

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the)	Docket No.
Consideration of the)	08-2469-01
Rescission, Alteration,)	
or Amendment of the)	
Certificate of Authority)	Administrative
of All American to)	Law Judge:
Operate as a Competitive)	Ruben Arredondo
Local Exchange Carrier)	
Within the State of)	
Utah.)	

TRANSCRIPT OF HEARING PROCEEDINGS

TAKEN AT: Public Service Commission
 160 East 300 South
 Salt Lake City, Utah

DATE: March 3, 2010

TIME: 9:10 a.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

(March 3, 2010 - All American - 08-2469-01)

1 APPEARANCES

2 For All American:

3 GARY R. GUELKER, ESQ.
4 JANET I. JENSON, ESQ.
5 JENSON & GUELKER, LLC
6 747 East South Temple Street, Suite 130
7 Salt Lake City, Utah 84102
8 (801) 579-0805
9 (801) 579-0801 (fax)

10 For the Division of Public Utilities:

11 MICHAEL L. GINSBERG, ESQ.
12 OFFICE OF THE ATTORNEY GENERAL
13 160 East 300 South, Fifth Floor
14 Post Office Box 140857
15 Salt Lake City, Utah 84114-0857
16 (801) 366-0353
17 (801) 366-0352 (fax)

18 For the Utah Office of Consumer Services:

19 PAUL H. PROCTOR, ESQ.
20 OFFICE OF THE ATTORNEY GENERAL
21 160 East 300 South, Fifth Floor
22 Post Office Box 140857
23 Salt Lake City, Utah 84114-0857
24 (801) 366-0353
25 (801) 366-0352 (fax)

26 For the Utah Rural Telecom Association:

27 STEPHEN F. MECHAM, ESQ.
28 CALLISTER, NEBEKER & McCULLOUGH
29 Gateway Tower East, Suite 900
30 10 East South Temple
31 Salt Lake City, Utah 84133
32 (801) 530-7300
33 (801) 364-9127 (fax)

34 For Qwest:

35 GEORGE BAKER THOMSON, JR., ESQ.
36 QWEST CORPORATE COUNSEL
37 1801 California Street, 10th Floor
38 Denver, Colorado 80202
39 (303) 383-6645
40 (303) 383-8588 (fax)

2

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES, CONTINUED

For AT&T Communications of the Mountain States and TCG
Utah:

WILLIAM J. EVANS, ESQ.
PARSONS, BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
(801) 532-1234
(801) 536-6111 (fax)

Also Present for Beehive Telecom:

Alan Smith, Esq. (Observing)

-oOo-

(March 3, 2010 - All American - 08-2469-01)

	WITNESSES	
1		
2	DAVID W. GOODALE	Page
3	Direct by Mr. Guelker	38
	Cross by Mr. Ginsberg	53
4	Cross by Mr. Proctor	101
	Cross by Mr. Thomson	146
5	Cross by Mr. Evans	155
	Cross by Mr. Mecham	175
6	Redirect by Mr. Guelker	182
	Recross by Mr. Proctor	189
7		
	LISA HENSLEY ECKERT	Page
8		
	Direct by Mr. Thomson	191
9	Cross by Mr. Guelker	198
	Cross by Mr. Ginsberg	205
10	Cross by Mr. Mecham	206
11	CASEY J. COLEMAN	Page
12	Direct by Mr. Ginsberg	209
	Cross by Mr. Guelker	231
13	Cross by Mr. Proctor	236
	Cross by Mr. Evans	238
14	Cross by Mr. Mecham	241
15	MECHELE BECK	Page
16	Direct by Mr. Proctor	248
	Cross by Mr. Guelker	253
17		
	DOUGLAS D. MEREDITH	Page
18		
	Direct by Mr. Mecham	258
19	Cross by Mr. Ginsberg	261
	Cross by Mr. Proctor	265

-oOo-

21
22
23
24
25

(March 3, 2010 - All American - 08-2469-01)

EXHIBITS		
No.	Description	Page
P-1	Testimony of David W. Goodale	41
P-2	Rebuttal Testimony of David W. Goodale	42
Qwest-1	Responsive Testimony of Lisa Hensley Eckert	194
AT&T-1	Direct Testimony of Jack Habiak	247
OCS-1-D M. BECK	Direct Testimony of Mechele Beck	250
URTA-1	Direct Testimony of Douglas Duncan Meredith	259

-oOo-

(The previous exhibits and related testimony were prefiled and are part of the PSC record and filed at the Commission.)

-oOo-

EXHIBITS, CONTINUED		
No.	Description	Page
DPU-1	Tariffs (with CD)	26
DPU-2	Data Requests and Responses (with CD)	30
DPU-3	Annual Reports	31
DPU-4	Written Responses to Data Requests	32
DPU-5	Responses to AT&T's First Set of Interrogatories	35
DPU-6	Responses to AT&T's Second Set of Interrogatories	35
DPU-7	Responses to AT&T's Third Set of Interrogatories	35

5

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1		EXHIBITS, CONTINUED	
2	DPU-8	Direct Testimony of Casey J. Coleman	212
3			
4	OCS-1	Utah Division of Corporations and Commercial Code Documents	182
5		Re: Joy Enterprises, Inc. (JEI)(A Nevada Corporation)	
6	Qwest-2	Summary for Lisa Hensley Eckert	194

7 -oOo-

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(March 3, 2010 - All American - 08-2469-01)

1 MARCH 3, 2010 9:10 A.M.

2 P R O C E E D I N G S

3 THE COURT: We're here in Docket
4 No. 08-2469-01. I'm Ruben Arredondo, the ALJ assigned
5 by the Commission to hear this matter. And with that
6 let's take appearances, beginning with All American
7 please.

8 MR. GUELKER: Gary Guelker on behalf of All
9 American Telephone Company.

10 THE COURT: Thank you.

11 MS. JENSON: Janet Jenson on behalf of All
12 American.

13 THE COURT: Thank you.

14 And then just starting over here with
15 Mr. Proctor.

16 MR. PROCTOR: Paul Proctor, Assistant
17 Attorney General, on behalf of the Utah Office of
18 Consumer Services.

19 MR. GINSBERG: Michael Ginsberg appearing for
20 the Utah Division of Public Utilities.

21 THE COURT: Thank you.

22 MR. MECHAM: Steve Mecham representing the
23 Utah Rural Telecom Association.

24 THE COURT: Okay, thank you.

25 MR. THOMSON: Morning, your Honor. My name

7

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 is George Baker Thomson, Jr. I represent Qwest.

2 THE COURT: Thank you.

3 MR. EVANS: I'm William Evans, here on behalf
4 of AT&T Communications of the Mountain States and TCG
5 Utah.

6 THE COURT: Thank you.

7 MR. SMITH: Alan Smith, your Honor, for
8 Beehive Telecom.

9 THE COURT: Are you gonna be making just
10 observations, or?

11 MR. SMITH: I'm observing.

12 THE COURT: Okay. There was a Motion in
13 Limine filed by All American, and the Office and the
14 Division filed their responses yesterday. And I'm
15 just gonna read a generalized order, and there might
16 be more detail contained in the final order issued by
17 the Commission:

18 "The PSC has reviewed the moving and
19 responding papers and also heard
20 comments by the parties opposed to the
21 Motion in Limine at the prehearing
22 conference held Monday -- this past
23 Monday.

24 "All American has moved to preclude
25 the Office and the Division from

1 opposing All American's proposed
2 amendment or from seeking the rescission
3 of its certificate at the hearing and
4 from introducing any evidence in support
5 of such positions.

6 "The purpose of discovery rules are
7 to make discovery as simple and
8 efficient as possible by eliminating any
9 unnecessary technicalities. And to
10 remove elements of surprise or trickery
11 so that the parties and the Court -- in
12 this case the administrative agency --
13 can determine the facts and resolve the
14 issues as directly, fairly, and
15 expeditiously as possible.

16 "However, case law makes clear that
17 the sanctions listed in Rule 37 are
18 discretionary with the administrative
19 agency. In Morton versus Continental
20 Baking Company the Court stated that
21 before discovery sanctions under Rule 37
22 are imposed, the administrative agency
23 must find on the part of the
24 noncomplying party or parties
25 willfulness, bad faith or fault, or

(March 3, 2010 - All American - 08-2469-01)

1 persistent dilatory tactics frustrating
2 the judicial process.

3 "Here the Commission has not found
4 that these circumstances exist. The
5 Commission denies the Motion for the
6 following reasons:

7 "First, the Office and the Division
8 complied with the scheduling order in
9 place. The October 28, 2009, scheduling
10 order -- which deadlines Beehive and All
11 American helped decide at a scheduling
12 conference -- set February 12, 2010, as
13 the deadline for the filing of DPU and
14 OCS testimony. And they've both
15 complied with this order.

16 "Second, it would be unjust to
17 preclude the Office and the Division's
18 evidence, especially when some of that
19 delay, if any, was partly due to
20 American -- All American's lateness.
21 Even assuming there was any delay on the
22 part of the Office and the Division,
23 there is substantial evidence to suggest
24 they were substantially justified in
25 doing so.

10

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 "Delay in discovery has become
2 common in this docket, and All American
3 has delayed in participating in
4 discovery as well. For example, All
5 American responded late when in
6 August 2008 it responded to data
7 requests sent in June 2008.

8 "All American, All American failed
9 to respond to a second set of data
10 requests sent August 2008. And the
11 Division filed a Motion to Dismiss,
12 partly due to All American's lateness
13 and failure to respond to data requests.

14 "All American obtained an extension
15 in responding to the DPU's motion by
16 saying it would waive the 240-day time
17 period for the Public Service Commission
18 to act.

19 "And while it attempted to resolve
20 some of the Division's concerns at the
21 next scheduling conference, it appeared
22 that no such negotiation took place.
23 Additionally, the waivability of the
24 240-day time period is now on appeal.

25 "In January 2009, five months after

(March 3, 2010 - All American - 08-2469-01)

1 the DPU sent data requests, the PSC
2 filing ordered All American to respond
3 to those data requests in August.

4 "The Office stated other delays in
5 discovery, namely late responses to the
6 Office's April 2009, November 2009, and
7 January 2010 data requests.

8 "Additionally, as of the prehearing
9 conference this past Monday, All
10 American still had outstanding
11 responses.

12 "Finally, allowing the DPU and the
13 Office to present evidence opposing the
14 amendment or rescission is not unfair,
15 nor will it allow for a hearing by
16 surprise or a trial by ambush.
17 Generally, preclusion of evidence under
18 Rule 37 is disfavored.

19 "The Office and the Division filed
20 their positions in February, but filed
21 them in a timely manner and in
22 accordance with the scheduling order
23 filed in this matter. In any case,
24 their positions should not be a surprise
25 to All American; they have made their

(March 3, 2010 - All American - 08-2469-01)

1 positions clear before.

2 "For example, as early as the 2006
3 docket where All American was granted
4 its certificate the Division recommended
5 granting a certificate to All American
6 in Qwest territory, but raised the same
7 concerns it raises here regarding All
8 American serving in Beehive territory.

9 "For example, the precedent-setting
10 nature of All American entering into a
11 rural telecom territory, USF, telecom
12 prices, et cetera. The Division raised
13 its concerns again in its October 2008
14 Motion to Dismiss.

15 "The Office, in its January 2009
16 Motion to Dismiss, explicitly stated the
17 Commission should consider whether to
18 cancel the All American certificate.
19 And there are other times when the DPU
20 and OCS have made their opposition
21 clear.

22 "There are other parties that have
23 made their opposition to any amendment
24 of the All American certificate. URTA
25 presented some of the same concerns here

13

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 as it did in the 2006 original
2 certificate proceedings, and reiterated
3 those concerns in it's December 2008
4 Motion to Intervene.

5 "Qwest raised concerns in its Motion
6 to Intervene in this docket in 2008 with
7 amending the All American certificate.

8 "All American has made no Motion in
9 Limine with regards to these parties;
10 therefore, All American has already been
11 prepared to address opposition of these
12 parties, at the very least related to
13 amendment of its certificate, if not
14 prepared to address evidence related to
15 rescission of its certificate.

16 "In fact, after the hearing the
17 evidence supporting the reasons for
18 rescissions and those merely opposing
19 amendment may, in fact, be very similar.
20 And for these reasons, the motion is
21 denied."

22 So we'll allow the Office and Division to
23 present their evidence. Let's go ahead and begin with
24 Mr. Guelker.

25 MR. GUELKER: Thank you, Judge. And if I

14

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 could I'd like to make a brief opening statement for
2 the record, please.

3 THE COURT: Go ahead.

4 MR. GUELKER: Thank you. Everyone here is
5 aware All American commenced this proceeding by filing
6 a petition in which it sought to expand the scope of
7 its original Certificate of Public Convenience and
8 Necessity, in order to expand its existing territory
9 to include Beehive -- to include a Beehive exchange
10 for less than 5,000 lines.

11 Now, we all know there's been some dispute
12 between the parties as to whether a formal hearing was
13 necessary in order to review the petition, or whether
14 the petition should be granted as a matter of law.
15 But the fact is, those issues have not been resolved
16 by a Commission -- the Commission's prior rulings.

17 And there's no need to debate the merits of
18 how All American has decided to proceed in this
19 matter, because we are where we are. We're here now
20 before you, Judge, to decide this issue on the merits
21 and hold an evidentiary hearing.

22 And so what's the relevant issue, or the
23 relevant issues? Well, the overall issue is whether
24 All American's proposed entry meets the legal
25 standards set forth in Section 54-8b-2.1.

15

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 And the two sub-issues there are, one, does
2 All American have the sufficient technical, financial,
3 and managerial resources and abilities to provide the
4 telecommunications services that are being applied
5 for. And the second issue is whether All American's
6 proposed entry is in the public interest.

7 But before we address those in detail I think
8 it's first to -- first important to look at what's the
9 service All American is seeking to provide in
10 Beehive's territory. Well, it wants to use its
11 switching equipment in Garrison, Utah to terminate
12 calls made to a conference call company namely --
13 namely, Joy Enterprises.

14 And it accomplishes this by terminating the
15 calls with a voice intelligent response system that's
16 owned by Joy which is located in Garrison. So the
17 question -- first question becomes, does All American
18 have the sufficient technical, financial, and
19 managerial resources to provide the service.

20 And I suggest the evidence will, will result
21 in the answer to that is yes. First of all, the
22 Commission has already determined that All American
23 has the ability to provide switch access service. And
24 it did so when it approved All American's existing
25 certificate.

16

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 But perhaps more importantly, All American
2 has been providing this service in the Beehive
3 territory for the last few years. And it's shown
4 ability to provide this successfully without any
5 complaint, without any technical glitches. So I think
6 this alone shows that they do have the ability to
7 provide the service that they're applying for.

8 So the second question becomes, well, is it
9 in the public interest for All American to be
10 providing this service on Beehive's territory. And
11 again, I would suggest the answer to that is yes.
12 First of all, the evidence will show that All American
13 is helping to facilitate a valuable service, namely
14 free conference call servicing to the public.

15 And furthermore, it's services are not having
16 any negative impact on the incumbent carrier in that
17 ter -- territory, namely Beehive. And in fact Beehive
18 consents to their entry. And it's not surprising,
19 because by increasing traffic to Beehive's exchange
20 this will result in higher access fees for Beehive.

21 And the result of that is, one, Beehive -- it
22 decreases the likelihood that Beehive is gonna have to
23 dip into the Universal Service Fund to support its
24 services. It provides more capital to Beehive, which
25 Beehive can use to improve the quality of service to

17

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 its existing customers.

2 And it requires Beehive to hire more people
3 and spend more money in the exchange, which in turn
4 has a positive impact on the local economy. And I
5 believe this is evidenced by URTA's position, which is
6 evidenced by their prefiled testimony in this case.

7 URTA initially intervened in this matter over
8 concerns that it had with All American's proposed
9 entry. And I don't purport to speak on behalf of
10 URTA, but it's my understanding from reading the
11 prefiled testimony that they do not oppose All
12 American's proposed entry, provided that certain
13 criteria are met.

14 The first is that the, the amendment's not
15 made on a nunc pro tunc basis. That All American's
16 services be limited to the conference call servicing
17 that's currently being provided. And finally, that
18 the Commission recognize that this is a unique
19 scenario, and it shouldn't be used to set a
20 precedential standard for proposed entry by CLECs into
21 rural territories in the future.

22 And All American, frankly, is willing to
23 abide by these conditions that I believe URTA has
24 proposed. And so I believe if you look at the
25 interested parties, the true interested parties, they,

18

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 they believe All American can do what it's doing, and
2 do so consistent with the public interest.

3 Now, the interveners in this matter have
4 generally provided two reasons why the proposed
5 amendment is not in the public interest. And the
6 first is what I believe the interveners have
7 self-servingly characterized as "traffic bumping."

8 But really what -- you can call it anything
9 you want, but the issue is whether All American should
10 be able to bill the various IXCs for access fees at
11 the higher rates applicable to rural territories such
12 as Beehive's.

13 And frankly, Judge, I don't think this
14 billing issue is relevant to the public interest. It
15 has no bearing on the quality of the services that All
16 American is providing. In fact, it's nothing more
17 than a private billing dispute between All American
18 and the, and the IXCs.

19 And there's been nothing illegal -- there --
20 nobody has ever said, no truant authority has ever
21 said there's anything illegal or improper about the
22 services All American is providing in this territory.

23 And I would suggest that the IXC's true
24 intent here is to use this proceeding to establish
25 some sort of precedence on this issue that can be used

19

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 against All American currently or on the -- or in
2 future lawsuits.

3 But this simply isn't a proper forum to, to
4 discuss the merits of traffic bumping. First of all
5 the vast majority of the relevant charges involve
6 interstate traffic, which is beyond the scope of this
7 Commission's jurisdiction.

8 But even if this Commission believed it could
9 litigate the merits of access charges, the various
10 IXCs should be required to open up a separate
11 rule-making docket so that all voices should be heard.
12 It's simply inappropriate to use a proposed amendment
13 as a means to litigate the legitimacy of access
14 charges and then try to apply them retroactively to
15 All American.

16 And the second issue that the interveners
17 have raised is they've been trying to portray All
18 American as some sort of scofflaw who's been operating
19 unlawfully outside the scope of its certificate, and
20 therefore is somehow undeserving of an amended
21 certificate. In fact they've gone as far as to seek
22 the actual revocation of their existing certificate.

23 But I think what the parties fail to
24 recognize -- and what I would like you to recognize,
25 Judge -- is that All American has gone through

20

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 significant efforts to try to rectify and bring
2 themselves into compliance.

3 You know, All American will admit that its
4 original application for its existing certificate was
5 probably too narrow in scope, and that it didn't
6 include Beehive's territory. But what has All
7 American done since then?

8 Well, they went with Beehive and made a
9 public and open application for an interconnection
10 agreement. Now, this was openly and publicly
11 revealed. And it revealed All American's intent to
12 operate Beehive's territory.

13 The Division and Qwest participated in the
14 docket, and they never raised any objections. And the
15 Commission approved the agreement, despite the scope
16 of All American's existing certificate.

17 But All American didn't stop there. It made
18 yet another trip to the Commission, again publicly and
19 openly, in this docket. And what did it try to do?
20 It tried to again resolve any discrepancies that
21 existed between its original certificate and its
22 interconnection agreement and the operations it was
23 providing.

24 So that's what it wants to do. It wants to
25 amend its existing certificate so that it is in

21

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 compliance. And this is hardly the type of conduct
2 that one would expect from a company that's intent on
3 operating illegally or trying to strip the law.

4 Remember, we initiated this docket. This was
5 not something that the Division or other parties
6 brought us in to challenge what we are doing.

7 And so what has All American faced as a
8 result of its decision to step forward and bring
9 itself into compliance? Well, it's faced nothing but
10 vigorous and zealous opposition, in an apparent
11 attempt to punish All American for the scope of its
12 initial application.

13 They've gone as far as to seek the revocation
14 of its existing certificate. And frankly, Judge, this
15 is not the type of reaction that will encourage other
16 parties to come -- who may be in noncompliance with
17 regulations to come forward and rectify their
18 situation.

19 And I would suggest it directly contradicts
20 the legislative policy as stated in Utah Code
21 Annotated Section 54-8b-1.1, which states that it's
22 the State's policy to, quote, allow flexible and
23 reduced regulation of telecommunications corporations
24 in public telecommunications services.

25 And so what I ask for you today, Judge, is to

22

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 sift through the rhetoric, the spurious allegations.
2 Instead focus on the relevant issue of whether All
3 American's operations are truly in the public interest
4 and whether it has the ability to provide those.
5 Thank you.

6 THE COURT: Thank you. Would you like me to
7 swear in your testimony? I mean your witness, sorry.

8 MR. GUELKER: Yes, please. We call Dave
9 Goodale.

10 MR. GINSBERG: Before we go ahead, your
11 Honor.

12 THE COURT: Uh-huh (affirmative.)

13 MR. GINSBERG: Would it make sense to go
14 through the exhibits that have been handed out. To --

15 THE COURT: Yeah, let's do that.

16 MR. GINSBERG: -- get all those on the
17 record, or deal with any objections beforehand.

18 THE COURT: Yeah, that's fine.

19 MR. GINSBERG: It'll help speed things up.
20 Do you want me to go through what I've handed out?

21 THE COURT: Okay. Can we recess real quick?

22 (A recess was taken from 9:26 to 9:33 a.m.)

23 THE COURT: Let's begin with All American.

24 And the exhibits -- did you have something you had
25 specific concerns about actually, Mr. Ginsberg?

23

(March 3, 2010 - All American - 08-2469-01)

1 MR. GINSBERG: Well, I have all these
2 exhibits that I handed out. And I was hoping, you
3 know, when we specifically went through many of them
4 at the prehearing conference, and I was hoping to get
5 them identified and admitted. I think by, by
6 agreement.

7 THE COURT: Okay.

8 MR. GINSBERG: So I --

9 THE COURT: So you want to identify those?

10 MR. GINSBERG: I think it would be helpful if
11 we went through and identified everything that was
12 handed out.

13 THE COURT: Okay. Do you want to begin now,
14 Mr. Guelker, or do you want to sort out the --

15 MR. GUELKER: Well, this is what I would
16 suggest. There certainly were certain exhibits that
17 the Division and we all agreed to their submission at
18 the prehearing conference. I would have no problem
19 identifying those at this point so that the parties
20 can freely use those during the course of cross
21 examination and whatnot.

22 THE COURT: Okay. All right, let's do that
23 then.

24 MR. GUELKER: But to the -- but the, but the
25 extent of the testimony and anything else, I'd prefer

24

(March 3, 2010 - All American - 08-2469-01)

1 just to handle those as they come up.

2 THE COURT: Right. Okay.

3 MR. GINSBERG: Right. It's only exhibits
4 that I think that we discussed, and maybe a few
5 others. But not the testimonies.

6 THE COURT: Okay. Let's, let's begin with
7 the ones that we've discussed at the prehearing
8 conference.

9 MR. GINSBERG: Okay. Should I start, or?

10 THE COURT: Yeah, go ahead.

11 MR. GINSBERG: The first one is called "All
12 American," and it's -- I handed it out on a CD. And
13 it's a list of -- a data request was made for All
14 American to provide all of the tariff price lists,
15 both for interstate and intrastate services that they
16 are using. And the response to the data request is
17 provided on the CD which I handed out.

18 The paper copy are certain pages of Tariff
19 No. 1, which is an FCC tariff dated June 29, 2005.
20 And there were a number of duplicates on that.

21 The second is FCC Tariff No. 1 Revised, which
22 was dated June 13, 2008, effective July 17, 2008. And
23 all of the revised pages to that Tariff No. 1 are
24 included in the paper copy.

25 The third one is FCC Tariff No. 2, which was

25

(March 3, 2010 - All American - 08-2469-01)

1 effective April 22, 2008. And the title pages and
2 other relevant pages are included in the paper copy.

3 There were no Utah intrastate tariffs or
4 price lists provided.

5 THE COURT: Okay. And --

6 MR. GINSBERG: How do you want these marked?

7 THE COURT: We'll mark this one DPU-1. My --
8 I assume this is the one you're talking about. It has
9 1, 2, 3, 4, 5 --

10 MR. GINSBERG: Yes.

11 THE COURT: -- just describing the contents
12 of the CD?

13 MR. GINSBERG: Right.

14 MR. GUELKER: We'll just make that a single
15 exhibit? Just so I'm marking.

16 THE COURT: Yeah. So -- and did you give a
17 copy to the court reporter?

18 MR. GINSBERG: I did.

19 THE COURT: Okay. So that will be --

20 MR. GINSBERG: I also gave her the CD. And I
21 don't know if others -- if anyone needs extra CDs, we
22 can provide them.

23 THE COURT: So we'll mark that packet, along
24 with the CD, as one single exhibit, DPU-1.

25 (Exhibit No. DPU-1 was marked for

26

(March 3, 2010 - All American - 08-2469-01)

1 identification.)

2 MR. GINSBERG: Okay. The second one is, it's
3 a list of 13 attachments. And it is a copy of the
4 questions and answers of all of the discovery that was
5 in 08-2469-01. And we also provided that on a CD.

6 Now, it did not include the discovery from
7 06-246 -- 2469-01, the original application, or -- I
8 think there was some discovery in 07-051-01 and 03.
9 And if the parties wish to have that included in this
10 record, since the Commission has taken administrative
11 notice of it we certainly have no problem with that
12 and could provide that.

13 But this only includes the 08-2469-01, so.

14 THE COURT: Okay.

15 MR. GINSBERG: Do you want that marked as
16 DPU-2?

17 THE COURT: DPU-2. Any objection?

18 MR. GUELKER: Well, I do object to the extent
19 it would include the response in the 06 docket. This
20 is the first time I became aware they would rely on
21 those in support of their position in this case. And
22 frankly I haven't seen them, so.

23 And I don't -- if I missed something at the
24 prehearing conference, I apologize. But I didn't
25 recall discussing that specific -- those specific

27

(March 3, 2010 - All American - 08-2469-01)

1 requests. I thought we were just referring to the
2 data requests that were produced in this case, which I
3 think were the ones relevant to this case.

4 MR. GINSBERG: Okay.

5 THE COURT: Mr. Ginsberg, any response?

6 MR. GINSBERG: No. I --

7 MR. PROCTOR: Well --

8 THE COURT: Okay. Well --

9 MR. PROCTOR: I would have a response. The
10 06 file in its entirety I believe this Commission has
11 taken administrative notice it exists. It's a public
12 record in any event. So whatever is in that file as
13 it pertains to All American and its Certificate of
14 Convenience and Necessity would be admissible.

15 THE COURT: Okay.

16 MR. PROCTOR: So whether or not it's here.

17 THE COURT: This --

18 MR. PROCTOR: And I don't understand
19 Mr. Guelker saying it's not admissible. It's just
20 that it shouldn't be a separate exhibit; am I
21 correct -- incorrect?

22 THE COURT: This is -- the only thing I'm
23 gonna do right now is mark this Exhibit as DPU-2. And
24 it only contains 08, 08 data requests and responses;
25 is that right?

28

(March 3, 2010 - All American - 08-2469-01)

1 MR. GINSBERG: That's correct.

2 THE COURT: Okay. So just for these 13.

3 MR. GINSBERG: The Commission has taken
4 administrative notice of the other two dockets.

5 THE COURT: Of the other two dockets. We
6 have.

7 MR. GUELKER: And I guess what I'd say is I
8 didn't -- I don't believe I stipulated to those. And
9 they want to try to introduce them for -- I don't know
10 for what reason.

11 THE COURT: Well, why don't we come to that
12 bridge when we -- we'll cross that bridge when we
13 cross it.

14 MR. GUELKER: Sure.

15 MR. GINSBERG: Well, let me make it clear
16 that the stipulation was that the Commission take
17 administrative notice of what they have within those
18 dockets, which I assume is within the Commission's
19 discretion.

20 Then if the discovery is within the
21 Commission's files, then it would be included. If
22 it's not, then it would not, and I guess we'd have to
23 deal with it here.

24 MR. GUELKER: It's my understand that the
25 discovery responses typically aren't filed with the

29

(March 3, 2010 - All American - 08-2469-01)

1 Commission and are not contained as part of the
2 record. Which is why I didn't -- I don't believe I
3 stipulated to their inclusion. I just don't know how
4 they're being used.

5 THE COURT: And I don't either. I don't know
6 what you're gonna do with 06, so maybe bring it up as
7 you try to present it. But what I want to do right
8 now is just these 13 attachments.

9 MR. GINSBERG: Okay. The next one --

10 THE COURT: So that will be DPU-2.

11 (Exhibit No. DPU-2 was marked for
12 identification.)

13 MR. GINSBERG: Okay. And DPU-3 are the
14 Annual Report for 2008; the Annual Report for 2007,
15 which was received in a response to a data request on
16 February 8, 2010; the Revised Annual Report for 2007,
17 which was received March 2, 2010.

18 And as I stated at the scheduling conference,
19 there was no record within the Division that the 2007
20 annual report was received. And maybe Mr. Goodale
21 will address that.

22 The Report of Gross Revenues for 2008 and for
23 2007 and the various fee assessments that occurred
24 with that. And information dealing with reports filed
25 on USF, the Utah Service Fund, that have been filed.

30

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 As I understand it, I marked the gross
2 receipts reports in yellow. But in a discussion with
3 Mr. Guelker off the record it is my understanding that
4 none of these reports need to be marked confidential.

5 THE COURT: Okay.

6 MR. GINSBERG: But.

7 THE COURT: Is that correct, Mr. Guelker?

8 MR. GUELKER: Hold on a second.

9 (Pause.)

10 MR. GUELKER: No, I stand by that. They
11 don't need to be marked as confidential.

12 THE COURT: Okay. Then we'll mark this as
13 DPU Exhibit 3.

14 (Exhibit No. DPU-3 was marked for
15 identification.)

16 MR. GINSBERG: Okay. The next document is --
17 I guess we could mark it as DPU-4. And these are the
18 answers to the questions from All American that have
19 been provided on the CDs that I referred to earlier.
20 It's just the answers so they're in written form.

21 It does not include the attachments that were
22 provided. Those are all on the CD. So these are the
23 ones that Mr. Guelker provided maybe a week or so ago,
24 with the necessary verifications on them.

25 MR. GUELKER: Just -- I'm just a little

31

(March 3, 2010 - All American - 08-2469-01)

1 confused, Mike. What -- how is four different than
2 two? Maybe I just --

3 MR. GINSBERG: Well, it isn't any different,
4 other than they're in a paper format.

5 MR. GUELKER: Oh, I see. Okay. I just mark
6 the paper forms?

7 MR. GINSBERG: Right.

8 MR. GUELKER: Okay. Very good.

9 MR. GINSBERG: So everything that's on four
10 is on two.

11 THE COURT: Is that what he's referring to?

12 MR. GUELKER: I understand --

13 MR. GINSBERG: Yes.

14 MR. GUELKER: -- DPU-2 is a disk.

15 MR. GINSBERG: Right.

16 MR. GUELKER: Correct?

17 MR. GINSBERG: Yes.

18 MR. GUELKER: And DPU-4 is the written copy
19 of some of what is contained in the answers?

20 MR. GINSBERG: Some of them. Some of them
21 are in two.

22 THE COURT: Okay. All right.

23 (Exhibit No. DPU-4 was marked for
24 identification.)

25 MR. PROCTOR: Excuse me, your Honor. And

32

(March 3, 2010 - All American - 08-2469-01)

1 that would be -- DPU-4 would also be the discovery
2 responses signed by All American's officer?

3 MR. GINSBERG: Right. That's what these are.

4 MR. PROCTOR: Okay.

5 MR. GINSBERG: They're what he provided about
6 a week ago, I think.

7 MR. GUELKER: Correct.

8 THE COURT: Okay.

9 MR. GINSBERG: And the final one, that was
10 not discussed in the scheduling conference and maybe
11 there are objections to it, but they are discovery
12 provided by Mr. Goodale in response to the Federal
13 District Court action in New York.

14 They're responses to data requests from -- to
15 AT&T, responding to Mr. Goodale. They all relate to
16 the type of service that is being provided by All
17 American to Joy Enterprises, and the tariffs that they
18 believe are applicable or inapplicable in those areas.

19 If they're not gonna be admitted I would
20 still like to get them marked so that we can go
21 through them when they're at least marked.

22 THE COURT: Okay.

23 MR. GINSBERG: And I don't know whether he
24 has any objections to them or not.

25 MR. GUELKER: Well, I do have a general

(March 3, 2010 - All American - 08-2469-01)

1 objection, Judge, and this sort of goes back to the
2 issues I raised in my Motion in Limine. That the
3 interrogatories that we asked were not only what is
4 your position, but what is the bases for that
5 position.

6 And frankly this is the first time I've seen
7 these responses raised or used as support for any of
8 the, for any of the positions that were articulated in
9 the Division's prefiled testimony.

10 And so I would object to them at this point
11 based solely on the fact that this is the first time
12 I've seen them. And they shouldn't be allowed to be
13 introduced for the first time at the hearing. I may
14 have more substantive objections depending on how they
15 try to be used, but that's my objection at this point.

16 THE COURT: Okay. What we'll do is we'll
17 mark them. Reserve your objection for when he tries
18 to use them. Just see if you could bring that up
19 again.

20 MR. GUELKER: Okay.

21 THE COURT: I have the First Set of
22 Interrogatories, Second Set of Interrogatories, and
23 Third Set of Interrogatories.

24 MR. GINSBERG: So do you want to mark the
25 first set would be DPU, um.

(March 3, 2010 - All American - 08-2469-01)

1 THE COURT: Five.

2 MR. GINSBERG: Five. The second set would
3 be.

4 THE COURT: Six. And then the third set will
5 be seven.

6 (Exhibit Nos. DPU-5, DPU-6, and DPU-7 were
7 marked for identification.)

8 MR. GINSBERG: Okay. I think that, I think
9 that about covers it.

10 THE COURT: Okay. Now, the Office also had
11 some exhibits that you raised at the prehearing
12 conference?

13 MR. PROCTOR: My main concern at the
14 prehearing conference was the answers to
15 interrogatories that had not been responded to. They
16 were.

17 We did, however, the next day I realized I
18 omitted the document that we would like admitted into
19 evidence at this point, which is the records of the
20 Utah Department of Commerce, Division of Corporations
21 and Commercial Code -- a PDF file was provided to
22 everyone, and I just handed out a hard copy --
23 reflecting the records of the Division pertaining to
24 Joy Enterprises, Inc., JEI, a Nevada corporation.

25 We believe that these are relevant. And

35

(March 3, 2010 - All American - 08-2469-01)

1 because it is a document that has all the indicia of
2 genuineness from a governmental agency, it is
3 admissible without foundation.

4 We believe it's relevant because it has now
5 been admitted that there is only one customer of All
6 American in the Garrison, Utah exchange. That is Joy
7 Enterprises, Inc., JEI, a Nevada corporation. The
8 nature of that business has been described in
9 testimony by All American, in answers to
10 interrogatories.

11 The financial arrangements between Joy and
12 All American have been disclosed. And this record
13 reflects that Joy Enterprises, Inc., JEI, a Nevada
14 corporation, is not, and according to the records from
15 the Division has never been authorized or qualified to
16 do business within the State of Utah.

17 THE COURT: Okay. Mr. --

18 MR. GUELKER: Well, I would raise the same
19 general objection that I did to the previous
20 interrogatories regarding the timing of the
21 production. So perhaps I'll just -- we'll just mark
22 it, and I won't stipulate to its admission, and we'll
23 deal with it --

24 MR. PROCTOR: May I respond --

25 THE COURT: Uh-huh (affirmative.)

36

(March 3, 2010 - All American - 08-2469-01)

1 MR. PROCTOR: -- your Honor? I specifically
2 asked whether or not Joy Enterprises, Inc., had -- the
3 Nevada corporation had ever been authorized to do
4 business in the state of Utah in a discovery response.

5 And the response that came first from
6 Mr. Guelker, which has now been adopted by All
7 American, was, We don't know. And we're not
8 authorized to speak for Joy Enterprises. And we don't
9 know what is meant by "authorized to do business."

10 So this is not a surprise. They responded.
11 They don't know. And this document of course
12 establishes the public records that answers that
13 interrogatory. I think it is admissible.

14 THE COURT: Okay. Let's go ahead and mark it
15 right now, and then we can -- once you use that
16 Mr. Guelker can raise his objections again. Can I get
17 a copy of that? I don't have that yet.

18 MR. GINSBERG: That will be marked as OCS-1?

19 THE COURT: That will be OCS-1.

20 (Exhibit No. OCS-1 was marked for
21 identification.)

22 THE COURT: I think those are all the
23 discovery that we discussed at the prehearing
24 conference. Anything else?

25 Okay. Mr. Goodale then, if you could raise

(March 3, 2010 - All American - 08-2469-01)

1 your right hand for me.

2 (Mr. Goodale was sworn.)

3 THE COURT: Thank you, go ahead.

4 MR. GUELKER: Would you like him to stay
5 here, Judge, or would you like him to --

6 THE COURT: You can -- either way. You can
7 sit there or you can sit up at the witness stand.

8 MR. GUELKER: Why don't you go up there,
9 Dave, because I think it will be easier when the other
10 folks ask you questions.

11 DAVID W. GOODALE,
12 called as a witness, having been duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. GUELKER:

16 Q. Good morning, Mr. Goodale.

17 A. Morning.

18 Q. Could you please provide your full name and
19 spell it for the record, please?

20 A. David Wilford Goodale, G-o-o-d-a-l-e.

21 Q. And you are the, as I understand, the
22 president of All American Telephone Company?

23 A. Yes, sir.

24 Q. Okay. How long have you worked in the
25 telecommunications industry, sir?

38

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. Approximately 20 years.

2 Q. Okay. So do you feel you have a lot of
3 experience in the industry?

4 A. Yes, sir.

5 Q. And do you feel you have the capability to
6 effectively manage your company?

7 A. Yes.

8 Q. Okay. Now, do you remember, did you prepare
9 any written testimony to be filed in this action?

10 A. Yes.

11 Q. Okay.

12 MR. GUELKER: If I could approach, your
13 Honor.

14 THE COURT: Uh-huh (affirmative.)

15 MR. GUELKER: Did you get a copy of the
16 prefiled testimony?

17 THE COURT: I have what was filed with the
18 Commission.

19 MR. GUELKER: Okay. Just so you have a
20 marked copy so you know what we're referring to.

21 Q. (By Mr. Guelker) Mr. Goodale, I've now
22 handed you what's been marked as Petitioner's
23 Exhibit 1. Is this a true and correct copy of the
24 testimony that you submitted in this action?

25 A. Yes.

39

(March 3, 2010 - All American - 08-2469-01)

1 Q. Okay. Did your counsel, namely me, assist
2 you in the preparation of that?

3 A. Yes.

4 Q. Okay. But you reviewed it before it was
5 filed?

6 A. Yes.

7 Q. Okay. And is the testimony true and accurate
8 to the best of your knowledge?

9 A. Yes.

10 Q. Okay. And you signed the testimony under
11 oath?

12 A. Yes.

13 Q. Okay.

14 MR. GUELKER: I'd move for the admission of
15 Petitioner's Exhibit 1.

16 THE COURT: No objections? Does everybody
17 have a copy of it? Yes? Okay.

18 MR. GINSBERG: Does that include all the
19 attachments?

20 MR. GUELKER: I believe, I believe it --

21 MR. GINSBERG: Are you gonna mark -- just
22 have it all as one?

23 MR. GUELKER: I was just gonna incorporate
24 his testimony exhibits --

25 MR. GINSBERG: That's fine.

40

(March 3, 2010 - All American - 08-2469-01)

1 MR. GUELKER: -- as part of his testimony.

2 THE COURT: Okay.

3 MR. GUELKER: If that's okay.

4 THE COURT: We'll admit Petitioner's
5 Exhibit 1. P-1.

6 (Exhibit No. P-1 was admitted.)

7 Q. (By Mr. Guelker) And do you adopt Exhibit
8 No. 1 as your testimony in this matter?

9 A. Yes.

10 Q. Okay. And I've also handed you what's been
11 marked as Petitioner's Exhibit 2. And is this a true
12 and correct copy of rebuttal testimony you submitted
13 in this action?

14 A. Yes.

15 Q. And again, did I assist you in preparing
16 that?

17 A. Yes.

18 Q. Okay. But again, you reviewed it before it
19 was filed, and signed it?

20 A. Yes.

21 Q. Okay.

22 MR. GUELKER: I move for the admission of
23 Petitioner's Exhibit 2.

24 THE COURT: No objections? Everybody has a
25 copy? We'll admit P-2. Petitioner's Exhibit 2.

41

(March 3, 2010 - All American - 08-2469-01)

1 (Exhibit No. P-2 was admitted.)

2 Q. (By Mr. Guelker) And again, do you adopt
3 this -- do you adopt Exhibit P-2 as your testimony in
4 this matter as well?

5 A. Yes.

6 Q. Okay. I'd now like just to expand on a
7 couple of the issues that you, that you discuss in
8 your prefiled testimony. You describe in there the
9 type of services that, that you've been providing in
10 Beehive's territory during the past few years,
11 correct?

12 A. Yes.

13 Q. Okay. Have you ever received any complaints
14 from customers that use the conference call servicing
15 regarding the quality of services they've received?

16 MR. PROCTOR: Excuse me, Judge, and pardon
17 me, Mr. Guelker, but are we going to be following the
18 typical Commission proceedings in this case where a
19 summary is provided and he's available for cross? Or
20 is, in essence, direct testimony allowed on issues
21 that may or may not be within the filed testimony?

22 THE COURT: Do you want to have him summarize
23 his testimony, do you want to proffer that, or?

24 MR. GUELKER: I can certainly proffer it, but
25 everybody's had this for some time now. And I think

42

(March 3, 2010 - All American - 08-2469-01)

1 the rules are summary -- he can provide a summary, but
2 that's at your discretion.

3 And I guess for interest of time I wasn't
4 gonna reiterate everything that was in there, but just
5 expand on a couple of the issues in there. If you'd
6 like me to go through and proffer all the different
7 topics I guess I could, but I didn't see it as
8 necessary.

9 MR. PROCTOR: The testimony has been
10 admitted.

11 THE COURT: Right.

12 MR. PROCTOR: And the typical proceeding, at
13 least in my experience, is that if the witness wishes
14 and the Commission permits, a summary is provided.
15 And at that point there is an opportunity for cross
16 examination.

17 There is no provision for the type of direct
18 examination of a witness that Mr. Guelker apparently
19 is wishing to engage in at this time. That's my
20 experience. And so I believe we should follow the
21 typical procedures as set forth in the rule --
22 administrative rules.

23 MR. GUELKER: And as I read the rules, as I
24 read the rules there's nothing that prohibits you from
25 expanding or explaining testimony that was a

(March 3, 2010 - All American - 08-2469-01)

1 prefilled -- that was prefilled.

2 He's not gonna discuss any topics or areas
3 that were not raised in there, he's just going to
4 discuss a few of the specifics. Especially in light
5 of the rebuttal -- or the responsive testimony that
6 was filed.

7 There's nothing that prohibits me from asking
8 questions of a witness on the stand.

9 THE COURT: Yeah, I'm going to agree with
10 Mr. Guelker. Go ahead.

11 MR. GUELKER: Can I proceed then?

12 THE COURT: Yes.

13 MR. GUELKER: Do we need a summary, Judge, or
14 is that necessary?

15 THE COURT: No. I, I mean, I've read the
16 prefilled testimony. I think everybody else has.

17 MR. GUELKER: Okay. All right, fair enough.

18 Q. (By Mr. Guelker) And so just getting back to
19 the question I was asking before I was interrupted.
20 Have you received any complaints from consumers using
21 the conference call servicing regarding the quality of
22 services they received from All American?

23 A. We've never received any complaints from
24 anybody regarding our service.

25 Q. Have you ever received any complaints about

44

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 somebody not being able to access the conference call
2 servicing?

3 A. I can't say that that's always been the case.
4 We've had fiber cuts where the service was not --

5 Q. Sure.

6 A. -- due to our -- circumstances beyond our
7 control. I have had those occasions, but very few of
8 them.

9 Q. I believe you've also stated in your
10 testimony that you recently installed a Taqua 7000
11 switch in order to provide the services that you're
12 providing in Garrison; is that correct?

13 A. Yes, sir.

14 Q. Okay. Do you remember when that was
15 installed approximately?

16 A. Several years ago.

17 Q. Okay. Have you had any problems with this
18 equipment since it was installed?

19 A. Nothing unexpected.

20 Q. Okay. But have you received any complaints
21 from Joy Enterprises regarding the quality of the
22 services that you are providing to them?

23 A. No.

24 Q. Okay. Does All American employ anybody to
25 assist it with its financial -- the financial and

45

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 accounting aspects of its business?

2 A. We have an in-house CPA that takes care of
3 all of our financial matters.

4 Q. Okay. And what is, what is the -- this
5 individual's name?

6 A. Donald Surratt.

7 Q. Okay. And does Mr. Surratt assist you in
8 generating the company's financial statements,
9 quarterly reports, tax returns, and other financial
10 documents?

11 A. Yes, sir.

12 Q. Okay. And do you feel he is able to
13 adequately handle these aspects of the business?

14 A. Yes.

15 Q. Okay. Now, in your testimony you also spoke
16 about the benefits that you believe the public derives
17 from the conference call services that All American
18 facilitates. Can you reiterate the nature of the
19 conference call servicing that All American
20 facilitates and how the public benefits from those
21 services?

22 A. The --

23 Q. First of all, why don't you describe -- that
24 was a compound question. Why don't you describe
25 the -- reiterate the services, the types of services

46

(March 3, 2010 - All American - 08-2469-01)

1 that people receive from these conference calling
2 calls.

3 A. These services we're referring to have
4 originated back in 1994 with Joy Enterprises having
5 been a customer of Beehive Telephone for quite some
6 time before they L&P'd their numbers over to our
7 services at All American Telephone. And we've
8 continued to provide the service through All American.

9 The services themselves are of great value to
10 the community at large. There's business conference
11 calling services that are made available to nonprofit
12 organizations. Who prefer to use them because they
13 can't afford to pay \$0.50 a minute for conference
14 calling services with AT&T, or MCI, or companies --
15 other companies that provide them.

16 This is a financial benefit to everybody
17 that's -- uses the service within the State of Utah,
18 as well as throughout the United States.

19 Q. Okay. And do you believe that, do you
20 believe that Beehive Telephone Company and its
21 customers derive any benefits from the services you're
22 providing in their territory?

23 A. Absolutely. These services were the
24 foundation for the growth that Beehive Telephone had
25 experienced since 1994. At that time they had 17

47

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 employees. And subsequently they've increased their
2 staffing to 85 employees.

3 And in that period of time they've been able
4 to take out of earnings and reinvest in their inner
5 structure. And have subsequently increased their
6 fiberoptic cabling, including 350 miles of new fiber
7 that they've laid.

8 They've upgraded all of their switches. And
9 they've brought DSL service to virtually all of their
10 residential and business customers. They've been able
11 to upgrade their 7 -- 13 different local offices. And
12 they've had high-capacity microwaves installed in
13 Southern Utah.

14 They have done all of this without any state
15 Universal Service Funds assistance. And by not
16 drawing from it and still paying into it, that in turn
17 has made more money available to the other small
18 telephone companies that you're -- throughout the
19 State of Utah.

20 At least it makes sense to me that it would
21 have.

22 Q. And in a more general scope, do you believe
23 the residents of Garrison, Utah have derived any
24 specific benefits from your operations?

25 A. Yes. To the extent I just said, they all

48

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 enjoy better service. The members of URTA, there's
2 about nine small telephone companies that are also
3 involved with the Utah Fiber Network that was
4 established to be the tandem switching services for
5 all of these small phone companies.

6 They were able to do that because of the high
7 volume of service that was being serviced through
8 their switch. And subsequently added to, what at that
9 time was about 50 percent of their revenue, came from
10 the traffic that Joy Enterprises had serviced.

11 That made it a financially-viable option to
12 increase the quality of their service to all of their
13 customers. And the reason they took this action
14 originally was because they were getting inadequate
15 service from Qwest and weren't getting the kind of
16 backup they needed from the tandem.

17 This has definitely benefited the customers
18 that they serve throughout the state. And that has
19 also benefited us, because we've had better service.
20 And I look forward to remaining in the State of Utah
21 and contributing to the increased service of -- that
22 we're doing now. And being a supporting member of
23 their organization by using their service.

24 Q. Well, let me ask you this. If the Commission
25 is inclined to deny All American's petition for an

49

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 amendment, what will be its business response, if any?
2 Will you be required to move your traffic to a
3 different location?

4 A. Well, we would be forced to do something
5 different. And we would have to take our traffic out
6 of that network and bring it to another network. We
7 have other states we're certified to bring service in,
8 and we can move that traffic if necessary.

9 Q. Okay. What state is that located in?

10 A. Nevada.

11 Q. Okay. But that wouldn't result in the
12 Beehive or any other -- that wouldn't result in
13 Beehive receiving these continued access fees for
14 these, these types of calls, would it?

15 A. They, they would lose any revenue that
16 they're receiving in the State of Utah that benefited
17 from our service.

18 Q. Okay. Are you aware, has All American's
19 operations had any negative impact on Beehive or its
20 ability to provide services to its customers?

21 A. No. Not at all. In fact, for the reasons
22 I've outlined earlier, I think our presence has been a
23 benefit and helped them bring better service to all
24 their customers.

25 Q. Okay. Now, you are aware, based on some of

50

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 the responsive testimony in this case, that Qwest and
2 some of the other parties are accusing All American of
3 engaging in a so-called illegal traffic pumping
4 scheme.

5 Do you know where the term "traffic pumping"
6 comes from, or do you have an understanding of where
7 it comes from?

8 A. I believe the IXCs, Qwest for one, created
9 the term. Prior to hearing that term I would have
10 called this, quite properly, services that were
11 brought forth because of commissions that were paid to
12 bring new service in.

13 Normal practice in the industry from the
14 onset of the divestiture of AT&T. It's been going on
15 forever. It's part of the business. It's done all
16 the time.

17 Q. And is All American currently involved a
18 dispute with any long distance providers regarding its
19 ability to bill them for calls made to Joy
20 Enterprises?

21 A. Yes. One with AT&T. And another with
22 Sprint.

23 Q. Okay. Have any of these disputes been
24 resolved?

25 MR. EVANS: Your Honor --

51

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 MR. GINSBERG: Yeah, these are --

2 MR. EVANS: And excuse me. I might,
3 Mr. Guelker, respectfully object to where we're going
4 with all of this right now. The direct testimony has
5 been filed. It's been responded to. This is far
6 outside the scope of the testimony.

7 In the interest of time and in fairness to
8 the parties who have to respond to this later, I'm
9 gonna object to going into subject matter that is
10 outside of the prefiled direct or rebuttal of this
11 witness.

12 MR. GUELKER: That was the end of the line of
13 questioning there, frankly, that these issues haven't
14 been resolved. I wasn't going any further with that,
15 so.

16 THE COURT: Do you want to make a statement?

17 MR. GINSBERG: Sure. Mine was just that
18 these statements are right out of his testimony, so
19 I -- it didn't seem to be necessary.

20 MR. GUELKER: Just one final question then.

21 THE COURT: Okay. I'm gonna sustain the
22 objection.

23 MR. GUELKER: Oh, I'm sorry.

24 Q. (By Mr. Guelker) If the Commission decides
25 to grant All American's proposed amendment but

(March 3, 2010 - All American - 08-2469-01)

1 restricts the cope -- the scope of its services to the
2 conference call servicing it's currently providing,
3 would All American be willing to abide by that
4 condition?

5 A. Yes.

6 MR. GUELKER: Okay. I have no further
7 questions for this witness.

8 THE COURT: All right. Thank you
9 Mr. Guelker.

10 Let's begin with the Division.

11 MR. GINSBERG: Thank you.

12 CROSS EXAMINATION

13 BY MR. GINSBERG:

14 Q. Mr. Goodale, is the only business that All
15 American is engaged in is providing the switching
16 services for Joy Enterprises in Utah and Nevada?

17 A. Yes.

18 Q. So under any other name does All American
19 engage in switching services for conference calling
20 companies in any other location in the country?

21 A. No.

22 Q. And am I correct that in Nevada and Utah the
23 only service customer that All American has is the Joy
24 Enterprise conference calling service?

25 A. Yes.

53

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. In other words, neither in Utah or Nevada do
2 you serve any other customer?

3 A. I might expand that to say that Joy
4 Enterprise has sub-customers that use their service.
5 So to that extent I'm not knowledgeable to -- but
6 there are others that use Joy Enterprise's services.
7 But to answer your question directly, yes, Joy
8 Enterprise is our sole customer.

9 Q. (By Mr. Ginsberg) So when you say other
10 people use Joy Enterprises' services are you referring
11 to something other than the conference calling and
12 chat lines that you talk about in your testimony?

13 A. That's primarily what I'm talking about.

14 Q. And, now Garrison, Utah is where your Taqua
15 7000 switch is located?

16 A. Yes.

17 Q. And in Nevada it is located in Burbank,
18 Nevada?

19 A. Yes.

20 Q. Now, it looked like on a map that those towns
21 are like right adjacent to each other; is that right?

22 A. Yes, sir.

23 Q. Are there actually two switches, or one
24 building that houses both?

25 A. Two separate locations.

54

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. Okay.

2 A. One in Nevada and one in Utah.

3 Q. And the one in Nevada, has it been operating
4 under the All American name since earlier than it did
5 in Utah?

6 A. Approximately the same time.

7 Q. So approximately mid-2007?

8 A. Yeah.

9 Q. And prior to that was the service being
10 provided, as you described in Nevada, similar to the
11 way you described it in Utah through Beehive?

12 A. Yes, sir.

13 Q. Now let me ask you a few questions first
14 about -- just so we can -- before we get into this.
15 Now, Joy Enterprises is owned by Joy Boyd?

16 A. Yes.

17 Q. And are there any other owners of Joy
18 Enterprises?

19 A. I'm not privileged to all that information,
20 but I believe she's the sole owner.

21 Q. So -- and also Joy Boyd is the sole owner of
22 All American?

23 A. No. Joy Boyd is the principal owner of All
24 American Telephone.

25 Q. I believe in your annual report you indicated

(March 3, 2010 - All American - 08-2469-01)

1 that there'd been 1,000 shares issued, and they were
2 all owned by Joy Boyd.

3 A. I may be --

4 Q. And is there --

5 A. As you refresh my memory you're probably
6 right, yes.

7 Q. Is there some other ownership interest in All
8 American that, that you wish to describe?

9 A. It would be within her family.

10 Q. Oh, okay. And am I -- does Beehive have any
11 interest in -- I think you indicated in your testimony
12 that Beehive has no ownership interest in either of
13 those two companies?

14 A. They have no ownership in either.

15 Q. Now, are you employed by Joy Enterprises or
16 All American?

17 A. All American Telephone.

18 Q. Now, you -- in some of your testimony that
19 you gave in the beginning you indicated that you
20 haven't received any complaints from customers. You
21 wouldn't receive any complaints, if there were any,
22 for the conference calling or chat line services,
23 would you?

24 A. I would be made aware of them if there was
25 any complaints regarding connectivity, and quality of

56

(March 3, 2010 - All American - 08-2469-01)

1 service, and that sort of thing.

2 Q. How would you be made aware of them?

3 A. Well, I would be -- I would have been told by
4 numerous people that there was a problem. And
5 taken -- I'd have to check and follow, follow through.
6 If there was any quality of service problems, find out
7 what they were and have them taken care of.

8 Q. I'd like to ask a little bit about how the
9 traffic actually -- how it actually works out there if
10 we could. Now, as I understand it, that a call from
11 anywhere in the country could be made to one of the
12 numbers that have been assigned to you, which are 435
13 numbers; is that right?

14 A. Yes, sir.

15 Q. And -- or the Nevada number that -- a
16 customer could either be dialing the 435, or what's
17 the?

18 A. Seven seven five.

19 Q. Seven seven five for Nevada?

20 A. Yes.

21 Q. But either of those two would be routed
22 through the UFN tandem?

23 A. No. Just the calls that come in to 435 go
24 through UFN.

25 Q. Okay. Do the calls from 735 go to the

57

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Beehive tandem in Wendover?

2 A. Seven seven five, they go to -- through AT&T
3 through Frontier and to Beehive in Wendover.

4 Q. Okay. So all of those calls, whether it be
5 to Nevada or Utah, end up at the Wendover tandem; is
6 that correct?

7 A. They go through the Wendover tandem.

8 Q. While the Utah calls would go through the UFN
9 tandem first?

10 A. They, they go through UFN first, yes.

11 Q. And is there a charge from the UFN tandem to
12 you?

13 A. Not to me.

14 Q. Who would it be to?

15 A. I'm not privileged to all of their dealings
16 with Beehive. But I would assume Beehive has some
17 relationship, being a part of the UFN organization.

18 Q. So once the call reaches the tandem in
19 Wendover, if it's a 735 call it gets switched to
20 Burbank?

21 A. A 775 call goes to --

22 Q. Seven seven five?

23 A. Goes to Burbank, yes.

24 Q. Over whose facilities?

25 A. The Beehive trunking to Burbank, where our

58

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 switch is located.

2 Q. And does Beehive charge you for the use of
3 those facilities?

4 A. We have an agreement with our --
5 interconnection agreement for the use of the
6 facilities.

7 Q. And that's a Nevada agreement?

8 A. It's a both Nevada and Utah agreement.

9 Q. Well, there are separate agreements for each
10 state?

11 A. Yes.

12 Q. Are they identical?

13 A. Yes. I believe they are.

14 Q. And if the call was going to the 435 it would
15 go over Beehive's facilities to Garrison?

16 A. Yes.

17 Q. And then once it reaches your switch, what
18 happens to the call?

19 A. From our switch it's terminated on the Joy
20 Enterprise equipment.

21 Q. Now, is the equipment located -- attached to
22 your equipment?

23 A. No, it's lying aside to our equipment in the
24 same room.

25 Q. Same room? And whose property is it on?

59

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. Beehive switching facilities.

2 Q. So it's located in the Beehive central
3 office --

4 A. Yes.

5 Q. -- if there is one there?

6 A. Yes.

7 Q. And do you pay Beehive co-location charges?

8 A. It's part of our interconnection agreement.

9 Q. Do you pay them an amount for using those
10 facilities?

11 A. Currently, no. But we will be.

12 Q. Can you explain that?

13 A. Well, under the circumstances there's no
14 income as a result of the legal action that's taking
15 place. And our fees and costs have been deferred till
16 there is some income.

17 Q. Now, the call is -- now, if I was calling the
18 435 number with a variety of, you know, a variety,
19 does each -- does the number itself identify then what
20 kind of chat line or conference calling service you're
21 going into?

22 A. The numbers in question are terminated on Joy
23 Enterprise equipment from our switch. And at that
24 point Joy Enterprise has control of what is provided
25 on the -- to, to the caller on that number.

60

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. So my -- so -- and maybe you don't. So no
2 matter what number you call -- the 435 plus the
3 variety of others -- you would get the same menu
4 options from Joy Enterprises, and then you can choose
5 to go where you want from there?

6 A. Not necessarily. I do know that there are
7 several different things, but I couldn't tell you what
8 number goes where for what.

9 Q. Now, you described it as a line side
10 connection using SIP. SIP is a Internet protocol, is
11 it not?

12 A. Yes.

13 Q. And does that mean that the -- once the call
14 is transferred to Joy Enterprises it becomes a
15 Internet protocol call?

16 A. It's not -- that would -- wouldn't be the
17 correct terminology. It's misleading. It's a
18 connectivity from one piece of equipment to the other,
19 but it does not go through the Internet.

20 Q. Are all of the calls that occur from a
21 variety of places that -- where people occur -- have
22 their chat or whatever takes place, all take place
23 within the equipment that is located in Garrison or
24 Burbank?

25 A. I didn't quite understand your question.

61

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. In other words, when those two calls are
2 hooked together and the people enter a chat room, or
3 have a conversation, or a conference call is created,
4 does that take place within that voice active -- that
5 conference calling equipment that's located in the
6 Beehive central office?

7 A. The Garrison service is separate from the
8 Burbank service. So if somebody calls a 435 number
9 they will be on the equipment in Garrison. And they
10 don't have any connectivity to the people that are
11 calling the 775 number.

12 Q. Now, my question though was within the 435
13 does all of the hooking together of those two calls,
14 the one from say Chicago or one from Los Angeles that
15 are gonna have this conference call or chat -- enter a
16 chat room, take place within that equipment that is
17 located in Garrison?

18 A. Yes.

19 Q. Does the call ever leave Garrison to go to
20 another location for credit card verification or any
21 kind of verification?

22 A. Beehive provides us with Internet access.
23 And the equipment that Joy Enterprise has does have
24 Internet access. They may use that type of service
25 internally, but it was -- I'm not aware of anything

62

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 like that.

2 Q. What is the Internet access? Do you mean the
3 calls themselves, once they reach Joy Enterprises, for
4 some reasons may be using the Internet to perform
5 functions?

6 A. Well, accounting functions and message
7 transferring from the people that service the
8 equipment remotely.

9 Q. Accounting functions would be billing? For
10 example, if they, if they want -- someone wants to use
11 a credit card for some enhanced services?

12 A. It could be used for that, yeah.

13 Q. Or when you say messaging, there's a
14 voicemail service? If someone wanted to access their
15 voicemail it would be through the Internet?

16 A. No, I don't know that that's the case. But
17 they use it primarily for accounting functions. And
18 call count verification. And the equipment provides
19 automated daily reports.

20 Q. Now, Beehive does your billing collections
21 for -- billing for you for the billings you make to
22 the interexchange carriers?

23 A. Our billings done with -- through Beehive,
24 yes.

25 Q. And is the only billings that you do is the

63

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 billings to the various interexchange carriers?

2 A. Yes.

3 Q. No other, no other billings take place?

4 A. No.

5 Q. You don't bill Beehive for anything?

6 A. No.

7 Q. Nor do they bill you for anything?

8 A. Currently, no.

9 Q. Now, in your testimony you indicate that you
10 provide -- I think it's on page, um. On line 225 of
11 your testimony it says:

12 "What service does All American
13 provide to Joy?"

14 And you say: "In essence, we
15 provide switching services."

16 And in answer to a data request you also
17 indicated that you provide co-location services. Is
18 that fair?

19 A. That would be included.

20 Q. And you also said you provide connectivity
21 services?

22 A. Well, that's connectivity to the network
23 through our switching service.

24 Q. Are there any other services -- you get the
25 numbers from the numbering administration, do you not?

64

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. Yes.

2 Q. And do you provide those numbers to All
3 American -- I mean to Joy Enterprises?

4 A. We have -- we -- some of the numbers that Joy
5 Enterprises is using, they have been using and
6 originated with Beehive. And those numbers were L&P'd
7 over to us as Beehive -- as the traffic moved from --
8 Joy Enterprise traffic moved from Beehive to All
9 American.

10 So some of the numbers that we have were
11 originally numbers that Beehive had take -- taken from
12 the number administration.

13 Q. Have you requested numbers on your own?

14 A. Yes.

15 Q. For both Utah and Nevada?

16 A. Yes, both.

17 Q. Any other kinds of services that you provide
18 to Joy Enterprises?

19 A. No.

20 Q. And for all of those services there is no
21 agreement written as to the charges for those
22 services?

23 A. Currently, no.

24 Q. You don't bill Joy Enterprises for anything?

25 A. Currently, no.

65

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. Have they paid you anything?

2 A. Not recently.

3 Q. Did they at some point?

4 A. I would have to refer to my bookkeeping, but
5 not in quite a long time.

6 Q. And is that true for both Utah and Nevada?

7 A. Yes, sir.

8 Q. And on what basis do you -- you said you
9 currently don't charge. What basis would you charge
10 then if you have no Utah price list, or tariffs, or
11 filed competitive contracts?

12 A. Well.

13 Q. On what basis would you charge them?

14 A. This -- our service was established with the
15 intent of increasing our revenue through increased
16 call volume. And we would be, on receipt of payment
17 from the interexchange carriers, paying a marketing
18 fee to Joy Enterprises for bringing that service to
19 our switch.

20 And that is the standing agreement. However,
21 without any funds coming in from the interexchange
22 carriers it's never -- that is not being executed.

23 Q. So the agreement was that if you receive
24 money from the interexchange carriers, then you'll
25 provide payment to -- you'll turn that money over to

66

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Joy Enterprises and pay Beehive?

2 A. As we -- yes. As we would be paid for our
3 services to the interexchange carriers, we in turn
4 would pay charges to Beehive and marketing fees to Joy
5 Enterprises. Among other expenses.

6 Q. What would be the other expenses?

7 A. Just a lot of general overhead, and attorney
8 fees, and --

9 Q. Okay.

10 A. -- management fees, and consulting fees, and
11 contract service fees for equipment.

12 Q. Are no interexchange carriers paying you?

13 A. Very few, very little. Several small
14 carriers. The big carriers that we receive traffic
15 from are both AT&T and Sprint, and those are the two
16 that are not paying us.

17 Q. And is the same true that, since the
18 beginning of your arrangement in Utah and Nevada, Joy
19 Enterprises has not paid you anything either?

20 A. Joy Enterprise has paid some money to All
21 American Telephone, but not on a regular basis and not
22 recently.

23 Q. And what would be the payments for that they
24 gave you? Is it to buy the switch that you installed?

25 A. No, the -- that had all taken place before

67

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 any payments were made from Joy Enterprises. As I
2 recall, they made some payments to help support the
3 burdensome legal costs that we're currently straddled
4 with in our lawsuits with AT&T and Sprint.

5 Q. But they would be payments then for those
6 kind of things rather than for telecommunications
7 services?

8 A. Yes.

9 Q. Okay. Now, you indicated that you had that
10 switch acquired in August of 2008, the -- in Utah; is
11 that right?

12 A. I'm --

13 Q. Around that time?

14 A. That may be correct. I'm not real sure about
15 the date, but.

16 Q. And was that true for Nevada also?

17 A. Both the switches were purchased at the same
18 time.

19 Q. And were the switches already there?

20 A. No.

21 Q. So --

22 A. They were purchased from Taqua. And they
23 were transported, installed, set up, and serviced
24 under contract.

25 Q. So prior to August 2008, because you billed

68

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 the interexchange carriers prior to that date and
2 indicated that you started providing the service in
3 Utah sometime in 2007, how did you do the service
4 without that switch?

5 A. We were leasing Harris 2020 switches from
6 Beehive Telephone.

7 Q. Which are the switches that Beehive has
8 located in those central offices?

9 A. Yes.

10 Q. And under what agreement was that lease made?

11 A. That was also part of our interconnection
12 agreement.

13 Q. And did you pay Beehive for the use of their
14 switch?

15 A. According to our agreement, that was all part
16 of this package.

17 Q. But were there payments made?

18 A. No. Not that I recall.

19 Q. So did the new switch provide some services
20 that the old switch didn't provide?

21 A. More reliable. And higher capacity. And the
22 Harris 2020 switches were obsolete. The new Taqua
23 switch is state of the art.

24 Q. Has Beehive replaced the Harris switches in
25 those central offices?

69

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. I believe Beehive's replaced all of their
2 switches with Taqua.

3 Q. So are there actually two switches in that --
4 out there; one that you own and one that Beehive owns?

5 A. I believe that's correct.

6 Q. They're not connected in any way, other than
7 through the way the traffic flows?

8 A. They're not connected.

9 Q. And is that true for Nevada also?

10 A. Yes.

11 Q. Now, what is the capacity of these switches?
12 Are they being fully utilized?

13 A. No, they're not. They're capable of handling
14 several thousand calls simultaneously. And our
15 capacity has been less than that.

16 Q. So if the Utah application were not extended,
17 you currently provide similar facilities -- in fact,
18 the traffic that goes either to Utah or Nevada is the
19 same traffic; is that right?

20 A. I don't understand your question.

21 Q. In other words, you would switch your traffic
22 to Nevada?

23 A. We would be able to -- Joy Enterprise would
24 be able to provide their callers with number change
25 information telling them to use services that would be

70

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 provided through Nevada. Or we could put a number
2 change on their -- on the switch and do the same thing
3 through our facilities.

4 Q. I do have some questions that relate to the
5 services that you provide with -- to Joy Enterprises,
6 and I'd like to go through some of those with you.
7 And I don't know if you actually have in front of you
8 copies to the answers that you provided in the AT&T
9 versus All American versus AT&T federal lawsuit that
10 you answered?

11 A. I don't have them in front of me, but.

12 MR. GUELKER: I don't think they've been
13 admitted yet.

14 THE COURT: They haven't been admitted.

15 MR. GINSBERG: No, I'm -- well, they've been
16 identified, and so.

17 Q. (By Mr. Ginsberg) Well, why don't I go
18 through the questions and then we can see if we need
19 to use them or not, okay?

20 A. Okay.

21 Q. In fact, why don't I give you a copy of the
22 Answer, and you -- just so you can follow along.

23 MR. GUELKER: If they're gonna be
24 incorporated into his testimony, your Honor, I think
25 we need to decide whether they should be admitted or

71

(March 3, 2010 - All American - 08-2469-01)

1 not. I mean, by incorporating them into his
2 testimony --

3 THE COURT: Do you have an objection to this?

4 MR. GUELKER: Yes. My objection to this is
5 as I stated before -- and it goes back to my Motion in
6 Limine -- we have previously asked the Division to not
7 only state their position but to provide all the bases
8 for that position.

9 And prior to today I -- they had not
10 identified the answers to interrogatories as something
11 that they were gonna rely upon in support for their
12 position. And so it appears here they're trying to
13 use them affirmatively, you know. And so since
14 they've never been identified I think they should be
15 excluded under Rule 37.

16 THE COURT: Okay. Mr. Ginsberg?

17 MR. GINSBERG: These are answers to discovery
18 that I could sit and just ask the questions that are
19 there. They just relate to -- many of them are very
20 similar to things we've just gone through about they
21 don't bill Joy Enterprise. There have been no
22 payments for Joy Enterprises. So many of them are
23 similar questions that have already been asked.

24 MR. GUELKER: I just don't know what they say
25 because I've never seen them before.

72

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 THE COURT: Do you have another -- any other
2 objections? No?

3 Okay. So is your objection --

4 THE WITNESS: I have an objection. I don't
5 see what purpose --

6 THE COURT: Mr. Goodale, you have an
7 attorney.

8 MR. GUELKER: David, I'll make the
9 objections.

10 THE WITNESS: Okay.

11 THE COURT: So your objection is to DPU-5, 6,
12 and 7 as they've been identified; is that right?

13 MR. GUELKER: Correct.

14 THE COURT: Okay. I'm gonna sustain the
15 objection.

16 So you can ask him questions --

17 MR. GINSBERG: All right.

18 THE COURT: -- if you feel that he has the
19 answers. He can answer them.

20 MR. GINSBERG: That's great.

21 Q. (By Mr. Ginsberg) Whether -- do you
22 provide -- so when these calls go into the Joy
23 Enter -- Joy Enterprises switch, can there be any
24 outgoing calls? Through you?

25 A. Yes.

73

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. How would that work?

2 A. The same way they came in.

3 Q. Now, the question that was asked of you, do
4 you provide the free conference calling provider with
5 the capability of placing outgoing calls to all
6 entities receiving multiple exchange service in the
7 same local exchange.

8 And the answer you gave was that you don't
9 provide that capability.

10 MR. GUELKER: Were you referring -- when you
11 say the answer that you gave, what are you referring
12 to? The interrogatory?

13 MR. GINSBERG: The interrogatory.

14 MR. GUELKER: Well, these have been...

15 THE COURT: I mean, he's -- we're not
16 admitting them, so.

17 MR. GINSBERG: Well, I understand you're not
18 admitting them. But now --

19 THE COURT: He's reading it into the record.

20 MR. GINSBERG: I think he gave an answer
21 which is at least potentially different from the
22 answer that he gave in the answers to the
23 interrogatories. So I think I have -- now have the
24 ability to be able to ask questions to impeach the
25 potential testimony. Or let him explain how they

74

(March 3, 2010 - All American - 08-2469-01)

1 provide outgoing calls to anywhere.

2 MR. GUELKER: First of all, your Honor, in
3 response to that these aren't, these aren't signed by
4 Mr. Goodale. These are signed by his counsel.
5 There's nowhere where there's sworn testimony. And
6 there's no nowhere that they -- that he signed them.

7 So they're not proper subject for
8 impeachment. They're not a previous sworn statement.

9 MR. PROCTOR: Your Honor, if I might?

10 THE COURT: Uh-huh (affirmative.)

11 MR. PROCTOR: These are prior inconsistent
12 statements. The document itself which contains those
13 inconsistent statements is admissible so long as
14 proper foundation can be laid through this witness.
15 Which he apparently can, because my copies are
16 executed by Mr. Goodale.

17 THE COURT: Okay. I -- can you tell me -- I
18 didn't understand what -- I don't understand your
19 question, Mr. Ginsberg.

20 MR. GINSBERG: My question was --

21 THE COURT: What you're trying to use them
22 for.

23 MR. GINSBERG: My, my -- I'm trying to define
24 or understand specifically what services can
25 be provided through All American from Joy Enterprises.

75

(March 3, 2010 - All American - 08-2469-01)

1 My question was, Can you -- can Joy Enterprises make
2 outgoing calls to any local exchange? And he
3 indicated yes. And I'm trying to get an explanation
4 of that.

5 THE COURT: And you said he gave a different
6 answer --

7 MR. GINSBERG: Well, I read the question and
8 I read the answer.

9 THE COURT: Okay.

10 MR. GINSBERG: So, you know, that -- if I
11 misstated, if I misstated the question by not being
12 completely -- I think he can, he can explain it.

13 THE COURT: And --

14 THE WITNESS: To the best of my knowledge,
15 they haven't made any --

16 MR. GUELKER: David, there's a pending
17 objection. If you could just wait.

18 THE WITNESS: Yeah.

19 MR. GUELKER: Thanks.

20 THE WITNESS: Okay.

21 THE COURT: And what were you referring to,
22 Mr. Proctor? Signed statements?

23 MR. GINSBERG: He's referring to the second
24 set of interrogatories, which are signed by
25 Mr. Goodale.

76

(March 3, 2010 - All American - 08-2469-01)

1 MR. PROCTOR: Well, actually, your Honor, in
2 discovery we asked All American about matters
3 pertaining to this particular action. And they
4 acknowledged that exists, how much was at issue. So
5 they were certainly aware of our inquiry into this
6 matter long ago.

7 What I'm referring to are All American
8 Telephone Company's Objections and Responses to AT&T
9 Corporations First, Second, and Third Set of
10 Interrogatories. And there are attachments to one, an
11 82-page list, single column, of the numbers to
12 which -- or that have been assigned to All American.
13 That's the one I remember.

14 They're executed by David Goodale, in one
15 case by his counsel, Jonathan Canis, and in the other
16 cases by this witness. At least that's what's
17 reflected in my copies.

18 So these are sworn statement answers to
19 interrogatory in a Federal Court proceeding, Southern
20 District of New York, by this witness. They're -- I
21 understand Mr. Ginsberg seeks to establish that his
22 testimony here today is inconsistent with his
23 testimony before.

24 Doesn't have to be contrary, just
25 inconsistent. These documents are admissible. And

77

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 certainly cross examination is for the very purpose of
2 establishing those inconsistencies. So the questions
3 are absolutely appropriate.

4 THE COURT: Mr. Guelker?

5 MR. GUELKER: Well, I guess I would say
6 there's been no foundation laid that he drafted these
7 answers. There's a, a typewritten, I guess you'd call
8 it a signature, but it's not signed by him. And there
9 hasn't been any foundation laid with respect to these
10 documents. You know, with respect to the time period
11 they cover, with respect to the -- what they're
12 referring to.

13 And, you know, just simply reading it into
14 the, into the record isn't proper. There's gotta be
15 some foundation laid that these are even his
16 statements, and that hasn't been laid.

17 MR. PROCTOR: Well.

18 MR. GUELKER: That he drafted those
19 statements or that he -- that -- or that he signed
20 them under oath. And I just don't see that on these
21 documents that I've been provided. Now, maybe there's
22 some signed one somewhere else.

23 Typically in a federal litigation you have
24 somebody sign a sworn statement and then you maintain
25 that in your file. I don't, I don't see that here, I

78

(March 3, 2010 - All American - 08-2469-01)

1 just see a typewritten statement. So it's not the
2 type of statement that's properly used for
3 impeachment.

4 MR. PROCTOR: Your Honor, all we have to do
5 is hand this witness those three sets of
6 interrogatories, ask him whether or not he answered
7 those questions. That's it.

8 THE COURT: Okay. So what I'm gonna do is
9 I'm gonna take a recess for five minutes. I'm gonna
10 let your witness take a look at these --

11 MR. GUELKER: Okay.

12 THE COURT: -- and see if he signed them.
13 And we'll come back in five minutes.

14 (A recess was taken from 10:42 to 10:49 a.m.)

15 THE COURT: Okay, referring to DPU-5, DPU-6,
16 and DPU-7. I didn't understand what you were trying
17 to use them for, Mr. Ginsberg, when I made the
18 objection.

19 MR. GINSBERG: Well, in specific on --

20 THE COURT: Well, I -- when I sustained the
21 objection. Also, I misread. I thought this Jerry
22 Boykin signed it, and I glanced over David Goodale.

23 So what I am gonna do, if you lay the proper
24 foundation I'm gonna overrule the objection and let
25 these in, 5, 6, and 7, as long as the proper

79

(March 3, 2010 - All American - 08-2469-01)

1 foundation is laid. On 5, 6, and 7.

2 MR. GINSBERG: Okay.

3 Q. (By Mr. Ginsberg) Mr. Goodale, did you have
4 an opportunity to look at 5, 6, and 7?

5 A. Briefly.

6 Q. And these are answers to discovery that you
7 provided, along --

8 A. Two years ago.

9 Q. Two years ago?

10 A. Approximately two years ago.

11 Q. If we could, specifically let's look at the
12 second set of interrogatories. Do you have those in
13 front of you?

14 A. Those would be No. 5 or 6?

15 Q. They would be called --

16 MR. MECHAM: Six.

17 THE COURT: Six.

18 Q. (By Mr. Ginsberg) -- Responses to AT&T's
19 Second Set of Interrogatories.

20 A. Okay.

21 Q. Okay. Now, the questions I sort of wish to
22 ask you, and if you could turn to page 8 if you could?

23 A. Page 8?

24 Q. Right. If you turn the page, you can see
25 some of these questions I've already asked you.

80

(March 3, 2010 - All American - 08-2469-01)

1 Whether or not, you know, Joy Enterprises pays you for
2 the space that -- at the central office, or whether
3 you have paid them anything. But I do have a couple
4 of other questions.

5 And you can see the one -- if you look at
6 (e), whether you provide Joy Enterprises with the
7 capability of placing outgoing calls. And can you
8 explain what capabilities exist?

9 A. As I mentioned earlier, to the best of my
10 knowledge, Joy Enterprise has never made any outgoing
11 calls.

12 Q. Okay.

13 A. Our switch has the capability of providing
14 service for outgoing calls. It is a -- that is the
15 case.

16 Q. If you look at (f), have you paid any
17 telecommunications taxes or other fees in Utah?

18 A. No.

19 Q. And that's because you haven't received any
20 revenues from Joy Enterprises?

21 A. Well.

22 Q. For telecommunications services?

23 A. Correct.

24 Q. Would you be obligated to pay taxes if you
25 received revenues?

81

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 MR. GUELKER: Objection to the extent it
2 calls for a legal conclusion.

3 You can testify as to your understanding,
4 Mr. Goodale.

5 THE COURT: Sustained.

6 MR. GINSBERG: That's fine.

7 THE WITNESS: Am I obligated to pay taxes if
8 I received revenue, was that your question?

9 Q. (By Mr. Ginsberg) Are they -- are you
10 obligated to provide -- are you providing
11 telecommunications services that are subject to state
12 taxes?

13 A. Under the terms of our agreement I don't
14 believe that to be the case.

15 Q. That is your agreement with, with who?

16 A. With Joy Enterprises.

17 Q. So it's your belief that currently you're
18 providing no services to Joy Enterprises that subject
19 you to telecommunications taxes in Utah. Is that true
20 for Nevada also?

21 A. Yes.

22 Q. If you look at (g.) I take it Joy
23 Enterprises' conference calling facilities is not
24 listed in any directories in Garrison, Utah?

25 A. Not to my knowledge.

82

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. You haven't listed them anywhere? Did they
2 ask you to be listed?

3 A. No.

4 Q. Are they listed anywhere, do you know?

5 A. Not that I know of.

6 Q. And I assume, if you look at (h), that there
7 are no people located there, are there, in Garrison,
8 Utah employed by either All American or Joy?

9 A. Currently, no.

10 Q. So there's no 911 provided to Joy
11 Enterprises?

12 A. That, that would -- like I said, I don't
13 believe that they've ever made any outgoing calls.
14 The service of 911 would be access -- accessible to
15 them.

16 Q. Now, if you look at (i.) I think we -- I
17 asked you whether you billed them for any, any
18 services or whether they billed you. But that
19 question relates to whether or not you enter them into
20 any of your ordering, billing, or accounting systems.
21 And you do not do that?

22 A. No.

23 Q. So how do you actually keep track of what
24 services you provide and what, in theory, they owe
25 you?

83

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. Under the terms of our agreement they would
2 not be required to pay me. I would be required to pay
3 them a marketing fee for their services. And included
4 in that payment for marketing fee would be the
5 connectivity we provide so that they can function.

6 Q. So even if you were receiving these revenues
7 the interexchange carriers paid you, you still
8 wouldn't expect anything back from them. You would
9 just provide to them the revenues that you receive,
10 minus what you think they owe you?

11 A. To the -- to date, that's the way we've
12 operated. I might preface that by saying that we are
13 in the process of reviewing some changes in procedure
14 that would include doing some billing for services and
15 paying appropriate taxes.

16 Q. But since you don't keep track of them in
17 either your ordering or billing records and have no
18 Utah price list for what you would charge them for
19 those services you would have no way of knowing what
20 amount to withhold, would you?

21 A. If the services were provided under contract,
22 I don't know that I would have to make a public price
23 list available. But that's another question. Like I
24 said, we are reviewing changes in our procedures so
25 that we would be billing for services and paying

84

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 appropriate taxes on that billing.

2 Q. Okay, thank you. I'd like to switch to a
3 different subject if we could. And do you have what
4 was marked as DPU-1 in front of you? Do you have that
5 with you, or? I have an extra copy here if we need
6 it.

7 A. DPU-1?

8 (Pause.)

9 Q. (By Mr. Ginsberg) Now, you provided the
10 answers to the discovery asking for the tariffs and
11 price lists that applied to the charging for whatever
12 services you provided to Joy, plus the charges you
13 billed to the interexchange carriers; is that right?

14 A. Yes.

15 Q. And there are three tariffs, are there not?

16 A. I believe so.

17 Q. That you provided? Are you -- I think you
18 signed those or were the author of submitting them; is
19 that right?

20 A. I believe so.

21 Q. And they were submitted -- they're submitted
22 through a service; is that right? Is that how this
23 works?

24 A. I'm not really following your question.

25 Q. Okay. Does All American prepare these or are

85

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 they prepared by a?

2 A. We have out-of-house counsel that prepares
3 them.

4 Q. Okay. Now, you are generally familiar with
5 these tariffs?

6 A. Generally.

7 Q. Now, the first one is Tariff No. 1, which
8 went into effect in June of 2005. And I do -- I did
9 provide some of the initial pages of that tariff.
10 That tariff only applies in the State of Nevada; is
11 that correct?

12 A. I believe that to be correct.

13 Q. And you used that for billing interexchange
14 services in Nevada?

15 A. We were working under that tariff at the
16 time.

17 Q. You didn't use that in Utah at all?

18 A. I don't recall.

19 Q. Well, you would not -- if you had, it would
20 have been incorrect?

21 MR. GUELKER: Objection, legal conclusion.

22 THE COURT: Overruled.

23 MR. GUELKER: Speaks for itself.

24 THE COURT: Overruled.

25 MR. GINSBERG: I think Mr. Goodale, as the

86

(March 3, 2010 - All American - 08-2469-01)

1 one who presented these to the FCC, should be capable
2 of answering whether he can use a Nevada tariff to
3 bill in Utah.

4 THE COURT: That, that's why I say it's
5 overruled.

6 MR. GUELKER: He overruled it.

7 MR. GINSBERG: Sorry, I didn't hear that.

8 THE COURT: That's okay.

9 THE WITNESS: I'm not qualified to answer the
10 question. I don't know.

11 Q. (By Mr. Ginsberg) Okay. Now, later you
12 revised Tariff No. 1. And that was dated
13 July -- June 13, 2008; is that correct?

14 A. Yes.

15 Q. Now, one of the main revisions that you
16 talked about in your testimony relates to a change in
17 the definition of "end user"; is that right? You
18 refer to that in your testimony?

19 A. As I recall.

20 Q. I can find the reference to it if we need to.

21 A. Yeah.

22 Q. Do you need to do that?

23 A. Yes. It's specified in our tariff. And...

24 Q. It's line 242 to 247 of your rebuttal
25 testimony.

87

(March 3, 2010 - All American - 08-2469-01)

1 A. I'm not looking in the right place.

2 Q. Of your rebuttal?

3 A. Um.

4 Q. Page 13.

5 A. Okay, page...

6 Q. Line numbers may be different.

7 A. I don't have any page numbers.

8 Q. Oh.

9 A. With -- what line was it?

10 Q. I have it as --

11 THE COURT: Page numbers are at the top
12 right.

13 Q. (By Mr. Ginsberg) It's line 242. It's a
14 little quote you put there, "End user." Do you see
15 it?

16 A. End user: Any person, firm --

17 Q. Right.

18 A. -- partnership, it says? Yes.

19 Q. And that is -- was included as an addition to
20 your Tariff No. 1 Revised? If you -- it's on page 12
21 of your revised tariff?

22 A. It was part of the revision.

23 Q. And what was the reason for this addition?

24 A. Under advice from my attorney. That's what
25 he wanted done there.

(March 3, 2010 - All American - 08-2469-01)

1 Q. Okay. Now, Tariff 1 Revised still applies
2 only in Nevada?

3 A. I don't know that it does. I believe we've
4 had subsequent tariffs that have been -- that don't
5 specify a Nevada federal tariff. It's open to any
6 state.

7 Q. And that would be Tariff No. 2?

8 A. Correct.

9 Q. Now. Now, Tariff No. 2 was put into effect
10 in June -- in April 2008; is that correct?

11 A. Yes.

12 Q. And if we look at Tariff No. 2, the
13 definition of end user does not reflect the definition
14 of end user that is contained in Revised Tariff 1. Is
15 that, is that fair? Do you know that?

16 A. No, I don't.

17 Q. Do you want to look at page 12 of that
18 tariff? It's the last page. Of Tariff No. 2. It's
19 the definition that's included on that page. Do you
20 see that?

21 A. Okay, it has been changed, yes. I see the
22 change.

23 Q. And it's your position that Tariff No. 2,
24 which went into effect in April, is your current
25 tariff that would -- you would bill interexchange

89

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 carriers for in Utah?

2 A. I believe this is a -- I believe this has
3 been revised. But I'm not, I'm not sure exactly when.
4 I do know that it's currently under the process of
5 being revised again.

6 Q. Is there some other tariff filing that,
7 that's in effect that we're not aware of?

8 A. Well, there's gonna -- there's some changes
9 in the tariff that our law firm in Washington, D.C.
10 wants to make. And it's under review.

11 Q. Now, if you could -- could you turn to the
12 Third Set of Interrogatories? Do you have that in
13 front of you? That, that -- it's called "All
14 American's Response to AT&T's Third Set of
15 Interrogatories."

16 A. Yes.

17 Q. Now, if you could look at Interrogatory
18 No. 1? It's essentially asking you which tariff is
19 applicable when. Now, here it states that you billed
20 AT&T pursuant to the terms of FCC Tariff 1 up to
21 April 20, 2008.

22 And from April 2008 until June 2008 you
23 billed AT&T pursuant to Tariff 2. And then upon
24 amending Tariff 1 -- which we referred to earlier --
25 effective June 17, 2008, until the present you bill

90

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 AT&T under the revised tariff. Is that --

2 A. Correct.

3 Q. -- a fair statement of how your tariffs work?

4 A. I believe it's -- I believe this to be
5 correct.

6 Q. So currently you bill both Utah and Nevada
7 under Tariff No. 1 Revised; is that right?

8 A. I don't believe so.

9 Q. Okay.

10 A. I believe the dates, um.

11 Q. You bill pursuant to FCC -- upon amending FCC
12 Tariff 1?

13 A. This was.

14 Q. Effective June 17th, '08, until the present
15 the plaintiff billed according to that tariff. Is
16 that, is that right or wrong?

17 A. This -- there seems to be some
18 inconsistencies in the date. This was dated
19 October -- well, that. When did this -- yeah, this is
20 dated October --

21 Q. 2009?

22 A. -- 2009. And the Tariff No. 2 was in effect
23 in 2008. I would question the correctness of this
24 statement.

25 I don't believe that statement to be correct.

91

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. Now if you could turn to the -- Question
2 No. 3, on the next page? It refers to Tariff 1. And
3 the reasons why you filed tariffs. It says both
4 tariffs were applicable to service in Nevada,
5 according to the terms, because the service areas for
6 All American encompass Nevada.

7 Which of these tariffs applies in the State
8 of Utah?

9 MR. GUELKER: Objection, your Honor, to the
10 extent it calls for a legal conclusion. The tariffs
11 speak for themselves.

12 THE COURT: Overruled.

13 Q. (By Mr. Ginsberg) Does that answer imply
14 that Tariff 2 and Tariff 1 apply to Nevada? Is that
15 what it states?

16 A. This is the answer, yes.

17 (Pause.)

18 Q. (By Mr. Ginsberg) Is there -- I think a
19 question was pending, or just -- is there not an
20 answer?

21 THE WITNESS: I believe I answered it.

22 THE COURT: I think he answered it.

23 MR. GINSBERG: What was the answer?

24 THE COURT: Will you state your answer again?

25 Actually, why don't you ask your question

92

1 again.

2 Q. (By Mr. Ginsberg) My question is what is --
3 what -- in light of the answers that you gave that
4 Tariff 2, and Tariff 1 by its own definition, apply to
5 Nevada, what is the tariff that you believe applies to
6 switched access service in the State of Utah?

7 A. That would be Tariff No. 2.

8 MR. GUELKER: Asserting an opinion into the
9 record.

10 MR. GINSBERG: Excuse me?

11 MR. GUELKER: Go ahead, Dave.

12 THE COURT: Go ahead.

13 THE WITNESS: That would be Tariff No. 2.

14 Q. (By Mr. Ginsberg) And that went into effect,
15 assuming that that's correct, in April of 2008?

16 A. Yes.

17 Q. And under what basis did you bill before that
18 date?

19 A. I, I don't have an answer.

20 Q. Okay. Let's go on to a different subject.
21 Just a few days ago you filed a Revised 2007 Annual
22 Report. Do you understand that?

23 A. I'm familiar with it.

24 Q. And you had provided in discovery an earlier
25 annual report, which has been made part of the record,

(March 3, 2010 - All American - 08-2469-01)

1 that was unsigned and undated. And that we indicated
2 to your counsel that we had no record of receiving
3 that. Was that annual report ever filed with the
4 Division -- the Commission?

5 A. I believe it was refiled and signed by Donald
6 Surratt.

7 Q. Was the original one that was provided in
8 discovery filed?

9 A. I believe it was filed.

10 Q. We have no record of that. Do you have any
11 record of when that was submitted?

12 A. I -- not, not at my hand, I don't.

13 Q. Can you provide that?

14 A. If it was filed, I imagine we can. I know
15 that -- as I recall, the filing was made, but it was
16 made late.

17 Q. Why did you revise it?

18 A. There was an objection to the fact that it
19 wasn't signed.

20 Q. Well, that wasn't the only thing that was
21 changed. You changed some of the numbers in it too.

22 A. There was some accounting factors that needed
23 to be modified, and Mr. Surratt took care of that.

24 Q. In your rebuttal testimony you indicate
25 that -- let me make sure that we have a clear

94

(March 3, 2010 - All American - 08-2469-01)

1 understanding of what occurred back there in 2006 and
2 2007. The attorney that you refer to in your
3 testimony is Judith Hooper?

4 A. No. Not necessarily.

5 Q. Oh.

6 A. I have several attorneys.

7 Q. The attorney that you -- advised you about
8 your filings that you referred to was not Judith
9 Hooper? Who made the filings before the Commission?

10 A. Some of --

11 Q. The filings --

12 A. Some of them may have been, yes.

13 Q. So there were many attorneys who advised you
14 about whether or not you had authority to serve in
15 Utah -- in the Beehive area?

16 MR. GUELKER: Object to the extent that
17 misrepresents his prior testimony. I mean, the
18 testimony speaks for itself.

19 But go ahead, Dave.

20 THE WITNESS: You're referring to my
21 relationship with Judith Hooper?

22 Q. (By Mr. Ginsberg) No. In your rebuttal
23 testimony you specifically refer to -- that you filed
24 an amended application in August; is that correct?

25 A. Yes.

95

(March 3, 2010 - All American - 08-2469-01)

1 Q. And you filed a second amended application in
2 February; is that right?

3 A. We, as I recall, had outside counsel help us
4 with some of these tariffs. It was CHR Solutions.

5 Q. I -- go ahead. I'm sorry, we're not talking
6 about the tariffs now.

7 A. Okay.

8 Q. Can you turn to -- do you have your rebuttal
9 testimony there with you?

10 A. Yes.

11 Q. If you see at the beginning, line 14, you
12 referred to the August 28, 2006, amended application.
13 Do you see that?

14 A. Yes.

15 Q. And then you do not refer to the February 20,
16 2007, amended application. Is that -- you understand
17 that that application stated that you would not serve
18 in the Beehive area; is that correct?

19 A. That's my understanding, correct.

20 Q. In fact, in an answer to a discovery request
21 from the Office you indicated that -- and I believe it
22 is, um.

23 OCS Request 2. Request No. 3. You indicated
24 that you actually disclosed to Beehive that you didn't
25 have authority to serve in their area before -- or at

96

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 the time you entered into the interconnection
2 agreement.

3 MR. GUELKER: I'm gonna object to the extent
4 it mischaracterizes what the -- says. I believe the
5 response was that they disclose the contents of their
6 application. So Beehive was aware of the contents of
7 their application.

8 Q. (By Mr. Ginsberg) Is that, is that correct?

9 A. Do I?

10 MR. GUELKER: Go ahead and answer.

11 THE WITNESS: Yes.

12 Q. (By Mr. Ginsberg) So they were aware of the
13 contents of the February 20th application?

14 A. I believe they were.

15 Q. And you were aware of the contents of the
16 February 20th application that -- where you indicated
17 that you would not serve in the Beehive area?

18 A. Yes.

19 Q. So why did you file the interconnection
20 agreement?

21 A. That was done --

22 Q. In light of the knowledge that you did not
23 have authority to serve there?

24 A. Well, I believe our original interconnection
25 agreement was done specifically as a matter of

97

(March 3, 2010 - All American - 08-2469-01)

1 understanding between Beehive Telephone, and All
2 American Telephone, and public record.

3 Q. No, my question is why did you file it in
4 light of the fact that you knew you did not have
5 authority to serve in that area?

6 A. We filed it because we felt that it was
7 necessary to file it. I was advised by counsel to
8 file it.

9 Q. In your rebuttal you indicated that -- I
10 think you specifically answered a question that even
11 after you were denied the Commission's authority to
12 serve within the Beehive area you state, on line 41,
13 All American still intended to operate in the Beehive
14 territory. And the attorney advised us that we would
15 still be able to do that if our amended application
16 was granted.

17 Is that, that's what you stated there?

18 A. I believe so.

19 Q. And --

20 A. Yes.

21 Q. -- the amended application being the
22 February 20th application?

23 A. I believe that might, might have been that.

24 Q. Then how would that amended application have
25 given you the authority to serve in the Beehive area?

98

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. I'm not an attorney, I don't have all the
2 answers. I tried to comply with the laws. And I've
3 tried to comply with the Commission. And I've done
4 everything that I thought was the right thing to do at
5 the time.

6 That's why I'm here today. I'm trying to get
7 these problems put aside. And get the permission
8 granted to do what we need to do in the State of Utah.
9 This is what my objective is. This is what I'm
10 striving to accomplish.

11 I think it's beneficial for everyone
12 concerned. And the relationship would be mutually
13 beneficial for everyone in the State of Utah.

14 MR. GINSBERG: That's all the questions I
15 have. Thank you.

16 THE WITNESS: You're welcome.

17 THE COURT: All right. Thank you,
18 Mr. Ginsberg.

19 Do you want to ask --

20 MR. GINSBERG: Oh, I would --

21 THE COURT: Huh?

22 MR. GINSBERG: Could I have admitted those --
23 and I guess the only ones I referred to were five and
24 six.

25 THE COURT: Yeah. We admitted those.

99

(March 3, 2010 - All American - 08-2469-01)

1 MR. GINSBERG: Oh.

2 THE COURT: Five, six.

3 MR. PROCTOR: And seven?

4 THE COURT: Seven?

5 MR. THOMSON: I believe they've all been
6 admitted.

7 THE COURT: Five, six, and seven.

8 MR. GINSBERG: Okay. Thank you.

9 THE COURT: Do you want to ask your redirect
10 now, or do you want to wait until after?

11 MR. GUELKER: We'd just as soon wait until
12 everybody's had a chance to cross.

13 THE COURT: Okay. I'm gonna go with the
14 Office next. I assume you'll take probably over an
15 hour?

16 MR. PROCTOR: Yes.

17 THE COURT: Why don't we go ahead and take a
18 lunch break now, and we'll come back at 1. About
19 1:00.

20 (A luncheon recess was taken
21 from 11:24 to 1:01 p.m.)

22 THE COURT: Mr. Goodale, if you'd like to
23 come to the witness stand again, please.

24 You can proceed, Mr. Proctor.

25 MR. PROCTOR: Thank you, your Honor.

100

(March 3, 2010 - All American - 08-2469-01)

1 CROSS EXAMINATION

2 BY MR. PROCTOR:

3 Q. Mr. Goodale -- and am I pronouncing that
4 correctly?

5 A. Yes.

6 Q. Thank you. My name is Paul Proctor. I'm an
7 Assistant Attorney General and I represent the Utah
8 Office of Consumer Services. I have some questions to
9 ask you about your initial statement that you made in
10 response to Mr. Guelker's questions.

11 One of the things you stated was that prior
12 to All American beginning to do business in the
13 Garrison, Utah exchange and the Burbank, Nevada
14 exchange, that service to Joy Enterprises was provided
15 by Beehive; is that correct?

16 A. Yes.

17 Q. And that Joy Enterprises' terminating access
18 accounted for 50 percent of Beehive's total company
19 revenues; is that correct?

20 A. No.

21 Q. What did you mean when you said it was --
22 accounted for 50 percent of the revenues?

23 A. I don't know what percentage of Beehive's
24 revenue it accounted for. But I have been told by
25 members of UFN that the traffic Beehive

101

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 representative -- represented was 50 percent of UFN's
2 income.

3 Q. "UFN" being what?

4 A. Utah Fiber Network, the tandem.

5 Q. Was Beehive being paid terminating access
6 revenues by the interexchange carriers when it
7 terminated traffic to Joy Enterprises?

8 A. I believe so, yes.

9 Q. And I believe you testified that that began
10 in approximately 1994?

11 A. Yes.

12 Q. And that was both in Nevada and Utah?

13 A. I'm not sure exactly which state, no. But I,
14 I guess pretty close. They were both -- probably yes.

15 Q. Okay. Now, did Beehive have a contract with
16 Joy Enterprises that was similar to the contract you
17 now have as All American with Joy Enterprises?

18 A. I believe our arrangements were similar.

19 Q. Did you assume Beehive's obligations to Joy
20 that -- did you assume Beehive's obligations under
21 that agreement?

22 A. Our opportunity to provide service to Joy
23 Enterprise is we undertook the responsibility when
24 they elected to use our service.

25 Q. And did you assume the obl -- the obligation

102

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 that Beehive had to pay up to 100 percent of the
2 access revenues to Joy Enterprises for marketing
3 services?

4 MR. GUELKER: I would object to the extent
5 the use of the word "assume" is vague and ambiguous,
6 it has certain legal connotations, and it's not clear
7 what Mr. Proctor means when he uses the word "assume."

8 THE COURT: Do you want to restate your
9 question, Mr. Proctor?

10 MR. PROCTOR: I will try, your Honor. But I
11 would, I would ask the Court limit, to the extent it
12 can, speaking objections. Which applies equally to my
13 own. They're inappropriate. And that's what that one
14 was. I'll try to restate it.

15 Q. (By Mr. Proctor) Let's talk again about All
16 American's agreement with Joy. It's my understanding
17 from your testimony that this is an oral agreement.
18 It is not reduced to writing in any form; is that
19 correct?

20 A. Yes.

21 Q. And that the agreement requires that you pay
22 up to 100 percent of the terminating access revenues
23 that All American receives to Joy Enterprises.

24 MR. GUELKER: Objection, assumes facts not in
25 evidence.

103

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 THE COURT: Overruled.

2 Q. (By Mr. Proctor) Is that correct?

3 A. Who told you that?

4 Q. I'm asking the question, sir.

5 A. No, it's not correct.

6 Q. What is the payment obligation or arrangement
7 under that oral agreement between All American and Joy
8 Enterprises?

9 A. Currently suspended.

10 Q. Has it -- by currently suspended, but what
11 about when it was first entered by Joy and All
12 American. What was the understanding about the
13 payment obligations?

14 A. The -- there was no payments made initially,
15 because it was in that time period the IXCs ceased to
16 pay for our terminating fees.

17 Q. If All American received terminating access
18 revenues, what is the term of the oral agreement for
19 the distribution of those revenues if you received
20 them?

21 A. It would have been a small portion of the
22 revenues received. And --

23 Q. A small portion of the revenues received
24 would be paid to?

25 A. As a marketing fee. The marketing fee would

104

(March 3, 2010 - All American - 08-2469-01)

1 be a portion of those revenues received. And it would
2 depend on a variety of factors.

3 Q. What portion or range of portions would Joy
4 Enterprises receive?

5 A. Probably between 20 and 50 percent.

6 Q. And what other circumstances or conditions
7 would govern the amount?

8 A. Operating costs and profitability of service.
9 And the volume of service and ratio to the cost.

10 Q. And are these ratios and these other
11 conditions in any way stated in writing?

12 A. No.

13 Q. Have they ever actually been put into effect
14 by a payment?

15 A. No.

16 Q. Would All American be expected to prepare a
17 bill to Joy Enterprises, or at least an accounting to
18 Joy Enterprises, for the revenues received and the
19 amount that would be paid under the agreement?

20 A. In the appropriate time that those revenues
21 are received, it'll happen.

22 Q. But thus far, throughout All American's
23 operations within Utah, is it your testimony that All
24 American has received no revenues from interstate
25 access services?

105

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. No, it is not my testimony.

2 Q. Has All American received terminating access
3 revenues?

4 A. Yes.

5 Q. How much did they receive in 2006? And this
6 would be from Utah operations, sir.

7 A. I don't have that figure at hand. I don't
8 believe it's any substantive figure.

9 Q. Did you -- did All American receive any in
10 2007?

11 A. Same.

12 Q. Did -- but All American recently filed an
13 annual report with this Commission, March 1st
14 exact -- to be exact, in which it disclosed its gross
15 Utah revenue as \$2.6 million, approximately. Actually
16 \$2.5 million. Are you aware of that?

17 A. That is a -- it's not a cash revenue
18 statement. We filed a revenue statement originally
19 based on the cash accounting that we use. And that
20 was unacceptable. They wanted accrual accounting.
21 Which I can't pay my bills with accruals so I have
22 always used cash accounting so I knew how to operate
23 my business. That's what I've been accustomed to
24 forever.

25 The accrual accounting may have stated the

106

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 fact that we billed and had income stated at two point
2 some million dollars. I believe there's some reserves
3 for bad debt that they're set which are somewhat of an
4 arbitrary figure because nobody knows what that's
5 gonna really be.

6 Q. Well, as I understand your 2007 report there
7 is an accounts receivable stated of something over
8 \$2 million. And there's a bad debt write-off of
9 approximately the same amount. But then there's an
10 additional \$2.5 million, approximately, in gross
11 revenues.

12 Now, is it your testimony that All American
13 uses the cash method of accounting?

14 A. In our normal business practices, yes.

15 Q. And that would be the way that you reported
16 your gross revenues on your 2007 annual report?

17 A. No, we had to re-file that on an accrual
18 basis.

19 Q. Well, and that would be the revised filing of
20 March 1, 2010?

21 A. Yes.

22 Q. And so the prior one, was it on a cash basis?

23 A. I believe it was, yes.

24 Q. Do you remember how much of the cash gross
25 revenues were disclosed in the first 2007 annual

107

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 report?

2 A. No.

3 Q. Was it over \$2 million?

4 A. I don't know.

5 Q. Did you review it before it was filed?

6 A. I don't recall the figures. I probably did
7 see it.

8 Q. Now, does Beehive -- well, excuse me. Does
9 All American bill Beehive for any services that All
10 American provides to Beehive?

11 A. No.

12 MR. PROCTOR: Your Honor, may I approach?

13 THE COURT: You may.

14 (Pause.)

15 Q. (By Mr. Proctor) Mr. Goodale, what I've
16 handed to you was provided in response to an Office
17 data request, Request No. 3. And I believe it's the
18 third set, I'm not certain. And it's part of DPU-2,
19 so it's already been admitted into evidence.

20 And I will tell you that the documents you
21 have are the front and the back end of roughly a year
22 of bills, which is all that was provided to us in the
23 data responses. The first has a, at the very top on
24 the right, date November 10, 2006. Do you see that?

25 A. Yes.

108

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. And further down on the left it has a
2 previous balance of \$1,073,759.28. See that?

3 A. Yes.

4 Q. And then further down it has current charges
5 of \$233,968.88 correct?

6 A. Yes.

7 Q. And this is an All American Telephone Company
8 bill to Beehive Telephone Company, Inc. Nevada. For
9 what services was this bill submitted to Beehive?

10 A. I'm gonna re -- the answer I gave you
11 earlier, currently -- I would say currently we don't
12 bill Beehive for anything. This is 2006. In this
13 time frame we did.

14 Q. What did you bill them for?

15 A. Beehive, at that time, was billing and
16 collecting all of the access revenue under their
17 billing and collection procedures. And we, in turn,
18 billed Beehive for that portion of the access revenue
19 that we provided.

20 Q. And as of November 10th of 2006 there was a
21 balance of \$1,074,000; is that correct?

22 A. According to this, it is.

23 Q. Now, I want you to go to the last two pages.
24 This is a bill that's dated October 29, 2007. Up on
25 the right-hand side, payment due date is November 13,

109

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 2007. The amount billed is \$1,269,478.97.

2 And on the previous balance they had
3 apparently paid \$100,000. There was an unpaid balance
4 at that time of 100 and -- or \$1,269,000. Again,
5 would this represent Beehive's collection of access
6 revenues for traffic that, in fact, was terminated by
7 All American?

8 A. I believe it -- yes.

9 Q. Has Beehive now paid the full amount of this
10 obligation?

11 A. I don't believe so.

12 Q. So -- and by October 29th of 2007 All
13 American was operating in Utah, in Garrison exchange,
14 correct?

15 A. Yes, I believe so.

16 Q. Would any of the \$1.2 million that was due be
17 related to terminating access revenues in Garrison?

18 A. I, I assume so.

19 Q. Okay. Now, when you began operating in
20 Garrison you basically replaced Beehive as Joy
21 Enterprise -- Enter -- Enterprises Telephone Company,
22 correct?

23 A. Correct.

24 Q. And so all of the revenues that Beehive had
25 been receiving now were going to be paid to All

110

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 American?

2 A. Correct.

3 Q. And in addition, All American was now billing
4 Beehive as well as the interexchange carriers for
5 terminating access revenues, correct?

6 A. No.

7 Q. What's incorrect about that?

8 A. At some point this procedure stopped. And at
9 the point where we started billing the interexchange
10 carriers directly ourself, we no longer billed through
11 Beehive. We billed direct through All American.

12 Q. Did you forgive the debt that Beehive had?

13 A. No.

14 Q. Have you made any efforts to collect that?

15 A. Under the current circumstances, no.

16 Q. What current circumstances would prevent you
17 from trying to collect terminating access revenues
18 from Beehive?

19 A. Well, Beehive Telephone unfortunately, as
20 you -- I've just learned, United Fiber Networks are
21 not being paid for their transport on this traffic.
22 And they're suffering cash flow deficiencies just like
23 we are.

24 And it would be inappropriate to try to add
25 to the burden of paying this old bill on top of the

111

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 lack of income that they're currently suffering from,
2 and jeopardizing their service they're providing their
3 customers.

4 Q. Now, does Beehive charge you now for any
5 service in the Garrison exchange?

6 A. Yes. The agreement, our operating
7 agreement -- we will have charges. Currently they're
8 suspended. At some point in time all of these things
9 will be taken into consideration, and there will be a
10 settlement that will be good for everybody.

11 Q. Is this operating agreement between All
12 American and Beehive?

13 A. We have a verbal agreement to work together
14 and work through this problem, and that's what we're
15 doing.

16 Q. So the verbal agreement would cover, for
17 example, Beehive's charges for use of either equipment
18 or facilities?

19 A. Our interexchange agreement covers that.

20 Q. The interexchange agreement between you and
21 Bee --

22 A. Beehive and All American.

23 Q. And that's an oral agreement?

24 A. No, that's a written agreement.

25 Q. And what is the date of that agreement?

112

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. Currently I couldn't tell you. I'd have to
2 refer to notes.

3 Q. Does it provide for any shared -- sharing
4 between All American and Beehive of the access
5 revenues --

6 A. No.

7 Q. -- paid by others?

8 A. No. To the best of my knowledge and
9 recollection, I don't believe it does.

10 Q. Do you have a recollection of approximately
11 when this agreement was entered?

12 A. I'd have to check my notes.

13 Q. You described that Joy Enterprises has
14 sub-customers. Do you recall that testimony?

15 A. They have had -- I know they have had
16 previously.

17 Q. And are those -- you call them
18 "sub-customers." Are they affiliates of Joy
19 Enterprises, or are they independent companies to whom
20 Joy Enterprises provides certain services?

21 A. I believe them to be independent companies.

22 Q. And those would be the chat lines and the
23 conference rooms or conference systems that one
24 accesses through your switch and Joy Enterprises'
25 Intelligent Voice Response System?

113

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. I, I wouldn't characterize it that way.

2 Q. How would you characterize it?

3 A. Joy Enterprise provides services. And they
4 have marketing arrangements with people that use those
5 services. Or they have had previously.

6 Q. Such as the chat lines?

7 A. Those are some of the services.

8 Q. And free conference calling systems?

9 A. That's some of the services.

10 Q. And so Joy, once it receives a call let's say
11 to FreeConferenceCall.com. And they have phone
12 numbers. Are you aware of them?

13 A. Yes, I am.

14 Q. You are -- were or are -- have -- you have a
15 financial interest in that company, don't you?

16 A. No.

17 Q. Did you at one time?

18 A. Never.

19 Q. So when someone calls a particular number for
20 a free conference call, let's say --

21 A. May I make a point of clarification?

22 Q. Please do.

23 A. You referred to a company called
24 FreeConferenceCall.com, of which I've never had any
25 financial interest in. I used to be a part owner in a

114

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 company called -- that was formally named global
2 conference partners.

3 And our service was FreeConference.com. And
4 I have long since sold my interest in that company.

5 Q. Okay. Thank you very much, sir. I
6 appreciate that.

7 So when one calls FreeConference phone
8 number, which is a 435-855 number, and it comes in
9 through All American's switch to Joy Enterprises'
10 Intelligent Voice Response System, does the ultimate
11 person who is going to engage in that conference call
12 utilize Joy Enterprises' response system in Garrison,
13 or is there a conference bridge located elsewhere that
14 is being used?

15 A. Garrison.

16 Q. Are there conference bridges, as well as the
17 Intelligent Voice Response System, located in
18 Garrison?

19 A. Yes.

20 Q. How many of those bridges are there?

21 A. One.

22 Q. Who owns those bridges?

23 A. Joy Enterprises.

24 Q. And they're used to actually connect the
25 persons making the call?

115

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. Yes.

2 Q. Now, I will disclose to you that last evening
3 I and my colleagues placed a call to randomly-picked
4 seven numbers of the 159 that All American uses for
5 the 435-855.

6 And in the process we, we had a number of
7 choices and options of where to go. Various services.
8 One was to subscribe to a particular VIP service that
9 required money. And ultimately to a chat room. And
10 randomly-picked numbers.

11 In addition, we also received a message that
12 said, If you would like to --

13 MR. GUELKER: Your Honor, I'm gonna object.
14 He's introducing factual evidence.

15 MR. PROCTOR: No, I'm not. I'm setting up
16 the question.

17 THE COURT: Let, let him ask -- let him
18 finish the question and then --

19 MR. GUELKER: Okay.

20 THE COURT: -- you can make the objection.

21 Q. (By Mr. Proctor) One of the steps of that
22 response system -- or an option was, if you're
23 interested in a system like this one, push a
24 particular number.

25 Is -- are intelligent voice systems, response

116

(March 3, 2010 - All American - 08-2469-01)

1 systems, advertised on Joy Enterprises' Intelligent
2 Voice Response System, or is that All American's
3 process?

4 A. What you've just told me indicates that there
5 must be some advertising on Joy Enterprises' systems.
6 It sure wasn't on mine.

7 Q. Okay. You mentioned that All American also
8 has conference services. It has provided nonprofit
9 organizations with free conference calls. Do you know
10 of a particular number that nonprofits use, or is it
11 just any of those numbers that you have?

12 A. I believe I testified that Joy Enterprise
13 provided conference calling services that were
14 accessible by nonprofits.

15 Q. Can you describe the precise marketing
16 services that Joy Enterprises provides to All
17 American?

18 A. No.

19 Q. Do you know what those services are?

20 A. Not -- no, I don't.

21 Q. Would there be someone else within All
22 American who does know what those services are?

23 A. I believe currently, and for the last three
24 years, there have been virtually no marketing efforts
25 made.

117

(March 3, 2010 - All American - 08-2469-01)

1 Q. Prior to that period were there marketing
2 efforts made?

3 A. Prior to that there was quite a few marketing
4 efforts made, I'm sure.

5 Q. What type of marketing did --

6 A. That I know of?

7 Q. Yes.

8 A. Print advertising. Television advertising.

9 Q. Would it be advertising All American, or
10 would it be advertising the customers that Joy
11 Enterprises serves?

12 A. The advertising was to phone numbers that
13 were issued by All American to Joy Enterprises.

14 Q. So All American's name as a phone company
15 would not appear anywhere within that advertising?

16 A. No.

17 Q. Now, also in discovery responses All American
18 acknowledged that it began -- or at least it sent one
19 bill to AT&T for terminating access in April of 2006.
20 Do you understand that to be the case?

21 A. I've heard that, yes.

22 Q. And again, that is part of the discovery
23 that's been admitted into evidence. But let me give
24 you a copy of the bill.

25 MR. PROCTOR: Your Honor, may I?

118

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 THE COURT: Yes.

2 (Pause.)

3 Q. (By Mr. Proctor) Mr. Goodale, if you would
4 look at that document. As president of All American
5 do you approve such bills, or do you have any
6 involvement in the preparation of the bills?

7 A. I usually review them.

8 Q. I know it's been a long time. But do you
9 recall this one?

10 A. No, I don't.

11 Q. Okay. Now, at the very top it says:
12 "Company Name: All American Telephone Company, Utah."
13 Do you see that?

14 A. Yes.

15 Q. It has an OCN number 691D. Do you know what
16 that number is?

17 A. Yes.

18 Q. What is that number?

19 A. That's our central office number.

20 Q. And by whom is that central office number
21 assigned?

22 A. I believe it's signed All American Telephone.

23 Q. By, by whom is it assigned?

24 A. It -- I'm really not sure.

25 Q. Is it Telcordia? Does that --

119

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. There you go.

2 Q. And Telcordia is what?

3 A. They're, they're kind of like the telephone
4 company administrator for the national services.

5 Q. And you have to apply to them for the Office
6 number, OCN number, for example?

7 A. Yes.

8 Q. Are there any other references or numbers
9 that you must apply to Telcordia for?

10 A. I, I'm not familiar with all of the numbers
11 that would be required to get use from them, but.

12 Q. But from this bill, given it says All
13 American Telephone Company, Utah, this would be for
14 switched, switched access that was terminated in
15 Garrison, Utah, correct?

16 A. Yes.

17 Q. Now, the usage period, down in the same
18 column, is from February 21, 2006, through March 20,
19 2006. Do you see that?

20 A. Yes.

21 Q. So All American was doing business in the
22 Garrison exchange, Garrison, Utah, as early as
23 February 2006, correct?

24 A. It appears to be the case.

25 Q. When did you first file for a Certificate of

120

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Public Convenience and Necessity with the Utah Public
2 Service Commission?

3 A. I don't recall the date.

4 Q. Was it after February 21, 2006?

5 A. I believe so.

6 Q. And All American continued to terminate
7 access in Garrison, Utah from -- at the -- or at least
8 February 2006 until the present, did it not?

9 A. Yes.

10 Q. And in fact, Mr. Goodale, if you will turn to
11 page 3 of your rebuttal testimony. Do you have that
12 before you?

13 A. Oh, here we go. Page 3?

14 Q. Page 3. To be precise, line 25.

15 Do you see that? The sentence that begins:
16 "From the time." Could you read that sentence for us,
17 please?

18 A. "From the time All American first
19 considered operating in Utah the
20 company's interest was to operate in
21 Beehive territory in the manner in which
22 it is currently operating."

23 Q. Now, when did All American first consider
24 operating in Utah?

25 A. Sometime prior to all of this.

121

(March 3, 2010 - All American - 08-2469-01)

1 Q. Wasn't it in 2005?

2 A. Possibly.

3 Q. And weren't you, at that time, discussing
4 creating a CLEC to operate in Utah?

5 A. We were in the process of doing exactly that,
6 yes.

7 Q. And you had retained a consultant out of
8 Texas, CHR, in order to assist you in establishing?

9 A. Yes.

10 Q. And you continued to work with CHR up until
11 2008 sometime; is that not correct?

12 A. I think I fired them a little after that.

13 Q. But apparently you didn't fire them in June
14 of 2008, because that's when they filed your Amended
15 Tariff FCC No. 1, correct?

16 A. Correct.

17 Q. Because Mr. Ginsberg pointed out they're the
18 ones who wrote the letter to the FCC and filed it on
19 your behalf?

20 A. Yeah.

21 Q. So as you considered entering into Utah as a
22 telephone company was your intent to limit your work
23 to -- or your service to the Garrison exchange?

24 A. I wouldn't characterize it as that by any
25 means. That was the focus of our involvement at the

122

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 time. Had things gone right, I think other
2 possibilities would have developed. I would like to
3 think that I could go further than that and go far
4 beyond that.

5 I'd like to get all of these problems
6 resolved so I could have the smooth operating business
7 I need to focus on growth and expanding into other
8 areas of Utah.

9 Q. But your testimony in -- rebuttal testimony
10 in this case is that you have no present intention to
11 serve anybody but Joy, anywhere but Garrison, Utah.
12 And you won't, you won't enter anybody else's
13 territory.

14 You won't even go into another exchange that
15 owns -- that Beehive owns. Isn't that your testimony?

16 A. It would be insanity for me to consider doing
17 anything else at this point. I don't have any plans
18 of doing anything else. As far as the intent of
19 taking customers away from Beehive? No. We have no
20 intent of ever taking customers away from Beehive.

21 And I believe that's what this all -- the
22 core of the questioning was about.

23 Q. Well, but you did take Joy Enterprises away.

24 A. Joy Enterprise is the one, sole exception.

25 Q. When you first then began to operate in

123

(March 3, 2010 - All American - 08-2469-01)

1 Garrison, Utah, before -- and would you acknowledge
2 that that was before you even filed for a Certificate
3 of Public Convenience and Necessity?

4 A. I beg your pardon?

5 Q. Would you concede that you -- that All
6 American began operating in the Garrison, Utah
7 exchange before it even filed for a Certificate of
8 Public Convenience and Necessity?

9 A. I believe the evidence shows that.

10 Q. And at that time the only terminating switch
11 in Garrison was Beehive's, correct?

12 A. I believe we were -- we started leasing
13 services from them. Switching services.

14 Q. Did you pay Beehive under a lease agreement
15 for their switch?

16 A. I don't know that there was ever any payment
17 for that service.

18 Q. You referred to it, I believe, as a Harris
19 2020. Am I stating that --

20 A. Originally they had Harris 2020 switches.
21 And at some point in time they were replaced with the
22 new up-to-date Taqua switches.

23 Q. Was it a Taqua switch different then the one
24 that you installed in August of 2008?

25 A. A different switch but the same model, I

124

(March 3, 2010 - All American - 08-2469-01)

1 believe.

2 Q. Same model?

3 A. Yeah.

4 Q. And that you, I believe you said -- stated
5 earlier is a very up-to-date, contemporary switch?

6 A. Yes.

7 Q. With a large capacity, correct?

8 A. Yes.

9 Q. And, but you also testified that the Harris
10 2020 was older equipment?

11 A. Yes.

12 Q. And had some problems?

13 A. It was older equipment.

14 Q. But do you recall that that -- the Harris
15 2020 was the first switch that you used when you first
16 got into that exchange?

17 A. I don't know when they were changed. I
18 couldn't attest to the date that they changed their
19 switches.

20 Q. Did Beehive own that switch that you utilized
21 when you first began operating in Garrison, or did Joy
22 Enterprises?

23 A. Prior to our purchasing and installing our
24 own switch, it was Beehive's switch.

25 Q. Were you aware that Joy Enterprises had

125

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 leased switches to Beehive as early as 1998?

2 A. I don't know.

3 Q. So it could have been that that was actually
4 a switch that was owned by Joy Enterprises?

5 A. I don't know that.

6 Q. But you never paid anybody for the lease of
7 that switch though?

8 A. What you're saying is very confusing to me.
9 I have no knowledge of what you're talking about.

10 Q. In response to some questions that
11 Mr. Ginsberg asked -- they were pertaining to federal
12 and state sales taxes on telecommunications services.
13 You testified that in fact All American has not
14 collected taxes from its customer. And has not then
15 submitted those taxes to either any federal or state
16 agency; is that correct?

17 A. I don't know exactly what taxes Mr. Ginsberg
18 was referring to, but I know that we've never
19 collected any tax. And as I testified earlier, we're
20 reviewing our procedures. In what we will be in the
21 future I believe will probably be billing some amount
22 of money to Joy Enterprises so that we can collect and
23 pay the appropriate taxes.

24 Q. But up to this point in time you have neither
25 collected the taxes from your customer, nor have you

126

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 been -- submitted those to any state or federal
2 agency?

3 A. I don't believe that there were any taxes
4 that were applicable up to this time.

5 Q. And that is because, sir, as I recall your
6 testimony, there -- you provide no telecommunications
7 services to Joy, so therefore there's no
8 telecommunications taxes due; is that correct?

9 MR. GUELKER: I would object to the extent it
10 mischaracterizes his testimony.

11 MR. PROCTOR: Well, your Honor --

12 THE COURT: Overruled.

13 Q. (By Mr. Proctor) Is that true?

14 A. Restate the question.

15 Q. Your testimony in response to Mr. Ginsberg's
16 question was that there -- in any event, there were no
17 taxes due on telecommunications services because you
18 don't provide telecommunications services to Joy
19 Enterprises?

20 A. No, that's not true.

21 Q. Well, there was a question about whether or
22 not you provide Joy Enterprises with the capability of
23 making an outgoing call. Do you remember that line of
24 questions from Mr. Ginsberg?

25 A. Yes.

127

(March 3, 2010 - All American - 08-2469-01)

1 Q. And you don't provide them with that
2 capability, do you?

3 A. That capability is available. I also
4 testified I don't believe they've ever used it.

5 Q. Do you still have a DPU-5, Exhibit 5? It's
6 the First Set of Interrogatories from AT&T?

7 A. Yes.

8 Q. Interrogatory 8, it's -- and the answer that
9 I'm concerned about is on page 8.

10 A. I've got it. Oop, no, I've got the wrong
11 one.

12 Q. Excuse me, sir. You have the wrong one? I
13 had the wrong one, and I apologize.

14 MR. GINSBERG: It's actually the second set.

15 MR. PROCTOR: It's the second set, but it is
16 page 8.

17 THE COURT: So DPU-6?

18 THE WITNESS: That's --

19 MR. PROCTOR: DPU-6, that's correct. I'm
20 sorry, sir.

21 THE WITNESS: DPU Exhibit 7?

22 MR. PROCTOR: Six.

23 THE WITNESS: Six? Page 8? Okay.

24 Q. (By Mr. Proctor) And the answer (e), it's
25 question 8(e):

128

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 "Whether you provided the Free
2 Calling Provider" --

3 And by the way, that is Joy Enterprises,
4 correct.

5 A. Yes.

6 Q. -- "with the capability to place
7 outgoing calls to all entities receiving
8 local exchange services in the same
9 local exchange."

10 And your response was, subject to objections:

11 "Plaintiff states that its answer is
12 'no.'"

13 You do not provide Joy Enterprises with the
14 capability to place outgoing calls, do you?

15 A. The question didn't say outgoing calls. It
16 said outgoing calls in the local exchange -- in the
17 same local exchange.

18 Q. So Joy Enterprises -- would you concede that
19 Joy Enterprises is doing business in the State of
20 Utah?

21 A. I would -- yes.

22 Q. Okay. So Joy Enterprises could not call the
23 Department of Transportation barn that is across the
24 street in Garrison, Utah?

25 A. Well, as I had stated, stated earlier, I

129

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 don't believe they've ever used any outgoing services.

2 Q. Well, we know that they -- nobody has ever
3 used outgoing services.

4 A. Okay.

5 Q. Okay?

6 A. Yes.

7 Q. But the question is whether or not they could
8 if they wanted to. And the answer that you gave --

9 A. Technically, they could right now do that.

10 Q. What would be required for them to
11 technically do that?

12 A. Well, they'd have to, they'd have to dial
13 out. Their system would have to call out.

14 Q. Then the answer that you provided in the
15 Southern District of New York's Federal Court was in
16 error?

17 A. Well, we're getting really picky here. As
18 I've testified earlier, there was, there was no
19 outgoing calls. And that's a fact. I, I don't
20 believe there ever were any outgoing calls.

21 Q. Well, the annual reports that you have filed
22 with the Division of Public Utilities and the Public
23 Service Commission reflect many millions of calls in
24 and no calls out, don't they?

25 A. Yes.

130

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. Now, you've stated that All American has
2 provided a benefit to the consumers in Garrison, Utah.
3 Do you still believe that?

4 A. As I testified earlier, yes.

5 Q. Do you provide any service to any other
6 person, family, business in Garrison, Utah?

7 A. I believe our presence there has been a
8 benefit to the community at large. I believe our
9 presence and our relationship with Beehive Telephone,
10 and Joy Enterprises's relationship previously with
11 Beehive Telephone, has been a benefit to the
12 community.

13 It's enriched the community. Brought income
14 into the community. It's self-evident by the results
15 of what's taken place in the growth that Beehive
16 Telephone has enjoyed. And the added benefit they've
17 given all of their customers.

18 That is evidence of the fact that our
19 association has benefited, and I hope will continue to
20 benefit the community.

21 Q. So the answer to my question is no, you
22 provide no service to any business or residents in
23 Garrison, Utah?

24 A. We provide service to Joy Enterprise.

25 Q. Nobody else, right?

131

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. That's, that's the only one we provide
2 service to right now.

3 Q. Now, as far as in income and general economic
4 growth in Garrison, Utah, Mr. Goodale, you don't
5 collect any money from Beehive, even though you bill
6 them. You don't pay any money to Joy Enterprises, you
7 say. We'll talk about that later. And Beehive
8 doesn't pay you anything.

9 What economic benefit does All American's
10 presence in Garrison, Utah provide to the residents of
11 Garrison, Utah?

12 A. Currently we have no economic benefit at all.
13 Not even for ourselves.

14 Q. Let's talk about your relationship then with
15 Beehive. Now, in your rebuttal testimony -- may I
16 characterize your reference to the advice you received
17 from your counsel about your right to do business in
18 Garrison as criticism?

19 A. I beg your pardon?

20 Q. Horrible question. Let me ask it again. And
21 let's just start out with this. The attorney you're
22 referring to is Ms. Hooper correct?

23 A. In part, yeah.

24 Q. What other lawyers were involved?

25 A. Yeah.

132

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. What other lawyers were involved?

2 A. Well, I, as I mentioned, we had work done by
3 CHR.

4 Q. Right.

5 A. Judith had -- we had services with -- we had
6 done by Judith.

7 Q. And that was for the, the proceedings here in
8 the Utah Public Service Commission it was Ms. Hooper,
9 correct?

10 A. As I recall, that's -- initially, yes.

11 Q. And she filed the original petition for a
12 certificate in April of '06, correct?

13 A. I believe the record shows that.

14 Q. And the record would also show she filed the
15 amended in August of '06 and the second amended in
16 February of '07, correct?

17 A. I believe that to be correct.

18 Q. And during -- throughout this time Ms. Hooper
19 was general counsel for Beehive, correct?

20 A. I believe so.

21 Q. And she was actually an officer of Beehive,
22 correct?

23 A. I don't know that.

24 Q. And then when it came time to file the
25 interconnection agreement, that was also done by

133

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Ms. Hooper, correct?

2 A. I believe so.

3 Q. Do you have a copy of the interconnection
4 agreement? Do we have one we could provide to the
5 witness?

6 MR. GUELKER: I believe it's, I believe it's
7 part of his direct testimony. I believe it's attached
8 as an exhibit.

9 MR. PROCTOR: Does he have his direct --

10 Q. (By Mr. Proctor) Sir, do you have your
11 direct testimony with you at the witness stand?

12 MR. PROCTOR: I think you're right,
13 Mr. Guelker.

14 MR. GUELKER: I believe it's Exhibit 1 to his
15 direct testimony. But because of the double-siding,
16 it's on the back.

17 MR. PROCTOR: Okay.

18 Q. (By Mr. Proctor) Do you have your direct,
19 sir?

20 A. Yes.

21 Q. Would you please turn to page 3 of the
22 interconnection agreement that you attached?

23 A. Okay.

24 Q. At the very top of the page there's a:
25 "Whereas, All American is authorized." Now, you

134

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 signed this interconnection agreement on June the 7th
2 of 2007, did you not?

3 A. I believe the record shows that.

4 Q. And you read it, and certainly on behalf of
5 All American authorized it --

6 A. Right.

7 Q. -- by that signature?

8 A. Yes.

9 Q. Would you read the first whereas?

10 A. "All American is authorized by the
11 Utah Public Service Commission, and has
12 filed -- and the Federal Communications
13 Commission to provide CLEC service and."

14 Q. Now, at that time did you know, were you
15 aware of, the limits to your certificate to operate as
16 a CLEC within the State of Utah?

17 A. At that time I don't recall that I was aware
18 of the fact that I wasn't complying with the law
19 completely. And that we had to re-file our
20 application.

21 Q. Were you aware of the terms and conditions of
22 the Certificate of Public Convenience and Necessity
23 that this Commission issued to All American in March
24 of 2007?

25 A. Yes.

135

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. And was one of those a exclusion of All
2 American from certain rural --

3 A. Yes.

4 Q. -- territories? And that included Garrison
5 exchange?

6 A. Yes.

7 Q. And it inclu -- certainly any Beehive
8 exchange, correct?

9 A. Not specifically, but yes.

10 Q. Okay. And that was because your attorney, on
11 your behalf, had expressly, in the February applica --
12 amended application excluded those territories,
13 correct?

14 A. It's quite obvious I've gotten -- I've
15 received some bad counsel. I am aware of that. And
16 I, I'm not very proud of the fact that I've done some
17 things that have not been to the best interest of our
18 own company. By far more troublesome than I'd ever
19 imagined.

20 And I'm here today trying to rectify that.
21 And I have competent counsel that's trying to help me
22 get through this. And I believe to be excellent
23 counsel. I have never been perfect. I don't profess
24 to be perfect today. But I do profess to try and do
25 what is right to meet the letter of the law, if not

136

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 exceed the minimum of the letter of the law. And get
2 through this and get on with the process of being
3 productive.

4 You know, we keep rehashing what I did wrong
5 and what wasn't done just right. I want to know what
6 I can do right now to make things right and move
7 forward.

8 Q. With that, let me go through some things
9 really quickly then. I think we can skip over some of
10 this. At least it's on the record now.

11 In November of 2008 had you asked CHR
12 Solutions to assist you in acquiring certain access
13 abbreviations, company name, or company identifier,
14 location identifiers, from Telcordia.

15 A. I don't recall. I probably had.

16 Q. Were they able to acquire those numbers for
17 All American and it -- in it -- in the Garrison, Utah
18 exchange?

19 A. We have a exchange -- we have a prefix of our
20 own there.

21 Q. With the addition of a prefix of your own in
22 Garrison -- well, let me back up.

23 Did CHR Solutions ever question whether or
24 not you were lawfully operating in -- well, I should
25 say this. Did CHR Solutions ever ask All American

137

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 whether it had a Certificate of Public Convenience and
2 Necessity to operate in Garrison, Utah?

3 A. No.

4 Q. Did they ever comment to you that you needed
5 one?

6 A. No. I fired them, remember?

7 Q. Sometime after November '0 -- 2008?

8 A. Not soon enough, but yes.

9 Q. Is it possible, sir, that you fired them
10 because they were asking questions like that?

11 A. On the contrary. I felt like I had received
12 poor advice.

13 MR. PROCTOR: Your Honor, can I just have a
14 moment?

15 THE COURT: Sure.

16 Q. (By Mr. Proctor) Mr. Goodale, I'm trying to
17 speed this up because of your statements.

18 What accounting system did All American agree
19 to utilize when it applied for a Certificate of Public
20 Convenience and Necessity with this Commission?

21 A. I don't recall.

22 Q. Does All American utilize generally-accepted
23 accounting principles?

24 A. Yes.

25 Q. Do you have an understanding/working

138

(March 3, 2010 - All American - 08-2469-01)

1 knowledge of those principles in connection with the
2 treatment of bad debt?

3 A. Vaguely.

4 Q. In your 2007 Annual Report Amended as of
5 March 1, 2010, there was an allowance taken for bad
6 debt. Do you recall that?

7 A. Yes.

8 Q. That bad debt was approximately \$2.2 million?

9 A. I believe that that's right.

10 Q. Over what period of time had that bad debt
11 been accrued on the company's books?

12 A. I'm not really sure.

13 Q. And also in your 2007 Annual Report you
14 disclosed total Utah operation revenues of \$2,510,497.

15 A. Okay.

16 Q. Were those -- and you were -- you list them
17 on the annual report as Interstate Special Access.
18 Would those be the terminating access revenues that
19 were generated from Joy Enterprises' business?

20 A. Yes.

21 Q. And was any part of the \$2.5 million in
22 revenues paid to Joy Enterprises?

23 A. I don't recall.

24 Q. Sir, you're the president of the company,
25 correct?

139

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. What was the time period?

2 Q. Well, all I know is you filed this in
3 March 1st of this year.

4 A. Okay.

5 Q. It covered the 2007 annual year.

6 A. Okay.

7 Q. And, and, and I can show you this if you
8 would like. But you disc -- oh, All American
9 Telephone revenues from Utah operations are listed as
10 \$2,510,497. Was any part of that money paid to Joy
11 Enterprises, pursuant to the oral contract that you
12 have with them?

13 A. I don't believe so.

14 Q. And those would be cash receipts?

15 A. No. That's accrual income.

16 Q. But the first 2007 report that you prepared,
17 at least, was on a cash basis, correct?

18 A. I believe that's so.

19 Q. And this is the first 2007 Annual Report you
20 prepared. Revenues from Utah operations, total, was
21 \$2,662,609. So that's the cash receipts.

22 A. I don't -- those numbers don't add up.
23 I -- maybe I'm incorrect in the -- that might have
24 been accrual. It seems that they're very similar in
25 amounts.

140

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. So you really don't know, then, how these
2 numbers were determined?

3 A. My CPA, Donald Surratt, prepared all of that
4 information. And I talked to him briefly about some
5 of these things, but I'm not really familiar with the
6 detail. I do know that we haven't collected
7 \$2 million in cash.

8 Q. Well, let's talk about your 2008 gross
9 revenues from Utah operations, \$4,181,780; would that
10 sound correct?

11 A. Could have been, yeah.

12 Q. And you also disclosed in the same annual
13 report -- let's see. Excuse me just one moment,
14 sorry.

15 With respect the 2008 revenues, you reported
16 to the Commission that there was a roughly
17 \$2.8 million overhead allocation. Was that payments
18 to Joy Enterprises?

19 A. No.

20 Q. To whom was that paid?

21 A. We've had excessive legal costs that have
22 taken up the majority of our budget.

23 Q. But I understood that Joy Enterprises has
24 been funding the litigation for you. That's what you
25 testified to this morning.

141

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. Yeah, I said they've contributed to that.

2 Q. So that would be professional fees?

3 A. Without, um. Probably would be, yeah.

4 Q. Well, in your 2008 report, on your Statement
5 of Income and Retained Earnings, as of December 31,
6 2007, your professional fees expense is listed as \$28.
7 And as -- at the end of 2008 your professional fees
8 expense was listed as zero. Is that correct?

9 A. The expenses were taken somewhere else, then,
10 because I know we had attorney fees. How they were
11 accounted for, I'm not -- I don't really recall.

12 Q. Sir, your office is --

13 A. I'll tell you this, though.

14 Q. Please.

15 A. Nobody's given any bill to All American
16 Telephone that hasn't been paid. We are responsible
17 for taking care of our obligations.

18 And our accounting that you see there,
19 those -- that accounting has been prepared for our
20 internal use. And my CPA is very diligent about
21 making sure that everything is taken care of properly.

22 Q. I have no doubt about that.

23 A. And I -- that's why I, I have him, because I
24 don't do a good job of that. I'm not an accountant.

25 Q. But on the other hand, you have not paid

142

(March 3, 2010 - All American - 08-2469-01)

1 Beehive for this --

2 A. By mutual understanding there have been no
3 exchange of monies in the last several years between
4 Beehive and All American because of the legal quagmire
5 we're in and the fact that everybody's income's all
6 messed up.

7 Q. And that would also be true of All American
8 and Joy Enterprises?

9 A. Absolutely.

10 Q. Okay. One of the things that you've said in
11 your testimony and then here today, sir -- and you can
12 accept or not my summary -- but that in fact Beehive
13 is -- or excuse me, All American is providing a
14 service to the customers, telephone users in the State
15 of Utah; is that correct?

16 A. Yes.

17 Q. All American is involved in a lawsuit in
18 Federal Court here in Utah that was initiated by
19 Beehive in suing Sprint for unpaid access charges.
20 Sprint filed a counter -- a claim, third-party claim
21 against All American, correct?

22 A. Yes.

23 Q. And All American counterclaimed against
24 Sprint for unpaid access charges. Roughly \$3 million,
25 as I recall?

143

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. I believe so.

2 Q. By the way, have you disclosed that
3 \$3 million account on your accounts receivable for
4 2008?

5 A. You'd have to ask Mr. Surratt.

6 Q. It would appear -- if you did it would appear
7 on your annual report, would it not?

8 A. I believe it would have.

9 Q. And the present AT&T amount that you -- or
10 excuse me. The amount you claim from AT&T in the
11 Southern District of New York is somewhere in the
12 neighborhood of 6 to 8 million dollars, correct?

13 A. Over a period of three years.

14 Q. Right. And so that, too, would appear as an
15 accounts receivable if, in fact, that's the way it's
16 being treated, correct?

17 A. I would assume so.

18 Q. And it would appear on the annual report?

19 A. Yes.

20 Q. All right. So as a consequence of the
21 litigation and an out -- a partial outcome in Federal
22 Court here in Utah in the Sprint/Beehive/All American
23 litigation, Beehive announced that it would disconnect
24 all incoming and not, not terminate or
25 initiate/originate any calls to or from the Sprint

144

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 network, correct?

2 A. That's what I've heard.

3 Q. And Sprint fought that. You understand that?

4 A. Yes.

5 Q. And the judge in that case did not refuse to
6 enter, in fact, a restraining order to prohibit that?

7 A. That's what I've been told.

8 Q. And so Beehive disconnected its system from
9 Sprint calls -- or I should say calls to the Sprint
10 network and calls from the Sprint network, correct?

11 A. I believe they -- initially they take a
12 message to all Sprint callers telling them that Sprint
13 hadn't paid their access fees to terminate calls in
14 the Beehive territory, and suggested that people get
15 another carrier.

16 Q. They did. I, I've heard that same thing.
17 But Beehive did, in fact, terminate any calls to or
18 from Beehive customers utilizing the Sprint network,
19 correct?

20 A. That's what I've been told.

21 Q. And that would have affected All American,
22 correct?

23 A. Yes.

24 Q. And your Garrison, Utah exchange?

25 A. Yes.

145

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. And one of the core disputes in that federal
2 litigation with Sprint and Beehive and All American is
3 the fact that All American is not certificated -- does
4 not have a Utah Public Service Commission certificate
5 to operate in the Garrison exchange; isn't that true?

6 A. That's why we're here today.

7 MR. PROCTOR: Thank you, Mr. Goodale.
8 Appreciate it very much.

9 THE COURT: Thank you.

10 Let's see. Qwest. Any questions by Qwest
11 for Mr. Goodale?

12 MR. THOMSON: Thank you, your Honor. Yes, we
13 have a few questions.

14 CROSS EXAMINATION

15 BY MR. THOMSON:

16 Q. Afternoon, Mr. Goodale. I want you to go to
17 your direct testimony and go to page 11 if you would,
18 please.

19 And once you get to page 11 I want you to
20 look at lines 196 through 198. Do you see that?

21 A. Yes.

22 THE REPORTER: Sorry, sir, you need to speak
23 into the microphone when you answer.

24 MR. GUELKER: You have to pull the mike --

25 THE COURT: Can you pull the microphone up to

146

(March 3, 2010 - All American - 08-2469-01)

1 you, Mr. Goodale, please?

2 MR. THOMSON: Mr. Goodale, can you bring the
3 mike closer?

4 THE COURT: Thank you.

5 THE WITNESS: Yes.

6 Q. (By Mr. Thomson) Isn't it true that the long
7 distance companies end up paying to connect those
8 distant employees you talk about in that sentence on
9 conference calls?

10 A. The long distance companies are representing
11 and providing a service to their customers that they
12 charge money for. And those customers are paying for
13 a service that the carriers charge.

14 They buy long distance service from Qwest.
15 They pay Qwest for the long distance service. And
16 part of that long distance service gives them the
17 right to call our telephone numbers.

18 Q. That's not the question I asked, Mr. Goodale.
19 Let me ask it again. Isn't it true that the long
20 distance companies are the ones paying to allow
21 companies and their employees to participate in
22 meetings from the comfort of their own office?

23 A. As a part of the service that they charge for
24 they have to pay a terminating fee, yes. If that's
25 what the question was. That's.

147

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. That's what I was asking. And let's stay on
2 page 11 and go to lines 203 through 209. And can you
3 agree with me that you're giving some examples of
4 services that your company and Joy might provide?

5 A. Yes.

6 Q. Isn't it true that another use that you don't
7 describe there is for adults seeking to engage in
8 adult chat?

9 A. Yes.

10 Q. And would you agree with me that adult chat
11 is a euphemism for sexual chat?

12 A. No.

13 Q. You wouldn't agree with that?

14 A. No.

15 Q. That's not your understanding what "adult
16 chat" means?

17 A. Adult chat in this case means that the
18 service is not intended to provide access to minors.
19 It's to limit this service. It's for adults.

20 Q. Okay. Why don't you describe for me, then,
21 the process by which All American allows concerned
22 parents to request that calls from their home line to
23 adult chat lines that Joy Enterprises runs be blocked.

24 A. I don't know that there's any specific
25 mechanism to do that that you referred to. I've never

148

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 had any complaints or questions about that. I do know
2 that Joy Enterprise, I've been told, provides a
3 monitoring function to block callers that are
4 objectionable. That are not community friendly.

5 I would refer to people that make obscene
6 gest -- gestures. And to minors that come into the
7 service. And they block the phone numbers.

8 Q. Let me make sure I understand your answer.
9 You're telling this Court -- the Commission that
10 you're not aware of any process that Joy has to allow
11 parents to block access by their minor children to
12 adult chat?

13 A. When you term -- when you use the terminology
14 "adult chat" you're referring to sexual --
15 sexually-orientated services. And I don't believe
16 those to be sexually-orientated services. So you're
17 asking a question about something that's entirely
18 different than what we're talking about.

19 Q. No. I'm asking a question to you,
20 Mr. Goodale, about whether you would agree with me
21 that there is no process in place that would allow
22 parents to contact Joy Enterprises, or your company,
23 to have access by their minor children to those
24 numbers blocked. Isn't that a fact?

25 A. If, if a parent had a question that's --

149

(March 3, 2010 - All American - 08-2469-01)

1 about our service I'm sure they could find a means to
2 contact us and voice their concern about the question.

3 Q. You haven't set up anything to allow that to
4 happen though, have you?

5 A. We don't have any -- All American doesn't
6 have any mechanism set up special for that purpose, as
7 we do not provide or our customers do not provide
8 adult services that you make reference to.

9 Q. So you're denying that there's any sexual
10 nature to any of this chat that goes on in these chat
11 rooms provided by Joy Enterprises?

12 A. I'm telling you that there's --

13 Q. Are you denying that; yes or no?

14 A. It's not a yes/no answer.

15 Q. It sure is. You're either denying it or
16 you're not.

17 A. I'm telling you that there's no services that
18 are directed to sexually-orientated conversation. If
19 people are in the open forum conversation, they talk
20 about what they want to talk about. Just like you do
21 when you call somebody else.

22 Q. You've been a director --

23 A. I don't know if the phone company sits in and
24 listens to your conversation to determine whether it's
25 adult orientated or not.

150

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. Mr. Goodale, you've been a director of Joy
2 Enterprises, haven't you?

3 A. I'm associated with Joy Enterprises.

4 Q. Have you been a director?

5 A. No. Not a director. I would say I've been
6 an officer, but. I guess it's just terminology.

7 Q. Okay. Let's talk a little bit about All
8 American's charges to Joy. I don't want to re-plow
9 this ground too much, but I want to ask you some
10 specific questions that I don't think Mr. Ginsberg
11 covered or Mr. Proctor.

12 And before I get into that, it's true that
13 All American doesn't have a local exchange tariff
14 filed with the Utah Public Service Commission?

15 A. That's why we're here.

16 Q. And All American has never billed Joy
17 Enterprises a subscriber line charge, has it?

18 A. No.

19 Q. And All American has never billed Joy the
20 federal USF fee, has it?

21 A. No.

22 Q. All American provides common line services to
23 Joy, doesn't it?

24 A. Yes.

25 Q. Finally, All American has never billed

151

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 carrier common line charges to Joy, has it?

2 A. No.

3 Q. Now, you've testified here today and in your
4 direct or rebuttal testimony -- I can't recall which
5 right now -- that it's not your intent to compete with
6 Beehive upon your entry into Beehive's service
7 territory, correct?

8 A. Correct.

9 Q. So do you support Beehive using its monopoly
10 status in its exchanges to charge long distance
11 companies for transiting all of Joy's traffic?

12 A. I beg your pardon?

13 MR. GUELKER: Objection, assumes facts not in
14 evidence.

15 THE COURT: Overruled.

16 MR. THOMSON: I'll state the question again.

17 Q. (By Mr. Thomson) Do you support Beehive
18 using its monopoly status in its exchanges to charge
19 IXCs for transiting all of Joy's traffic?

20 A. I don't oppose it.

21 (There was a cell phone interruption.)

22 THE WITNESS: Excuse me.

23 Q. (By Mr. Thomson) Now let's go to page 18 of
24 your direct, Mr. Goodale. And let me know when you
25 get there, please.

152

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Specifically I'd like you to look at
2 lines 347 and 348. Do you see those?

3 A. Yes.

4 Q. Isn't it true that the IXCs are the entities
5 that are paying for the public's use of the
6 heavily-demanded service that you talk about there?

7 A. As part of the service they provide to their
8 customers and charge for, yes. I'll go further to say
9 I believe that all of the IXCs profit from the service
10 in terminating calls into this -- these exchanges.

11 Q. And that testimony is based on your
12 examination of IXC profits?

13 A. No. But the Federal Trade Commission has
14 posted on their website information that's been filed
15 by the interexchange carriers pertaining to their
16 gross revenues for services, and the total minutes of
17 service that they provide.

18 And I believe when you take one and divide it
19 by the other, it comes out to about \$0.10 a minute.

20 Q. But you're not an accountant, are you?

21 A. That's just basic math.

22 Q. Now, you've never provided local exchange
23 service to anyone in Utah, correct?

24 A. Joy Enterprises.

25 Q. But if what you're providing to Joy

153

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Enterprises is local exchange service you're doing it
2 without the benefit of a tariff, or a contract, or any
3 other document filed with this Commission, correct?

4 A. The evidence shows that.

5 Q. Now, All American has never purchased any
6 unbundled network elements from Qwest, has it?

7 A. No.

8 Q. All American never leased facilities and
9 network from any CLEC that was competing in Qwest's
10 service territory in Utah?

11 A. No.

12 Q. All American never provided any customer in
13 Qwest's local service territory in Utah with resold
14 local exchange services?

15 A. We never did state that.

16 Q. Is that true?

17 A. Yes.

18 Q. The Taqua switch is a Class 5 switch,
19 correct?

20 A. Yes.

21 Q. So you could provide local exchange services
22 through the Taqua?

23 A. Yes.

24 Q. So even though you stated in your amended
25 application that you intended to compete with Qwest in

154

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 its service territory for local exchange customers you
2 didn't really intend to do that, did you, Mr. Goodale?

3 A. At sometime, possibly.

4 Q. But you've never done that, to date?

5 A. To date we have never done that.

6 Q. And even though you were aware in 2008 that
7 there was an issue whether you were technically
8 authorized to operate in Beehive's territory, you
9 didn't cease your operations there, did you?

10 A. No. We tried to cure that issue. That's why
11 we're here.

12 Q. Yeah, but you initially argued that there
13 should be no hearing in this case, didn't you?

14 A. Through reasons that haven't been talked
15 about, yes.

16 MR. THOMSON: Your Honor, I don't think I
17 have any further questions.

18 Thank you, Mr. Goodale.

19 THE COURT: All right, thank you.

20 AT&T, please. Mr. Evans.

21 CROSS EXAMINATION

22 BY MR. EVANS:

23 Q. Thank you, Mr. Goodale. You can -- I'm over
24 here in the corner, next --

25 A. Oh, okay.

155

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. I know it's a little backwards for you, but
2 bear with us. And I think most of my questions have
3 been covered by others. I'm curious about when you
4 first came to Utah. When was that, what year?

5 A. I don't recall. Probably 1946.

6 Q. No, I mean into Beehive's territory and set
7 up business.

8 A. I believe it was in 1994.

9 Q. And you were with Joy Enterprises at the
10 time?

11 A. Yes.

12 Q. And you began doing telecommunications
13 services there or put in your switch -- no, began
14 providing as All American in what year?

15 A. Yes.

16 Q. 2005?

17 A. Yes.

18 Q. What was it that caused you to form All
19 American and start operating as All American?

20 A. It seemed as though it was a good opportunity
21 to continue operations under the new umbrella of All
22 American Telephone, and that's what we decided to do.

23 Q. And you chose -- why did you choose to set up
24 there in Garrison rather than in, say, Qwest
25 territory?

156

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. The access revenue. The rates.

2 Q. Because the rates in rural telco areas were
3 better?

4 A. Yes.

5 Q. Would you have done that business model in
6 Qwest's territory?

7 A. At a different rate.

8 Q. Could you do it today in Qwest's territory?

9 A. If I wanted to, yes. I imagine.

10 Q. But you chose to serve where your certificate
11 specifically disallowed, right?

12 A. That's where we were -- that's where our
13 service was establish -- established. And I've tried
14 to rectify the --

15 Q. Well, you keep saying that you tried to
16 rectify it. But only after you got into litigation
17 about it; isn't that true?

18 A. Well, you know, we're going over the same
19 thing again.

20 Q. No. I'm just asking --

21 A. Over again.

22 Q. I'm just asking, isn't it true that you
23 didn't seek to rectify it until you were in litigation
24 about the problem?

25 A. When I realized it became a problem, I

157

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 started trying to take care of it.

2 Q. You first realized that you were operating
3 outside your certificate when you were sued for it?
4 Or when you were in litigation about it? That's the
5 first -- you're telling me that's the first you
6 realized it?

7 I think you told Mr. Proctor you understood
8 that you weren't authorized to operate in Beehive's
9 territory.

10 A. Well.

11 Q. Are you telling me something different now?

12 A. No, I'm not. When, when you refer to
13 "litigation" you're referring to the AT&T litigation?

14 Q. Yes.

15 A. We have taken measures to correct the problem
16 since that litigation started.

17 Q. But not before then? Even though you knew
18 that you were not authorized, correct?

19 A. I believe the record shows that.

20 Q. Okay, thank you. How are you, how are you
21 measuring minutes, or do you measure minutes of
22 traffic at your switch?

23 A. The minutes -- the MOUs are determined by, I
24 believe tenths of a second in usage.

25 Q. And are you measuring those minutes at your

158

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 switch, or does Beehive measure them for you?

2 A. The billing minutes are measured by the
3 tandem. The tandem records the connection and the --
4 in the call, and provides the CBRs with the billable
5 minutes.

6 Q. So when you say "at the tandem" you mean by
7 Beehive?

8 A. United -- or Utah Fiber Network.

9 Q. Right. You're not measuring any minutes at
10 your switch?

11 A. We measure minutes at our switch. We measure
12 minutes and try to compare them apples to apples with
13 what we get from the billed minutes.

14 Q. But you're not billing off of those minutes,
15 right?

16 A. No.

17 Q. Does -- did -- you co-located there with
18 Beehive at Garrison. Did they provide technical
19 assistance in your co-location?

20 A. Yes.

21 Q. Did -- have you -- have they, over the years,
22 provided technical assistance with your equipment?

23 A. Yes.

24 Q. And that of Joy Enterprises as well?

25 A. No. I don't believe so.

159

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. And just let's, there was some discussion
2 with Mr. Proctor about Beehive having not paid All
3 American for invoiced services. Do you recall that?

4 A. Yes.

5 Q. Have they never paid you anything?

6 A. I don't believe that to be the case. I
7 believe they have paid prior to the issues that were
8 brought up.

9 Q. I don't understand "the issues that were
10 brought up."

11 A. The billing references that were brought into
12 evidence. Prior to that, I believe there were some
13 billings that were paid for.

14 Q. Over, over -- were they paying for billings
15 over a long period of time?

16 A. What's a long period of time?

17 Q. I don't know. From 2005 to 2006 and '7, were
18 they paying?

19 A. Possibly. That may be correct. I'm not, I'm
20 not sure of the timing.

21 Q. Do you know when they stopped paying?

22 A. I believe these records indicate the last
23 payments that were made.

24 Q. Take a look at the records and tell me when
25 that would have been, please.

160

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. This bill in question was for April of 2006.
2 And the other one's for November 2006. So it was, I
3 believe, 2006.

4 Q. They were paying up until 2006?

5 A. I believe so. As I recall.

6 Q. Were you reporting those revenues in 2006
7 to -- for purposes of taxes?

8 A. I believe all of our revenues have been
9 reported.

10 Q. To whom?

11 A. The appropriate authorities that request.

12 Q. Did you file --

13 A. We filed a report with the FCC, a 941, and
14 the state reports that (inaudible.)

15 THE REPORTER: I'm sorry, sir. The state
16 reports? You to speak into the microphone, I can't
17 hear you.

18 THE WITNESS: The state reports that were
19 referenced earlier.

20 Q. (By Mr. Evans) Well, the first state report
21 you filed here was in 2007 and you only filed that
22 last week, right? You didn't file anything in 2006 or
23 for 2005, yet you were operating here, right?

24 A. I don't know, I don't know that they haven't
25 been filed.

161

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. You don't know that they have been either,
2 right?

3 A. No.

4 Q. And your -- in your -- what's your position
5 in the company?

6 A. President.

7 Q. And you're the manager of this company?

8 A. Yes.

9 Q. It's your expertise, your managerial
10 expertise that we're relying on, and you can't, you
11 can't tell me whether they filed --

12 A. I would have to consult with my staff to give
13 you an exacting answer.

14 Q. Who's your staff?

15 A. Among them is Donald Surratt, who's the
16 person I would consult with about this issue.

17 Q. Your agreement with Joy Enterprises is a
18 verbal agreement; is that what we're to understand?

19 A. Yes.

20 Q. There's nothing in writing?

21 A. Yes.

22 Q. And it's a -- you've characterized it as a
23 marketing agreement?

24 A. Yes.

25 Q. And the idea is that you pay the access

162

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 charges over to Joy, and they do marketing for All
2 American. Is that it?

3 A. I wouldn't characterize it that way.

4 Q. Well, how would you characterize it? Give me
5 a concise, clean characterization what that agreement
6 is.

7 A. Joy Enterprise invest in marketing that would
8 bring traffic into an All American switch. And we pay
9 a marketing fee for that.

10 Q. And how -- what kind of marketing do
11 they -- did they do? Are they doing for you?

12 A. As I had testified earlier, I don't believe
13 any has been done in several years.

14 Q. How about before several years, what were
15 they doing?

16 A. As I testified earlier, I believe there was
17 television and print advertising.

18 Q. Advertising Joy's services but not All
19 American, right?

20 A. Right.

21 Q. So when you say a marketing agreement you
22 mean Joy promotes their own services, not that they
23 promote All American's?

24 A. They promote their service using All American
25 Telephone numbers. All American Telephone numbers

163

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 carry the traffic into our switch.

2 Q. Okay. So, so they're promoting their own
3 service?

4 A. Their promotions, yes.

5 Q. And how was, how was the amount of payment to
6 be -- how is the amount of payment to be determined
7 under that agreement?

8 A. The payment terms, like I had mentioned
9 earlier, it really -- they've been suspended for quite
10 a while because of there's no payment involved.

11 Q. Yeah, you did testify to that earlier. But
12 when they were in effect, what was the verbal
13 agreement in terms of how the payments were to be
14 calculated and for -- on what basis?

15 A. Monthly, on monthly payment would receive a
16 collected revenue from interexchange carriers.

17 Q. So it was -- how much of that collected
18 revenue was paid over to Joy?

19 A. Depending on the volume, anywhere -- volume
20 of traffic, anywhere from 20 --

21 Q. Well, but it's -- is it a verbal agreement?

22 A. It's a verbal agreement.

23 Q. Then tell me the percentages. Let's be
24 precise. If you were Joy and it was --

25 A. I don't, I, I don't know that it was ever

164

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 referred to in percentages, but more in per minute.
2 Half a penny per minute, penny per minute, penny
3 and-a-half per minute. That's.

4 Q. Well, but it's your verbal agreement. Who
5 else would know? It's not con -- it's not reduced to
6 writing, is it?

7 A. Correct.

8 Q. So I'm asking, how were payments to Joy
9 structured. And you're unable to tell me?

10 A. I -- the, the payment -- I'm telling you.
11 The payments were structured on a rate per minute.

12 Q. What rate per minute?

13 A. And that rate fluctuated, depending on the
14 volume of traffic.

15 Q. Okay. Where was the first break in the
16 fluctuation in the volume of traffic?

17 A. Oh, um. This is confusing, because -- we're
18 talking about Nevada and Utah?

19 Q. We're talking about Utah.

20 A. We're talking about Utah --

21 Q. Uh-huh (affirmative.)

22 A. -- and the agreement was not Utah specific,
23 but overall specific. It was overall for Utah and
24 Nevada.

25 Q. So there was no specific agreement for the

165

(March 3, 2010 - All American - 08-2469-01)

1 Utah company A.A. and the Utah Joy Enterprises. Is
2 that what you're telling me?

3 A. I'm telling you that the agreement was a
4 blanket agreement for Utah and Nevada. It included
5 Utah traffic as well as Nevada traffic.

6 Q. And how were the two combined?

7 A. Joy Enterprise used numbers in Nevada and
8 they used numbers in Utah.

9 Q. Do you have any accounting for the payments
10 that were made to Joy Enterprises?

11 A. Yes.

12 Q. Have you produced it in this proceeding?

13 A. I don't know that in this particular time
14 period there was any accounting to produce.

15 Q. You have no accounting?

16 A. I, I don't know that any was required to be
17 produced there.

18 Q. Okay. Let me ask you just a little bit about
19 public interest. And I also don't want to -- I'm -- I
20 don't have many questions about it, but I do have one.

21 You assert in your testimony, your direct at
22 page 17, that the public benefits because of the
23 services that Joy Enterprises provides under its
24 business arrangement with Beehive?

25 A. Yes.

166

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. And you go into some discussion about a free
2 exchange of ideas. And the ability of people to
3 conference and -- for free, right?

4 A. I believe so.

5 Q. Isn't that a service that's provided by Joy?

6 A. The customer of All American, yes.

7 Q. But it's not a service -- all All American is
8 providing is connectivity, isn't it?

9 A. We're making that available.

10 Q. Wasn't it available before All American came
11 to Beehive's territory?

12 A. It's been available with other forms of
13 competition for years.

14 Q. I didn't understand the answer.

15 A. Conference calling services have been
16 available to the public for years.

17 Q. Yeah. And it's not -- All American is not --

18 A. It's not a unique, unique new thing that we
19 invented.

20 Q. Sure. No. All American's not even offering
21 conference call services, are you?

22 A. We're providing connectivity so that Joy
23 Enterprise can.

24 Q. But you are not offering them, are you?

25 A. No.

167

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. Thank you. So the public benefit of
2 conference call services isn't something that All
3 American is bringing to us in Utah, is it?

4 A. Yes, it is.

5 Q. Are you providing conference call services?

6 A. Our customers are.

7 Q. You're not, are you?

8 A. Our customers are.

9 Q. I don't want to get argumentative.

10 A. Then why did you bring it up?

11 Q. Because I don't think --

12 MR. GUELKER: David, just answer the
13 questions, please.

14 THE COURT: You're here just to answer the
15 questions.

16 Q. (By Mr, Evans) It's Joy that's providing it,
17 not All American. It's, it's Joy. There's no public
18 benefit by providing a line. Not -- you're not
19 providing conference calling?

20 A. It's accessible to, it's accessible to
21 customers in Utah as a result of us providing this
22 service to Joy Enterprise.

23 Q. I understand your argument. I understand
24 that statement. I'm just pointing out that it's Joy
25 that provides the conference calling.

168

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Let's talk about the next one for a minute.
2 You say that your presence will not result in a loss
3 of customers to Beehive or otherwise diminish
4 Beehive's ability to service existing customers; is
5 that correct?

6 A. Yes.

7 Q. And will result in increased income to
8 Beehive; is that correct?

9 A. I believe so.

10 Q. Do you know whether it has?

11 A. It has in the past.

12 Q. In the past when? Before All American came
13 to town?

14 A. And since then they are billing for
15 transport.

16 Q. Until the IXCs stopped paying?

17 A. I believe the only one that's ceased paying
18 them is, from the best of my knowledge, Sprint. I'm
19 not sure.

20 Q. So that increased income to Beehive you're
21 saying is a public benefit?

22 A. It allows Beehive to provide services that
23 are a public benefit.

24 Q. Well, only if Beehive reinvests that revenue.

25 A. The record shows that they have continuously.

169

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. Well, what record?

2 A. The record of growth. The fact that they
3 expanded their service and laid 350 miles of --

4 Q. You don't -- do you have access --

5 A. -- fiber network.

6 Q. Do you have access to their books?

7 A. I can only tell you what I've learned from
8 what they tell me. What I've learned from Beehive.

9 Q. But you don't know that that -- that those
10 investments are coming from dollars from Joy
11 Enterprises' presence in the territory, do you?

12 A. According to them, I have been told they are.

13 Q. But that's hearsay, isn't it? You don't know
14 that?

15 A. I do. When you're dealing with honorable
16 people, they tell you things, you rely on their --

17 Q. So that, that's what you're relying on?

18 A. -- their word. And I've never known them to
19 tell me something that wasn't true. I believe what
20 they tell me to be true. And I know that they're
21 getting paid for transit, so I know they have to be
22 making money as a result.

23 Q. Do you think, is there any requirement or
24 regulation that they reinvest that money into their
25 infrastructure?

170

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. I --

2 Q. Are you aware of anything like that?

3 A. I'm not familiar with all of the details of
4 ILEC regulations and accounting, but I do know that
5 they re -- they have -- they do reinvest their money
6 in their companies.

7 Q. And if All American weren't there in Garrison
8 and Beehive was, and -- I'm sorry, Joy Enterprise was
9 still there, wouldn't Beehive get the same revenues
10 for the same traffic to Joy, even in the absence of
11 All American?

12 A. I'm not sure.

13 Q. They'd get more, wouldn't they? Because
14 they'd get the terminating piece as well?

15 A. I believe so.

16 Q. All right. So it isn't All American that
17 creates the benefit of revenue from Joy's presence in
18 the territory, is it? Beehive would do better without
19 All American there, is what you've just said.

20 A. No, I didn't say that.

21 Q. Okay. We'll leave it to the record to speak
22 for that.

23 I noticed that in your application for a
24 certificate Exhibit F is missing. I haven't found one
25 in any of the different versions of the application.

171

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Do you have a copy of the application in front of you?

2 MR. GUELKER: I believe it's attached to your
3 direct testimony, David. But Exhibit F was filed
4 under -- it doesn't include Exhibit F either. It just
5 indicates it was filed under seal.

6 MR. EVANS: Yeah. Well, I -- let me tell you
7 this. That I spent quite some time here yesterday
8 with the Public Service Commission staff going through
9 drawers looking for paper that is absent. And one of
10 those was Exhibit F.

11 And I didn't find it anywhere. It's
12 apparently not filed under seal, at least as far as
13 they know.

14 Q. (By Mr. Evans) And I was hoping that you
15 could tell me what was in that five-year projected --
16 projection of expected operations?

17 A. No, I can't.

18 Q. You can't? Okay.

19 A. There's too many uncertainties to make any
20 five-year projection of operations. I can only make
21 some rash assumptions.

22 Q. Well, you listed a lot of things that you'd
23 be providing, a lot of services that you'd be
24 providing in Qwest's territory. And so far you've
25 said today that you're not providing those, correct?

172

(March 3, 2010 - All American - 08-2469-01)

1 A. Correct.

2 Q. I mean, no, no local exchange service?

3 A. Other than to Joy Enterprises.

4 Q. Well, you call it local exchange service. Do
5 you know the definition in Utah of local exchange
6 service?

7 A. I'm listening.

8 Q. I'm not telling you, I'm asking you if you
9 know.

10 A. I, I'm not sure.

11 Q. There's a statutory definition of local
12 exchange service in Utah. Do you know what it is?

13 A. No.

14 Q. Okay. You're not providing originating
15 access though, are you?

16 A. No.

17 Q. Or basic access lines, direct inward
18 dialing -- direct outward dialing? Are you providing
19 that?

20 A. I could, but I don't have anyone using it.

21 Q. You don't, you don't offer it, do you?

22 A. If, if it was -- if Joy Enterprise wanted to
23 use it, they would be able to.

24 Q. Well, I, I'm trying to match this up with
25 your five-year plan. And of course you don't have a

173

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 five-year plan, so it's really hard to know whether
2 you've met the goals of the five-year plan.

3 But as of today you're not providing any of
4 the services that you listed in your application for a
5 certificate, are you?

6 A. I don't believe that to be true. I --

7 Q. Which one do you think you're offering?

8 A. I told you we were offering connectivity.

9 Q. But I --

10 A. We're offering switching service. And
11 that's --

12 Q. I didn't see those listed in your
13 application, though. You're offering services that
14 weren't listed there.

15 As I go through the list of what's in your
16 application I don't see that you're offering any of
17 them. Do you?

18 A. (No audible response.)

19 MR. EVANS: I think I have no more questions.
20 Thanks.

21 THE COURT: Thank you.

22 Mr. Mecham, URTA, please.

23 MR. MECHAM: Thank you.

24 ***

25 ***

174

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

1 CROSS EXAMINATION

2 BY MR. MECHAM:

3 Q. I'm sorry, Mr. Goodale, but I'm also over
4 here. I represent the Utah Rural Telecom Association.
5 I just have a few questions. I'm curious about All
6 American itself. You're president since 2007, as I
7 recall your testimony, correct?

8 A. Yes, sir.

9 Q. Are there other officers?

10 A. Yes.

11 Q. Are they listed anywhere in the records thus
12 far?

13 A. I don't know if they are.

14 Q. Are they -- do you have a vice president?

15 A. We have a -- yes.

16 Q. I'm -- is it a full structure? Who are they?

17 A. Wesley Doucet, and Donald Surratt is the
18 secretary/treasurer.

19 Q. And you have directors. You're a director,
20 as I recall?

21 A. Yes.

22 Q. And Joy Boyd is a director?

23 A. Yes.

24 Q. And are there others?

25 A. That I've mentioned, Gayla Doucet and Wesley

(March 3, 2010 - All American - 08-2469-01)

1 Doucet.

2 Q. And that's the full board?

3 A. That's it.

4 Q. Okay. And how many employees are there?

5 A. About four.

6 Q. And are they all in Nevada?

7 A. No. We have contract services for technical
8 service in Nevada and Utah.

9 Q. So independent contractors who service your
10 switch --

11 A. If --

12 Q. -- in Garrison?

13 A. Yes.

14 Q. And as far as the record reflects thus far,
15 it appears that All American's been doing business in
16 Utah since 2005; is that correct?

17 A. Yes.

18 Q. I don't know if you've had an opportunity to
19 read the Qwest testimony by Ms. Eckert, but she said
20 that she believes that you've been doing business
21 since 2004, anyway, as All American.

22 A. I don't believe that to be correct.

23 Q. Okay. We'll explore that with her, then, I
24 guess.

25 You also indicated in your direct testimony

176

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 that you've been involved in telecommunications
2 industry for the last 20 years. You've been president
3 since January of '07 -- '07, as we've established.
4 Who was your predecessor at All American as president?

5 A. We -- I was involved in the origination of
6 the All American Telephone.

7 Q. And were you president from the outset?

8 A. Yes.

9 Q. And how long has All American been in
10 existence?

11 A. I believe since '75.

12 Q. Since 1975?

13 A. Excuse me, no.

14 Q. I'm just saying, woo.

15 A. Yeah, I'm way off there. I'd have to check
16 the exact year, but it -- as I recall, it was '95 or
17 '97 that it was originated.

18 Q. So it coexisted with Joy?

19 A. Uh-huh (affirmative.)

20 Q. Was Joy also in existence at the same time as
21 All American then?

22 A. Prior to All American, Joy was in existence.

23 Q. Okay. And in the 20 years of your
24 experience -- I know you've been associated as a
25 director with Joy?

177

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. Yes.

2 Q. And you are involved with a free conference
3 calling entity, as I understand it?

4 A. Global Conference Partners, yes.

5 Q. And what else, what else has -- what else is
6 on your resumé for the last 20 years?

7 A. Intermedia Telecommunications Services.
8 Telemedia.

9 Q. And where are they; are they all located in
10 Nevada?

11 A. Yes, they're Nevada corporations.

12 Q. So all of your experience basically is in
13 Nevada and Utah?

14 A. We've contracted services with telephone
15 companies in England. We had -- Megamedia did
16 business in England for, oh, ten years.

17 And we did business with our -- Intermedia
18 did business with PAETEC Communications for close to
19 ten years. Telemedia did business with TelePacific in
20 California and Nevada for quite some time.

21 Q. Okay. Anything else?

22 A. Similar services prior to that.

23 Q. Okay. Now, your original application for a
24 Certificate of Public Convenience and Necessity was
25 filed April 19, 2006. You had been operating at least

178

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 since 2005. What prompted that initial filing?

2 What was it that made All American feel like
3 it was time to file a certificate if you were
4 operating the exact same services for a year or two
5 before in the state?

6 A. We wanted to become in compliance with the
7 law.

8 Q. Did you know about the law beforehand?

9 A. I, I -- be -- before we filed I realized we
10 needed to change what we had done.

11 (Pause.)

12 MR. MECHAM: I think that's it, your Honor,
13 thank you.

14 THE COURT: All right, thank you.

15 Then let's take a 15-minute break. About
16 3:15 is when we'll come back.

17 (A recess was taken from 2:58 to 3:17 p.m.)

18 MR. THOMSON: Your Honor, while we're waiting
19 can I raise an administrative matter, please?

20 THE COURT: Yeah.

21 MR. THOMSON: I've consulted with most of the
22 parties, except for Mr. Guelker, and have asked that
23 Lisa Hensley Eckert be allowed to testify out of turn
24 as the next witness. And the parties have indicated
25 that they're fine with that, although I haven't talked

179

(March 3, 2010 - All American - 08-2469-01)

1 to Mr. Guelker about that.

2 MR. GUELKER: That's fine with me.

3 THE COURT: Okay. That's fine.

4 MR. THOMSON: Thank you, your Honor.

5 THE COURT: Do you want to just take care of
6 that right now. We can take care of that?

7 MR. PROCTOR: Right now, is that appropriate?

8 THE COURT: Do we need the witness here?

9 MR. PROCTOR: No. No, your Honor. And I
10 omitted to do it at the conclusion of my cross
11 examination, and that was to move for the admission of
12 OCS-1.

13 That was the government record from the
14 Division of Corporations with respect to Joy
15 Enterprises, Inc., a Nevada corporation, in the
16 absence of any record within the State of Utah that
17 they are a business qualified or authorized to
18 transact business in the State of Utah.

19 Now, I think the, again, the document itself
20 does not require foundation. Its relevance was
21 established by Mr. Goodale pointedly stating, Yes, Joy
22 Enterprises is doing business there in Garrison. And
23 the nature -- his description of the nature of Joy
24 Enterprises' Utah operations for a number of years
25 now, in addition to the contractual obligations,

180

(March 3, 2010 - All American - 08-2469-01)

1 albeit somewhat vague and problematic, but
2 nevertheless definitive obligations that go all the
3 way back to Beehive.

4 Under that circumstance I believe that it is
5 relevant to establish that one of the basic
6 requirements of a corporation to -- or a sole
7 proprietor, or a d/b/a, or a limited partnership to do
8 business here, as was recognized by this Commission's
9 requirements for an application for a Certificate of
10 Public Convenience and Necessity, is that you're
11 authorized to do business in the State of Utah.

12 Joy Enterprises is not. And for that reason
13 I would move to admit OCS-1.

14 THE COURT: All right.

15 You had an objection previously, Mr. Guelker?

16 MR. GUELKER: I did have an object -- I did
17 have an objection, your Honor. First of all, the
18 general objection that it wasn't produced prior. I
19 think it was just yesterday or maybe late the day
20 before, I can't quite remember. But it was after the
21 prehearing conference in any matter, so I would object
22 to it on that grounds.

23 And second, I frankly don't see the relevance
24 of this. You know, there's no issue -- the fact that
25 one of the -- that Mr. Goodale's customer may or may

181

(March 3, 2010 - All American - 08-2469-01)

1 not be authorized to do business in the State of Utah,
2 I don't see -- really see how that's relevant to the,
3 to the issues of the public interest and whether they
4 have the necessary abilities to provide the services
5 they're providing. So on those grounds I'd object.

6 THE COURT: All right. I'm gonna overrule
7 the objection. I am gonna admit OCS-1.

8 (Exhibit No. OCS-1 was admitted.)

9 THE COURT: And let's begin with redirect.

10 REDIRECT EXAMINATION

11 BY MR. GUELKER:

12 Q. Mr. Goodale, just a few follow-up questions
13 I'd like to ask you. I'd like to go back to towards
14 the beginning of today, when you were being asked
15 questions by Mr. Ginsberg. And one of the questions
16 was whether you had paid any Utah State taxes. And it
17 frankly wasn't clear which taxes he was referring to.

18 But in any event, are you aware of any
19 obligation on the part of All American to pay any Utah
20 State taxes?

21 A. No, not at the present. As I testified, we
22 are looking into the issue of charging for
23 connectivity, and charging the taxes on it, and paying
24 the appropriate taxes.

25 Q. Okay. And your company is domiciled in

182

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Nevada, correct?

2 A. Yes, sir.

3 Q. Okay. And are you aware of any obligation to
4 pay any Utah State income taxes or State business
5 taxes?

6 A. All of the taxes required by the State of
7 Nevada have been paid.

8 Q. How about, are you aware of any obligations
9 to pay any other state taxes -- that is business
10 taxes, income taxes -- in the State of Utah?

11 A. No.

12 Q. Okay. Has your CPA advised you that you have
13 any obligation to pay such taxes?

14 A. No.

15 Q. Okay. And if you, in fact, became aware of
16 an obligation to pay such taxes would you make sure
17 that that's done properly?

18 A. Absolutely.

19 Q. Okay. I'd like you to refer then to the --
20 since it's been admitted -- OCS Exhibit 1. Was that
21 was -- just what was admitted?

22 THE COURT: Right.

23 Q. (By Mr. Guelker) Okay. And in there I
24 believe this indicates that Joy Enterprises, Inc. is
25 not registered with the Department of Corporations,

183

(March 3, 2010 - All American - 08-2469-01)

1 and it's been characterized that this means it's not
2 authorized to do business.

3 Do you know, based on your experience in the
4 industry, is it common for a telecommunications
5 carrier to determine whether or not its business
6 customers are, in fact, licensed or otherwise
7 authorized to do business in the State of Utah?

8 A. I, I've, I've never heard of it.

9 Q. Okay. All right. All right.

10 Another issue that was raised by Qwest was
11 you testified about your ability to block calls that
12 were, that were coming in to All American and then
13 being terminated with Joy. And I believe you
14 indicated that you don't have any specific procedures
15 set up to block those types of calls.

16 Let me ask you, though, are you aware, does
17 Joy Enterprises have any protocols in place to monitor
18 or block calls made to -- that are terminated with --
19 in its conference services?

20 A. Yes.

21 Q. Thank you. Could you describe those, please?

22 A. If a minor calls and a monitor detects a
23 minor on the, the services that we've mentioned
24 earlier, being open-forum conversation, they would
25 block that minor from calling so that you can't call

184

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 back, and then have them disconnected.

2 If somebody calls that is disruptive or
3 promoting some activity that would be undesirable,
4 they have the ability to mute that caller so nobody
5 else can hear 'em. If somebody's making racial
6 comments and slanderous comments they can block the
7 call so nobody can hear it.

8 That's the kind of thing that they protect,
9 and we -- the quality of the service that they're
10 providing.

11 Q. Okay. Another question I have is there was
12 some testimony that you -- that All American did not
13 decide to, to seek an amendment to its existing
14 certificate till it became involved in litigation with
15 AT&T in New York.

16 Who, in fact, initiated that litigation? Who
17 sued who in that case?

18 A. Oh, we, we initiated the litigation. We
19 start -- we sued AT&T.

20 Q. So in other words, it wasn't a situation
21 where you were sued and then decided to seek an
22 amendment to your certificate in reaction to being
23 sued?

24 A. Not, not at all.

25 Q. Okay.

185

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 MR. GUELKER: That's all the questions I have
2 right now, Mr. Goodale.

3 THE WITNESS: Thank you.

4 THE COURT: All right, thank you.

5 Any questions, Mr. Ginsberg, just limited to
6 redirect?

7 MR. GINSBERG: No.

8 THE COURT: Mr. Proctor?

9 MR. PROCTOR: Yes, thank you. And this
10 relates to the income tax questions that were asked
11 just by Mr. Guelker. Your Honor, in our second set of
12 interrogatories -- or data requests, Request No. 18
13 was:

14 "Has All American filed Utah
15 corporate franchise and income tax
16 returns for any tax year or period? If
17 so, provide a copy of the return."

18 The response was:

19 "All American states that this
20 request seeks information that is
21 irrelevant to the issues raised in All
22 American's complaint. Based on this
23 objection, All American will not respond
24 to this request."

25 Then they come on a redirect and ask

186

(March 3, 2010 - All American - 08-2469-01)

1 basically the same question, only phrased in terms of
2 a legal conclusion, Are you obligated to file those
3 returns.

4 My concern is that, had they answered that
5 question as Mr. Goodale did today when the -- in the
6 response, it would have given me an opportunity to
7 make an inquiry of the Utah State Tax Commission to
8 find out whether or not indeed there is an obligation
9 for a company that has a certificate to operate a
10 business in the State of Utah has to file a return to
11 calculate what Utah-related revenues are. And any tax
12 obligations upon them.

13 I could have prepared. As it is, I'm stuck
14 with a legal conclusion from a lay witness, asked on
15 redirect, after they refused to answer it in
16 discovery. I believe that the -- either his questions
17 with respect -- or his answers with respect to tax
18 returns should be stricken, or -- and this would be my
19 preference -- I am permitted to do the necessary
20 preparation and submit a written interrogatory to this
21 witness that base -- that explores whether or not they
22 are, in fact, obligated to file Utah corporate income
23 tax returns.

24 MR. GUELKER: And is this a redirect
25 question?

187

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 THE COURT: Well --

2 MR. PROCTOR: That's what I'm asking. For
3 that, that result.

4 THE COURT: Do you have a response?

5 MR. GUELKER: I'd like to, yes. First of
6 all, he didn't provide a legal conclusion. His
7 testimony is that he was -- he's not aware of any
8 obligation. He hasn't been advised of any obligation.
9 But that if he was obligated, he would pay that.

10 And the reason it was raised, it was to
11 clarify -- this wasn't something we raised for the
12 first time on redirect. This was something that was
13 raised in response to a line of questioning from
14 Mr. Ginsberg that was a bit unclear with respect to
15 taxes and obligations to pay taxes.

16 And so that's why we brought it up in that
17 context. We didn't raise it affirmatively, it was
18 brought up by him. But there's no legal conclusion.
19 And I guess that's a legal argument they can make, but
20 it's -- I -- he wasn't saying, We don't have an
21 obligation.

22 He said, I'm not aware of any obligation,
23 I've not been advised of such, so that's why we
24 haven't paid any.

25 THE COURT: I'm gonna sustain the objection.

188

(March 3, 2010 - All American - 08-2469-01)

1 I'm gonna allow you to -- what do you need in order to
2 question him about the taxes?

3 MR. PROCTOR: Well, let me see if I can do it
4 right now.

5 THE COURT: Okay.

6 MR. PROCTOR: And then I can argue with a
7 brief.

8 THE COURT: Just limit it to Utah State tax.

9 MR. PROCTOR: Absolutely, absolutely.

10 RE CROSS EXAMINATION

11 BY MR. PROCTOR:

12 Q. Mr. Goodale, has, at any time, All American's
13 Utah operations generated any revenues?

14 MR. GUELKER: Objection, your Honor, this
15 goes beyond the scope. I thought we were talking
16 about obliga -- legal obligation to pay taxes.

17 THE COURT: Well, but his, his issue as he
18 read that response to the interrogatory was that --

19 Read me the -- I don't have that last line.

20 MR. PROCTOR: "All American states
21 this request seeks information that is
22 irrelevant to the issues raised in All
23 American's complaint. Based on this
24 objection, All American will not respond
25 to this request."

189

(March 3, 2010 - All American - 08-2469-01)

1 And it pertained to Utah corporate franchise
2 and income tax returns for any tax year or period.
3 Mr. Ginsberg's questions, of course, related to
4 telecommunication taxes to its customers.

5 THE COURT: It's, it is beyond the scope of
6 redirect, but I'm -- I think -- I'm pretty sure
7 Mr. Goodale raised the issue in his direct testimony,
8 Mr. Ginsberg added on cross. So I am gonna allow
9 Mr. Proctor just to ask that question. And let's --
10 beyond the scope of redirect, let's limit it to that.

11 MR. PROCTOR: Okay. I hope I can repeat it.

12 Q. (By Mr. Proctor) Mr. Goodale, has at any
13 time during the period -- any period that All American
14 has conducted its operations, conducted its business
15 in Utah, have you received any revenues from any
16 source, from -- for that business?

17 A. I would say yes.

18 Q. From what source, and how much?

19 A. I would have to refer to my books. I don't
20 have that information available.

21 Q. And you did not file, at any time, for any
22 year, a Utah Corporate Franchise and Income Tax
23 Return?

24 A. No.

25 MR. PROCTOR: That's all I need, thank you.

190

(March 3, 2010 - All American - 08-2469-01)

1 THE COURT: Okay.

2 Mr. Evans, any questions?

3 MR. EVANS: Nothing on recross.

4 THE COURT: Mr. Thomson?

5 MR THOMSON: No thank you, your Honor.

6 THE COURT: URTA?

7 MR. MECHAM: No, thank you.

8 THE COURT: Follow up Mr. Guelker?

9 MR. GUELKER: Nothing else.

10 THE COURT: Okay. All right. Thank you,
11 Mr. Goodale.

12 And let's go next to Qwest's witness, please.

13 MR. THOMSON: Thank you, your Honor. Qwest
14 calls Lisa Hensley Eckert to the stand.

15 (Ms. Hensley Eckert was sworn.)

16 LISA HENSLEY ECKERT,
17 called as a witness, having been duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. THOMSON:

21 Q. Good afternoon Ms. Hensley Eckert. Would you
22 state your full name for the record, please?

23 A. My name is Lisa Hensley Eckert,
24 H-e-n-s-l-e-y, E-c-k-e-r-t.

25 Q. What is your business address?

191

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. 1801 California, 47th Floor, Denver, Colorado
2 80202.

3 Q. And for whom do you work?

4 A. I am in the Public Policy Department at
5 Qwest.

6 Q. And in what capacity are you employed by
7 Qwest?

8 A. I am the director of inter-carrier
9 compensation issues.

10 Q. Do you have a copy of what's been marked as
11 Qwest Exhibits 1 and 2 with you today?

12 A. I do.

13 Q. Let's talk about Qwest Exhibit 1 first. Did
14 you cause that testimony labelled as Qwest Exhibit 1
15 to be filed?

16 A. I did.

17 Q. And if I ask -- or do you have any
18 corrections or revisions to make to that testimony at
19 this point?

20 A. I do not.

21 Q. If I asked you the questions posed in your
22 testimony under oath today, would your answers be the
23 same?

24 A. They would.

25 MR. THOMSON: Your Honor, Qwest moves the

192

(March 3, 2010 - All American - 08-2469-01)

1 admission of Qwest Exhibit 1.

2 THE COURT: No objections?

3 MR. GUELKER: I do have -- I do have an
4 objection as to relevance and the scope of the
5 testimony. And I referred to this in my opening
6 statement. As I read Ms. -- as I read Ms. Eckert's
7 testimony, the primary topic she'll be discussing is
8 this issue of so-called traffic bumping.

9 And frankly, we don't think this -- the issue
10 of -- this traffic -- so-called traffic bumping issue
11 is relevant to this proceeding. It isn't relevant to
12 the public interest. And it shouldn't be injected in
13 this context.

14 And I can, if you would like me to give more
15 argument, I can. I know there was a speaking
16 objection to argument earlier.

17 THE COURT: No, that's okay.

18 Any response, Mr. Thomson?

19 MR. THOMSON: No, your Honor. I'd just note
20 for the record that Qwest filed this testimony on
21 February 12th, and this is the first objection we've
22 had to it.

23 THE COURT: Over -- I'm gonna overrule the
24 objection. I think it is relevant to several of the
25 questions we're trying to figure out with regards to

193

(March 3, 2010 - All American - 08-2469-01)

1 the CPCN in general.

2 (Exhibit No. Qwest-1 was admitted.)

3 Q. (By Mr. Thomson) Ms. Hensley Eckert, do you
4 also have a summary of your testimony that's been
5 marked as Qwest Exhibit 2?

6 A. I do.

7 Q. And did you cause that summary to be
8 prepared?

9 A. I did.

10 Q. Is it accurate, to the best of your knowledge
11 and belief?

12 A. It is.

13 MR. THOMSON: Your Honor, at this time I'll
14 move the admission of Qwest Exhibit 2.

15 THE COURT: Any objections? All right.

16 MR. GUELKER: For the record I'll make the
17 same objection, but.

18 THE COURT: Okay. I'm gonna admit Qwest
19 Exhibit 2.

20 (Exhibit No. Qwest-2 was admitted.)

21 MR. THOMSON: Thank you, your Honor.

22 Q. (By Mr. Thomson) Ms. Hensley Eckert, would
23 you briefly describe the salient points of your
24 summary?

25 A. Well, first and foremost I think that there

194

(March 3, 2010 - All American - 08-2469-01)

1 is no public interest reason for All American to be
2 allowed to expand its CPCN into the Beehive territory.
3 The reasons that All American has provided for
4 basically claiming that there is a public interest I
5 believe are not compelling. And I do not believe that
6 they do, in fact, reach a public interest standard.

7 All American has, in fact, been engaging in
8 unauthorized operations for a number of years. And
9 this Commission requires a precedent -- has a, has a
10 precedent which requires that All American justify why
11 it deserves this waiver. And they have not done so.

12 All American has a longstanding history of
13 billing for traffic in the State of Utah. The first
14 time that Qwest was contacted by All American was
15 actually in 2004, requesting that 72 numbers be
16 released from a fraud block.

17 I think it's important to understand that a
18 fraud block would be put in place in a situation where
19 a number had had a num -- had complaints on it from
20 our customers -- generally 800 customers, PBX
21 customers -- whose systems were being hacked to access
22 these particular numbers.

23 And so beginning in around 1996, 1998 time
24 frame these fraud blocks would have been put in place
25 when the numbers were being run by Beehive.

195

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 In June of 2007 All American sent a letter to
2 the FCC claiming that two other numbers were still
3 being blocked by IXCs. Those were 435-855 numbers,
4 which according to all of our records were Beehive
5 numbers, but they were claimed by All American at that
6 time.

7 These 435-855-3 and 5-range numbers are
8 primarily party lines, which is a euphemism for adult
9 chat lines.

10 MR. GUELKER: Objection, foundation.

11 THE COURT: Overruled.

12 MR. THOMSON: Your Honor, the summary has
13 been admitted.

14 THE COURT: Overruled.

15 THE WITNESS: The mere fact that Beehive
16 itself does not oppose All American's petition
17 provides evidence that Beehive is, in fact, a party to
18 this scheme.

19 Now, I have called this a traffic pumping
20 scheme. This is the same type of setup that we've
21 seen in other states. In particular, Iowa, where we
22 had a traffic pumping case where the Iowa Board ruled
23 that traffic pumping was, in fact, an unreasonable
24 practice.

25 And it has been called access stimulation as

196

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 well as traffic pumping at the FCC, where the FCC did
2 find in the Farmers Merchant case that this behavior
3 was an unreasonable practice.

4 In addition, based on some of the testimony
5 that we've heard today, Qwest was originally surprised
6 to learn that the Utah Rural Telecom Association was
7 not opposing this, since they've opposed all other
8 CLEC applications into rural territories.

9 But based on Mr. Goodale's testimony, if
10 50 percent of their income is based on this traffic,
11 it's no longer surprising that they are not opposing
12 this.

13 In addition, I think I also mentioned that a
14 number of these party lines were, in fact, adult
15 content. In my testimony I do provide one example of
16 a Google search which shows that these are, in fact,
17 adult chat lines.

18 I have also done a number of calls over the
19 last three years, basically test calls to see what
20 exact -- what exact content is on these lines. And
21 I've not found anything different from what is in that
22 number.

23 MR. THOMSON: Your Honor, at this time Qwest
24 releases the witness for cross examination.

25 THE COURT: All right. Mr. Guelker?

197

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 (There was a cell phone interruption.)

2 MR. GUELKER: Just one moment.

3 CROSS EXAMINATION

4 BY MR. GUELKER:

5 Q. Thank you, Ms. Eckert, for your testimony.
6 Just a few follow-up things I'd like to ask you about.
7 If you could turn to page 97 -- or excuse me, line 97
8 of your testimony. You state that Commission -- on
9 line 97:

10 "Commission precedent requires that
11 All American justify why it deserves a
12 waiver of the Commission's current
13 policy of enforcing the rural
14 exemption."

15 What precedent were you referring to there?

16 A. The fact that the Commission has denied other
17 CLECs' entry into rural areas.

18 Q. Okay. And so when you use the term "rural
19 exemption," what are you referring to there?

20 A. I am referring to the Utah rural exemption,
21 not the FCC rural exemption.

22 Q. Okay. And what's your understanding of the
23 Utah rural exemption?

24 A. That there are strong public interest reasons
25 for CLECs not entering into rural ILEC territory.

198

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. Okay. And where would I find those public
2 interests?

3 A. I think you have to look at 52-8b-2.1 in
4 subsection 4.

5 Q. Okay. And what is the public interest stated
6 there?

7 A. I would --

8 Q. You're talking about the public -- you're
9 talking about the public policy behind the rural
10 exemption. What is the public policy behind the rural
11 exemption?

12 A. Primarily protection of USF.

13 Q. Okay. And where do you derive that knowledge
14 from?

15 A. From perusing the statutes.

16 Q. Perusing the statutes? What did you in fact
17 review in order to review your test -- to prepare your
18 testimony? What statutes did you review?

19 A. I reviewed 54-8b-2.1.

20 Q. Okay. Did you review any others -- did you
21 peruse any other statutes?

22 A. I perused a lot of statutes.

23 Q. Okay. What other Utah statutes did you
24 peruse in preparation for your testimony?

25 A. I don't recall.

199

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. Okay. Did you peruse any of the state
2 regulations that might pertain to -- or help might
3 explain -- or might help explain Section 54-8b-2.1?

4 A. I believe that I did, but I don't recall
5 those off the top of my head.

6 Q. All right. Do you recall if you reviewed
7 Utah Administrative Rule 746-349-8, which places
8 conditions on a CLEC's obligation to provide those --
9 to provide services to those requesting it?

10 A. Without looking at it I couldn't tell you if
11 I did or not.

12 Q. Okay. But you certainly didn't incorporate
13 that administrative rule into your testimony, did you?

14 A. I did not.

15 Q. Okay. Is there a reason why you would not
16 have or you just don't remember --

17 A. (Moves head from side to side.)

18 Q. -- you did? Okay.

19 Now I'd like you to turn to page 10 of your
20 testimony, line 208. Just so it's clear, you
21 acknowledge that All American's services to Joy
22 Enterprises is not likely to increase Beehive's need
23 for State USF funds; is that correct?

24 A. I don't believe that it would.

25 Q. Tell me about this -- the search that you

200

(March 3, 2010 - All American - 08-2469-01)

1 did. This Google search that you referred to. How
2 many numbers did you put in for this search? It
3 wasn't, it wasn't clear to me. Because I think you
4 said -- well, let me just ask you that. How many
5 numbers did you put into your search?

6 A. Well, what I did was basically an NTA and XX
7 search. So I wasn't putting in specific 435-855-1111,
8 or 1112, 1113. No, I actually dialed those numbers.
9 What I did on my Google search is I would put in the
10 words "chat rooms," "adult content," "adult chat," and
11 then do 435-855, and then get the universe of -- the
12 plethora of Google responses.

13 Q. Okay. You only include one in here, though.
14 Is this the only one that you found?

15 A. It is not the only one that I found. It was
16 the only one that I found that when I clicked on the
17 hyperlink didn't put a virus on my computer. And
18 since I was down for two days off of one of the
19 viruses, I chose that I wasn't going to do -- have
20 anybody else who might click on that hyperlink have
21 the same problem that I had.

22 Q. Is there a reason why you didn't print out
23 the page that you referred to and attach it to your
24 testimony?

25 A. I didn't think that it was necessary to do

201

(March 3, 2010 - All American - 08-2469-01)

1 so.

2 Q. Okay. And there are a number of ellipses
3 that are contained in this snippet that you put in
4 here. Is there any way I can determine what was
5 contained, or what were -- what you omitted in those
6 spaces that are marked with ellipses?

7 A. Well, the ellipses are actually from the
8 actual Google search. When you do a Google search
9 they actually -- this is just a screen shot of the
10 Google search. So nothing that I would have put in --
11 I would not have actually removed anything. This is
12 simply a piece of the Google.

13 And if you have an electronic version, there
14 should be a hyperlink in there and you can actually go
15 to the website. Secondly, if you do a Google search
16 on the words "chat rooms," "adult chat rooms," with
17 435-855, this among others will come up. But I do
18 warn you, don't click on the others.

19 Q. Okay. You don't have any indication, though,
20 that this posting or whatever it is was put on there
21 by All American or Joy Enterprises, do you?

22 A. Well, I would doubt that it was put on there
23 by All American. I would think that this was part of
24 the marketing activities of either Joy or Joy's
25 sub-customers, if you will.

202

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. Why do you say that?

2 A. Prior -- in years prior, because I've been
3 tracking traffic pumping for a number of years, there
4 was a, there was a much more intense usage of Internet
5 advertising.

6 And, and so it appeared at that time that the
7 owners of those websites were, you know, companies
8 like, like Audiocom that runs Manhole and companies
9 like that. That would run their websites and put
10 these numbers out on their websites.

11 Over the years there have been fewer and
12 fewer of those.

13 Q. I guess my question was -- maybe I'll just
14 ask it a different way.

15 What -- do you have, do you have any evidence
16 or facts that lead you to believe that Joy Enterprises
17 placed this particular snippet onto the Internet?

18 A. Well, it drives traffic to them.

19 Q. Do you have any facts, though, to show that?

20 A. I wouldn't know who actually put this out
21 there.

22 Q. Okay.

23 A. But it certainly benefits them.

24 Q. Are you familiar with what's known as the
25 NECA pool?

203

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. I am.

2 Q. Okay. And do you know whether Beehive
3 Telephone Company is a member of the NECA pool?

4 A. I am not sure if they are now.

5 Q. Okay. So you, so you don't, you don't know?

6 A. Off the top of my head, I don't know.

7 Q. Do you know if they ever were?

8 A. I believe they were at one time.

9 Q. Okay. Do you know when they entered into the
10 NECA pool?

11 A. The number of companies jump in and out of
12 the NECA pool, depending on their cost basis.

13 Q. Now I'd like you to turn to page 11 of your
14 testimony, line 229. In there you say it's Qwest's
15 understanding that Beehive Telephone has recently
16 started to block traffic coming from Sprint because of
17 a traffic pumping dispute.

18 Isn't it true that the reason Beehive is
19 blocking the traffic is because Sprint isn't paying
20 its bills?

21 A. I don't know what Beehive's reasoning for it
22 was, but they did come to us and ask us to block the
23 traffic as well.

24 Q. Okay. So you, so you say here -- so the
25 truth is you don't really know why Beehive decided to

204

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 block that traffic, do you?

2 A. Well, I know that they were involved in a
3 traffic pumping dispute. And regardless of whether
4 they were blocking it because Sprint wasn't paying
5 their bills or because they were inappropriately
6 billing Sprint is not my business to, to engage in.

7 Q. Fair enough.

8 MR. GUELKER: That's all the questions I
9 have.

10 THE COURT: Thank you, Mr. Guelker.

11 Mr. Ginsberg?

12 CROSS EXAMINATION

13 BY MR. GINSBERG:

14 Q. When you indicated that it wasn't surprising
15 that URTA was supporting the application, is that
16 because URTA is part members or owners of the UFN
17 tandem?

18 A. Yes.

19 Q. And how are they benefitting?

20 A. According to Mr. Goodale, they're --
21 50 percent of their operations are -- or 50 percent of
22 their revenues are based on this traffic pumping
23 traffic.

24 Q. And as far as you know, does most of the
25 traffic go through the UFN tandem?

205

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. According to what Mr. Goodale has said today,
2 that is what I now believe.

3 Q. Do you know who the owners are of the UFN
4 tandem?

5 A. I believe it is a number of rural LECs.

6 Q. Do you know who they are though?

7 A. I do not know.

8 MR. GINSBERG: Okay, thank you.

9 THE COURT: Thank you.

10 Mr. Proctor?

11 MR. PROCTOR: Nothing. Thank you.

12 THE COURT: Mr. Evans?

13 MR. EVANS: Nothing. No thanks.

14 THE COURT: Mr. Mecham?

15 MR. MECHAM: Just a couple, thank you.

16 CROSS EXAMINATION

17 BY MR. MECHAM:

18 Q. Ms. Hensley Eckert, are you aware that the
19 UFN switch -- well, UFN itself is a separate entity
20 from URTA?

21 A. I believe that the members, though, would be
22 also owners of UFN.

23 Q. Are you aware that URTA doesn't own UFN or
24 the switch?

25 A. I believe that the member companies -- I

206

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 think it's about the member companies.

2 Q. Do you recognize they're separate entities?

3 A. They may be separate entities, but it doesn't
4 mean that they don't support their members -- that the
5 URTA wouldn't support its members' desires.

6 Q. And in URTA's testimony do you recognize that
7 URTA has opposed the nunc pro tunc aspect to the
8 application that All American has made?

9 A. Yes.

10 Q. And do you understand as well that the
11 arguments that URTA made in its testimony were in the
12 alternative? In other words, if the Commission were
13 to decide that All American should be allowed to
14 continue, that the Commission should establish the
15 public interest standard?

16 A. I still find that surprising. That you would
17 even argue in the alternative.

18 Q. But you do understand that's the position?

19 A. That may be your position, but it's, um, it's
20 surprising.

21 Q. Well, of course you understand, appearing
22 before various Commissions, that a Commission can --
23 Commissions can do any number of things?

24 A. Yes, they can.

25 Q. So you have to sort of anticipate in the

207

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 alternative what could happen, do you not?

2 A. Sometimes it's wise to do so, sometimes it's
3 not.

4 Q. But you understand that it happens all the
5 time?

6 A. Yes, it does.

7 Q. In an effort to try to cut it off at the pass
8 and at least preserve arguments to another day?

9 A. Or split the baby.

10 THE REPORTER: I'm sorry, what?

11 THE WITNESS: Or split the baby.

12 Q. (By Mr. Mecham) Thank you. Let me just
13 quickly ask. In your testimony on the fraud blocking
14 and the effort by All American to have that removed
15 by -- for 72 numbers?

16 A. Yes.

17 Q. Was it All American who made the request?

18 A. Apparently it was. I have this information
19 from our fraud department. And they said they
20 received a call from an entity known as All American,
21 and that All American was the company that requested
22 the fraud blocks be removed.

23 MR. MECHAM: Okay. Thank you. I have
24 nothing further.

25 THE COURT: Thank you. Mr. Thomson?

208

(March 3, 2010 - All American - 08-2469-01)

1 MR. THOMSON: I have no redirect, your Honor.

2 THE COURT: All right. Thank you Ms. Hensley
3 Eckert.

4 THE WITNESS: Thank you.

5 THE COURT: We can go ahead and move on with
6 the Division. Mr. Coleman?

7 (Mr. Coleman was sworn.)

8 MR. GINSBERG: Are we ready?

9 THE COURT: Go ahead.

10 MR. GINSBERG: Are we all set?

11 THE COURT: Go ahead.

12 CASEY J. COLEMAN,
13 called as a witness, having been duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. GINSBERG:

17 Q. State your name for the record.

18 A. Casey J. Coleman.

19 Q. And how should we -- your direct testimony
20 that you prefiled consists of 21 pages. Could we have
21 that marked as DPU -- what is the next number? Eight,
22 I guess?

23 THE COURT: I think it's eight.

24 MR. GINSBERG: Is that right?

25 THE COURT: Yeah, it would be eight.

209

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 MR. GINSBERG: Okay.

2 Q. (By Mr. Ginsberg) And that's your testimony
3 that you prepared for this proceeding?

4 A. Yes.

5 Q. Do you have any corrections you wish to make?

6 A. No.

7 Q. And if those questions were asked to you
8 today, that would be the testimony you would give?

9 A. Yes.

10 Q. Do you have a summary? And I know at the
11 scheduling conference you were provided the
12 opportunity to provide any rebuttal to the testimonies
13 that had been filed. Can you do that now?

14 A. Yeah.

15 THE COURT: There's no objections to the
16 admission of DPU-8?

17 MR. GUELKER: I do have some objection just
18 to certain aspects of it, your Honor, if I might raise
19 those right now. First -- my first objection, and
20 I'll point to specifics, is that I think Mr. Coleman
21 improperly makes a number of legal conclusions in his
22 testimony regarding appropriate legal standards in
23 this case that I don't think are appropriate for
24 factual testimony.

25 For example, beginning on line 82 of his

210

(March 3, 2010 - All American - 08-2469-01)

1 testimony he testifies that the Commission has more
2 stringent public interest requirements for CLECs
3 seeking to serve in rural territories. Frankly, I
4 don't think it's his place -- well, with respect, that
5 it's his place as a fact witness to testify as to what
6 the Commission's standards are.

7 Likewise, on line 269, in his testimony there
8 he begins to analyze a decision in the Bresnan case,
9 and he provides testimony on what he believes its
10 precedential effect on this case is.

11 Again, the extent to which any Commission's
12 decision has precedential effect is for it to decide.
13 And it's for advocacy, it's not a proper subject for
14 factual testimony.

15 And finally on line -- beginning on line 326,
16 Mr. Coleman opines that the Commission has a different
17 resp -- he -- I should say he opines as to what the
18 Commission's focus should be when evaluating the legal
19 term the public interest.

20 And again, I think that's proper for
21 advocacy, for the Commission to decide, not as factual
22 testimony. And so to that extent I would strike his
23 testimony to the extent he opines as to what the
24 correct legal standards in this case should be.

25 Secondly, I think he also -- Mr. Coleman

211

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 provides improper expert testimony. For example --
2 well, first of all Rule 26, which is applicable to
3 this proceeding, requires that before any expert
4 testimony is made we receive an expert report, the
5 basis, a CV, and a number of other items before that
6 testimony can be admitted.

7 We haven't, we haven't received any of that.
8 All we've received is the prefiled testimony. And
9 beginning on page 31 (sic) and continuing on,
10 Mr. Coleman consistently tries to "analyze the
11 managerial expertise of AATCO."

12 In other words, he's not providing facts
13 derived from personal knowledge. He's providing an
14 opinion, based on facts provided by others, based on
15 his expertise. It's classic expert opinion. And so I
16 would move to strike his testimony in which he
17 attempts to analyze the managerial expertise on those
18 grounds.

19 THE COURT: Okay. Any other objections?

20 MR. GUELKER: No, your Honor.

21 THE COURT: I'm gonna overrule the objection
22 and admit DPU-8, prefiled testimony. Go ahead.

23 (Exhibit No. DPU-8 was admitted.)

24 THE WITNESS: Thank you, your Honor.

25 Basically just to give a summary of my testimony, we

212

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 did an analysis initially of this company, All
2 American, to determine if we felt that they would be a
3 company that should be granted a CPCN. Similar to
4 what we would do with any other company in the state.

5 We did that at this point versus what we
6 would have done originally. Obviously with a nunc pro
7 tunc, none of the things were in there. But as we did
8 the analysis, and as my testimony stated, we believed
9 that All American at minimum shouldn't be granted an
10 extension of their CPCN into Beehive's territory.

11 And also brought into question -- which was
12 in my testimony -- the fact as to whether they should
13 even be allowed to have a CPCN to serve within Qwest's
14 territory. Because they, in my testimony as I argued,
15 it doesn't appear that they're serving customers
16 and/or providing any local exchange services.

17 So that's a brief summary of what my
18 testimony. What I'd like to kind of talk a little bit
19 more on point now is in rebuttal to some of the items
20 that were brought up in the rebuttal testimony of
21 Mr. Goodale.

22 He, he indicates that part of our testimony,
23 you know, he says that Mr. Coleman and Ms. Beck state
24 in their testimony that All American is not providing
25 any services in the Qwest territory as All American

213

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 stated it would do in its application. And it's true.

2 And then he basically goes on to continue
3 that we had all of the factual information as far as
4 the Division when they filed their original
5 application, and so because of that we as a Division
6 should be able to determine if they should be allowed
7 to go within Beehive's territory or Qwest's territory.

8 What he doesn't say in his testimony, which
9 has come out today, is the fact that he didn't
10 continue on with the third amended appeal that
11 specifically limited within Qwest's territory.

12 And as a Division the reason why this is
13 important is because there is a different level, as
14 far as review, that happens for a company that is
15 looking to get within Qwest's territory versus getting
16 into a rural territory.

17 As I said in my original testimony, the
18 review process that the Division does is more
19 stringent. Because we haven't had any cases that we
20 can generally refer to or, or -- now, at this point in
21 time, we've had one case that was allowed into a rural
22 area, versus within Qwest's territory there's been
23 numerous CLECs. And so we have a better understanding
24 as far as a Division of what the public interest
25 standard would be and also what the requirements would

214

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 be with tariff.

2 Also, if you look at it with a rural company,
3 which was brought up before, Section 54-8b-2.1 has
4 some requirements that would have to be analyzed by
5 the Division for us to be able to make a
6 recommendation if we felt that they were meeting the
7 competitive entry requirements that would be there for
8 a rural company.

9 Because the Division was looking specifically
10 now in Qwest's territory with their amended
11 application, that doesn't come into play. Nor was it
12 ever discussed as far as if this would be on the
13 federal level as far as the 251(c) element -- or I
14 believe it's (c), that may be wrong.

15 But anyways 251, the rural exemption that's
16 found on the federal level, that was never explored or
17 discussed because we're dealing only in Qwest's
18 territory.

19 And as I discussed before, the public
20 interest standard, because of what's happened in other
21 cases, the Division, through practice, believes that
22 there is a level that is higher, or a requirement that
23 is higher for a company to be allowed within a rural
24 area than what in practice has been happening within a
25 Qwest territory.

215

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 The reality of it is, is that if a company
2 basically is able to come in and show that they're
3 going to be providing some competitive services within
4 Qwest's territory, from our understanding as far as a
5 Division, that's been enough to basically satisfy that
6 public interest standard.

7 Mr. Goodale continues on in his rebuttal
8 talking about the process that All American followed
9 in order to obtain it's proposed amendment was
10 intentionally designed to avoid the proper review of
11 its operations by the Commission. And he says, Is
12 that true?

13 And what he says is that, you know, they
14 filed the amendment trying to do -- get the ability to
15 go within Beehive's territory. It was explicitly
16 known when the interconnection agreement was filed
17 that they were gonna be going into Beehive's
18 territory. But again his rebuttal testimony misses
19 the point with the argument.

20 I will concede in the fact that we are having
21 a public proceeding now that it was probably
22 contemplated going to a rural area. But if, but if
23 what a company was allowed to go into the rural area
24 in the way in which they had initially tried to, to,
25 to be allowed to go into the area there would have

216

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 been some challenges that would have happened there.

2 Basically it would have allowed a process
3 where someone could have come in. Got authority in
4 the Qwest area. And because of the Division's review,
5 although the application is the same and the questions
6 are the same, like we talked about the public interest
7 standard is different, a company could get authority
8 to go within Qwest's territory. File with the
9 Commission and say, Well, we want to now expand our
10 certificate.

11 And the Commission, you know, could determine
12 on the merits of that, but there may not be a
13 proceeding that would happen. And allow the company,
14 instead of following a very understood and well
15 established process that was in there, come in
16 sidestepping.

17 That isn't happening here, but that could
18 have been a precedent that was set. And that is
19 something that the Division was obviously concerned
20 about and didn't want to allow it to happen with that.
21 And still, you know, it could have been a potential
22 possibility.

23 We believe that the Commission should always
24 require that companies follow the application process.
25 And that the process allows for the Commission to

217

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 determine if the ILEC would be waiving the federal
2 rule exemption, you know, as well as providing notice
3 to the interested parties.

4 Because we're going into a rural area there's
5 certain requirements that are greater because of that.
6 And we think that that process still needs to be
7 followed with that as well.

8 He -- in his rebuttal testimony Mr. Goodale
9 talks about how they've taken the necessary steps to
10 try to come into compliance with the law as far as
11 it's there, you know. Were the situation, you know,
12 the Division or some other third party tried to
13 challenge, he basically says that we as a Division
14 didn't try to challenge the fact that All American was
15 serving within Beehive's territory.

16 And again, this is another mixing of the
17 facts by Mr. Goodale and what's out there. Is it true
18 that the Division didn't challenge All American's
19 operations in Garrison, Garrison exchange initially?
20 Yes, that's accurate. But the reason why is because
21 the Division was believing, according to the CPCN,
22 that All American was only gonna be serving within the
23 Qwest exchange.

24 It's pretty hard to basically argue or say,
25 Well, we don't believe that they should be serving in

218

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 an area, when the premise is and our belief is that
2 they're not serving in that area to begin with.

3 Once an interconnection agreement was filed,
4 and then once the no -- nunc pro tunc amendment came
5 into play, the Division brought up again their same
6 concerns that were discussed in 2006. And that was
7 the fact that we didn't believe initially that All
8 American should be serving within the Beehive
9 territory, or at least that process hadn't been filed
10 through the Commission to make that determination.

11 All American was serving basically illegally
12 within Beehive's territory, even though they have a
13 direct order from the Commission requiring otherwise.
14 The Division is very concerned that All American
15 violated a direct order from the Commission and served
16 in an area that All American clearly should have
17 understood was not granted by the Commission.

18 THE REPORTER: Can you slow down, please?

19 THE WITNESS: Sorry. I gave her permission
20 because I know I talk too fast.

21 All American was serving illegally within
22 Beehive's territory, even though they had a direct
23 order from the Commission requiring otherwise. The
24 Division is very concerned that All American violated
25 a direct order from the Commission and served in an

219

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 area that All American clearly should have understood
2 was not granted by the Commission.

3 Mr. Goodale also talks about his concerns
4 regarding All American's initial CPCN application and
5 its proposed entry into areas of rural Utah that are
6 outside of the Qwest service territory. And then he
7 goes on to explain what he feels what some of those
8 concerns were.

9 As a Division, one of, one of the things that
10 he brings up is how he doesn't believe that the USF
11 will be impacted. And he talks about how All American
12 will not be taking any customers from Beehive. And as
13 a result of that, you know, there won't be any draws
14 that are -- potentially need to be there from the USF
15 fund.

16 Although that potentially could be true, the
17 application and the ability of All American to serve
18 within Beehive's territory could impact the USF.
19 Let's set aside, for example, their argument where
20 they say they're only gonna be serving Joy
21 Enterprises. But let's say there's a certificate of
22 which, if the Commission didn't limit them but allowed
23 them to go in and to potentially market for customers
24 who would be Beehive's customers.

25 The way that our Universal Service Fund is

220

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 set up is that those ILECs have the ability to come in
2 to the State fund and ask, or through a rate case to
3 be able to make up the difference in those revenues.

4 There's nothing right now that limits All,
5 All American from being able to go out there. And
6 Mr. Goodale even indicated in his testimony that if
7 things in this way pay -- potentially worked out, that
8 maybe they're gonna want to expand their services.

9 Well, let me give you a hypothetical that
10 could potentially happen that the Division is worried
11 with. What would happen in a scenario if All American
12 went in and was able to get all of Beehives's
13 customers. So Beehive ILEC has no customers.

14 The State USF fund in that regard would be
15 required to make up whatever revenue shortfalls were
16 not there -- start whatever revenue shortfalls were
17 happening as a result of these CLECs competing within
18 Beehive's exchange.

19 So the CLEC is getting all of those revenues,
20 and the State USF fund is still having to make up
21 those things. So without some type of limitation on
22 the certificate, it is possible this USF fund could be
23 impacted.

24 Now, according to what Mr. Goodale has
25 testified today, they don't have an interest in

221

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 potentially doing that so, so it may not be impacted.
2 But as a, as a policy standpoint I believe that that
3 impact to the Universal Service Fund is still valid
4 and it's still something that could be considered.

5 Now, granted, my hypothetical situation is
6 extreme. I don't anticipate that an ILEC would lose
7 all of their customers. But it's more just to try to
8 illustrate that point for the Commission.

9 So, you know, at a minimum the Commission
10 would at least need to limit, if in fact they want to
11 say there's no -- gonna be no impact to the USF, that,
12 that they would not be able to potentially increase
13 or, you know, possibly look at what the proposal was
14 by URTA.

15 I know Ms. Hensley talked about how she was a
16 little bit surprised by the support of URTA, or at
17 least an alternate that was provided to that as far as
18 a condition that the CPCN would limit All American's
19 authority to the conferencing service and that it's
20 provided in Beehive's territory.

21 And Mr. Guelker has already brought up the
22 point that I'm not a legal attorney, so I'm not giving
23 a legal opinion here. But if you look at the Statute
24 54-8b-2.1 as far as competitive entry, my
25 understanding is that it doesn't allow the Commission

222

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 to be able to limit the certificate.

2 The way, the way, if you look at that
3 statutes -- I didn't bring it. Can I borrow your
4 statute book for a second, Mike? I didn't bring mine
5 up, sorry.

6 MR. GUELKER: I guess, your Honor, I'd object
7 to this. He's admitted that he's not an expert. If
8 he's just gonna read the statute, the statute speaks
9 for itself.

10 THE COURT: Do you want to just tell us --

11 THE WITNESS: I just want to refer to it.
12 That's why I have it here. I'm not gonna read the
13 statute.

14 THE COURT: Tell me the provision you want to
15 refer to.

16 THE WITNESS: There are a couple of
17 provisions in here. One is that the
18 telecommunications corporation provide public
19 communication services to any customer or class of
20 customers who request service within the local
21 exchange.

22 THE COURT: The citations?

23 THE WITNESS: 54-8b-2.1, and then it's No. 4
24 dealing with competitive entry. And, you know, the
25 Beehive exchange is obviously, as a matter of fact, an

223

(March 3, 2010 - All American - 08-2469-01)

1 exchange that has less than 5,000 access lines.

2 And for competitive entry it would seem that
3 a company that wants to serve within the 5,000 access
4 lines -- which was also put in, you know, with this
5 rule -- is that a company would have to be willing to
6 accept that obligation that's in there.

7 All American, in this proceeding, has never
8 indicated if they're willing to accept that
9 obligation. If they're willing to provide additional
10 private telecommunications services.

11 And in fact has argued the other way. That
12 they want to provide no private -- or sorry, public
13 telecommunications services, local exchange services,
14 or anything other than the service which they are
15 already doing.

16 To me it would seem that the alternate
17 proposal by URTA is not one that's allowed by law.
18 Now granted, I'm not making a legal argument there.
19 I'm just pointing out that it doesn't seem to fit what
20 that is in there as well.

21 Also, if you want to look at -- the other
22 thing that it talks about in there is that they need
23 to provide local exchange service. All American in
24 their testimony has -- and also in discovery responses
25 has indicated that they're not providing basic

224

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 residential services defined by statute.

2 They also basically, if you look at local
3 exchange service, it talks about how it's a two-way
4 interactive transmission of signals and different
5 things with that as well. It would seem that they're
6 not providing anything that would be considered a
7 local exchange service.

8 And then if you look at the definition of
9 what a public telecommunication service, again it's
10 the two-way transmission of signs, signals, writing,
11 images, et cetera.

12 The services that All American is providing
13 and what they've described right here I don't believe
14 is a two-way transmission of those as well. So it
15 would seem to be a stretch that they're providing
16 basic residential phone service. A stretch that
17 they're providing local exchange service. And you may
18 be able to argue they're providing a public
19 telecommunications service.

20 But looking at the application, the Division
21 is unable to see how All American is providing what
22 could be defined as any telecommunication service.
23 Clearly they're not providing any of those things that
24 we talked about. And even implying that they provide
25 a public telecommunications service is a stretch.

225

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 And really, you know, they haven't agreed to
2 provide any of those services to any of the customers
3 within Beehive's exchange other than Joy Enterprises.

4 Now, Mr. Goodale also talked about the
5 reliability of my testimony on a subject as part of --
6 as far as the public interest standard because I'm not
7 a lawyer.

8 This concern is simply unfounded. For the
9 Division, I was the expert witness in the Bresnan
10 proceeding. One of the major points of that
11 proceeding was the public interest standard and what
12 should be applicable. Large portions of the testimony
13 I filed in that case dealt solely on a public interest
14 standard for rural companies.

15 It might be true that I am unable to give a
16 legal opinion on a public interest standard, but I
17 think my past work and personal knowledge in this area
18 qualifies me to say there's a public interest standard
19 that differs for Qwest territories and rural Utah.

20 I wasn't trying to make a legal
21 interpretation there, but I would think that just as a
22 general standard it would be safe to say there's a
23 different policy that is being followed for rural
24 companies versus Qwest territory.

25 Another point in his testimony that

226

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Mr. Goodale suggests is that a public interest
2 standard would only apply if rural ILECs were
3 opposing the application. He points out that because
4 Bresnan was a contested case by the rural ILEC,
5 whereas this case is not contested by the rural ILEC,
6 the standard should somehow be different.

7 I have a serious policy concern with that
8 logic. By allowing that type of situation, the
9 Commission would be allowing the rural ILECs
10 effectively to determine if a CLEC should be allowed
11 in an area. Then if the ILECs opposed the application
12 the Commission would then be able to apply a public
13 interest standard.

14 As has been well documented here, I am not an
15 attorney. I am also not a commissioner so I don't
16 want to speak for them, but I would think this is not
17 a policy the Commission would want to adopt. Allowing
18 companies to determine when the Commission would apply
19 the public interest standard.

20 Beginning on page 13, line 281 of his
21 testimony, you know, Mr. Goodale basically talks about
22 how I opine that American -- All American's entry into
23 Beehive's territory does not satisfy the public
24 interest test because I allege there's no competitive
25 advantage.

227

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 And then he talks about how this definition
2 is too narrow. And that if the legislature wanted to
3 focus entirely on that type of thing they would have
4 said specifically a competitive entry standard.

5 My belief is that the legislature did provide
6 a clear idea of what it wanted in 54-8b-1.1 in the
7 Legislative Policy Declarations No. 3. Which
8 specifically says that the Division and the Commission
9 is to encourage the development of competition as a
10 means of providing wider customer choices for public
11 telecommu -- sorry, it must be late. Public
12 telecommunications services throughout the state.

13 The Commission, as I stated in my testimony,
14 also indicated that competitive entry is one of the
15 criteria to be used in determining a public interest
16 standard. That was specifically talked about in the
17 Bresnan case and put in the order, that that was one
18 of the criteria that they were going to use to
19 determine that as well.

20 As testified today by All American,
21 competition will not be happening in Beehive's
22 territory. So they have failed to meet a public
23 interest standard in at least the one criteria, which
24 is competitive entry.

25 Also, if you look at the tariff that was

228

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 provided by Mr. Goodale? In there he -- in his
2 testimony he brings out the fact that there is an end
3 user that he uses as a definition with that. But as
4 I've tried to review the tariff it looks like that
5 definition that he provides for end user that may
6 allow for Joy Enterprises to be considered an end
7 user, that tariff looks like it would only be
8 applicable in Nevada.

9 And the alleged applicable Utah tariff does
10 not have any of the same definition. And so my
11 arguments about if, in fact, Joy Enterprises would fit
12 the definition of a customer would still be just as
13 valid as when I filed the testimony -- or just as
14 valid today as when I filed the testimony.

15 In conclusion, if All American wanted to
16 follow the Commission rules and statutes as has been
17 alleged by Mr. Goodale, you know, I'd ask the question
18 why didn't they follow the well-known procedure to be
19 allowed authority to serve in Beehive's territory, and
20 file an application to come in and go through the
21 well-established process with that as well?

22 It seems instead that what they wanted to do
23 was -- maybe, as Mr. Goodale says, maybe they realized
24 that they had served in an area that they weren't
25 allowed to. But it would seem to me, if they wanted

229

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 to be as forthright and honest with that, that they
2 would follow the procedure which they had done before
3 in their application and come in and ask to be within
4 Beehive's territory instead of trying to do it
5 different as well.

6 All American is not providing basic
7 residential service, local exchange service, or public
8 telecommunications services anywhere within Qwest's
9 territory. Nor are they, we believe, providing it
10 within Beehive's territory.

11 We also believe that Joy Enterprises is not a
12 customer, because they don't fit the definition of a
13 customer. Nor does Joy Enterprises pay anything to
14 All American for any services they're providing for
15 them as well.

16 We also believe that All American has not met
17 the public interest standard because, as they've
18 alleged, there's no competition within Beehive's
19 territory.

20 And it doesn't appear that there's gonna be
21 any benefit derived by anybody in the State of Utah
22 for what is provided there, except for maybe those few
23 people who may use the free conference calling service
24 as well. Which in Mr. Goodale's testimony -- and I'm
25 going off the top of my head -- but I believe he said

230

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 it was about four percent of the total traffic was
2 interstate traffic.

3 Therefore, the Division does not believe All
4 American should be allowed to expand their certificate
5 into Beehives's territory. Additionally, because they
6 will not be serving in Qwest's territory, we recommend
7 the Commission revoke the earlier CPCN granted to All
8 American.

9 Q. Does that finish your?

10 A. Yeah.

11 MR. GINSBERG: He's available for questions.

12 THE COURT: Okay. Mr. Guelker?

13 MR. GUELKER: Just a few questions,
14 Mr. Coleman.

15 CROSS EXAMINATION

16 BY MR. GUELKER:

17 Q. First of all, you stated that the reason the
18 Division never went in and brought any sort of
19 enforcement action against All American for what it
20 was doing is because it wasn't aware that it was even
21 operating in Beehive's territory. Did I, did I state
22 your testimony right?

23 A. Initially, yeah. I mean, we, we believed
24 that they were operating as to the conditions of their
25 CPCN, which specifically limited, limited them to be

231

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 in Beehive's territory, because of the procedure -- or
2 proceeding that had happened where they originally
3 filed for the State, and then they filed for Beehive's
4 territory, and then ultimately was denied that. So
5 yes.

6 Q. But you would agree, wouldn't you, that when
7 Beehive and All American filed their interconnection
8 agreement with the Commission for its approval, that
9 clearly indicated that All American intended to
10 operate in Beehive's territory; isn't that correct?

11 A. I --

12 MR. GINSBERG: If you know.

13 THE WITNESS: I, I wasn't involved in, in the
14 proceeding at that point as far as when the Division
15 would clearly know that that happened.

16 What I do know is once the Division realized
17 that All American was serving within Beehive's
18 territory, that's when we started to raise concerns as
19 far as why they were in there. And that they were
20 violating what we felt was a pretty clear order from
21 the Commission that said they shouldn't be in there to
22 begin with.

23 Q. (By Mr. Guelker) So you weren't -- you're
24 saying you weren't involved at all with the
25 proceedings surrounding the interconnection agreement?

232

(March 3, 2010 - All American - 08-2469-01)

1 A. There were other people within the Division
2 at the time it was reviewing the interconnection
3 agreement, and so I wasn't the one specifically
4 reviewing it.

5 Q. Okay. All right. Now, you, you were, you
6 were talking about a hypothetical about the impact on
7 the USF if All American hypothetically went in and
8 took all of Beehive's customers. Do you remember that
9 testimony?

10 A. Yes.

11 Q. Okay. Isn't it true, though, that the
12 Commission has continuing authority over a company's
13 certificate and could revisit the appropriateness of
14 that certificate at any time; isn't that right?

15 A. The Commission always has the ability, which
16 I believe is happening now. I mean, we're obviously
17 looking at a CPCN that was granted to All American in
18 Qwest's territory. And they have the ability to come
19 in and to review at any time a CPCN that was granted
20 to determine, you know.

21 Q. So if the Commission determined that All
22 American, contrary to its testimony here, was doing
23 something that would negatively impact the USF, it
24 could certainly go back and perhaps seek the
25 rescission of that certificate; isn't that true?

233

(March 3, 2010 - All American - 08-2469-01)

1 A. They could, but it also creates an issue
2 because at that point you have customers within Utah
3 who are, who are using a telecommunications provider
4 and so it becomes a much more arduous task to do that
5 because then the Commission would have to
6 potentially -- again, I'm not speaking for the
7 Commission. I'm just thinking --

8 Q. Sure.

9 A. -- the process here.

10 Q. It was a hypothetical.

11 A. Yeah, hypothetical. I mean, you know. The
12 process here, then the Commission may have to order
13 All American or whatever to cease operating services
14 to that customer that's there, you know.

15 And it does create a potential situation that
16 I don't know the Commission wants to start telling
17 customers that they can't use a provider that's now
18 out there offering services. You know, for basic
19 residential phone service.

20 And that, you know, and that's I think what
21 you have to realize, is we're talking about
22 residential customers. And maybe some business
23 customers but ultimately, you know, just that basic
24 general populus that's, that's looking for phone
25 service or something like that.

234

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. Just since, since we've talked a lot about
2 hypotheticals here, I've got one more sort of
3 hypothetical question.

4 Say a company, a hypothetical company, was
5 providing a service that wasn't considered local
6 exchange services. And it wasn't considered a public
7 telecommunications service. Would that company need a
8 CPCN to -- in order to provide that service?

9 A. You could argue that they wouldn't, or
10 necessarily wouldn't, because it doesn't fall under
11 the jurisdiction of the Commission if it's not a
12 public telecommunication service. It may or may not
13 need a CPCN to be able to do that.

14 Q. Okay. So hypothetically they could do it
15 outside the jurisdiction of the Commission. Is
16 that -- if they weren't providing either of those two
17 types of services?

18 A. Baskin-Robbins provides ice cream all the
19 time and it doesn't fall within the Commission's area.
20 I'm sure they sell ice cream. And I don't know of any
21 Baskin-Robbins stores that have asked for a CPCN.

22 MR. GUELKER: Okay. That's all I have.

23 THE COURT: Okay. Thank you, Mr. Guelker.

24 Mr. Proctor?

25 MR. PROCTOR: Yes, just a few.

235

(March 3, 2010 - All American - 08-2469-01)

1 CROSS EXAMINATION

2 BY MR. PROCTOR:

3 Q. Mr. Coleman, in connection with the
4 second-to-last hypothetical that you were given, that
5 was with respect to undoing a Certificate of
6 Convenience and Necessity in the event that it's been
7 exceeded and the business has established customer
8 relations in the extra -- extraterritorially.

9 In the case of Joy Enterprises and All
10 American, however, it's true that Joy Enterprises was
11 being served by Beehive for a number of years -- since
12 approximately 1994 -- in the Garrison exchange,
13 correct?

14 (There was a cell phone interruption.)

15 THE COURT: Mr. Goodale, can you turn your
16 phone off, or turn it on vibrate or something?

17 THE WITNESS: Can I go on?

18 THE COURT: Go ahead.

19 THE WITNESS: Okay. My belief is, from the
20 information and what's been on the record here, that's
21 the understanding. '94 or approximately or something
22 like that Joy Enterprises has existed or been
23 providing some services out within the Beehive
24 exchange.

25 Q. (By Mr. Proctor) And Beehive is still in

236

(March 3, 2010 - All American - 08-2469-01)

1 that exchange?

2 A. Yes, they are.

3 Q. And so in the event that All American's
4 certificate was revoked, Beehive could certainly
5 provide that service to Joy, correct?

6 A. They were doing it before, so I believe --
7 unless there's something that I'm not aware of -- they
8 should be able to do it again.

9 Q. Did you hear Mr. Goodale testify that in fact
10 now Beehive and All American both have the Taqua 7000
11 switch, which is more than capable of serving them?

12 A. Yes.

13 Q. Did you not also hear Mr. Goodale explain
14 that in Nevada they have a similar switch that could
15 easily assume 100 percent of Joy Enterprises' demands
16 in Nevada?

17 A. Yes.

18 Q. So under those circumstances, Mr. Coleman,
19 would revoking the certificate for All American to
20 serve anywhere in Utah, and in particular in requiring
21 that they withdraw from the Garrison, Utah exchange,
22 would that, in your opinion, place any hardship upon
23 any customer within the State of Utah, including Joy
24 Enterprises?

25 A. No, I don't believe so. What, what I was

237

(March 3, 2010 - All American - 08-2469-01)

1 trying to illustrate is, is if it's -- someone had
2 just normal phone service, you know, you're -- they're
3 gonna have to go find another provider, potentially.
4 And that, that could become a situation that's much
5 more sticky.

6 In this situation what was provided or is
7 being provided by All American can be provided by the
8 incumbent local exchange carrier that's out there.

9 MR. PROCTOR: Thank you. No more questions.

10 THE COURT: Mr. Thomson?

11 MR. THOMSON: Thank you, your Honor. No
12 questions from Qwest.

13 THE COURT: Mr. Evans?

14 CROSS EXAMINATION

15 BY MR. EVANS:

16 Q. Just a follow up on Mr. Guelker's last
17 hypothetical, if I might.

18 A. Sure.

19 Q. I think he -- I think the hypothetical was if
20 he's -- if a company is -- a hypothetical company is
21 not providing local exchange services, and not pub --
22 not providing public telecommunications services,
23 would it need a CPCN. And I think your answer was,
24 Well, probably not?

25 A. My understanding is a CPCN is to allow a

238

(March 3, 2010 - All American - 08-2469-01)

1 telecommunications service to be able to provide
2 service within an exchange. You know, within a
3 certain area. If they're not providing
4 telecommunications service, you know, I don't see why
5 they would need a CPCN.

6 Q. But then this hypothetical company would not
7 be able to collect access charges, would it?

8 A. I, I wouldn't think so, because you have to
9 be some type of telecommunications company to be able
10 to charge those access rates would be my, would be my
11 understanding.

12 Q. Or how about get a block of local numbers,
13 could they do that?

14 A. My understanding is you have to be a CLEC to
15 be able to get a block of local numbers. We've had
16 voiceover IP providers who you could argue are
17 providing, you know, the FCC has a different
18 definition, but to a customer it would look like
19 they're providing phone service. And they are unable
20 to get a block of numbers because they're not defined
21 as a competitive local exchange provider, a CLEC.

22 Q. Did you read the portion of Mr. Goodale's
23 testimony that said he was -- connectivity was SIPs,
24 or Session Internet Protocol? Did you -- in fact, I
25 think you commented on that in your testimony, didn't

239

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

1 you?

2 A. I did read his testimony.

3 Q. Yeah. That his -- I guess it's on page 13
4 where Mr. --

5 A. Is this the direct testimony?

6 Q. Yes.

7 A. Okay.

8 Q. Mr. Goodale says that All American's switches
9 are connected to Joy Enterprises' intelligent voice
10 response systems, which are co-located and connected
11 via SIP. Do you know what a "SIP" is?

12 A. I don't know specifically. I believe it has
13 something to do with the hollow traffic. And I
14 believe Mr. Goodale testified that they are doing that
15 using some type of IP. You know, Internet.

16 Q. Okay. So you think it has to do with a
17 protocol for Internet telephony or a voiceover IP?

18 A. I believe so, yes.

19 Q. Do you know of any Internet Service Providers
20 that are offering conference calling?

21 A. I don't know of any, although I do know that
22 it is possible. You can use any number -- MSN,
23 Messenger, Yahoo, et cetera -- where you can have a
24 group of people get on and do voice calls or other
25 things using that, you know, computer technology. But

240

(March 3, 2010 - All American - 08-2469-01)

1 a specific ISP, I don't know that.

2 Q. Okay. But that -- but you know that it can
3 be done --

4 A. Yeah, I'm sure.

5 Q. -- through voiceover IP?

6 A. Yeah, for sure.

7 MR. EVANS: Okay. No more questions, thank
8 you.

9 THE COURT: Thank you.

10 Mr. Mecham?

11 MR. MECHAM: Thank you, your Honor.

12 CROSS EXAMINATION

13 BY MR. MECHAM:

14 Q. Mr. Coleman, I'm assuming that your testimony
15 in this case is distinguished from your testimony in
16 the Bresnan case based on the number of lines, 5,000
17 versus under 5,000 -- over versus under 5,000?

18 A. Distinguished in which aspect?

19 Q. Public interest considerations. You used
20 that, I suppose, from the Bresnan standpoint. But --
21 and concluded that competition was a good thing in a,
22 in an exchange of greater than 5,000 access lines?

23 A. Sure.

24 Q. Is your -- well, I'm just gonna ask the
25 question. Is the testimony in this case

241

(March 3, 2010 - All American - 08-2469-01)

1 distinguishable based on the fact that we're talking
2 about an exchange with fewer than 5,000 access lines?

3 A. I believe the level that is required as far
4 as someone wanting to go into what would be considered
5 a rural exchange, which I talked about with 54-8b-2.1.
6 I mean, there are certain requirements that are there
7 that I believe differentiates it between say a Bresnan
8 exchange, which was, which was above 5,000 access
9 lines, versus a smaller one that didn't.

10 I still believe there's a public interest
11 standard, and I still think they're both rural. And
12 so in that regard I still think that you would look at
13 a different public interest standard for any of our
14 rural companies that would be URTA members and make
15 sure that that public interest standard was met.

16 Q. So even if a URTA member had an exchange with
17 greater than 5,000 access lines, you would go through
18 an analysis. And it wouldn't just be a slam dunk
19 based on the Bresnan precedent?

20 A. What, what I would do as far as -- and I
21 believe, you know, as a Division obviously how I -- we
22 would look at that is I think we would look at what
23 happened in the Bresnan case.

24 But we would also try to determine similar to
25 what we did in the Bresnan and weigh the potential

242

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 benefits of competition, and what the company is
2 saying they will provide as far as competition, and
3 any public interest standard that would be out there,
4 versus an impact to the USF or any other negative
5 elements that are out there.

6 And I believe with -- and that's what I tried
7 to -- in my discussion with the rebuttal testimony a
8 little bit that's what I, I was trying to portray, is
9 I believe that there's another level or another step
10 that's required, if it's a rural company, that -- as a
11 Division review that we would need to do and I think
12 that the Commission would look at than if it's just a,
13 you know, going into Qwest's area. Which those are
14 pretty much a slam dunk as far as what, what they need
15 to say with it as well.

16 So that may have been a very wordy answer but
17 I think, yeah, you would -- that analysis would be
18 there but I think you would still -- I don't know that
19 it's a slam dunk precedent. I think that there's a
20 lot of factors that would go into that that we would
21 analyze.

22 Q. Okay, thank you. Do you still have 54-8b-2.1
23 with you?

24 A. I can get very close to it, but yeah. Okay.

25 Q. Of course recognizing it's the Commission's

243

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 ultimate decision, but as you look at subsection 1
2 there it says:

3 "Notwithstanding the certificate
4 section 54-4-25, the Commission may
5 issue a certificate to a
6 telecommunications corporation
7 authorizing it to compete in providing
8 local exchange services or other public
9 telecommunications services in all or
10 part of the service territory of an
11 incumbent telephone corporation."

12 Doesn't that mean to you that the Commission,
13 if it desired -- whether or not it's wise -- if it
14 desired to do so it could authorize a
15 telecommunications corporation to provide less than
16 the full array of services in less than the full
17 service territory?

18 A. The wording there seems to indicate that.
19 And I guess, looking at what happened in the Bresnan
20 case, the Commission obviously said that they didn't
21 have to serve the entire exchange -- which I know is
22 the position of URTA -- and allowed them to serve
23 where they had facilities.

24 So obviously the Commission did allow for a
25 little bit of a reduced service area, I think which

244

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 the Division would be uncomfortable with. And again I
2 can't speak for any of the rural companies, but I know
3 it was an element of the Bresnan case.

4 But I don't know that the Commission would
5 want to get to a point where they're going to limit
6 which services could or couldn't be provided, because
7 that could open up the opportunity for cherry picking.
8 If --

9 Q. You may not like it either, but I'm just
10 reading the statute.

11 A. Yeah. And, and, and I don't know -- again,
12 this is probably where my legal background, not having
13 one, I don't know how that would also play in with
14 four as far as the requirement where the company that
15 wants to compete in that area has to have the same
16 requirement or obligation that the incumbent LEC would
17 need.

18 What's in there makes it a little bit
19 incongruent as far as what could be applied. And as
20 far as reg -- regulation, that's something that we
21 deal with as regulators is trying to determine what
22 that balance is and what, you know. And the
23 Commission obviously has to make a determination on
24 that as well.

25 I -- yeah. But I, but I will -- yeah, there,

245

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 there is a possibility for the Commission to do that
2 if they so choose.

3 MR. MECHAM: Thank you.

4 THE WITNESS: I just don't think they should.

5 THE COURT: Thank you, Mr. Mecham.

6 All right. Mr. Ginsberg, any?

7 MR. GINSBERG: No.

8 THE COURT: All right. Thank you,
9 Mr. Coleman.

10 Let's take a quick five-minute break, and
11 we'll come back and hear from --

12 MR. GINSBERG: Are we gonna actually try and
13 finish today? I don't know how much we have for --

14 THE COURT: Well, I was planning to leave in
15 about an hour, unless somebody needs to leave by five.

16 MR. PROCTOR: I don't know if this needs to
17 be on the record.

18 (A discussion was held regarding
19 the schedule.)

20 THE COURT: Let's deal with the -- with
21 AT&T's witness. And I'll turn it over to Mr. Evans.

22 MR. EVANS: Thank you. AT&T has submitted
23 the direct testimony of Jack Habiak, dated
24 February 11, 2010. And behind it is the one exhibit,
25 designated Exhibit A. It's the summary of All

246

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 American's monthly access billing to AT&T.

2 And we would request that Mr. Habiak's
3 testimony and accompanying exhibit be admitted into
4 the record as AT&T Exhibit 1.

5 THE COURT: Okay.

6 MR. GUELKER: No objection.

7 THE COURT: No objections. And we'll also
8 note that previously the parties stated that they
9 didn't have any cross for Mr. Habiak. Is that -- if
10 that's not correct, let me know now.

11 MR. GUELKER: I stand by that.

12 THE COURT: Okay. All right, then we'll
13 admit AT&T Exhibit 1. And the parties waive their
14 cross of Mr. Habiak.

15 (Exhibit No. AT&T-1 was admitted.)

16 THE COURT: Okay, then let's go on with
17 Ms. Beck.

18 MR. GUELKER: Your Honor, just for
19 housekeeping so everybody knows, we no longer intend
20 to call a rebuttal witness. So if we can get through
21 this today.

22 THE COURT: Okay. So we'll finish up with
23 Ms. Beck then. If we go past six does anybody have a
24 problem?

25 MR. THOMSON: Your Honor, Ms. Hensley Eckert

247

(March 3, 2010 - All American - 08-2469-01)

1 has airline reservations that would require her to
2 leave between 5 and 5:15.

3 THE COURT: Okay.

4 MR. THOMSON: And with your permission, I'd
5 like to do so as well.

6 THE COURT: Okay, that's fine. Any
7 objections?

8 MR. GUELKER: No objection.

9 MR. MECHAM: We, we ought to be done by then,
10 shouldn't we?

11 THE COURT: I mean, I hope so, but.

12 (A discussion was held regarding
13 the schedule.)

14 (Ms. Beck was sworn.)

15 MECHELE BECK,
16 called as a witness, having been duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. PROCTOR:

20 Q. Ms. Beck, would you state your name and by
21 whom you're employed?

22 A. My name is Mechele Beck. I'm employed by the
23 Utah Office of Consumer Services.

24 Q. And what is your -- in what capacity do you
25 serve the Utah Office of Consumer Services?

248

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. I am the director.

2 Q. Ms. Beck, could you give a brief summary of
3 your background in the utility industry?

4 A. Yes. I've been working in utility regulation
5 for 15 years -- approximately 15 years. I started
6 actually at the Department of Public Service in the
7 State of Minnesota, where it was the agency that
8 called ourselves the Rate Payer Advocates.

9 And after that time I spent about five years
10 in a consumer-owned utility in Minnesota. A very
11 brief point -- amount of time in an investor-owned
12 utility. And then I was appointed by Governor
13 Huntsman to this position here.

14 Q. What is your educational background?

15 A. I have a Bachelor's Degree in Political
16 Science. And completed the course requirements for a
17 Master's Degree in Applied Economics.

18 Q. Have you had occasion to testify before the
19 Utah Public Service Commission or other public service
20 commissions?

21 A. I've testified before the Utah Public Service
22 Commission, the Minnesota Public Utilities Commission,
23 FERC. And contributed to testimony -- I'm not sure if
24 I filed -- I haven't testified in front of, I may have
25 filed prefiled testimony in North and South Dakota.

249

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. You have prefiled testimony that's been
2 marked as OCS-1-D M. BECK, consisting of 17 pages, and
3 three attachments of 11, 12, and 17; is that correct?

4 A. Eleven, 12, and 17 pages --

5 Q. Seventeen pages, yes.

6 A. -- three attachments? Yes, that's correct.

7 Q. Do you have any corrections that you wish to
8 make to your direct testimony?

9 A. No, I do not.

10 Q. If I were to ask you today the same questions
11 that were answered in your prefiled direct testimony,
12 would your answers remain the same?

13 A. Yes.

14 MR. PROCTOR: The Office would move to admit
15 into evidence the OCS-1-D M. BECK, the direct
16 testimony and the attachments.

17 MR. GUELKER: No objection.

18 THE COURT: Okay. We'll admit OCS-1-D.

19 (Exhibit No. OCS-1-D was admitted.)

20 Q. (By Mr. Proctor) Ms. Beck, have you prepared
21 a summary of your testimony?

22 A. Yes, I have.

23 Q. Could you provide it, please?

24 A. Sure. My summary is actually incredibly
25 brief. I just wanted to do a quick review of the

250

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 positions that the Office has taken.

2 As I think everyone in the room knows, the
3 Office of Consumer Services is the State agency with
4 the responsibility of advocating on behalf of
5 residential and small commercial consumers. And as
6 such, we have participated in this hearing -- in this,
7 in this proceeding.

8 Our original position, although it has been
9 characterized as being much wider than this, really
10 was limited to requesting a formal hearing in the
11 docket. We felt like the issues were complex enough
12 that it needed to be done on the record in an
13 evidentiary hearing.

14 Once the Commission essentially agreed with
15 that position, move -- and confirmed that it would be
16 a formal hearing, and defined the scope of this
17 proceeding, that scope included: Compliance or
18 non-compliance with the March 7, 2007, CPCN; whether
19 the interconnection agreement, pardon me, whether the
20 interconnection agreement altered those terms; and
21 whether All American's actions regarding the CPCN are
22 in the public interest.

23 So once that scope was set, then we
24 considered the evidence in that context that the
25 Commission had framed. And as such, the Office

251

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 believes it would not be in the public interest to
2 amend All American's CPCN. And that the Commission
3 should order compliance with the existing CPCN, which
4 would include withdrawal from Beehive's territory.

5 The reason -- one of the reasons that we
6 believe it's not consistent -- that it would not be in
7 the public interest is it's not consistent with the
8 State policy as outlined in the statutes and has been
9 referenced several times.

10 For example, it doesn't provide broader
11 choices to consumers. It doesn't enhance the general
12 welfare of consumers. And although All American's
13 witness earlier today made some assertions of some
14 secondary or tertiary benefits to the community,
15 there's been no supporting evidence to that provided
16 in this record. So we still believe it is not
17 consistent with the policy.

18 Furthermore, we believe that the process
19 itself has been misused. And the -- we at the Office
20 believe that the process is important to always
21 protecting the public interest and protecting
22 consumers.

23 So in and of itself, this problematic
24 behavior we think is contrary to the public interest.
25 And for those reasons we're making this recommendation

252

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 today to the Commission.

2 Q. Does that conclude your summary?

3 A. Yes, it does.

4 Q. Okay. There's not much in here, but --

5 A. Oh.

6 Q. -- you may need it.

7 A. I may.

8 MR. PROCTOR: Ms. Beck is available for
9 cross.

10 THE COURT: Okay. Mr. Guelker?

11 CROSS EXAMINATION

12 BY MR. GUELKER:

13 Q. Just a few questions, Ms. Beck.

14 A. Sure.

15 Q. When did you first become aware of All
16 American's petition; do you remember?

17 A. I remember -- certainly -- I'd have to go --
18 hang -- let me just review my file for a moment.

19 Q. Sure.

20 A. It came to my attention shortly before we --
21 well, I say "we," but really our Assistant Attorney
22 General Paul Proctor, on behalf of the Office,
23 prepared some responses. And of course I'm not -- I
24 don't see a date on those.

25 So subject to check, let's just frame it in

253

(March 3, 2010 - All American - 08-2469-01)

1 the 2000 -- early 2008 time period, I would guess.
2 But if, if anyone has a date, if you could put three
3 or four months before that filing, I think that would
4 be very close.

5 Q. Okay. Just, just for -- just so we have a
6 reference point, was it before or after the Committee
7 of Consumer Services was reorganized to the Office of
8 Consumer Services? Do you?

9 A. It was before.

10 Q. It was before? Okay, all right. And do you
11 remember the context of what you first learned of the
12 petition?

13 A. Sure. We have formal and informal staff
14 meetings at the Office, and the staff who monitor the
15 different issues will bring them forward. And
16 sometimes our Attorney General representation will
17 bring the issues forward.

18 So it came in through one of those formal or
19 informal staff meetings.

20 Q. You don't remember if it was a formal or
21 informal?

22 A. Well, to be perfectly honest, that would be a
23 very difficult dividing line to determine within our
24 office.

25 Q. Okay. Why is that?

254

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. Because of -- we're a small office. We have
2 informal gatherings all -- quite frequently. And the
3 difference between formal and informal is probably
4 whether or not there are treats.

5 Q. Fair enough.

6 A. We schedule those.

7 Q. Is this one of those scenarios in which the
8 Attorney General brought it to your attention, or was
9 it somebody within the, I guess the Committee back
10 then brought it to, brought it to your attention?

11 A. I, I don't recall. Because a lot of these
12 issues come forward, you know, at a -- oftentimes at
13 about the same time. Maybe I'll get a forwarded email
14 from -- for a hypothetical example, maybe I'll get a
15 forwarded email from one person in my staff and then a
16 side conversation with the Attorney General, or vice
17 versa. So in this case, I can't recall.

18 Q. Okay. Do you know if there are any
19 minutes -- well, let me ask you this before I ask you
20 that. As a practice, before your Attorney General is
21 allowed to intervene in a matter on behalf of the
22 Office does he need your permission to do that, or is
23 that something he's typically allowed to do at his
24 discretion?

25 MR. PROCTOR: Objection, your Honor. I

255

(March 3, 2010 - All American - 08-2469-01)

1 believe that all of these matters pertaining to the
2 relationship between the Attorney General's Office and
3 the Office, the Committee of Consumer Services,
4 Ms. Beck, and so forth have been addressed quite
5 thoroughly in the Commission's Order on
6 Reconsideration.

7 And I believe that at this point they would
8 be utterly irrelevant to the matters before this
9 Commission in this hearing.

10 THE COURT: I'm gonna sustain the objection
11 and note they're on appeal, as well, I believe. These
12 issues.

13 MR. GUELKER: Pardon me?

14 THE COURT: Aren't these issues on appeal as
15 well currently?

16 MR. GUELKER: In part, yes.

17 THE COURT: All right. I'm gonna sustain the
18 objection.

19 MR. GUELKER: Very good.

20 Q. (By Mr. Guelker) Just a few more questions
21 then. You would agree, would you not, that it's
22 your -- it's the Office's responsibility to represent
23 the interest of residential consumers and small
24 business consumers?

25 A. Correct.

256

(March 3, 2010 - All American - 08-2469-01)

1 Q. Okay. But you admit in your testimony there
2 aren't any small businesses located in the Garrison
3 exchange; is that correct?

4 A. Correct.

5 Q. Okay. And I think you also state there are
6 approximately, to the best of your knowledge,
7 approximately 200 people and 50 customers located in
8 the Garrison exchange; is that correct?

9 A. Just to be clear, I don't think I
10 distinguished those as residential or small
11 commercial.

12 Q. Okay. All right. I guess my question is,
13 did you ever receive any complaints -- did the Office
14 ever receive any complaints from anybody in the
15 Garrison exchange regarding All American?

16 A. We're not the agency that receives
17 complaints.

18 Q. Okay. Would -- okay. What agency would that
19 be?

20 A. Division of Public Utilities is established,
21 I believe by statute, to take consumer complaints.

22 MR. GUELKER: I don't have any other
23 questions. Thanks.

24 THE COURT: Thank you.

25 Mr. Ginsberg?

257

(March 3, 2010 - All American - 08-2469-01)

1 MR. GINSBERG: No questions.

2 THE COURT: Mr. Evans, or? Mr. Evans, any
3 questions?

4 MR. EVANS: No questions I think.

5 THE COURT: Okay.

6 MR. EVANS: It was so well done.

7 THE COURT: Mr. Mecham?

8 MR. MECHAM: I have none.

9 THE COURT: Okay. And anything else,
10 Mr. Proctor?

11 MR. PROCTOR: No. Thank you very much.

12 THE COURT: All right. Thank you, Ms. Beck.

13 Then let's go ahead with Mr. Meredith.

14 (Mr. Meredith was sworn.)

15 DOUGLAS D. MEREDITH,
16 called as a witness, having been duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MECHAM:

20 Q. Mr. Meredith, could you state your name,
21 address, and whom you represent today?

22 A. Yes. My full name is Douglas Duncan
23 Meredith. My address, place of business, is 547 South
24 Oakview Lane in Bountiful, Utah 84010. And I am
25 representing the Utah Rural Telecom Association, URTA.

258

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 Q. Thank you. And did you have filed on your
2 behalf direct testimony in this proceeding consisting
3 of seven pages?

4 A. Yes.

5 Q. And if I were to ask you the questions that
6 are in that testimony today, would they be the same as
7 they were when it was filed?

8 A. Yes.

9 Q. Do you have any corrections to the testimony?

10 A. No.

11 Q. Do you have a brief summary of the testimony?

12 A. Yes.

13 THE COURT: No objection to the admission of
14 it?

15 MR. GUELKER: No objection.

16 THE COURT: Okay. Mark that URTA-1.

17 (Exhibit No. URTA-1 was admitted.)

18 THE WITNESS: Yes, I have just a brief, brief
19 statement. The position of URTA on All American's
20 petition begins on page 3 of my direct testimony. And
21 in which URTA opposes the amendment and petition
22 insofar as it is a -- that All American is seeking a
23 nunc pro tunc ratification of (inaudible.)

24 THE REPORTER: I -- sir, I'm sorry, with the
25 coughing I couldn't hear.

259

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 THE WITNESS: I'm sorry.

2 THE REPORTER: Can you repeat and speak
3 louder, please?

4 THE WITNESS: Sure. On page 3, URTA -- I
5 state that URTA opposes All American's amended
6 petition insofar as All American is seeking nunc pro
7 tunc gratification of the services All American has
8 provided in Beehive's territory.

9 I also provide an alternative, if the
10 Commission were not to, not to make that decision in
11 chief, then there are two alternatives. One
12 alternative is to grant the nunc pro tunc and make the
13 amendment effective prospectively, and provided that
14 the Commission establishes a very clear public
15 interest criteria for entering rural exchanges with
16 fewer than 5,000 lines.

17 If the Commission didn't want to do that as
18 an alternative, the second alternative is to make it
19 very clear that any actions taken in favor of All
20 American in this petition -- this proceeding would
21 have no precedent -- precedential value going forward
22 for other rural local exchanges or rural carriers in
23 the state. And that's my summary.

24 Q. Thank you. Do you have anything further
25 before you're available for cross?

260

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

1 A. No.

2 MR. MECHAM: All right. Mr. Meredith is
3 available for cross.

4 THE COURT: Mr. Guelker?

5 MR. GUELKER: I have no questions.

6 THE COURT: Mr. Ginsberg?

7 MR. GINSBERG: Just a couple.

8 CROSS EXAMINATION

9 BY MR. GINSBERG:

10 Q. Is it your position or view that this record
11 has provided you the sufficient basis for the
12 Commission to make the public interest findings
13 necessary for opening up a rural exchange?

14 A. No. I don't believe the -- from what I've
15 read and from what I've heard today, that the public
16 interest criteria has been sufficiently vetted. On
17 page 6 of my testimony I give at least four criteria
18 for a public interest finding.

19 That is, it should consider, at the very
20 least, the impact of entry on the incumbent provider.
21 The impact on the incumbent provider's ability to
22 continue to serve high-cost areas. The impact of the
23 serve -- the State Universal Service Fund. And the
24 impact on and benefits for customers in the affected,
25 affected area.

(March 3, 2010 - All American - 08-2469-01)

1 I -- those minimum criteria have not been
2 fully vetted. They've been discussed -- at least two
3 of them have been discussed by other witnesses.

4 Q. So your alternative is to do what?

5 A. The alternative, if the Commission were not
6 to look at a public interest fully, then the
7 alternative would be to -- if they didn't adopt the
8 case -- the primary objective -- the primary position
9 of URTA, then the alternative would be to make sure
10 that any action taken on a nunc pro tunc petition
11 would have no precedential value going forward in a
12 proceeding -- future proceeding regarding rural
13 telephone companies in the State of Utah.

14 Q. Now, you've been a witness in Utah before,
15 have you not, on competitive issues?

16 A. Yes, I have.

17 Q. In fact, I -- you were the URTA witness in
18 the Bresnan proceeding?

19 A. Yes. Both, both Bresnan proceedings. The
20 CPCN proceeding and also the interconnection agreement
21 proceeding I was a witness.

22 Q. Now, in those proceedings and today it was
23 also discussed the provision in the Utah Code that if
24 someone's gonna enter an exchange of less than 5,000
25 access lines like a Beehive-type of exchange, then

262

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 certain obligations about who they serve and offering
2 service are there. Are you aware of that section?

3 A. Yes. I re -- I reviewed that section briefly
4 again just when Mr. Coleman was on the stand, in
5 dealing with his cross examination.

6 Q. And do you have a concern about allowing a
7 company only to serve one customer in a rural
8 exchange?

9 A. The -- certainly the provision that I looked
10 at allows the certificating carrier or the carrier
11 seeking the certificate to identify offered services
12 that it wants to offer.

13 So there is a possibility for a cus -- for a
14 CPCN applicant to not only limit the geography, which
15 we all know of. Like in what happened in Bresnan with
16 the Vernal exchange. It was just one exchange of the
17 entire area.

18 But also it appears that particular provision
19 allows the limitation of the types of services that
20 are being offered. I don't know if I've really looked
21 at whether a limitation of that nature is a problem
22 for me.

23 Clearly I have recommended that type of a,
24 type of a recommendation in my alternative. In saying
25 that if you, if you were to grant the nunc pro tunc

263

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 petition that you could limit it to the Garrison
2 exchange and limit it only to the services currently
3 being offered.

4 Q. So, for example, in theory if somebody wanted
5 to come in to a rural exchange of less than 5,000
6 access lines, they could. And had a -- was providing
7 service only to one customer within that exchange,
8 that would be something that you think could be
9 permitted?

10 A. That would some -- that would be -- we would
11 have to look through the public interest to see if
12 that would be within the public interest. For
13 example, if we have a situation where a customer comes
14 in, as we have now with Joy Enterprises.

15 There are, there are considerations on
16 universal service contributions. There are
17 considerations on universal service draws. A whole
18 host of issues related to the public interest that I
19 think would have to be examined.

20 Q. Is it your view that the section was added in
21 order to prevent cherry picking of individual
22 customers in rural exchanges?

23 A. I don't know if I have a view on whether that
24 was added -- I don't have any, any knowledge that that
25 provision of the statute was added for that particular

264

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 purpose.

2 Q. One final question. Can you advise us who
3 the members are of URTA who are owners of the UFN
4 tandem?

5 A. No, I can't. I participate in conference
6 calls with URTA. But I do not have any relationship,
7 or any billing, or consulting advocacy, or work with
8 the UFN, which is the Utah Fiber Network. I know it
9 is a smaller subset than the entire group, but I don't
10 know who the individual members of UFN are.

11 Q. Do you happen to know whether any of the
12 owners of the UFN tandem are not URTA members?

13 A. No, I don't.

14 MR. GINSBERG: Thank you.

15 THE COURT: Thank you.

16 Mr. Proctor?

17 MR. PROCTOR: Yes, thank you.

18 CROSS EXAMINATION

19 BY MR. PROCTOR:

20 Q. Mr. Meredith, are you aware that the issue of
21 a nunc pro tunc, or retroactive, expansion of the CPCN
22 has been determined by the Commission in both Judge
23 Arredondo's order and an order on reconsideration, and
24 that result being they're not entitled to nunc pro
25 tunc relief?

265

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 A. I did not -- I'm not aware of a, of an order
2 that came from this proceeding that said they're not
3 entitled to nunc pro tunc.

4 Q. Are you aware of the order on
5 reconsideration, and again the ALJ's order, that
6 defined the scope of this particular proceeding?

7 A. No. Is that before or after direct testimony
8 was filed?

9 Q. It was last June and August.

10 A. Oh, last August? I -- then, then I would
11 have been aware. Yes, I would have, I would have been
12 advised and would probably have read that particular
13 order. I don't have a recollection of that, though.

14 Q. Okay. When URTA intervened in this
15 proceeding did they state a position with respect to
16 whether or not All American should be permitted to
17 operate within the Garrison, Utah exchange of Beehive?

18 A. I'm not sure what positions were stated. I
19 do know that, in discussions with URTA members and in
20 preparation for testimony, that the proper discussion
21 and vetting of the public interest was of paramount
22 interest and importance.

23 Q. Is it true that your prime -- that URTA's
24 primary position in this case is that the CPCN should
25 not be expanded to include the rural exchange in

266

(March 3, 2010 - All American - 08-2469-01)

1 Garrison, Utah?

2 A. As a nunc pro tunc proceeding, correct.

3 Q. Well, let's assume that it's a proceeding
4 going forward. It's not going to be retroactive
5 relief.

6 A. Okay. Then that's alternative one for me, in
7 my mind.

8 Q. Not alternatively, but prime -- is your
9 primary position, then, that it should not be
10 expanded -- the CPCN should not be expanded?

11 A. The primary, the primary, the primary is, if
12 I refer to page 5, line 134 of my testimony, we do not
13 oppose the alternative relief that All American
14 seeks -- that is to say, to do it prospectively --
15 provided the Commission establishes a public interest
16 criteria for entering rural exchanges with fewer than
17 5,000 access lines.

18 Until -- if that is not done, then we do not,
19 we do not -- then that alternative wouldn't work. I
20 mean, you wouldn't, you wouldn't satisfy our
21 requirement -- or our recommendation.

22 Q. When the URTA intervened into All American's
23 2006 proceedings and -- wherein they asked for a CPCN
24 to cover first the entire state, rural and otherwise,
25 and then narrowed it to Beehive, and ultimately of

267

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 course excluded all rural territories, do you know
2 what URTA's position taken in that docket was?

3 A. Yes. I mention that, or refer to that on
4 pages 3 and 4 of my direct testimony. Essentially
5 giving a history of what, what we oppose -- why we
6 oppose what we opposed at the time.

7 Q. And what was it?

8 A. That we opposed it.

9 Q. Okay. Now, at this point you've, you've
10 developed that -- you suggested that there might be
11 some public interest considerations or criteria that
12 could be developed to test All American's -- the
13 propriety, if I will, if I can, of All American
14 remaining in the Garrison, Utah exchange doing what
15 they're doing now. Is that fair? That's what you're
16 looking for?

17 A. If you, if you chose not to -- let me see.
18 You would need to test whether having All American
19 provide service in the Garrison exchange would meet a
20 public interest criteria for less than 5,000 lines.

21 Q. Now, on page 140 through 147 you outlined
22 potential criteria --

23 A. Uh-huh.

24 Q. -- or criteria that you believed might get
25 you to that particular decision point; is that

268

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 correct?

2 A. Yeah. I said a minimum of at least four
3 criteria that are -- that I believe should be looked
4 at. If we look at the Bresnan decision, that really
5 boiled down to two. And Mr. Coleman expressed that
6 very eloquently, talking about competitive choice and
7 impact on USF.

8 I think that is too limited. And the
9 criteria should be expanded to include these other
10 items.

11 Q. Would the criteria also include the
12 legislative policy statement found in Section
13 54-8b-1.1 as to the policy reasons for allowing
14 competitive entry into ILEC telephone company
15 territories?

16 A. I'd need to look at that particular
17 provision.

18 Q. Do you need a copy of the statute?

19 A. Could you refer, refer to the?

20 Q. 54-8b-1.1. My volume is page 84. I --

21 A. Yes, I have that.

22 This appears to be like a preamble for the --
23 or the policy of the State generally.

24 Q. No question, it is.

25 A. And it doesn't really recognize some of the

269

(March 3, 2010 - All American - 08-2469-01)

1 other specifics that identify the protections for
2 rural carriers.

3 Q. As a policy statement would these be criteria
4 that this Commission should consider, and to -- to
5 determine whether or not All American should be
6 allowed to remain in a rural exchange and doing the
7 business that it's presently doing?

8 A. Let me just take a moment and read these ten
9 items.

10 (Pause.)

11 THE WITNESS: Of these ten items, I, I can
12 see that the Commission could use these or portions of
13 them. It's certainly not limited to these items in
14 their determination of the public interest.

15 Q. (By Mr. Proctor) Would another criteria be
16 to examine the prior conduct of All American in
17 entering Utah -- Garrison, Utah exchange, operating
18 with no certificate -- the evidence that you've hear
19 to -- heard here today, would that also be appropriate
20 criteria for this Commission to consider in your
21 alternative proposal?

22 A. Yes. Yes. Because a good number of the
23 pieces of information that I heard today dealt with
24 the ability of All American to operate. And to
25 operate as a, as a carrier, following all the rules

270

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 and regulations of the Commission and of the State,
2 yes.

3 Q. For example, reporting requirements?

4 A. Yes.

5 Q. Financial integrity?

6 A. I don't know about integrity, but.

7 Q. Financial ability?

8 A. Financial ability. Ability to have a handle
9 on items that are usually generally very well known
10 by, by managers of the company.

11 Q. Did you -- did Mr. Goodale's testimony with
12 respect to the annual reports and the revenues and
13 expenses, did that satisfy any of your criteria with
14 respect to All American's financial operations within
15 the Garrison, Utah exchange?

16 A. I haven't looked at the annual reports. I
17 didn't take -- because I was -- I'm more interested in
18 the public interest criteria, so I really didn't get
19 into that. But the filing or the not filing of annual
20 reports is a concern.

21 Q. Is it also a concern that All American
22 requested, in its second amended application, to
23 exclude all rural territories and thereby comply with
24 the prohibition within Utah law. Acquired a
25 certificate that excluded all those territories, and

271

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 then within a few months violated it. Does that at
2 all affect the satisfaction of any of your criteria
3 that you stated in your testimony, or any of the
4 criteria we've talked about today?

5 A. Yes, I think actually it's, unfortunately, a
6 little worse than what you -- how you stated. My
7 understanding is that All American was operating
8 before it sought a CPCN for the entire state.

9 In Garrison -- he was operating in Garrison,
10 Utah. And then went forth and sought a, sought a
11 certificate. Got a certificate that limited it to
12 Qwest's territory. And then continued to operate in
13 Garrison.

14 So the facts are not good in that particular
15 situation. And that speaks again, as I mentioned, to
16 the managerial ability to follow regulations.

17 Q. I'm glad you mentioned that. So, based upon
18 your own review of the testimony, your testimony and
19 analysis, and what you heard here today, has All
20 American complied with any of the criteria that you
21 would request the Commission to apply in determining
22 whether they should remain in Garrison, Utah?

23 A. No. As I mentioned before, I don't think the
24 public interest has been sufficiently vetted, from
25 what I've heard so far.

272

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1 MR. PROCTOR: Thank you, sir.
2 THE COURT: Any other questions, Mr. Proctor?
3 MR. PROCTOR: No. I have no questions.
4 THE COURT: Mr. Evans?
5 MR. EVANS: Nothing here, thank you.
6 THE COURT: All right.
7 Mr. Mecham, any redirect?
8 MR. MECHAM: No redirect.
9 THE COURT: All right. Thank you.
10 Mr. Guelker, did you want to call Mr. Goodale
11 for any rebuttal?
12 MR. GUELKER: Not -- no, we don't, your
13 Honor.
14 THE COURT: Okay.
15 MR. GUELKER: We're set.
16 MR. GINSBERG: I'm sorry, I couldn't hear
17 you.
18 THE COURT: I just wanted to see if he
19 wanted -- he mentioned calling Mr. Goodale as a
20 possible rebuttal witness.
21 MR. GINSBERG: Oh.
22 THE COURT: Okay. Then with that, I wanted
23 to just take care of a couple of housekeeping. I just
24 wanted to make sure we have everybody's exhibits. We
25 have All American's Exhibit P-1 and P-2; is that

273

(March 3, 2010 - All American - 08-2469-01)

1 correct? Just those two?

2 MR. GUELKER: Correct.

3 THE COURT: Then we have DPU-1 -- we have a
4 total of eight exhibits for DPU; is that correct?

5 MR. GINSBERG: Yes.

6 THE COURT: Okay. And then OC -- OCS-1, and
7 I think there was a 1-D?

8 MR. PROCTOR: One and 1-D M. BECK, with
9 attachments. So we have the two exhibits.

10 THE COURT: Okay. And then Qwest's -- Qwest
11 Exhibit 1 and 2. And URTA-1. And AT&T Exhibit 1. Is
12 that correct; have I neglected to mention any
13 exhibits? No?

14 And then I'll just remind everybody that we
15 do have initial post-hearing briefs due Monday,
16 March 15th. And responsive post-hearing briefs
17 Monday, March 22nd.

18 MR. PROCTOR: And I think I've been appointed
19 to talk to you about that.

20 MR. GINSBERG: Can we do that off the record,
21 or?

22 THE COURT: Yeah, go ahead.

23 (A discussion was held off the record.)

24 (The hearing was concluded at 5:22 p.m.)

25

274

Kelly L. Wilburn, CSR, RPR
DepomaxMerit

(March 3, 2010 - All American - 08-2469-01)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

This is to certify that the foregoing proceedings were taken before me, KELLY L. WILBURN, a Certified Shorthand Reporter and Registered Professional Reporter in and for the State of Utah.

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting. And that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, numbered 1 through 274, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

SIGNED ON THIS 15th DAY OF March, 2010.

Kelly L. Wilburn, CSR, RPR
Utah CSR No. 109582-7801

