

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Beehive Telephone Co., Inc., for a Certificate of Public Convenience and Necessity to Provide Local Exchange Services within the State of Utah)
DOCKET NO. 06-051-01)
REPORT AND ORDER APPROVING)
STIPULATION AND ISSUING)
CERTIFICATE)

SYNOPSIS

The Commission approves the Stipulation Between Parties (“Stipulation”) filed by Beehive Telephone Co., Inc., (“Beehive Telephone”), Beehive Telecom, and the Utah Division of Public Utilities granting the request of Beehive Telephone for a Certificate of Public Convenience and Necessity (“Certificate”) authorizing Beehive Telecom to provide public telecommunications services within the State of Utah, including, for limited purposes as agreed in the Stipulation, the service territory for which Beehive Telephone serves as the incumbent local exchange carrier, but excluding all other local exchanges having fewer than 5,000 access lines of an incumbent telephone corporation with fewer than 30,000 access lines in the state. The Commission, having considered the record in this proceeding and the applicable law, hereby makes, adopts, and enters the following Report and Order.

ISSUED: April 23, 2007

By The Commission:

PROCEDURAL HISTORY

On May 3, 2006, Beehive Telephone Company, Inc. (“Beehive Telephone” or “Applicant”) filed its original Application pursuant to Utah Code Annotated §54-8b-1.1 *et. seq.*, and Title 63, Chapter 46b of the Utah Administrative Procedures Act seeking a Certificate of Public Convenience and Necessity (“Certificate”) to operate as a provider of local exchange and intrastate interexchange telecommunications services throughout the state of Utah.

On June 9, 2006, the Utah Rural Telecom Association (“URTA”) filed a Petition to Intervene and a Petition to Exclude from Application all Exchanges Serving Fewer than 5,000

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Access Lines. On June 27, 2006, the Commission issued its Order Granting Intervention to URTA.

On August 28, 2006, following two procedural conferences held with the parties and the Administrative Law Judge, Applicant filed an Amended Application including in its intended service territory that area currently served by Beehive Telephone as the incumbent local exchange carrier (“ILEC”) while excluding from said service territory all other exchanges with less than 5,000 access lines served by an incumbent telephone corporation with fewer than 30,000 access lines in the state.

On January 16, 2007, the Division of Public Utilities (“Division”) filed a memorandum recommending approval of the Amended Application with respect to Applicant’s request to serve as a competitive local exchange carrier (“CLEC”) in Qwest territory but raising several concerns with Applicant’s request to serve as a CLEC in Beehive Telephone’s territory.¹

On January 24, 2007, the Commission issued a Notice of Hearing setting hearing in this matter to convene with the Administrative Law Judge on March 22, 2007. In response to concerns raised by various parties, on February 15, 2007, the Commission issued a Notice Canceling Hearing and Setting Technical and Scheduling Conference to convene on March 27, 2007.

¹Although both the Application and the Amended Application were filed by Beehive Telephone, it is Beehive Telecom, an affiliate of Beehive Telephone, that would serve as the certificated CLEC under the authority sought from the Commission in this docket.

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On April 13, 2007, following the conference noted above, the Commission issued a Notice of Hearing setting hearing in this matter to convene with the Administrative Law Judge on April 19, 2007.

On April 17, 2007, the Division, Beehive Telephone, and Beehive Telecom (hereinafter jointly referred to as "Parties to the Stipulation") filed for approval a Stipulation Between Parties ("Stipulation") in which they agree to approval of a Certificate authorizing Beehive Telecom to serve as a CLEC in all Qwest territory in the state of Utah and also as a CLEC in the territory of Beehive Telephone, with certain restrictions as discussed below.

Also on April 17, 2007, the Commission issued an Amended Notice of Hearing informing all interested persons that the hearing previously scheduled to convene on April 19, 2007, would consider evidence and argument regarding the Stipulation in addition to other relevant issues.

Hearing convened as noticed on April 19, 2007 before the Commission's Administrative Law Judge. At hearing, Beehive Telephone and Beehive Telecom were represented by Judith O. Hooper of Beehive Telephone. The Division was represented by Patricia Schmid, Assistant Attorney General. Christopher Luras, Technical Consultant, testified on behalf of the Division. URTA was represented by Stephen F. Mecham of Callister Nebeker & McCullough.

THE STIPULATION

The Stipulation contains the following principal terms and conditions. This description of the Stipulation is made for convenience of reference only and is not intended to

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modify the terms and conditions of the Stipulation appended to this Order. Parties to the Stipulation agree as follows:

1. Beehive Telecom shall keep separate accounting records from Beehive Telephone and the Division shall have access to Beehive Telecom's books and records.
2. Beehive Telecom should be issued a Certificate to provide all public telecommunications services in all Qwest territory in the state of Utah.
3. Beehive Telecom should be issued a Certificate to operate within Beehive Telephone's service territory for the sole purpose of permitting Beehive Telecom to interconnect with, collocate in and to purchase wholesale facilities from Beehive Telephone for the purpose of facilitating Beehive Telecom's service in Qwest's service territory.
4. Beehive Telecom will not provide retail telecommunications service to any customers within Beehive Telephone's service territory.
5. Beehive Telecom will file with the Commission its agreements, including the rates and terms and conditions for interconnection, collocation and the purchase of any services or facilities of Beehive Telephone or Beehive Telecom.
6. Approval of the Stipulation should not be construed as a finding by the Commission that it is in the public interest for Beehive Telecom to provide telecommunications services to customers within Beehive Telephone territory or that the requirements of 47 U.S.C. § 251(f)(1)(B) have been met.

DISCUSSION

At hearing, the Division testified the terms and conditions of the Stipulation are in the public interest and represent a reasonable settlement of the matters currently before the Commission. The Division further testified that the prohibition against Beehive Telecom offering retail telecommunication services in Beehive Telephone service territory effectively moots the Division's previous concerns as stated in its memorandum of January 16, 2007. URITA did not offer any testimony or evidence, and took no position on approval of the Stipulation.

FINDINGS AND CONCLUSIONS

Settlement of matters before the Commission is encouraged at any stage of proceedings.² However, parties to a proceeding not joining in a stipulation or settlement shall be entitled to oppose the stipulation.³ No party has done so in this case. The Commission may approve a stipulation or settlement after considering the interests of the public and other affected persons if it finds the stipulation or settlement in the public interest.⁴ We have carefully reviewed the record in this matter, all issues raised by the parties and the arguments and evidence provided by the parties with respect to those issues. Based upon this review, we find and conclude the parties' agreement to issuance of a Certificate as indicated in the Stipulation is in the public interest. We therefore approve the Stipulation as a just and reasonable settlement of

² Utah Code Ann. § 54-7-1. *See also Utah Dept. of Admin. Services v. Public Service Comm'n*, 658 P.2d 601, 613-14 (Utah 1983).

³ Utah Code Ann. § 54-7-1(3)(e)(ii).

⁴ *Id.*

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the issues in this docket. However, as we have indicated in previous cases, said approval is not intended to alter any existing Commission policy or to establish any precedent by the Commission.

Accordingly, the Commission, having been fully advised in the premises, enters the following Report, containing Findings of Fact, Conclusions of Law, and the Order based thereon.

FINDINGS OF FACT

1. Beehive Telecom is qualified to do business in Utah.
2. Beehive Telephone has requested that the Commission grant a Certificate of Public Convenience and Necessity to Beehive Telecom authorizing it to provide public telecommunications services within the State of Utah.
3. Beehive Telecom is proposing to provide public telecommunication services in the state of Utah, including the service territory of Beehive Telephone but excluding all other exchanges with less than 5,000 access lines that are served by incumbent telephone corporations with fewer than 30,000 access lines in the state.
4. Beehive Telecom seeks certification to operate within the service territory of Beehive Telecom solely to permit interconnection with the facilities of Beehive Telephone. Beehive Telecom will not provide retail telecommunications service to any customers within Beehive Telephone service territory.
5. Beehive Telecom will utilize its managerial and technical expertise to support its Utah operations.

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6. Beehive Telecom has sufficient technical resources and abilities to provide the public telecommunications services for which Beehive Telephone has applied.

7. Beehive Telecom has sufficient managerial resources and abilities to provide the public telecommunications services for which Beehive Telephone has applied.

8. Beehive Telecom has a secure and sufficient source of funding for its Utah operations that will enable it to meet projected capital and operating expenses and to implement its business plans.

9. Beehive Telecom has sufficient financial resources and abilities to provide the public telecommunications services for which Beehive Telephone has applied.

10. In its provision of intrastate services, Beehive Telecom will be subject to competition from other certified telecommunications services providers.

11. Beehive Telecom's service offerings will provide customers with a wider range of choices in meeting their telecommunications needs and will support the development of competition.

12. The issuance of a Certificate to Beehive Telecom to provide public telecommunications services is in the public interest.

13. The reporting requirements in Exhibit C attached hereto are in the public interest and are binding upon Beehive Telecom until modified by the Commission.

14. Beehive Telecom has applied for exemptions from the requirements of various procedures of the Utah Code and the Commission's Rules and Regulations.

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15. The grant of exemptions from the provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit C, is in accord with Commission practice and is in the public interest.

CONCLUSIONS OF LAW

1. Beehive Telecom meets each of the statutory requirements (§54-8b-2.1, *et. seq.* UCA 1953, as amended) for issuance of a Certificate as a telecommunications corporation.

2. Beehive Telecom meets each of the statutory requirements (§54-8b-2.1, *et. seq.*, UCA 1953, as amended) for authorization to provide the public telecommunications services for which it seeks a Certificate.

3. The issuance of a Certificate to Beehive Telecom to provide the telecommunications services for which it has applied is in accord with the legislative policy declarations set forth in Utah Code §54-8b-1.1.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Stipulation Between Parties filed on April 17, 2007, is approved.
2. The Commission hereby grants Beehive Telecom the Certificate attached hereto as Exhibit B and, by this reference, made a part of this Report and Order.

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3. Beehive Telecom shall provide reports to the Commission and to the Division of Public Utilities, Utah Department of Commerce, as set forth in Exhibit C and, by this reference, made part of this Report and Order.

4. Beehive Telecom is exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit C.

5. As Beehive Telecom does not propose to take customer deposits nor provide pre-paid services, the Commission's bond requirement is waived.

Pursuant to *Utah Code Ann.* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of *Utah Code Ann.* §§ 63-46b-14 and 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 23rd day of April, 2007.

/s/ Steven F. Goodwill
Administrative Law Judge

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Approved and Confirmed this 23rd day of April, 2007, as the Report and Order of
the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#53135

APPENDIX A: STIPULATION

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Attorneys for Applicant, Beehive Telephone Company, Inc., & Beehive Telecom, Inc.

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

IN THE MATTER OF THE PETITION OF BEEHIVE TELEPHONE CO. FOR AUTHORITY TO COMPETE AS A TELECOMMUNICATIONS CORPORATION AND TO OFFER PUBLIC TELECOMMUNICATIONS SERVICES	DOCKET NO. 06-051-01 STIPULATION BETWEEN PARTIES April 16, 2007
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STIPULATION

The Division of Public Utilities (“the Division”) and Beehive Telecom (“Beehive CLEC”), the competitive local exchange carrier applicant in this docket, and Beehive Telephone Company, Inc., (“Beehive ILEC”) have discussed certain issues raised by Beehive CLEC’s Application and its Amended Application and by the Division’s January 16, 2007, Memorandum to the Public Service Commission (“the Commission”). Beehive CLEC, Beehive ILEC, and the Division (“the Parties”) held a technical conference on March 27, 2007, before Judge Steve

Goodwill. The Parties enter into this STIPULATION which encompasses the full agreement between the Division, Beehive CLEC, and Beehive ILEC on the following issues:

On May 3, 2006, Beehive CLEC applied for a Certificate of Public Convenience and Necessity (“CPCN”) to provide telecommunications services throughout the State of Utah, pursuant to Utah Code Annotated § 54-8b-2.1 and R746-349 of the Commission’s Rules. On August 28, 2006, Beehive CLEC amended its application requesting a CPCN to provide telecommunications services as a CLEC in Qwest territories and in Beehive’s ILEC territory.

The Parties agree that this Stipulation is in the public interest and that all of its terms and conditions, considered together as a whole, will produce fair, just and reasonable results. However, this Stipulation should not be construed as a finding by the Commission that it is in the public interest for Beehive CLEC to provide telecommunications services to customers in the Beehive ILEC service territory or constitute a finding by the Commission that the requirements under Section 251(f)(1)(B) have been met.

1. Beehive CLEC shall keep separate accounting records from Beehive ILEC and the Division shall have access to Beehive CLEC’s books and records.
2. The Division agrees that Beehive CLEC should be issued a CPCN to provide all public telecommunications services in all Qwest territories in the state of Utah.
3. In order to provide public telecommunication services within the Qwest

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territory Beehive CLEC should be issued a CPCN within the Beehive ILEC service territory. This Certificate is being issued for the sole purpose in order to allow Beehive CLEC to interconnect with, collocate in and to purchase wholesale facilities from Beehive ILECs such as UNE's and other wholesale facilities in facilitating Beehive CLEC's provisioning of service in Qwest's service territory. Beehive CLEC will purchase these facilities, enter into interconnection agreements and co-locate pursuant to Utah Code Annotated § 54-8b-2.2, R746-348 and R746-349-4 and other applicable federal and state laws.

4. Beehive CLEC will not provide retail telecommunication service to any customers in Beehive ILEC's service territory.
5. Pursuant to § 54-8b-2.2(1)(d) of the *Utah Code* Beehive CLEC and Beehive ILEC will file with the Commission its agreements, including the rates terms and conditions for interconnection, collocation and the purchase of any services or facilities of Beehive ILEC or Beehive CLEC. In the event the Commission rejects any or all of this Stipulation, or imposes any additional material conditions on approval of this Stipulation, or in the event the Commission's approval of this Stipulation is rejected or conditioned in whole or in part by an appellate court, each Party reserves the right, upon written notice to the Commission and the other Parties to this proceeding delivered no later than five (5) business days after the

issuance date of the applicable Commission or court order, to withdraw from this Stipulation. Prior to that election, Parties agree to meet and discuss the Commission's order or court's decision. In the event that no new agreement is reached, no Party shall be bound or prejudiced by the terms of this Stipulation, and each Party shall be entitled to undertake any steps it deems appropriate.

No Party is bound by any position asserted in the negotiation of this Stipulation, except to the extent expressly stated herein, nor shall this Stipulation be construed as a waiver of the rights of any Party unless such rights are expressly waived herein. Execution of this Stipulation shall not be deemed to constitute an acknowledgement by any Party of the validity or invalidity of any particular method, theory or principle of regulation or cost recovery, and no Party shall be deemed to have agreed that any method, theory or principle of regulation or cost recovery employed in arriving at this Stipulation is appropriate for resolving any issues in any other proceeding in the future and shall not be deemed to constitute precedent nor prejudice the rights of any party in future proceedings. No findings of fact or conclusions of law other than those stated herein shall be deemed to be implicit in this Stipulation.

6. The Parties agree that their rights and obligations under this Stipulation are subject to the Commission's approval of this Stipulation.

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7. The Parties recommend that the Commission approve and adopt this Stipulation in its entirety.

This Stipulation resolves the Application and Amended Application in this docket. However, Beehive CLEC, Beehive ILEC and the Division may continue to discuss other issues Beehive CLEC and Beehive ILEC believe are related which, if resolved, would be resolved in a separate docket. Nothing in this Stipulation or closing of this docket will bar or preclude the parties from raising such issues on another docket.

Dated this 16th day of April, 2007.

BEEHIVE TELEPHONE COMPANY, INC.

Judith O. Hooper
Executive Vice President & Chief Counsel

BEEHIVE TELECOM, INC.

Chuck McCown
Chief Executive Officer

UTAH DIVISION OF PUBLIC UTILITIES

Michael Ginsberg
Patricia Schmid
Assistant Attorney General

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EXHIBIT B

In the Matter of the Application of Beehive)
Telephone Co., Inc., for a Certificate of)
Public Convenience and Necessity to)
Provide Local Exchange Services within)
the State of Utah)

DOCKET NO. 07-2481-01

CERTIFICATE

ISSUED: April 20, 2007

By the Commission:

The Public Service Commission of Utah, pursuant to the Utah Code Ann. §54-8b-2.1, *et. seq.*, hereby issues a Certificate of Public Convenience and Necessity authorizing Beehive Telecom (“Grantee”) to provide public telecommunications services within the State of Utah, including, for the sole purpose of permitting Grantee to interconnect with, collocate in and to purchase wholesale facilities from Beehive Telephone Co., Inc. (“Beehive Telephone”) in order to facilitate Grantee’s service in Qwest service territory, the service territory for which Beehive Telephone serves as the incumbent local exchange carrier, and excluding all other local exchanges of less than 5,000 access lines of incumbent telephone corporations with fewer than 30,000 access lines in the state. Grantee will not provide retail telecommunications service to any customers within Beehive Telephone’s service territory.

DATED at Salt Lake City, Utah, this 20th day of April, 2007.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

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Attest:

/s/ Julie Orchard

Commission Secretary

EXHIBIT C

I. Annual Report

Grantee shall file an Annual Report, on or before March 31 of each year, unless said grantee requests and obtains an extension. The Annual Report shall contain the following:

A. **Annual Revenues** from operations attributable to the State of Utah by major service categories. Such information would be provided on a "Total Utah" and "Utah Intrastate" basis. "Total Utah" will consist of the total of interstate and intrastate revenues. "Utah Intrastate" will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Intrastate Utah revenues shall be reported according to at least the following classes of service:

- (1) private line and special access,
- (2) business local exchange,
- (3) residential local exchange,
- (4) measured interexchange, and
- (5) vertical services.

Business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible.

B. **Annual Expenses and Estimated Taxes** attributed to operations in the State of Utah.

C. **Year End Balances by Account for Property, Plant, Equipment, Annual**

Depreciation, and Accumulated Depreciation for telecommunications investment in Utah.

The Actual Depreciation Rates which were applied in developing annual and accumulated depreciation figures shall also be shown.

D. **Financial Statements** maintained in accordance with generally accepted accounting principles in the ordinary course of business. These financial statements shall at a minimum include an income statement, balance sheet and statement of cash flows.

E. **List of Services** offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served.

F. **Number of Access Lines in Service** by geographic area, segregated between business and residential customers.

G. **Number of Messages and Minutes of Services** for measured services billed to end users.

H. **List of Officers and Responsible Contact Personnel** updated annually.

I. **Chart of Accounts.** In addition to the foregoing, said grantee will provide its chart of accounts as existing and updated (no less than annually). Said Grantee will also work with the Division in good faith to develop a method of estimating intrastate expenses and investments.

II. Applicable Statutory Provisions and Exemptions from Statutes and Waiver of Regulations.

Grantee shall be exempted from the following statutory provisions and regulations:

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A.	<u>Exemptions from Title 54</u>		
	54-3-8, 54-3-19	--	Prohibitions of discrimination
	54-7-12	--	Rate increases or decreases
	54-4-21	--	Establishment of property values
	54-4-24	--	Depreciation rates
	54-4-26	--	Approval of expenditures
B.	<u>Waivers of Regulations</u>		
	R746-340-2(D)	--	Uniform System of Accounts (47 C.F.R. 32)
	R746-340-2(E)(1)	--	Tariff filings required
	R746-340-2(E)(2)	--	Exchange Maps
	R746-341	--	Lifeline ¹
	R746-344	--	Rate case filing requirements
	R746-401	--	Reporting of construction, acquisition and disposition of assets
	R746-405	--	Tariff formats
	R746-600	--	Accounting for post-retirement benefits

III. Obligations with Respect to Provision of Services.

Grantee agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

¹This regulation would be waived only until the Commission establishes Lifeline rules that may include Grantee or until it begins to provide residential local exchange service.

A. Grantee's obligation to furnish service to customers is dependent upon the availability of suitable facilities on its own network and the networks of underlying carriers. Grantee will provide a map identifying the areas within the state of Utah where it is offering any services. The map will be updated as Grantee serves new areas and no less frequently than annually.

B. Grantee will only be responsible for the operation and maintenance of services that it provides.

IV. Modification

It is anticipated that to the extent such requirements impact competitive entry or impact effective competition that they will be subject to the rule making requirements of the Utah Code Ann. § 54-8b-2.2 and that the provisions set forth herein shall be superseded by any such rule adopted by the Commission.