

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Petition  
of Beehive Telephone Company, Docket No. 13-051-01  
Inc., for an Increase in Rates  
Effective July 1, 2013

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HEARING PROCEEDINGS  
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TAKEN AT: Public Service Commission  
Hearing Room 451  
160 East 300 South  
Salt Lake City, Utah

DATE: Tuesday, June 25, 2013

TIME: 9:00 a.m.

REPORTED BY: Scott M. Knight, RPR

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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE: MELANIE A. REIF  
FOR DIVISION OF PUBLIC UTILITIES:

JUSTIN C. JETTER, ESQ.,  
ASSISTANT ATTORNEY GENERAL  
160 East 300 South, Fifth Floor  
Salt Lake City, Utah 84114

FOR OFFICE OF CONSUMER SERVICES:

PAUL H. PROCTOR, ESQ.,  
ASSISTANT ATTORNEY GENERAL  
160 East 300 South, Second Floor  
Salt Lake City, Utah 84114

FOR BEEHIVE TELEPHONE COMPANY, INC.:

DAVID R. IRVINE, ESQ.  
747 East South Temple Street, Suite 130  
Salt Lake City, Utah 84102

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1 PROCEEDINGS

2 THE HEARING OFFICER: Good morning, everyone. I'm  
3 Melanie Reif, the administrative law judge for the Utah  
4 Public Service Commission. And this is the hearing which  
5 has been scheduled in Docket 13-051-01, In the Matter of the  
6 Petition of Beehive Telephone Company, Inc., for an Increase  
7 in Rates Effective July 1, 2013.

8 Before we take appearances in this matter, the  
9 Commission wishes to first address a motion which is pending  
10 concerning a protective order which the applicant has filed,  
11 and the Commission wishes to address this before addressing  
12 the application. Is there any objection to the motion as  
13 filed?

14 MR. JETTER: The Division doesn't have an  
15 objection. We're not sure it's necessary. Just in light of  
16 the general rules of confidential documents, we think that  
17 those rules could cover the confidentiality necessary, but I  
18 guess we don't have an opposition to a protective order.

19 THE HEARING OFFICER: Thank you, Mr. Jetter.  
20 Mr. Proctor, any response from the Division--the  
21 Office?

22 MR. PROCTOR: No response.

23 THE HEARING OFFICER: Okay. Thank you. Based on  
24 Rule 746-100-16, we are inclined to issue a protective order  
25 and treat the materials as such. We do also note that there

1 may be some redundancy with the confidentiality rules, but  
2 given the motion as filed, we do grant it.

3 And we'll proceed by taking appearances now.

4 Mr. Irvine.

5 MR. IRVINE: David Irvine for Beehive Telephone  
6 Company.

7 MR. JETTER: Justin Jetter for the Utah Division  
8 of Public Utilities. And with me is William Duncan, also  
9 with the Division of Public Utilities.

10 THE HEARING OFFICER: Thank you.

11 MR. PROCTOR: I'm Paul Proctor on behalf of the  
12 Office of Consumer Services.

13 THE HEARING OFFICER: Okay. Mr. Irvine, this is  
14 your application, so I'll let you proceed to explain what it  
15 is that you're seeking and any clarifications that you wish  
16 to make.

17 MR. IRVINE: Thank you, Judge. Excuse me. First  
18 of all, I'd like to express appreciation on behalf of the  
19 Company to the Commission and the Division of Public  
20 Utilities and the Committee for accommodating us in a rather  
21 unusual proceeding and request for immediate rate action.

22 We filed a--a notice of an intention to file a  
23 petition for an immediate increase in rates on May 31st in  
24 2013. This was in response to an order issued by the  
25 Federal Communications Commission, FCC 11-161, in November

1 2011, which imposed a requirement on companies like Beehive  
2 that draw revenue from the Federal Universal Service Fund.  
3 And because of anticipated adjustments in Federal USF, the  
4 FCC established a Connect America Fund that would operate to  
5 make telephone companies such as Beehive whole in the event  
6 USF payments were reduced. As a condition of qualifying for  
7 the Connect America Fund participation, Beehive and other  
8 similarly situated carriers are required to have their rates  
9 established at a--an FCC-mandated floor of \$14 per access  
10 line--I'm sorry about that--\$14 per access line as of July  
11 1st, 2013. And so we filed the request for an increase in  
12 Beehive's access rate of \$2.33 per month per line.

13 The application, or rather the notice that I filed  
14 was pursuant to Utah Code 54-7-12, subsection (8). And this  
15 leads to a bit of a procedural uncertainty for me because,  
16 as I understand that requirement, the Company would have to  
17 give the Commission and its customers 30 days' notice of the  
18 proposed rate increase before it can file an application.  
19 We filed the notice and sent notice by first class mail to  
20 all of Beehive's customers on May 31st, 2013.

21 And I have previously provided informational  
22 copies of the petition that we propose to file with the  
23 Division and the Committee and--and with the Commission.  
24 And I have not yet filed the--the official petition for a  
25 rate increase. I have the copies here to do that today, and

1 I'm happy to make those available to any of the parties and  
2 to--and to you.

3 I wasn't sure what the Commission's preference  
4 would be in terms of actually filing that document. I can  
5 file it this morning. I can file it tomorrow. I can file  
6 it on the 30th. But technically, the 30 days, as I  
7 calculated it, would not run until the 30th of June. So I  
8 wasn't quite sure how to proceed in terms of actually filing  
9 the petition on which this hearing has been scheduled.

10 The--I think the request for a rate increase is  
11 pretty straightforward. It would not result in a net  
12 increase to Beehive in terms of annual revenue. It would  
13 keep the company essentially stable for neither a net loss  
14 nor a net gain over the next year. Beehive anticipates  
15 receiving Connect America Fund support later this year, and  
16 it's making this filing simply to comply with the FCC  
17 directive that its rates be at the \$14-per-line-per-month  
18 floor.

19 THE HEARING OFFICER: Is there anything further,  
20 Mr. Irvine?

21 MR. IRVINE: Ray Hendershot, who is Beehive's cost  
22 consultant, is evidently delayed getting here this morning  
23 flying in from Colorado Springs. So I had anticipated that  
24 he would be available to respond to questions that the  
25 parties might have as to this, but if--if he doesn't make it

1 soon, I guess we'll just have to wing it with me as best I  
2 can.

3 THE HEARING OFFICER: Okay. I'm sorry. I didn't  
4 realize that you were awaiting any particular person.

5 MR. IRVINE: Well, I don't want to hold things up  
6 based on an airplane I can't predict, so--

7 THE HEARING OFFICER: Okay. Okay. With respect  
8 to the filing that you were mentioning that you may be  
9 making today, is there anything about that filing that would  
10 differ than what you filed on May 31st?

11 MR. IRVINE: Yes. I appreciate you mentioning  
12 that, Judge. In the May 31st filing, the--there was a  
13 computational error in calculating the amount of the rate  
14 increase that we were requesting. And it shows up in the  
15 original documents, the original exhibits, as approximately  
16 \$212,000. That is an incorrect number. The total amount of  
17 the rate increase that we are requesting--and it's reflected  
18 in the exhibits that I circulated yesterday and that are in  
19 the--the actual filing--is \$17,727 annually.

20 THE HEARING OFFICER: And how did you circulate  
21 those? Did you circulate--circulate them to the parties in  
22 this matter?

23 MR. IRVINE: Yes, I did, via e-mail.

24 THE HEARING OFFICER: Okay. We'll come back to  
25 your filing--I am going to give the parties an opportunity

1 to ask any questions that they wish.

2 MR. IRVINE: Sure.

3 THE HEARING OFFICER: And realizing that  
4 Mr. Hendershot is not here--so if there becomes an issue  
5 which you don't have the information to, just please let me  
6 know and--

7 MR. IRVINE: I'll be happy to do that.

8 THE HEARING OFFICER: Okay. Mr. Jetter, do you  
9 have any questions for Mr. Irvine?

10 MR. JETTER: Just in relation to the comment that  
11 came in from a customer, Division's interested to know if  
12 Beehive is currently blocking telephone--incoming telephone  
13 calls from any other provider.

14 MR. IRVINE: I'm not aware that they are.

15 MR. JETTER: Okay. I don't think we have any  
16 further questions.

17 THE HEARING OFFICER: Thank you, Mr. Jetter.  
18 Mr. Proctor, any questions?

19 MR. PROCTOR: Well, first of all, your Honor, I  
20 understand Mr. Irvine's appearing here as an attorney  
21 representing Beehive Telephone. I don't understand that he  
22 is providing testimony, certainly not under oath. So I  
23 don't know that it's questions that we would have of  
24 Mr. Irvine. I don't believe that we can ask him--we can  
25 cross-examine his statements. We do have a response,



1       however, to Beehive's presentation with respect to their  
2       filings.

3               THE HEARING OFFICER: Okay. And I'll give you an  
4       opportunity to address that. Right now, this is an  
5       opportunity to ask Mr. Irvine questions about the filing,  
6       and it's not necessarily an opportunity to cross-examine  
7       him. So if you don't have any further questions, then I'll  
8       proceed with the questions that the Commission has.

9               Mr. Irvine, thank you for the clarification you  
10       have provided this morning. Could you, for the Commission's  
11       background, explain the rush--the rush meaning the rush to  
12       the July 1st deadline?

13              MR. IRVINE: Judge, the July 1st deadline was  
14       established by the FCC. And I--I don't have a--a  
15       particularly informed response as to why the Company didn't  
16       file sooner. All I can tell you--pardon me--is that I was  
17       requested to draft the petition about three days before it  
18       was filed.

19              THE HEARING OFFICER: Okay.

20              MR. IRVINE: And--and it was a matter that I did  
21       at the Company's request.

22              THE HEARING OFFICER: Does the July 1st deadline  
23       correspond exactly with the Connect America Fund deadline?

24              MR. IRVINE: Yes, it does. Let me--let me just  
25       pass you an extract from the FCC's order. And if you refer

1 to the second page, the dates that are required by the  
2 Federal Communications Commission are outlined not quite in  
3 the middle of the page, the line--it's subparagraph (2),  
4 under subparagraph (f): "Beginning . . . July 1st, 2013,  
5 and ending June 30th, 2014, the local urban rate floor shall  
6 be \$14." That's the determination from the FCC, and the  
7 Company is responding to that directive.

8 The effect of--of the FCC's order is that if the  
9 Company does not establish its rate as of July 1st, 2013,  
10 then the amounts that would have been received had the rate  
11 increase been in effect will be deducted from the USF  
12 support the Company receives. That's outlined in the  
13 preceding paragraph, where it says, "To the extent end user  
14 rates plus state-regulated fees are below local [or] urban  
15 rate floors plus [the] state-regulated fees, appropriate  
16 reductions in high-cost support will be made by the  
17 Universal Service Administrative Company."

18 So Beehive found itself in a position that if it  
19 couldn't meet the FCC requirement, it would lose USF support  
20 by the amount that it would have received through Connect  
21 America Fund had the rate increase been effective July 1st.

22 THE HEARING OFFICER: So is it correct that by  
23 increasing your rates by \$2.33, you achieved the \$14 access  
24 line?

25 MR. IRVINE: Yes, it is.

1 THE HEARING OFFICER: And is there a date before  
2 July 1 or--or perhaps it is exactly July 1--that you would  
3 have further clarification from the FCC, or is this entirely  
4 contingent upon what happens at the state level?

5 MR. IRVINE: I believe it's entirely contingent on  
6 what happens at the state level, Judge. If the rate isn't  
7 in effect as of July 1st, then the reductions that the FCC  
8 would make through the USF would take effect irrespective of  
9 anything the Commission did--I mean, the FCC did or this  
10 Commission did or did not do. This is a response, purely,  
11 to a federal order.

12 THE HEARING OFFICER: Okay. So hypothetically  
13 speaking, if the Commission were to deny the rate increase,  
14 you would not receive the same level of CAF funding that you  
15 had received previously?

16 MR. IRVINE: If the Commission were to deny the  
17 rate increase request, Beehive would lose \$17,727 in USF  
18 support.

19 THE HEARING OFFICER: Okay. Thank you very much.  
20 Do you wish to have this marked as an exhibit and enter it  
21 into the record?

22 MR. IRVINE: If that's useful for the Commission,  
23 I would be happy to have that marked as an exhibit.

24 THE HEARING OFFICER: I think that that would be  
25 helpful. Does the recorder have a copy?

1 MR. IRVINE: I don't see that he does.

2 THE HEARING OFFICER: Okay. Thank you. Unless  
3 there's any objection, I'd like to mark this as Beehive  
4 Exhibit No. 1.

5 Hearing no objection, it'll be entered into the  
6 record as evidence.

7 Beehive Exhibit-1 was entered into evidence.

8 HEARING OFFICER: Mr. Irvine, we're going to hear  
9 from the Division and the Office this morning, but before we  
10 do, would it be correct that you--you are hoping to get a  
11 decision from the Commission, if not today, shortly  
12 thereafter and--and prior to July 1st?

13 MR. IRVINE: Yes--

14 THE HEARING OFFICER: Okay.

15 MR. IRVINE: --Judge. And I appreciate that the  
16 procedural issue here is a little bit unclear. And I'm not  
17 sure of the precise manner in which that should be  
18 accomplished, but we would like to have the rate increase  
19 effective as of July 1st, 2013.

20 THE HEARING OFFICER: Okay. And you are aware  
21 that the Commission did send out a notice on this--a notice  
22 of application, notice of comment period--

23 MR. IRVINE: Yes.

24 THE HEARING OFFICER: --and request for proof of  
25 customer notice? Are you aware of any comments that have

1       been filed other than comments that were filed by the  
2       Division?

3               MR. IRVINE: The Company has not received comments  
4       from any of its customers, Judge. I believe there should be  
5       in the docket a proof of service that I filed, I believe, on  
6       the 19th of June in response to the order that was issued  
7       earlier.

8               THE HEARING OFFICER: Yes, you're correct.

9               I--did you receive a copy of the comments filed by  
10       a Ms. Veronica Douglass?

11              MR. IRVINE: No.

12              THE HEARING OFFICER: Do you have access to the  
13       Beehive Telephone Company docket which is available online?

14              MR. IRVINE: I don't this morning but I do at my  
15       office.

16              THE HEARING OFFICER: Okay. Let's be off the  
17       record for just one second.

18       (A discussion was held off the record.)

19              THE HEARING OFFICER: Let's just take a quick  
20       recess and be right back.

21       (Recess taken, 9:18-9:21 a.m.)

22              THE HEARING OFFICER: Let's go back on the record.

23              Mr. Irvine, just for clarification, I've provided  
24       you a copy of the comments filed by Ms. Veronica Douglass.  
25       And this was received by the Commission on June 17, 2013.

1 Do you have a reply to this filing?

2 MR. IRVINE: Yes, thank you. I'm not familiar  
3 with Veronica Douglass, and I don't know which Beehive  
4 exchange she may reside in. I am familiar with the  
5 litigation between Beehive and Sprint. It is my  
6 understanding that the call blocking to which she refers was  
7 in effect for about a three-week period in 2009. If it is  
8 still going on, I'm not aware of that, but I would be happy  
9 to contact the Company this morning and verify the  
10 circumstances, if that would be of interest to the  
11 Commission.

12 I will just say briefly that the issue between  
13 Beehive and Sprint is one that has been in contentious  
14 litigation for at least three years, and it goes to a  
15 refusal on the part of Sprint to pay billings that Beehive  
16 has submitted. And this has bounced between federal court  
17 in Salt Lake City and the FCC. It's not likely to be  
18 resolved in the near future. But so far as I'm aware, there  
19 is no call blocking in effect. If--if there is, that is  
20 news to me.

21 THE HEARING OFFICER: Mr. Irvine, inasmuch as this  
22 matter is pending in the federal court and/or before the FCC  
23 and inasmuch as Ms. Douglass has not raised a complaint with  
24 the Division of Public Utilities, would it be your position  
25 that this matter would not be a matter that would be under

1 the Commission's jurisdiction?

2 MR. IRVINE: I think the Commission has broad  
3 jurisdiction. And certainly if a customer has a complaint  
4 about telephone service from this utility or any other, I  
5 believe the Commission is in a position to address that.

6 I--all I can say is, as I've reported to you, I  
7 don't believe there is any call blocking in effect, but I  
8 would be happy to verify with the company if I'm incorrect  
9 and report back to you and the Commission if that's the  
10 case.

11 THE HEARING OFFICER: Okay. Let's be off the  
12 record for a moment, please.

13 (A discussion was held off the record.)

14 THE HEARING OFFICER: We're on the record.

15 MR. PROCTOR: Under the circumstances where there  
16 was a colloquy between yourself and Mr. Irvine concerning  
17 Ms.--I think it's Douglass's complaint and jurisdictional  
18 issues and then to go off the record and note that the  
19 Public Service Commission is going to manage the complaint  
20 as a complaint and refer the complainant to the DPU with her  
21 options, I believe that statement also should be part of the  
22 record of this case. Going off the record to have that  
23 discussion with Mr. Irvine about what the PSC is doing, I  
24 think, is--is not doing service to the other parties in this  
25 case or Ms. Douglass.

1 THE HEARING OFFICER: Mr. Proctor, just for  
2 clarification, I did not state that we would be treating her  
3 letter as a complaint. What I explained was that we'd be  
4 notifying her--excuse me--notifying her that if she wishes  
5 to raise a complaint, she can to so with the Commission or  
6 the FCC.

7 MR. PROCTOR: And I think that's something that  
8 should very much be on the record, because other parties may  
9 believe it to be in fact a complaint filed with the  
10 Commission.

11 THE HEARING OFFICER: Very well. And if that's  
12 the case, then--then they can make that--they can make that  
13 known. So--thank you.

14 And Mr. Irvine, was there anything else? I think  
15 I covered--let me just double-check. I think I covered  
16 everything I wanted to cover. Yes, I have. Is there  
17 anything further you wish to add at this time?

18 MR. IRVINE: No, except to note with respect to  
19 the Veronica Douglass letter, I don't take that as a  
20 substantive objection to the rate increase that Beehive is  
21 proposing. I take it as a separate service issue she's  
22 concerned about.

23 THE HEARING OFFICER: Thank you.

24 Mr. Jetter?

25 MR. JETTER: Thank you, your Honor. I think I'd



1 like to just start out with stating a little bit of the  
2 Division's position on this. Excuse me.

3 We believe that the particular 54-7-12, subsection  
4 (8), along with Rule 746-344, allows the Commission to--for  
5 these smaller rural telephone companies, to have a  
6 shortened, abbreviated process for rate increase like this  
7 one. And it may be appropriate in the proper situations  
8 without the full 240-day case rate proceeding. I think  
9 that's what's envisioned in the statute and the rule.

10 In the instant case, we don't have the actual  
11 application filed yet and we simply don't have enough  
12 information at this time to really determine whether this  
13 rate increase would lead to an overearning situation. And  
14 we filed a memo reflecting our general concerns about that.

15 Concern that's come to light recently is the  
16 notice that was sent to the customers. It's our  
17 understanding that a copy reflecting basically what--I  
18 believe it was a copy of the petition of the petitioner was  
19 sent to the customers of Beehive Telephone. And an error in  
20 that is the same number that was addressed this morning, the  
21 difference between the 212--\$212,720 and the 17,000 and some  
22 change. Whether that's a material representation issue that  
23 the Commission believes would require a new notice to go  
24 out, and probably an additional 30-day period, I suppose  
25 would be something that should be--be considered.

1           The rule states that the telephone corporation--  
2           and I'm reading from 54-7-12(8)(b)(i)--or excuse me--  
3           (a)(ii): "The telephone corporation shall notify the  
4           Commission and all potentially affected access line  
5           subscribers of the proposed rate increase 30 days before the  
6           filing of the proposed rate increase or change."

7           And I believe that the--excuse me--notice sent  
8           out--excuse me. I've had a little bit of a cold lately.  
9           The notice sent out may meet the standard, as it does  
10          identify that--the \$2.33 per line rate increase. And--that,  
11          I believe, is the correct number. So whether the Commission  
12          wishes to require an additional new notice be sent out, I  
13          think, is something that the Commission should consider.

14          In addition, the rule provides the Commission the  
15          opportunity to investigate and effectively conduct a  
16          standard rate case for this type of rate increase if the  
17          Commission wishes. The Division of Public Utilities doesn't  
18          have a real strong position either way on this. The  
19          reasoning behind it for the Commission--or for the Division  
20          is that the cost of that may significantly outweigh the cost  
21          of the small rate increase that's being asked for, and in  
22          which case it may defeat the purpose of and thwart the  
23          ability of the rural telephone company to receive the  
24          federal funding that they're looking for.

25          So with that, I guess I'd like to call our first

1 witness, Mr. William Duncan.

2 THE HEARING OFFICER: Mr. Duncan?

3 MR. DUNCAN: Yes.

4 THE HEARING OFFICER: Would you please raise your  
5 right hand, please? Do you swear that the testimony you're  
6 about to give is the truth?

7 MR. DUNCAN: Yes.

8 THE HEARING OFFICER: Thank you.

9 WILLIAM DUNCAN,

10 being first duly sworn, was examined and testified as

11 follows:

12 EXAMINATION

13 BY-MR.JETTER:

14 Q Mr. Duncan, would you please state your name and  
15 occupation for the record?

16 A William Duncan. I'm the manager of the  
17 telecommunications section for the Utah Division of Public  
18 Utilities.

19 Q Thank you. And Mr. Duncan, have you reviewed the  
20 application and the filings in this docket?

21 A Yes.

22 Q And did you prepare the June 12th, 2013,  
23 conditional approval recommendation submitted by the  
24 Division of Public Utilities?

25 A Yes.

1 Q Do you have any changes that you would like to  
2 make to that?

3 A No.

4 MR. JETTER: I'd like to move at this time that we  
5 enter this in the record as Division of Public Utilities  
6 Exhibit 1.

7 THE HEARING OFFICER: Any objection?

8 Hearing none, it is entered.

9 MR. IRVINE: No objection.

10 Division of Public Utilities Exhibit-1 was entered into  
11 evidence.

12 BY MR. JETTER:

13 Q Mr. Duncan, do you believe that the \$14-per-  
14 access-line rate increase would meet the FCC requirement and  
15 do you believe that in the event that--rephrase this--in the  
16 event that further information is provided by the Company,  
17 and the Division is satisfied that there's not an  
18 overearning situation, that that would be a just and  
19 reasonable rate?

20 A Yes.

21 MR. JETTER: I don't have any further questions  
22 for Mr. Duncan. He's available for cross-examination.

23 THE HEARING OFFICER: Mr. Irvine?

24 MR. IRVINE: No cross.

25 THE HEARING OFFICER: Mr. Proctor, questions for

1 Mr. Duncan?

2 MR. PROCTOR: No, thank you.

3 EXAMINATION

4 BY THE HEARING OFFICER:

5 Q Mr. Duncan, just a couple of questions, please.

6 With respect to your conditional approval, could you help me  
7 understand what further information you would glean that  
8 would help you determine whether this is just and  
9 reasonable, and related to that, whether the Company would  
10 be overearning at the \$14 access rate?

11 A I believe that in the paragraphs above, we state  
12 our position that they would--the information required in  
13 R746-700-40 is the type of information that the Division  
14 would need to analyze it to a more full extent.

15 Q Also related to that, it was a little confusing to  
16 me: Your counsel suggested that perhaps this be teed up for  
17 a rate case so you could go into all of that. And then it  
18 seemed like maybe at the end of what he was suggesting that  
19 maybe he was suggesting that maybe that wouldn't be the most  
20 prudent, cost-effective route. So what is it that the  
21 Division--

22 A Well--

23 Q --really would like to see?

24 A Sure. If the Commission feels that this needs to  
25 be investigated, then, you know, it would take the--a full

1 240-day period. I think one of the--there's been a change  
2 in the case now. Originally they were requesting \$212,000.  
3 And now that--they found an error. It's only \$17,000 that  
4 they're requesting. And I think what we believe now that we  
5 may change our position on this memo is that if we go to a  
6 full 240-day case, it would probably cost far in excess of  
7 that \$17,000 that they're requesting.

8 Q Well, there is a change in--in--in their filing,  
9 but it simply results in--in what the reduction is in the  
10 amount--

11 A Right.

12 Q --of CAF eligibility that they receive from the  
13 federal government--

14 A Uh-huh (Affirmative).

15 Q --is that correct?

16 A That is--yes, that is correct.

17 Q So as I understand it, originally they had filed,  
18 and it was \$212,720 and that's now been corrected to 17,727,  
19 but the rate increase that's requested is \$2.33 per month  
20 per access line. And as I understand it, that's in line  
21 with what the FCC has mandated?

22 A That is correct.

23 Q So with that background, does that change your  
24 recommendation? Does that change your view of--of the  
25 application as it stands?

1           A   No. We--we couldn't--we still cannot tell if  
2 they're overearning based on the 2.33, not without some type  
3 of investigation.

4           Q   Okay.

5           A   And I don't see how we can do that unless a normal  
6 240-day schedule.

7           Q   Okay. And--is that what you're recommending?

8           A   Well, what we're recommending is the Commission  
9 approve it and then come back and have the Company file a  
10 complete filing and let us review that and--and do a normal  
11 rate case if the Commission feels an investigation is  
12 warranted.

13           I think that there is--the fact that FCC has  
14 deemed two hundred--or the \$14 to be just and reasonable,  
15 and that's less than what the Division--the Commission has  
16 used in Utah USF cases where the--where we've imputed  
17 revenue up to 16.50 per access line. So they're asking for  
18 less than what has been granted to other companies as a just  
19 and reasonable rate.

20           Q   So would that be prima facie evidence that it's  
21 evidence that they're not overearning?

22           A   I don't think it would be evidence they're not  
23 overearning. It would be evidence that it's a just and  
24 reasonable rate that's been accepted by the FCC and by the  
25 Commission as . . .

1 Q Okay. So it doesn't do away with your concern  
2 that--that they could still be overearning?

3 A They could still be. We don't know.

4 Q Okay. And you believe that in order to examine  
5 that issue, you would need an additional 240 days?

6 A I believe--the problem is that if we started some  
7 type of limited investigation, if the Commission wants us to  
8 complete it in 60 days or something, then we'll get into it  
9 and we'll find an issue that we need more discovery and more  
10 time to investigate and we'll never get to the bottom of  
11 that issue in some limited period.

12 MR. IRVINE: Judge, can I offer a suggestion?

13 THE HEARING OFFICER: Yes, please.

14 MR. IRVINE: I noted in the Division's advice  
15 letter, if that's the correct term--the recommendation for  
16 conditional approval--I'm reading on the last page, "If  
17 Beehive's request is granted on an accelerated schedule to  
18 meet the July 1st deadline, with or without hearing, Beehive  
19 should be obligated to file such additional information as  
20 the Commission believes is warranted by September 1st, so  
21 [that] the Commission, Division, and other interested  
22 persons may verify that Beehive is not overearning."

23 The Company has no problem providing whatever  
24 information the Commission or the parties may desire. I get  
25 a little bit nervous about the prospect of a full-blown rate



1 filing over this primarily because of the cost issue that  
2 Mr. Duncan addressed. And simply the administrative cost to  
3 the Company to prepare that is going to be greater than the  
4 \$17,000 that the Company is requesting.

5 I'm wondering if there's a middle ground that  
6 would allow the Division, the Committee, and the Company to  
7 go to September 1st on the basis that was described in the  
8 Division's letter and see if there is information that would  
9 address the concerns about possible overearning.

10 If that can be resolved without a full-blown rate  
11 case, I think it would be to everyone's advantage to do so.  
12 I don't know precisely what informational items the Division  
13 may be interested in receiving, but the Company's happy to  
14 be as cooperative as possible in providing whatever is  
15 requested.

16 THE HEARING OFFICER: Mr. Irvine, if I'm  
17 understanding Mr. Duncan correctly, in order for the  
18 Division to make a determination about that issue, I believe  
19 what they're asking for is the kind of information that they  
20 would receive in a rate case so that they're not potentially  
21 missing something.

22 Is that correct, Mr. Duncan?

23 THE WITNESS: That's correct.

24 THE HEARING OFFICER: So I don't think that it  
25 would be safe to assume that they would just be asking for

1 certain documents and not other things. I think what  
2 they're asking for is full cooperation in a full rate case.  
3 But with the caveat that if that's what the Commission deems  
4 warranted and--and--so--so would you like to speak to that  
5 issue, about whether it is warranted or should be warranted  
6 in this docket?

7 MR. IRVINE: Well, the Company has made its  
8 request for a rate increase, as we've discussed this  
9 morning. We are--we're here at the pleasure of the  
10 Commission to provide whatever information the Commission,  
11 the parties would like us to provide. And Beehive will be  
12 absolutely cooperative in--in performing as it's requested  
13 to perform. And I'm not quite sure what I can say beyond  
14 that, but be happy to--to respond accordingly.

15 THE HEARING OFFICER: Thank you, Mr. Irvine.  
16 Were there other questions for Mr. Duncan?

17 Okay. Mr. Proctor?

18 MR. PROCTOR: I think that the procedural  
19 uncertainties that Beehive Telephone raises, if they exist  
20 at all, exist as a consequence of Beehive waiting from  
21 November/December 2011 until--would have been May the 28th  
22 to request someone to file for the rate increase that  
23 they--that under the federal rules contemplated being  
24 effective July 1. And interestingly, there's no one even  
25 here from Beehive Telephone apparently interested enough in

1 the process.

2 But, in fact, the statute's quite plain and it's  
3 not uncertain at all. And perhaps Beehive is--has complied  
4 with it, just don't realize it. They must give the  
5 Commission notice, and potentially affected access line  
6 subscribers notice, of the proposed rate increase 30 days  
7 before filing the proposed rate increase. And that 30 days  
8 would be on, I believe, May the 30th--or excuse me--June the  
9 30th, last day of this month. So that would be the running  
10 of the 30 days, and it's before filing.

11 So on the 31st, they would then file their  
12 proposed tariff revisions and necessary information to  
13 support a determination that the proposed rate increase is  
14 just and reasonable. So that would be on May the--or June  
15 the 30--30th--actually, July 1. Pardon me. And that's  
16 looking plainly at the statute, 70--54-7-12(8), first (b)  
17 and then (a).

18 The Commission's rules in 746-344-2 are a little  
19 bit confusing. The last sentence says, "The completed  
20 approved schedules"--I assume they're talking tariffs--don't  
21 know--"shall be received by the Commission at least 30 days  
22 in advance of the proposed effective date . . . ." So under  
23 that administrative rule, reasonably read, it would be 30  
24 days after they file the proposed tariffs that they would be  
25 effective. So that would be the end of July.

1           But as we all know, the statute trumps the  
2 administrative rule. So under the circumstances, on  
3 June--on July 1, the Company files its tariff--proposed  
4 tariff revisions and the necessary information supporting a  
5 just and reasonableness of the rate, and then the Commission  
6 may allow it to be effective on that date. The Commission  
7 may also investigate whether the proposed rate increase is  
8 just and reasonable. And I don't think that those two  
9 provisions are necessarily exclusive.

10           So if, in fact, the Commission finds that that--  
11 the rate increase is just and reasonable based upon the  
12 finding, for example, that it's less than the affordable  
13 base rate for other companies, then I suppose you could let  
14 the \$17,000 rate increase--annual rate increase go into  
15 effect.

16           However, the Commission raises a good point  
17 because just and reasonable rates takes into account a  
18 number of other items. Foremost amongst their filings that  
19 they provided so far is \$150,000, approximately, access--  
20 or--line revenue on an annual basis, and \$7 million in  
21 access charges. That immediately gives rise to a question  
22 of what is their rate of return when it's a multiple of  
23 their access revenues versus the line charges that they  
24 charge. Now, I'm not suggesting that they should give phone  
25 service for free, but on the other hand, their rate of

1 return may be a serious question.

2 So I think the Division is quite correct in saying  
3 we need additional information so that ultimately this  
4 Commission, who has the obligation to determine whether it's  
5 just and reasonable, can say that under the circumstances of  
6 their financial results as a whole.

7 And I think this to some extent raises my  
8 objection earlier. The Commission cannot make a decision  
9 about a rate increase without substantial evidence put  
10 forth, the burden of which lies upon the Company. And there  
11 is no evidence before this Commission at this point in time  
12 from Beehive at all, because there's been no sworn testimony  
13 provided. And except for a federal rule or an order from  
14 the FCC, there's no evidence at all. I think that could  
15 easily be changed.

16 And remember, this is just a rate increase and it  
17 is very small, although I don't believe that the size of the  
18 rate increase ought to be reason for the Commission or  
19 parties who appear before the Commission to simply set aside  
20 the statute and kind of give it a glance but not follow it.

21 So I think that this could be done, but it's  
22 longer period than--than Beehive would kind of rush it  
23 through, as they seem intent on doing. And I think the  
24 Division's request is absolutely appropriate, given the  
25 financials that they have provided it. There's a question

1 about their rate of return.

2 The Office also wishes to present testimony by  
3 Ms. Beck with respect to this matter.

4 THE HEARING OFFICER: Okay. Mr. Proctor, before  
5 we get to Ms. Beck, just for clarification, so is it the  
6 Office's position that if approval is granted, that it be  
7 conditional and that it be conditioned upon further  
8 investigation into the financials and--and the just and  
9 reasonableness of the rate increase and, in particular,  
10 whether there is overearning?

11 MR. PROCTOR: Well, if, by using the term  
12 "conditional," you mean interim, as the statute addresses  
13 interim rates, I am not prepared to answer the question as  
14 to whether or not that interim rate provision applies when  
15 it is a telephone company with less than--or fewer than  
16 5,000 access lines. I do not know the answer to that  
17 question. Ms. Beck can perhaps address it.

18 THE HEARING OFFICER: Okay. Ms. Beck, are you  
19 prepared to testify? Would you swear that the testimony you  
20 are about to give is the truth?

21 MS. BECK: Yes.

22 THE HEARING OFFICER: Thank you.

23 TESTIMONY OF MICHELE BECK

24 THE WITNESS: For the record, my name is Michele  
25 Beck. I'm the director of the Office of Consumer Services.

1 I just wanted to make a brief statement today primarily in  
2 support of the DPU's recommendations. So our own counsel,  
3 as well as others in the room today, have mentioned this as  
4 being a small rate increase, but I would note it's a 20  
5 percent increase for these customers. So these are issues  
6 that we regularly deal with in front of the Commission, and  
7 investigate.

8 And as--as our counsel has indicated, we don't  
9 have evidence yet. We were given a courtesy copy, but it's  
10 not really a filing. So the Office is--is--wants to express  
11 some confusion about the process to--just to simply state  
12 that, you know, we haven't conducted discovery. We're  
13 concerned that such a large error has been found already  
14 in--in what--with all due respect to the Company, is a  
15 relatively simple calculation. And we've seen hard copies  
16 but not spreadsheets with formulas intact. So typically  
17 with rate increases, it's a full--we look at both sides of  
18 the equation. So this is a topic that has already been  
19 covered by our counsel. I don't want to spend too much time  
20 on that.

21 But the fact that \$14 is set as an affordable base  
22 rate by the FCC in 16, as regularly used here at the  
23 Commission, I think is not sufficient evidence that the  
24 rates are just and reasonable.

25 So we want to support the--the Division's

1 recommendations, as we understood them coming in, and we do  
2 ask the Commission to carefully consider the process  
3 involved in this. We think process is--is important in  
4 allowing us and other parties to participate. So the--even  
5 coming to this hearing, I think there was a fair amount of  
6 confusion as to what the purpose was, since it appeared that  
7 we were simply addressing a notice of a pending request for  
8 a rate increase.

9 So we--we ask that of the Commission, is just  
10 careful consideration of the process and a review of this  
11 potential overearning situation, because it is a situation  
12 where--where the small number of customers in Beehive's  
13 territory are asked to have a 20 percent rate increase.

14 As a small side note, I'd like to indicate that in  
15 the Office's view, the filing from--from Ms. Douglass is  
16 probably not pertinent to the Commission's decision about a  
17 rate increase, but in our view, it should be treated as a  
18 complaint. And we think that there are significant barriers  
19 to individuals. Particularly this seems like a very sincere  
20 senior citizen who may not understand the full process, and  
21 so we think it should be taken as a complaint. And we offer  
22 our assistance, to the extent that it applies here, since  
23 one of our statutory duties is to assist individuals in  
24 appearing before the Commission.

25 THE HEARING OFFICER: Thank you, Ms. Beck.



1 Any questions, Mr. Irvine?

2 MR. IRVINE: No.

3 THE HEARING OFFICER: Questions, Mr. Jetter?

4 MR. JETTER: (Moves head from side to side.)

5 THE HEARING OFFICER: Ms. Beck, just so I'm clear  
6 and--I think we're all familiar with this statute, which  
7 heretofore has not been utilized. And it's a statute that  
8 doesn't anticipate a lot of things that we normally see in a  
9 general rate case. Given what you've testified to and what  
10 your counsel has suggested as far as the position, is there  
11 anything beyond what you've said so far about the--  
12 considering the overearning issue, etc.--is it the Office's  
13 position that you would like this to be a rate case?

14 THE WITNESS: Well, I'll say that the Office is  
15 not taking a position on that, because the laboring oar is  
16 taken by the Division. And so there are times that the  
17 nature and the significance of the small telecom cases rises  
18 to a level where the Office believes additional  
19 participation on our part is warranted. But by and large,  
20 these cases are conducted by the Division, so I want to show  
21 them deference on the type of case.

22 So our position is, while the statute  
23 contemplates--I'm not looking at it, but I think the words  
24 were "abbreviated filing." I--I don't think the statute  
25 contemplated no filing. And so that's--that's our concern

1 is that this is coming, and to date we only have a notice of  
2 filing.

3 So these procedural--there's kind of, in my view,  
4 two issues here. One is that statute for the small  
5 telecoms, and the second is what kind of petition is before  
6 the Commission yet to date. And--so I know that the  
7 Commission and, I believe, all parties try to be cooperative  
8 in dealing with these entanglements that can come up in  
9 terms of 30-day notice requirements and the different  
10 notices, but it is difficult to be a overly sympathetic when  
11 this arises from an FCC order from over a year and a half  
12 ago.

13 THE HEARING OFFICER: Thank you, Ms. Beck.  
14 Are there any follow-up questions for Ms. Beck?

15 MR. IRVINE: No.

16 THE HEARING OFFICER: I'd like to ask, is there  
17 anyone here who wishes to address the application who is not  
18 otherwise a party? Does anyone in particular have any  
19 objection that they wish to note?

20 Hearing none, the record will reflect no  
21 objection.

22 Mr. Irvine, I know that you've--you've expressed  
23 some frustration with this matter being filed in--within a  
24 very short window. And we're going to take a recess here in  
25 just a moment. But before we do, is there anything further

1 that you wish to add?

2 MR. IRVINE: Just a couple of items, Judge. First  
3 of all, there was a question raised with respect to the  
4 adequacy of notice by the Division. And I would just note  
5 that the notice that was provided to customers very clearly  
6 stated that the proposal was for a \$2.33-per-month rate  
7 increase. That has not changed. I believe, in terms of  
8 whether the notice that was sent to customers was materially  
9 sufficient, the answer's yes. They were advised that the  
10 rates, if approved by the Commission, would rise by \$2.33  
11 per month. And that has not changed.

12 Again, I just want to note that I'm not at all  
13 unaware of the imposition that the Company and I have put  
14 everyone and the Commission to in order to accommodate a  
15 request that was filed later than it should have been and  
16 requested some immediate action, that a lot of people have  
17 extended extraordinary courtesy and jumped through hoops to  
18 help us get to this point. And absolute--pardon me--  
19 absolutely, the Company is going to be cooperative in doing  
20 whatever is requested to provide information to the  
21 Commission and to the parties with respect to rate of return  
22 and anything else. And I don't want to--to be taken in any  
23 respect as appearing to be resistant to that, because we're  
24 just not.

25 I am going to proceed as follows with respect to

1 the application: This is the only way I can think of to  
2 square the procedural requirements that I believe I'm  
3 subject to. As I understand the Commission's procedures, a  
4 filing is not complete until there has been a hard copy  
5 filing with the Commission, as well as an electronic filing  
6 with the Commission. And so I'm going to file on Friday the  
7 hard copy petition that has informally been circulated. And  
8 I'm going to electronically file the same application on the  
9 30th. And that, I think, keeps me straight with the statute  
10 and with the rules in terms of meeting the filing  
11 requirements as they--as they exist.

12 We still are interested in obtaining at least  
13 conditional approval of this rate increase to go into effect  
14 as of July 1st. And at some point down the road, if the  
15 Commission finds that that is not a just and reasonable rate  
16 increase, then obviously it can make adjustments and those  
17 will be given effect. But for my purposes, in terms of  
18 getting the application before the Commission in a  
19 responsible way, that's what I propose to do.

20 THE HEARING OFFICER: Thank you, Mr. Irvine. And  
21 just for clarification, this Friday is the 28th. Is that  
22 the--the date--

23 MR. IRVINE: That's my understanding.

24 THE HEARING OFFICER: --date you intend to file?

25 MR. IRVINE: That's when I'm going to file the

1 hard copy. But as I understand the Commission's procedures,  
2 the filing is not considered complete until there has been  
3 an electronic file as well.

4 THE HEARING OFFICER: Okay. Very well.

5 Are there any other comments or questions before  
6 we go off the record and take a recess for a few minutes?

7 Okay. We'll be in recess. Thank you.

8 (Recess taken, 10:04-10:18 a.m.)

9 THE HEARING OFFICER: We'll be back on the record.

10 Mr. Irvine, I have a question or two more for you,  
11 and appreciate you answering. Earlier, when you submitted  
12 the FCC 11-161, I believe this is a CFR; is that correct?

13 MR. IRVINE: I believe so.

14 THE HEARING OFFICER: Okay. And you directed the  
15 Commission to not quite mid-page, but under subsection (f),  
16 sub (2). I believe the section that you were focusing on is  
17 subsection (2); is that correct?

18 MR. IRVINE: Yes.

19 THE HEARING OFFICER: And that section reads,  
20 "Beginning on July 1st, 2013, and ending June 30th, 2014,  
21 the local urban rate floor shall be \$14." Is that a correct  
22 reading of that statement?

23 MR. IRVINE: Yes.

24 THE HEARING OFFICER: Okay. Do you know what the  
25 FCC definition is of urban or local urban rate floor? Can

1 you help me out there?

2 MR. IRVINE: I wish I could, but I can't off the  
3 top of my head, Judge.

4 THE HEARING OFFICER: Okay. I'm trying to better  
5 understand how this applies to Beehive. Beehive is a rural  
6 provider, correct?

7 MR. IRVINE: Well--yeah, it serves primarily rural  
8 areas.

9 THE HEARING OFFICER: So how does this provision  
10 even apply to Beehive?

11 MR. IRVINE: I would have to provide a larger  
12 extract than this, Judge. I'm happy to do that, if that  
13 would be of interest to you or the Commission.

14 THE HEARING OFFICER: Well, it hinges on your  
15 application, sir. So--

16 MR. IRVINE: I can't do that this morning, because  
17 I don't have it with me.

18 THE HEARING OFFICER: Okay. Do you have a quick  
19 way of getting an answer to that question?

20 MR. IRVINE: I don't know that it would be quick,  
21 as within the next five minutes, no.

22 THE HEARING OFFICER: Next fifteen minutes? Next  
23 thirty minutes?

24 MR. PROCTOR: Excuse me, your Honor.

25 MR. IRVINE: That's possible.

1 MR. PROCTOR: Would it be possible for Beehive to  
2 file--with their application they're going to be doing  
3 July 1, as, I think, the electronic, they could include the  
4 definition in there. Then the Commission could take a look  
5 at the completed filing with all the information that it's  
6 now seeking.

7 THE HEARING OFFICER: Mr. Irvine, is that  
8 acceptable to you?

9 MR. IRVINE: I can do that. And I can also  
10 provide that today. I don't want to--I would like to  
11 provide that as quickly as I can for the Commission and for  
12 the parties.

13 THE HEARING OFFICER: I think what Mr. Proctor has  
14 suggested is reasonable.

15 Mr. Jetter, is that--is that acceptable with the  
16 Division?

17 MR. JETTER: Yes, I think that would be fine for  
18 us.

19 THE HEARING OFFICER: I think that that sounds  
20 like a reasonable solution. And--so we'll be anticipating  
21 that clarification with your filing on Friday.

22 MR. IRVINE: Okay.

23 THE HEARING OFFICER: And probably the sooner, the  
24 better you can get that to us.

25 MR. IRVINE: Be happy to do it.

1 THE HEARING OFFICER: That way we can take a look  
2 at that and see if we have any other questions.

3 So the Commission is prepared to make a bench  
4 ruling today subject to a number of things. Before  
5 providing that bench ruling, are there any questions?

6 Okay. So the Commission conditionally approves  
7 the requested increase effective July 1st, 2013. The  
8 increase is subject to, in part, that Beehive provide  
9 adequate justification and clarification that the provision  
10 it's relying upon in the document it provided today--in  
11 particular, FCC 11-161, which has been marked Beehive  
12 Exhibit No. 1, under subsection (f), subsection (2)--that it  
13 is in fact subject to the requirement stated which states,  
14 "Beginning on July 1st, 2013, and ending June 30th, 2014,  
15 the local urban rate floor shall be \$14."

16 Secondly, the rate increase is conditioned upon an  
17 audit to be completed by the Division. And, in part, the  
18 Commission is sensitive to the concerns that have been  
19 raised today about this may or may not justify a full rate  
20 case and the burdens that may be involved with that, and the  
21 expenses. And so to that end, the Commission wishes, as  
22 part of the conditions associated with this approval, that  
23 the Division start in the next 60 days an audit and complete  
24 that audit and provide a report to the Division--or excuse  
25 me--to the Commission.



1 MR. JETTER: May I ask for clarification?

2 THE HEARING OFFICER: Yes.

3 MR. JETTER: When you--I believe you had stated  
4 that the Division would start the audit--

5 THE HEARING OFFICER: Yes.

6 MR. JETTER: --in 60 days?

7 THE HEARING OFFICER: Yes.

8 MR. JETTER: But that's not the completion date?

9 THE HEARING OFFICER: That's correct. And I  
10 apologize if I caused you any concern. We assume that you  
11 will be prioritizing that with your regular workflow and  
12 that you will ensure that it is complete at a schedule that  
13 is achievable by the Division.

14 MR. JETTER: Thank you.

15 THE HEARING OFFICER: Sure.

16 Any questions before we conclude?

17 MR. IRVINE: No, except, again, Judge, I can't  
18 sufficiently express my appreciation for the effort that  
19 everyone has made to accommodate the Company on very, very  
20 short notice.

21 THE HEARING OFFICER: Thank you, Mr. Irvine.  
22 You're very welcome.

23 And thank you for being here today, everyone.

24 Have a nice rest of the day.

25 Proceedings concluded at 10:26 a.m.)

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CERTIFICATE

This is to certify that the foregoing proceedings were taken before me, SCOTT M. KNIGHT, a Registered Professional Reporter and Notary Public in and for the State of Utah, residing at South Jordan, Utah;

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

---

Scott M. Knight, RPR  
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