

Docket No. 08-2469-01

Office of Consumer Services  
Responsive Post Hearing Brief  
March 31, 2010

Attachment 4

Marc A. Goldman (*admitted pro hac vice*) (D.C. 449230) mgoldman@jenner.com  
Duane C. Pozza (*admitted pro hac vice*) (D.C. 490167) dpozza@jenner.com  
JENNER & BLOCK  
1099 New York Avenue, N.W., Suite 900  
Washington, D.C. 20001  
Telephone: (202) 639-6000  
Facsimile: (202) 639-6066

Paul C. Drecksel (5946) pdrecksel@parrbrown.com  
Daniel E. Barnett (8579) dbarnett@parrbrown.com  
John P. Snow (10735) jsnow@parrbrown.com  
PARR BROWN GEE & LOVELESS  
185 South State St., Suite 800  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7840  
Facsimile: (801) 532-7750

Attorneys for Sprint Communications Company, L.P.

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH,  
CENTRAL DIVISION

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BEEHIVE TELEPHONE CO., INC., a Utah  
corporation, and BEEHIVE TELEPHONE CO.  
OF NEVADA, INC., a Nevada corporation,

Plaintiffs,

v.

SPRINT COMMUNICATIONS COMPANY  
L.P., a Delaware limited partnership,

Defendant,

v.

ALL AMERICAN TELEPHONE CO., INC., a  
Nevada corporation,

Third-Party Defendant.

**DECLARATION OF JULIE A.  
WALKER IN OPPOSITION TO  
BEEHIVE'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Case No. 2:08-cv-00380

Hon. Dee Benson

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## DECLARATION OF JULIE A. WALKER

1) My name is Julie A. Walker. My title is Access Verification Analyst II for Sprint United Management Company, the management subsidiary of Sprint Nextel Corporation. I am aware of the litigation between Sprint Communications Company L.P. ("Sprint") and Beehive Telephone Co., Inc. and Beehive Telephone Co. of Nevada, Inc. (whom I will refer to collectively as "Beehive"), and All American Telephone Co., Inc. ("All American") pending in the United States District Court for the District of Utah. I make the following declaration in support of Sprint's Memorandum in Opposition to Beehive's Motion for Partial Summary Judgment. The statements made in this declaration are based on my personal knowledge including information provided to me by others at Sprint or by personnel working under my supervision. If called to testify as a witness, I would testify as follows:

2) I received a Bachelor's of Science in Accountancy, from the University of Missouri at Columbia, in Columbia, MO, in 1990. I have been employed at Sprint since 1991. My entire career at Sprint has been in Sprint's Access Verification department, outside of a one-year rotation to Corporate Accounting during 1993. During my tenure in Access Verification, I have held several positions, all related to the audit and payment of access charges billed to Sprint by other telecommunications companies.

3) In my current position, I have investigated a number of instances in which local exchange carriers ("LECs") collaborated with conference call, chat line, or other similar service providers (known as "CCCs") to stimulate traffic to the LECs in order to bill access charges to long-distance providers. Typically, in these schemes, the LECs offer the CCCs a portion of the access charges they collect in exchange for the CCCs using the LECs' telephone numbers to offer service, which they do for free or nearly free to callers. By offering free service, the CCCs

stimulate traffic with the high cost of the additional traffic borne not by the users of the CCCs' service but by the long-distance providers. This practice is commonly referred to as "traffic pumping." My investigation of these traffic-pumping activities included the investigation of the activity of Beehive and All American.

4) On or around September 2007, my Access Verification team at Sprint noticed a sudden increase in terminating access charges billed by All American in Utah. We communicated with David Goodale of All American, who later told us in an email in November 2007 that some of All American's "customers" had recently moved from Nevada to Utah. Mr. Goodale also stated that All American had "added new Utah customer traffic that had previously been with Beehive Telephone." A true and correct copy of the email from Mr. Goodale to myself is attached hereto as Exhibit 1.

5) As I discuss below, our investigation of phone numbers to which All American was directing calls led us to conclude that All American was sending calls to CCCs, not local end user customers. Because Mr. Goodale indicated that this same traffic had previously been with Beehive, this strongly suggested that Beehive had previously been sending calls directly to CCCs. Upon further investigation we also noted that the end office switching charges (and some other charges) billed by Beehive dropped dramatically in August 2007. This dramatic decrease also suggested that Beehive had previously been sending calls directly to CCCs but had then stopped doing so, as there is no other obvious reason for such a sudden drop off. Moreover, in prior months, Beehive's end-office switching access charges billed to Sprint had been very high for a carrier of its size, again suggesting it had been sending traffic to CCCs.

6) Even after traffic to CCCs was routed through All American, Beehive remained an integral part of this scheme. Our investigation of traffic volumes showed that Beehive was

billing transport charges on calls that were being directed to All American for termination, and that Beehive's transport charges remained high even as its other access charges declined.

Switched access charges are divided into different components, including tandem switching and transport charges to take traffic from the long-distance provider to the local end office switch, and end office switching for use of the switch closest to the customer. Sometimes multiple carriers provide different parts of the access service. Here, Beehive was billing for tandem switching and transport components of access service, and All American was, among other things, billing for local end office switching.

7) Sprint concluded, however, that the traffic to the CCCs was not access traffic at all, because the CCCs were not end user customers of Beehive's or All American's local exchange service as is required to bill access charges. In October, 2007, we began disputing in writing both Beehive's and All American's charges for call traffic to CCCs and withheld payment for such traffic going forward. Sprint has also disputed Beehive's and All American's charges for calls to CCCs prior to October, 2007. Sprint has now disputed \$3.5M with Beehive going back to February 2007, and has disputed \$3.0M with All American, going back to April 2006.

8) We subsequently received additional confirmation that Beehive was routing traffic through All American to CCCs. In an email exchange with Chuck McCown of Beehive after we began disputing charges, Mr. McCown admitted that Beehive had routed disputed call traffic to a Competitive Local Exchange Carrier ("CLEC"), which can only be All American, for delivery to conference bridge equipment. A true and correct copy of a January 2, 2008 email exchange between Mr. McCown and myself (among others) is attached hereto as Exhibit 2. In that same email exchange, Mr. McCown denied that Beehive itself sent call traffic directly to CCCs at that time, but, as I explained, that is not relevant to Sprint's dispute, which is based on the fact that

Beehive is imposing access charges for traffic that does not terminate with end user customers of a LEC. Moreover, Mr. McCown's assertion that Beehive did not then directly terminate traffic to CCCs was not inconsistent with Sprint's understanding that Beehive had previously done so. I noted to Mr. McCown that the dispute is not volume-related, but instead related to the nature of the CCC traffic. I also explained that a substantial portion of the calls for which Beehive was billing switched access charges went to what appeared to be a sex chat line entitled "Manhole Party Crowd."

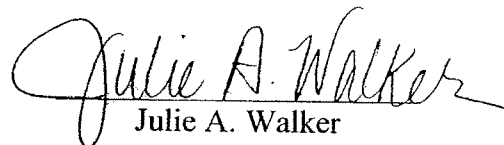
9) During my investigation of these issues I also held telephone conversations with David Goodale. In those conversations, Mr. Goodale acknowledged that the large volumes of traffic at issue are the result of conference call and chat line traffic. In a conversation on or about June 20, 2008, Mr. Goodale provided further evidence suggesting Beehive's continued involvement in the scheme. Mr. Goodale admitted that All American used Beehive's switches to deliver traffic and also obtained its telephone numbers from Beehive. Further, All American does not appear to have any legitimate local end user customers; all of the traffic to All American appears to go to CCCs. This is apparent from the fact that All American does not regularly bill Sprint originating access charges, as would be expected if it had legitimate local end user customers such as residential or non-CCC business customers. In other words, while a lot of long-distance traffic is routed to All American, none is routed from All American as would be expected if All American had ordinary customers who made, as well as received, long-distance calls.

10) I have also called telephone numbers associated with the large volumes of traffic at All American and was able to confirm that the numbers were associated with chat line or conference services. Those free chat line services included the "Party Crowd" chat line and the "Manhole Party Crowd" chat line, which was described on the call: "spend free time, 24/7, with America's

hottest party crowd. Adult members only.” The services appear to function to connect other callers to talk to each other, which is true generally of CCCs involved in other traffic-pumping investigations.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 31, 2009, in Overland Park, KS.

  
Julie A. Walker

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of July, 2009, I filed the foregoing **DECLARATION OF JULIE A. WALKER IN OPPOSITION TO BEEHIVE'S MOTION FOR PARTIAL SUMMARY JUDGMENT** electronically with the Clerk of Court using the CM/ECF system, which was served via electronic mail to the following:

- Alan L. Smith (alanakaed@aol.com)
- Gary R. Guelker (gary@jandglegal.com)

The foregoing **DECLARATION OF JULIE A. WALKER IN OPPOSITION TO BEEHIVE'S MOTION FOR PARTIAL SUMMARY JUDGMENT** was also served via U.S. Mail, postage prepaid, on the following:

David R. Irvine  
747 E. South Temple, Suite 130  
Salt Lake City, Utah 84102

DATED this 31st day of July, 2009.

PARR BROWN GEE & LOVELESS

By:           /s/ John P. Snow            
Paul C. Drecksel  
Daniel E. Barnett  
John P. Snow  
*Attorneys for Defendant and Counterclaim  
Plaintiff*



# **Exhibit 1**

**Walker Decl. Opposition to Summary Judgment**

**Pozza, Duane**

**From:** David Goodale [goodale@allamericantelco.com]  
**Sent:** Tuesday, November 20, 2007 5:22 PM  
**To:** Walker, Julie A [NTK]  
**Subject:** RE: Billing from 691DD691D0333

Ms. Walker:

This issue is still open and in addition you may want to review our 10/1/07 billing number 589E09200706241. As you will see by reviewing all our Nevada and Utah traffic we have decreased our MOU in Nevada as we have had customers move from Nevada to Utah. In addition we have added new Utah customer traffic that had previously been with Beehive Telephone. This traffic shift in the two billing areas and the new traffic from Beehive is the only reason for any increase in our Utah MOU billing. By totaling the three billings you will see that Sprint traffic has moved but not increased. We have been a good partner with Sprint for many years with both companies benefiting from our servicing Sprint customer calls. We look forward to continuing this mutually beneficial relationship and request that you pay our bills for Nevada 9-1-07 and Utah 10-1 and 11-1-07. Please call or email me if you have any questions.

Thank You,

David W. Goodale  
[goodale@allamericantelco.com](mailto:goodale@allamericantelco.com)  
V: 702-499-9889  
F: 702-920-8844  
C: 800-510-7800

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**From:** Walker, Julie A [FIN] [mailto:Julie.A.Walker@sprint.com]  
**Sent:** Friday, October 19, 2007 11:10 AM  
**To:** David Goodale  
**Subject:** RE: Billing from 691DD691D0333

David,  
I apologize for not getting back to you yet. I have had two packed days, and am leaving for today. What I wanted to do before responding to you, was review your traffic data, and I haven't had a chance to do that. I will respond to you on Monday.

Thanks~

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**From:** David Goodale [mailto:goodale@allamericantelco.com]  
**Sent:** Tuesday, October 02, 2007 12:49 PM  
**To:** Walker, Julie A [FIN]  
**Subject:** Billing from 691DD691D0333

Ms. Walker:

Your dispute detail report shows a concern for the increase in traffic when in fact the traffic is decreasing since our August 1 billing. As these calls originate from Sprint customers we have no control on this access traffic. This is all valid traffic billed according to our tariff. If you have

6/19/2008

any questions or concerns please call me at 702-499-9889

David W. Goodale

[goodale@allamericantelco.com](mailto:goodale@allamericantelco.com)

V: 702-499-9889

F: 702-920-8844

C: 800-510-7800

## **Exhibit 2**

**Walker Decl. Opposition to Summary Judgment**

## Pozza, Duane

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**From:** Walker, Julie A [NTK] [Julie.A.Walker@sprint.com]  
**Sent:** Tuesday, July 28, 2009 1:35 PM  
**To:** Roach, Regina S [NTK]  
**Subject:** FW: Beehive Telephone call

-----Original Message-----

**From:** Chuck McCown [mailto:chuck@beehive.net]  
**Sent:** Wednesday, January 02, 2008 9:32 AM  
**To:** Walker, Julie A [FIN]; john@beehive.net  
**Cc:** Lawler, Kathryn B [FIN]; Roach, Regina S [FIN]  
**Subject:** Re: Beehive Telephone call

You are mistaken in that you are claiming that we are terminating any call to a chat line. We do not terminate any conference or chat traffic. We do have traffic that transits our company to other CLECS. They do have customers that operate conference bridges. Those bridges are located in central offices in the most rural area of this country. Yes rural does mean rural. The CLECs are rural and their customers are rural.

But your dispute is with them not us. You will note that none of the access billed to you for the type of traffic that you characterize as suspect is local switching.

Irrespective, your feelings about what type of traffic is and is not allowed does not have any bearing on the filed rate doctrine. You deliver the traffic, you pay for the traffic. Period. No dispute. You are admitting here that you are engaging in self help. You can make whatever claims you wish but not paying a common carrier tariffs for traffic hauled is not legal.

So, I guess there is no reason for the call. We will file the complaint today and ask our translations people to route sprint calls to a recording indicating why we can no longer switch the calls. We will also put a contact number into the recording of someone at Sprint that they can contact. Shall we use your number?

Govern Yourselves Accordingly  
Chuck McCown

The other issue, which shouldn't be confused with the above, makes up about \$400k of the current outstanding, and has nothing to do with measured volumes of traffic, or discrepancies in the CDR's. The issue is not volume-related, but rather driven by the nature of the traffic itself - specifically, chat line/free conference terminations. Sprint, like other IXC's, has seen terminating access volumes skyrocket from carriers who have contracted with 3rd party conferencing companies, solely to stimulate access billed to the IXC's, whereupon the vast revenues generated by such traffic, are then shared, presumably. For our disputes with Beehive, those claims are categorized as code 912 - Toll Fraud. Speaking off-hand, I believe we've determined that about 1.2M of your 1.3M current volumes are terminating to a "Manhole Party Crowd" chat line. I'm sure you are aware that many such "access pumping" claims have been brought before the FCC and Federal Court, by several IXC's. Sprint, with other IXC's, continues to hold firm that, until this access pumping issue is firmly understood, and finally resolved in such courts, our claims are valid.

~~However, Sprint is very willing to negotiate a potential settlement to this issue. With respect to the idea that we're disputing~~ the NECA rates, I will just add that Sprint believes NECA rates are reasonable and just for any "rural" carrier transporting traffic reasonable to its local exchange population. Rural mean rural. However, billing volumes that potentially exceed what an RBOC in that exchange would bill, would indicate a rate more comparable to the dominant RBOC in your state would be more appropriate.

Therefore, some items for discussion would include the application of a lower rate for this access, and/or a self-induced "cap" on volumes billed

If your company wishes to explore such an analysis of volume/rate structure, certainly let's get some dialogue started.

I hope this clarification was helpful. I understand your position related to "self help", and we do want to get back on track

with the access carrier/IXC relationship that we have established. Sprint continues to pay Beehive for all access not related to the issues described above.

John, I will plan to call you about 9:00 Mountain time.

Thanks~  
Julie Walker

-----Original Message-----

From: Chuck McCown - 2 [mailto:chuck@beehive.net]  
Sent: Tuesday, January 01, 2008 9:58 PM  
To: Walker, Julie A [FIN]; john@beehive.net  
Cc: Lawler, Kathryn B [FIN]; Roach, Regina S [FIN]  
Subject: Re: Beehive Telephone call

Thanks for the note, but you really need to be talking to our CABS guy John and telling him you are paying your bill via ACH tomorrow morning. He says he has been attempting to settle this for months.

You folks have CDRs for the calls. You folks bill your customers for 1+ long distance. So, you have already billed and collected the money from your customers. Now, since you sent the calls to their various destinations, the onus, the legal responsibility, is on you to pay for transport and delivery. Our rates are NECA rates. We are in the NECA pool. You cannot claim NECA rates are not reasonable and just. That is indisputable.

It is illegal for an IXC to engage in self help by refusing to pay. We have call records, you have call records. Moreover the call records we use are produced by Qwest, the regional access toll tandem switch provider. If you feel our records are wrong, I suggest you take it up with Qwest. But the Qwest records agree with the records that our intermediate tandem and end office switches produce to a pretty high degree. Actually there is a little phantom traffic being foisted upon us but that is a different argument for a different day. So since Qwest is keeping track of the calls (and I'll bet you are paying them for what they do, that is discoverable) then there shouldn't be a dispute as to the amount of traffic. What is left to dispute?

Our complaint to the FCC will include both self help and quantum meruit argument which is inarguable in this case. Any withheld CABS payment is defacto self help and quantum meruit. In some cases treble damages are in order. We hope to have NECA intervening with this as well. I will probably have the draft complaint done tomorrow. Big IXCs like you folks tap dance and drag things out forever at the expense of the little rurals like us. We know the drill. We have been subject to it for years. What do you expect us to do?

John will be happy to discuss any of this with any of you. 435-837-6000 I suggest you wait until about 8:30 Mountain time for him to get settled in his office for the day.

I will be in and out of the office as usual. I don't see much benefit in having me in the discussions since I don't deal with the mechanics of the CABS billing. I deal with the decision to enter the legal arena. If you want me, ask them to find me. I split my time between several venues. Sometimes I am in the office, sometimes not.

Regards,  
Chuck

----- Original Message -----

From: "Walker, Julie A [FIN]" <Julie.A.Walker@sprint.com>  
To: <chuck@beehive.net>  
Cc: "Lawler, Kathryn B [FIN]" <Kathy.Lawler@sprint.com>; "Roach, Regina S [FIN]" <Regina.Roach@sprint.com>  
Sent: Tuesday, January 01, 2008 8:15 PM  
Subject: Beehive Telephone call

Hi Chuck,

I apologize for not returning your call on Monday. I was out of the office, and should have updated my voicemail accordingly. I will be in the office tomorrow, and will be happy to speak to you regarding the disputes we currently have with Beehive. Of the Sprint contacts you have made, I am probably closest to the issue, and best-suited to speak to the

amounts in dispute, and Sprint's position on the issue.

I will plan to call you at 9:00 a.m. Central Time. Let me know if some other time is preferable to you.

Thanks~  
Julie Walker  
Senior Financial Analyst  
Sprint Nextel Access Verification  
913-315-5435