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June 26, 2013

Ms. Melanie A. Reif  
Administrative Law Judge  
Utah Public Service Commission  
Heber Wells Building, 4<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84111

Re: Beehive Telephone Co., Inc. Request for Rate Increase  
Docket No. 13-051-01

Dear Judge Reif:

In yesterday's hearing, the Commission raised a question about the extract from 47 C.F.R. § 54.318 (from the the FCC's Order 11-161), which Beehive presented as its Exhibit 1 for purposes of the hearing. The question was how Beehive, which is a rural telephone company, can be impacted by an FCC order which refers to "a local urban rate floor."

One of the effects of the order is to eliminate the distinction between "rural" and "non-rural" carriers. Instead, the FCC is shifting the language to reflect the regulated nature of the companies: "price cap carriers" and "rate of return carriers." Beehive is a rate of return carrier. As §54.318(c) (page 1 of Exhibit 1) states, the rule regarding high-cost support applies to both categories of carriers.

The references in the rule to "local urban rate floors" are not a characterization that refers to "urban" carriers versus "rural" carriers. Rather, it's a term of art that reflects a significant shift in the way high-cost support will be structured. Its genesis is in rate studies comparing urban and rural rates, and a conclusion by the FCC that the data indicates that the traditional approach to high-cost subsidies has resulted in a "wealth transfer" from poorer ratepayers in urban areas to wealthier ratepayers in rural areas. Therefore, the FCC is pegging the target Connect America Fund floor rate at a level calculated by the FCC to represent the national average of rates in urban areas. The policy is to deliberately require all carriers receiving high-cost support to increase their minimum rates to the "urban floor" level, and if they do not, there is a dollar-for-dollar reduction in USF support (§54.318(b) and (f)).

There is an extended discussion of this policy in the order itself at ¶¶ 235 – 240 (which I've enclosed for your convenience). Beehive's rates are exactly within the policy target of the FCC order because the benchmark is the average urban rate which the FCC wants all high-cost carriers to meet, whether or not the carrier serves primarily rural customers.

I'm not sure what additional information about the FCC policy the Commission may desire. If the Commission still prefers to have this explanation added to Beehive's petition, I'm happy to do so.

Again, thank you for the extraordinary courtesy shown to me and my client in facilitating an action that, in the best of all possible worlds, we should have brought to the Commission sooner.

Respectfully yours,

A handwritten signature in black ink, appearing to read "David R. Irvine". The signature is fluid and cursive, with a long horizontal stroke at the end.

David R. Irvine

DRI:sp

cc: Justin Jetter, Esq.  
Paul Proctor, Esq.

235. *Discussion.* We now adopt a rule to limit high-cost support where end-user rates do not meet a specified local rate floor. This rule will apply to both rate-of-return carriers and price cap companies.

374 47 U.S.C. § 254(b)(3).

375 *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4733-34, para. 573. Under a benchmark approach, the benchmarked rate is imputed to the carrier for purposes of determining support, but carriers typically are not required to raise their rates to the benchmark level.

376 *Id.* See also *id.* at 4603, para. 139 and n. 223 (seeking comment on developing a rate benchmark for voice [and broadband] services to satisfy Congress's requirement that universal service ensure that services are available to all regions, "including rural, insular, and high cost areas," at rates that are "affordable" and "reasonably comparable" to those in urban areas).

377 *Ad Hoc USF/ICC Transformation NPRM Comments* at 26. We sought comment specifically on this approach in a subsequent Public Notice addressing specific aspects of additional proposals and issues. *August 3 PN*, 26 FCC Rcd at 11118.

86

## Federal Communications Commission

### FCC 11-161

Section 254 obligates states to share in the responsibility of ensuring universal service. We recognize some state commissions may not have examined local rates in many years, and carriers may lack incentives to pursue a rate increase when federal universal service support is available. Based on evidence in the record, however, there are a number of carriers with local rates that are significantly lower than rates that urban consumers pay.<sup>378</sup> Indeed, as noted in Figure 5 below, there are local rates paid by customers of universal service recipients as low as \$5 in some areas of the country. For example, we note that two carriers in Iowa and one carrier in Minnesota offer local residential rates below \$5 per month.<sup>379</sup> We do not believe that Congress intended to create a regime in which universal service subsidizes artificially low local rates in rural areas when it adopted the reasonably comparable principle in section 254(b); rather, it is clear from the overall context and structure of the statute that its purpose is to ensure that rates in rural areas not be significantly higher than in urban areas.

236. We focus here on the impact of such a rule on rate-of-return companies.<sup>380</sup> Data submitted by NECA summarizing residential R-1 rates for over 600 companies — a broad cross-section of carriers that typically receive universal service support — show that approximately 60 percent of those study areas have local residential rates that are below the 2008 national average local rate of \$15.62. This distribution plot shows that most rates fall within a five-dollar range of the national average, but more than one hundred companies, collectively representing hundreds of thousands of access lines, have a basic R-1 rate that is significantly lower. This appears consistent with rate data filed by other commenters.<sup>381</sup>

Figure 5

Sample of Local Residential Service Monthly Rates

NECA Survey of 641 Respondents

<sup>378</sup> In the *August 3 PN*, we stated that our high-cost universal service rules may subsidize excessively low rates for consumers served by rural and rate-of-return carriers. *August 3 PN*, 26 FCC Rcd at 4614-15, para. 172. We noted that one commenter stated that roughly 20 percent of the residential lines of small rate-of-return companies have monthly rates of \$12 or less and another 22 percent have local rates between \$12 and \$15 per month, while the nationwide average urban rate, it contends, was approximately \$15.47 based on the most recent published reference book of rates by the FCC. *Id.* While individual consumers in those areas may benefit from such low rates, when a carrier uses universal service support to subsidize local rates well below those required by the Act, the carrier is spending universal service funds that could potentially be better deployed to the benefit of consumers elsewhere. *Id.*

<sup>379</sup> Local residential rates, or flat rates for residential service, are more commonly referred to as the "R-1" rate. See, e.g., Letter from the Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92

at 3 (filed February 5, 2007) (referencing "the basic residential local rate (1FR or equivalent)").

380 While price cap companies on average tend to have higher R-1 rates than rate-of-return companies, we note that data in the record indicates that a number of price cap companies also have local R-1 rates below the most recently available national average local rate, \$15.62, in a number of states. See Letter from Malena F. Barzilai, Regulatory Counsel & Director, Windstream Communications, to Marlene H. Dortch, Secretary, FCC, Confidential Information Subject to Protective Order in CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135, 10-90, and GN Docket No. 09-51 (filed Oct. 15, 2011) (*NECA Survey*); Letter from Michael D. Saperstein, Jr., Director of Federal Regulatory Affairs, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, Confidential Information Subject to Protective Order in CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135, 10-90, and GN Docket No. 09-51 (filed Dec. 16, 2010). In fact, price cap companies have some R-1 rates lower than \$9.

381 The data for this distribution comes from the *NECA Survey*. See also Oregon Telecommunications Association and the Washington Independent Telecommunications Association Comments, Table 7 (filed July 12, 2010) (providing existing monthly local residential rates ranging from \$10.00 to \$27.39 not including subscriber line charges of \$6.50 per month); Oregon Telecommunications Association and the Washington Independent Telecommunications Association Reply Comments, Table 3 (filed August 11, 2010) (providing existing monthly local residential rates ranging from \$12.25 to \$30.50 not including subscriber line charges of \$6.50 per month).

87

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## Federal Communications Commission

### FCC 11-161

237. It is inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability. Doing so places an undue burden on the Fund and consumers that pay into it. Specifically, we do not believe it is equitable for consumers across the country to subsidize the cost of service for some consumers that pay local service rates that are significantly lower than the national urban average.

238. Based on the foregoing, and as described below, we will limit high-cost support where local end-user rates plus state regulated fees (specifically, state SLCs, state universal service fees, and mandatory extended area service charges) do not meet an urban rate floor representing the national average of local rates plus such state regulated fees. Our calculation of this urban rate floor does not include federal SLCs, as the purposes of this rule change are to ensure that states are contributing to support and advance universal service and that consumers are not contributing to the Fund to support customers whose rates are below a reasonable level.<sup>382</sup>

239. We will phase in this rate floor in three steps, beginning with an initial rate floor of \$10 for the period July 1, 2012 through June 30, 2013 and \$14 for the period July 1, 2013 through June 30, 2014. Beginning July 1, 2014, and in each subsequent calendar year, the rate floor will be established after the Wireline Competition Bureau completes an updated annual survey of voice rates. Under this approach, the Commission will reduce, on a dollar-for-dollar basis, HCLS and CAF Phase I support to the extent that a carrier's local rates (plus state regulated fees) do not meet the urban rate floor.

240. To the extent end-user rates do not meet the rate floor, USAC will make appropriate reductions in HCLS support. This calculation will be pursuant to a rule that is separate from our existing rules for calculation of HCLS, which is subject to an annual cap. As a consequence, any calculated

<sup>382</sup> See 47 U.S.C. §§ 254(b)(5), 254(f), 254(k); *Federal-State Joint Board on Universal Service*, Order on Remand, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, 22568 para. 17 (2003) ("The Act makes clear that preserving and advancing universal service is a shared federal and state responsibility.").

88

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## Federal Communications Commission

### FCC 11-161

reductions will not flow to other carriers that receive HCLS, but rather will be used to fund other aspects of the CAF pursuant to the reforms we adopt today.383