideration and the competitive carrier must still demonstrate
136 that the public necessity and convenience will be realized by permitting the
137 competitive entry.

138 **Q. DOES THIS MEAN THAT THE REGULATORY FRAMEWORK**
139 **DESCRIBED ABOVE IS DIFFERENT FOR A COMPETITIVE**
140 **LOCAL EXCHANGE CARRIER?**

141 A. Yes, in part, due to Utah's public policy favoring competition in the
142 telecommunications industry. The public policy also presumes that granting
143 the CPCN will provide telecommunications consumers the advantages of
144 competition, i.e. greater availability of improved services at competitive
145 rates from all telecommunications companies operating in the territory,
146 both incumbent and competitive local exchange carriers.

147 **Q. DOES THIS MEAN THAT IF GRANTED, THE COMPETITIVE**
148 **LOCAL EXCHANGE CARRIER MAY OPERATE**
149 **UNCONSTRAINED BY THE CPCN?**

150 A. No. In any case, the utility must conform its operations to the CPCN as
151 granted and the Commission imposes reporting requirements to monitor the
152 utility for compliance with its terms and conditions in relation to the public
153 interest. These requirements help to ensure that the utility follows through
154 with its plans, as they have been determined to be in the public interest.

155 The electric utility has to build the power plant or transmission line and the
156 local exchange carrier must take reasonable steps to offer to consumers the
157 promised telecommunications services. A public utility may not abandon a
158 project, materially change it, delay it, or alter what or where the service will
159 be provided. Any material alteration, expansion or contraction to the
160 consumer expectations defined by the CPCN must be explained and
161 demonstrated as necessary and convenient for the public and in the public
162 interest.

163 **Q. HOW IS THIS PRINCIPLE TO BE APPLIED TO ALL AMERICAN?**

164 A. There is a presumption in statute and in practice that a competitive carrier
165 may not receive a certificate to compete in a local exchange with fewer than
166 5,000 access lines, owned or controlled by an incumbent carrier with fewer
167 than 30,000 access lines in Utah. It is my understanding that while an
168 incumbent rural carrier may agree to competitive entry, the Commission
169 must affirmatively find that it is consistent with the public interest. If the
170 Commission issues a CPCN to a competitive carrier to operate in a rural
171 local exchange, the Commission is required to impose an obligation upon
172 this carrier to provide service to any customer or class of customers who
173 requests service. However, Mr. Goodale states in his direct testimony that
174 All American will not be offering any local exchange services or any
175 services at all, to any but Joy Enterprises and because of this, All
176 American's operations in Beehive's rural Garrison, Utah exchange is in the

177 public interest. This position is absolutely contrary to the criterion for the
178 initial issuance of a CPCN and demonstrates that approving, after-the-fact,
179 All American's expansion into a rural exchange would be contrary to the
180 public interest.

181 **Services Provided by All American**

182 **Q. HOW DID ALL AMERICAN DESCRIBE THE SERVICES IT**
183 **WOULD PROVIDE TO UTAH TELEPHONE CONSUMERS?**

184 A. All American's initial applications for a CPCN represented that it would
185 provide greater competition in the local exchange marketplace for both
186 business and residential customers by providing better quality services and
187 enhanced user features. All American represented that it would increase
188 consumer choice through reliable service offerings of all forms of resold
189 local exchange services.

190 **Q. WHAT SERVICES DOES ALL AMERICAN ACTUALLY PROVIDE**
191 **TO UTAH TELEPHONE CONSUMERS?**

192 A. All American has made no effort to provide local exchange services
193 anywhere in Utah. All American operates in Garrison, Utah but I would
194 not describe it as providing local exchange services. The Garrison
195 exchange is located in Beehive Telephone's certificated territory; a rural
196 exchange that is expressly excluded from All American's CPCN. All
197 American serves only one customer, Joy Enterprises, Inc., to whom it
198 assigned 159 numbers.

199 **Q. HOW DO YOU DESCRIBE ALL AMERICAN'S OPERATIONS IN**
200 **THE GARRISON RURAL EXCHANGE?**

201 A. Within three months of acquiring the CPCN, All American violated the
202 CPCN by commencing operations in Garrison. For its single customer, Joy
203 Enterprises, in 2008 All American reported 9,134,171 messages for
204 153,073,054 interstate access terminated minutes; 204,847 messages for
205 4,494,737 intrastate access terminated minutes; and, 0 access originated
206 minutes. I understand this to mean that in 2008, 9,339,018 calls were
207 placed to Joy Enterprises in Garrison, Utah and that Joy Enterprises made
208 no calls out. Garrison is a community of approximately 200 and the
209 location of a Utah Department of Transportation yard and office, but no
210 other business. If Garrison is a typical Beehive wire center, there are
211 perhaps 50 telephone customers. It is difficult to comprehend having such a
212 large number of calls in a location with so few telephone customers.
213 However, this is because Joy Enterprises generates 100% of traffic to All
214 American. The residential and small commercial consumers in Garrison
215 have not been offered and are not receiving any services or benefits from
216 All American.

217 **Description of Inter-relationships between the Companies**

218 **Q. WHAT DO YOU KNOW OF JOY ENTERPRISES?**

219 A. All American disclosed that Joy Boyd has an ownership interest in Joy
220 Enterprises and is the sole shareholder of All American, and that Joy

221 Enterprises is a free calling service company based in Las Vegas, Nevada.
222 It is my understanding that All American does not charge Joy Enterprises
223 for telephone service in Garrison, and that Joy Enterprises performs
224 marketing or other services for All American for which All American pays
225 Joy Enterprises.

226 **Q. WHAT DO YOU KNOW OF THE BUSINESS ARRANGEMENT**
227 **BETWEEN JOY ENTERPRISES AND BEEHIVE?**

228 A. It is my understanding that previous to the existence of All American in
229 Utah, Joy Enterprises and Beehive had a similar business relationship. As
230 of the date this testimony is prepared, my understanding is that from about
231 1994 through sometime in 1997 Joy Enterprises and Beehive partnered for
232 the purpose of stimulating interstate access revenues and Joy Enterprises
233 generated 95% of the traffic that terminated in Beehive's territory. I
234 understand from two FCC opinions, which are included as Attachment 1
235 and 2, that Beehive's payments to Joy Enterprises were substantial,
236 inadequately explained and raised serious questions regarding Beehive's
237 access rates. I have also learned from Beehive CEO Chuck McCown's
238 December 7, 2009 declaration, which is included as Attachment 3, that in
239 2007 Beehive restructured its relationship with free calling service
240 companies by transiting traffic to All American, which terminates calls to
241 the free calling service company, which I understand to be Joy Enterprises.

242

243 **Q. DOES MR. McCOWN EXPLAIN THE REASONS FOR THIS**
244 **RESTRUCTURED RELATIONSHIP?**

245 A. Yes. As I understand Mr. McCown's explanation, Beehive reacted to
246 claims that Beehive's independently established access rates were excessive
247 by agreeing to charge tariffs established by the National Exchange Carriers
248 Association. It appears that All American's Utah operations began with the
249 express purpose of continuing the business arrangement with Joy
250 Enterprises.

251 **Q. WHAT IS THE RELATIONSHIP BETWEEN BEEHIVE AND ALL**
252 **AMERICAN?**

253 A. Mr. Goodale contends that there is none. I do not present evidence to the
254 contrary. However, I note that All American has taken over one specific
255 aspect of what was formerly part of Beehive's business model. Both All
256 American and Beehive appear to have had similar arrangements with Joy
257 Enterprises at different points in time. Also, I note that Beehive not only
258 has not objected to All American operating contrary to its CPCN within
259 Beehive's territory, but has defended All American's actions and taken
260 similar positions in each part of this case.

261 **Conclusions and Recommendations**

262 **Q. WHAT ARE YOUR CONCLUSIONS FROM THESE FACTS?**

263 A. It appears that All American's operation in the Garrison exchange is an
264 unnecessary detour of calls to Joy Enterprises that has no public

265 telecommunications purpose and is neither necessary nor convenient to
266 consumers. This conclusion is supported by David W. Goodale's direct
267 testimony. He describes how calls to one of Joy Enterprises' 159 telephone
268 numbers are routed to a Beehive switch in Wendover, Utah, then to an All
269 American switch in either Garrison, Utah or Burbank, Nevada, using
270 Beehive fiber, and then to Joy Enterprises, the end user. The Joy
271 Enterprises operation in Garrison apparently consists solely of an intelligent
272 voice response system. Although All American had to acquire a CPCN
273 before it could act as a CLEC in Utah, there does not appear to have been
274 any intention to provide local exchange services anywhere in Utah. It
275 certainly appears that the real party in interest is Joy Enterprises and not All
276 American and certainly not Utah residential and small commercial
277 telephone customers.

278 Mr. Goodale's testimony affirms these conclusions. For example he
279 states, "First, I believe that the services that Joy Enterprises provides under
280 **its business arrangement** with Beehive are a public benefit." [Goodale
281 Direct, line 331, emphasis added.] His attempt to describe how All
282 American benefits the public demonstrates that All American exists only as
283 the link between Beehive and Joy Enterprises so that Beehive and Joy
284 Enterprises may profit from an unnecessary and expensive step to complete
285 a call. One may readily conclude that All American is not a
286 telecommunications corporation and is not providing telecommunications

287 services. Mr. Goodale also admits that All American has no intent to
288 provide local exchange services, serves only one customer and will not seek
289 to serve any other customers, especially those currently being served by
290 Beehive. [Goodale Direct, line 310 to 313]

291 **Q. WHAT ARE THE KEY PUBLIC INTEREST CONSIDERATIONS IN**
292 **THIS CASE AND WHY ARE THEY IMPORTANT TO UTAH**
293 **RESIDENTIAL AND SMALL COMMERCIAL TELEPHONE**
294 **CONSUMERS?**

295 A. First and foremost, it is important for the Commission to consider the State
296 of Utah's telecommunications policy in determining public interest. The
297 legislature has declared the policy of the state in Utah Code Section 54-8b-
298 1.1. It specifically references telecommunications competition as "a means
299 of providing wider customer choices for public telecommunications
300 services throughout the state," and to "enhance the general welfare and
301 encourage the growth of the economy of the state." The Commission must
302 consider whether allowing All American to "compete" in Beehive's
303 territory provide any of these desired public benefits.

304 Another key consideration in determining public interest is found
305 within the process itself. The Commission acknowledged this in its Report
306 and Order dated August 24, 2009 by saying: "The OCS Motion is not only
307 concerned with specifically how an All American/Beehive interconnection
308 agreement will impact rates for ratepayers, but also generally with the

309 process by which public telephone companies may alter the terms of their
310 certificates and abide by the Commission's orders." The Office believes
311 that processes such as the service representations and assurances of
312 consumer benefits provided in the CPCN application, and ongoing
313 compliance with reporting requirements, in and of themselves provide
314 important consumer protections. The public interest cannot be upheld
315 when these processes are misused or based upon disingenuous or false
316 information.

317 Thus, in this case, it is important for the Commission to carefully
318 consider the public interest implications of having one rural ILEC invite
319 into its territory a CLEC, knowing that the CLEC will not compete in any
320 real way. This counterfeit form of competitive entry threatens the benefits
321 of real competition, expanded service offerings, competitive pricing and the
322 appropriateness of competition in rural Utah that Utah's public
323 telecommunications policy grants to consumers throughout Utah.

324 **Q. DOES ALL AMERICAN PRESENT ANY EVIDENCE THAT IT IS**
325 **SERVING THE PUBLIC INTEREST IN GARRISON, UTAH?**

326 A. No. A competitive telecommunications CPCN is not granted to protect and
327 preserve the incumbent carriers' monopoly position or to protect an
328 unregulated, corporate parent's revenue stream. All American's statement
329 that customers in Garrison, Utah are not harmed may be true, but All
330 American must then admit that they receive no benefit from All American

331 either. This is particularly troubling given the inconsistency between actual
332 service offerings by All American and the services represented to be
333 offered in the original application for a CPCN.

334 **Q. IS AMENDING ALL AMERICAN'S CPCN TO INCLUDE THE**
335 **RURAL GARRISON, UTAH EXCHANGE IN THE PUBLIC**
336 **INTEREST?**

337 A. No. Residential and small commercial telephone customers derived no
338 benefit or advantage from All American's business model and methods.
339 The Garrison, Utah community as a whole derives no benefit or advantage
340 from All American's business model and methods. All American
341 represented to the Commission that it would serve the public interest by
342 creating greater competition in the local exchange marketplace for both
343 business and residential customers and provide its subscribers with better
344 quality services, enhanced user features, and increased consumer choice.
345 However, it appears that All American had no intent to provide these
346 services or to respect Utah law governing competitive carriers in rural
347 exchanges. All American is not a true local exchange carrier but appears to
348 be a company that exists only as a conduit for Joy Enterprises to collect
349 revenues from interstate exchange carriers. All American is not necessary
350 to public telecommunications, does not benefit any telecommunications
351 consumer and therefore is superfluous to the public convenience.

352 **Q. WHAT ACTION DOES THE OFFICE RECOMMEND THAT THE**
353 **COMMISSION TAKE WITHIN THIS DOCKET?**

354 A. The Office recommends that the Commission reject All American's request
355 to amend the CPCN. The Commission should also enforce the terms of the
356 original CPCN, which does not allow All American to operate in any local
357 exchanges of less than 5,000 access lines of incumbent telephone
358 corporations with fewer than 30,000 access lines in the state, and would
359 therefore require withdrawal of All American's operations in Beehive's
360 territory.

361 **Q. DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**

362 A. Yes.