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Division of Public Utilities

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*Director, Division of Public Utilities*

**MEMORANDUM**

**To: Public Service Commission**

**From: Division of Public Utilities**

Constance B. White, Director  
Laura Scholl, Telecommunications Manager  
Chris Luras, Technical Consultant  
Clair Oman, Utility Analyst

**Date:** January 16, 2007

**Re: Docket No. 06-051-01**

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

**I. BACKGROUND**

On May 3, 2006, Beehive Telecom, Inc. ("Beehive Telecom or CLEC") applied for a Certificate of Public Convenience and Necessity ("CPCN") as a Competitive Local Exchange Carrier ("CLEC") to provide intrastate interexchange services throughout the State of Utah. Beehive Telecom was incorporated on June 27, 2006, as a subsidiary of Beehive Telephone Company ("Beehive Telephone or ILEC"). On August 28, 2006, Beehive Telecom amended its application requesting a CPCN to provide intrastate interexchange services as a CLEC in Qwest territories and in Beehive Telephone's Independent Local Exchange Carrier ("ILEC") territory.

**II. ISSUES**

The Division recommends that Beehive Telecom's request to compete in Qwest's territory be approved. However, the Division has identified several potential issues with Beehive Telecom's

request to enter Beehive Telephone's ILEC territory. The following sections highlight the Division's primary concerns.

### **Statewide Issue**

The Beehive Telecom petition is the first request in Utah by a CLEC to enter a rural ILEC territory. As a result, determinations made in this proceeding will set precedents for future requests. Additionally, the CLEC seeking competitive entry is a subsidiary of the rural ILEC within whose territory it is petitioning to compete. The Division recommends that the associated issues be heard by the Commission.

### **Universal Service Fund**

In general, allowing CLEC entry into the territory of any rural ILEC that receives USF support can impact the USF. The probability of USF support increases when any rural ILEC loses customers and revenues to a CLEC.

### **Telecommunications Rates**

Generally, allowing CLEC entry into the territory of any rural ILEC can result in an increase of telecommunication rates. In this instance, it is possible that existing ILEC customers will subscribe to the CLEC, which will result in a loss in revenue to the ILEC. To meet its rate of return, an ILEC could increase service rates to offset revenue loss.

### **Accounting Records & Affiliate Transactions**

Given that the CLEC is a subsidiary of the regulated ILEC, proper affiliate transaction measures must be developed and imposed. The risk of commingling assets and resources is a concern.

### **Competition**

The statutory provisions which allow competitive entry include the intent of facilitating consumer choice. The application states that approval will serve the public interest by creating greater competition in the local exchange marketplace. This statement may apply to the approval

of the application in Qwest's territory; however, in the rural ILEC territory, consumers may not realize any benefits of competition.

### **III. RECOMMENDATION**

#### **Qwest Territory**

The Division recommends that the Commission approve Beehive Telecom's request for a CPCN in Qwest's territory. Beehive Telecom has provided the necessary information to fulfill the requirements detailed in §746-349 of the Public Service Commission Rules. The Division has reviewed the technical, managerial, and financial abilities of Beehive Telecom and has concluded that the issuance of a CPCN to Beehive Telephone in only Qwest's territory is in the public interest. Additionally, the Division recommends that the Commission specifically disallow entry into local exchanges with fewer than 5,000 access lines that are owned or controlled by incumbent local exchange carriers with fewer than 30,000 access lines until the associated issues and concerns are resolved formally in a hearing.

The following points summarize Beehive's petition and the Division's concurrences as they relate to entry into Qwest's territory:

- Beehive Telecom plans to provide competing local telecommunications services, including exchange access telecommunications in the exchange areas in which Qwest Communications is the ILEC.
- Beehive Telecom's balance sheet indicates a positive net worth and sufficient cash to fund operations. Moreover, Beehive Telecom's five-year projection of operations illustrates that it should have sufficient cash to fund operations.
- Beehive Telecom agrees to comply with all FCC and state requirements regarding solicitation and authorization for preferred carrier changes.
- Summaries of professional experience and education of its managerial personnel indicate that the staff of Beehive Telecom has considerable experience in the telecommunications industry.
- Beehive Telecom requests that the \$100,000 bond requirement be waived considering that it will not require customer deposits or prepayments of any kind.

- Beehive Telecom asserts that approval of this application will serve the public interest by creating greater competition in the local exchange marketplace.

### **Beehive Telephone's Territory**

The Division recommends that the significant competitive entry issues raised in Beehive's petition be heard by the Commission. The statute allowing competitive entry does not address whether a wholly owned CLEC subsidiary can enter its parent company's ILEC territory. Furthermore, the Division believes that this issue is precedential and could affect the Universal Service Fund, increase service rates, and create accounting & affiliate transaction issues. Lastly, the Division cannot identify any consumer benefit gained by granting a CPCN to Beehive Telecom to serve within Beehive Telephone's territory. As an aside, the Division is aware of competitive trends in telecommunications and the various modes of competition not addressed by Utah statutes or subject to Commission oversight. Nonetheless, there is currently no clear statutory provision allowing the permissions Beehive seeks.