



State of Utah  
Department of Commerce  
Division of Public Utilities

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To: Public Service Commission

From: Division of Public Utilities

Chris Parker, Director

William Duncan, Manager Telecommunications

Date: June 12, 2013

Re: In the Matter of the Petition of Beehive Telephone Company, Inc for an Immediate Increase in Rates; and Notice to the Commission and the Company's Subscribers.  
Docket No. 13-051-01

Recommendation: Conditional Approval

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Background:

On May 31<sup>st</sup>, 2013, Beehive Telephone Company, Inc (Beehive) filed a notification of a forthcoming petition, with the Public Service Commission (Commission), that it will request an immediate increase in rates, effective July 1, 2013. The notification also informed the Commission that Beehive will request that the Commission waive a hearing on the rate increase. This notification was filed pursuant to Utah Code Ann. § 54-7-12(8) and Commission rule R746-344-3.

The notification also describes justification for the rate increase--compliance with the FCC mandated floor or target rate of \$14 per access line on and after July 1, 2013. If Beehive is not at the mandated floor rate, it will lose, dollar for dollar, federal USF support for the amount it is collecting from subscribers.

The Commission requested the Division to address three issues with regard to the notification:

1. Investigate and address the completeness of the application
2. Determine if the proposed rate is just and reasonable.
3. Was adequate notice provided to the affected parties?

Analysis:

*Completeness of the application –*

As of the date of this memo, Beehive has filed only a notification that a petition will be forthcoming, not the petition itself. Beehive apparently attempts to follow the filing requirements as described in R746-344 Filing requirements for Telephone Corporations with less than 5,000 Access Line Subscribers.<sup>1</sup> This rule contemplates a reduced filing requirement for companies that meet the under 5,000 access line criteria. Filing requirements under this rule are far less stringent than the requirements found in R746-700-40 Information for a General Rate Case Application for a Telecommunications Corporation. The Beehive filing does not meet the requirements of R746-700-40.

Rule R746-344 contemplates the filing of schedules adopted by the Commission. However, those schedules do not exist. Whether Beehive's filing provides sufficient data to satisfy the rule in the absence of the schedules is not clear. Further, Beehive has so far filed only a notice of a petition, not the petition itself. The rule's provision requiring 30-day notice of the rate increase does not clearly explain whether that 30-day notice must follow the petition filing or whether it may run concurrently with the notice period required under Subsection 54-7-12(8). This problem could have been avoided by Beehive filing its request in a more timely manner.

In short, there are procedural uncertainties in the rule. The rule however, is plainly intended to allow for Commission decision on some lower quantum of evidence than in a normal general rate case. While the filing is far from a complete filing under R746-700-40, it could be sufficient for limited purposes with appropriate follow-up, as noted below.

*Determine if the proposed rate increase is just and reasonable –*

In the USF/ICC Transformation Order issued November, 2011, the FCC established minimum levels that telephone companies must charge subscribers. If companies are below that minimum level, federal USF support is reduced dollar for dollar for the amount it would receive had it been charging the minimum rate. That rate is \$14/month, effective July 1, 2013. Since the FCC has ruled that \$14/month is just and reasonable, the Commission could follow the FCC and

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<sup>1</sup> Commission rule R746-344-2 references Utah Code Ann. § 54-7-12(7). 2009 Senate Bill 75 amended §54-7-12 such that the subsection (7) referenced previously by R746-344-2 is now renumbered to § 54-7-12(8). The Division interprets R746-344 as referencing the same language under the new numbering. 2009 Utah Laws ch. 319, §2.

implement the requested rate. The Division notes that this rate is below the Commission approved affordable base rate that is used in Utah USF cases.

The Division does not know if the rate is just and reasonable based on traditional rate of return analysis, and would not be in a position state an opinion at this time.

Section 54-7-12(8) (b) (i) allows the Commission the latitude to investigate filings of this nature. If the Commission believes this matter should be investigated and analyzed on a rate of return basis, the Division's position is that Beehive should be required to file all of the information required in R746-700-40, and that a scheduling conference be held to establish a normal 240 day procedural schedule. The 240 day period should begin when Beehive makes a complete filing.

Section 54-7-12(8)(c) requires the Commission to investigate and hold a hearing if more than 10% of the affected access line subscribers file a request for agency action requesting an investigation and hearing. If the Commission receives this level of protest, the Division's position would be the same as stated in the paragraph above.

However, given the nature of the request and its basis in federal changes, the Division believes Beehive's request could be in the public interest. R746-344-5 specifically contemplates a limited case for the purpose of addressing FCC changes. The proposed filing appears to fit that category.

If Beehive's request is granted on an accelerated schedule to meet the July 1 deadline, with or without hearing, Beehive should be obligated to file such additional information as is the Commission believes is warranted by September 1, so the Commission, Division, and other interested persons may verify that Beehive is not overearning. Further, the order approving the increase should contain a provision requiring Beehive to refund any over collected amount due to the change to customers in the event the filing shows Beehive overearning.

*Was adequate Public notice provided to the affected parties?*

Beehive has represented to the Division that the same notification that was filed with the Commission, was mailed to all of the affected subscribers on May 31, 2013. As of the date of this memo, the Division has received one call inquiring about this matter. As noted above, the notice period required by Section 54-7-12(8) and R746-344 is 30 days. The Division has no reason to believe that Beehive's mailing of notice to customers, coupled with the Commission's notice issued on June 11, 2013, is inadequate.