

B. Notice of Filing, Comment Period, and Proof of Notice to Beehive Customers

On June 11, 2013, the Commission issued a notice of application to increase rates, notice of comment period, and request for proof from Beehive of notice to its customers.³ On June 17, 2013, a customer filed a comment objecting to the rate increase based on an allegation that Beehive is “blocking” all calls from Sprint cell phones.⁴ On June 19, 2013, Beehive filed proof of notice to its customers.⁵

C. Division’s Recommendation

On June 13, 2013, in response to a Commission action request, the Division of Public Utilities (“Division”) filed a recommendation to conditionally approve Beehive’s request for a rate increase.⁶ The Division’s recommendation notes, “[i]f 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.”⁷ The Division further notes, “[s]ince the FCC has ruled that \$14/month is just and reasonable, the Commission could follow the FCC and 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.”⁸ “The Division does not know if the rate is just and reasonable based on traditional rate of return analysis” and recommends the Commission hold a scheduling conference, establishing a 240-day procedural schedule, and require Beehive to file a rate case to ensure Beehive is not over earning.⁹ “However, given the nature of the request and its basis in

³ See Notice of Filing, Comment Period, and Request for Proof of Notice to Customers, issued June 11, 2013.

⁴ The letter denotes that a copy was also sent to the FCC.

⁵ See Proof of Customer Notice, filed June 19, 2013.

⁶ See Division Memo, filed June 13, 2013.

⁷ Id. at 1.

⁸ Id. at 2-3.

⁹ Id. at 3.

federal [law], the Division believes Beehive's request could be in the public interest. [Utah Admin. Code] R746-344-5 specifically contemplates a limited case for the purpose of addressing FCC changes. The proposed filing appears to fit that category."^{10, 11}

C. Pre-Hearing Motion

On June 24, 2013, Beehive filed a motion for protective order concerning certain exhibits filed together with Beehive's notice.¹² No objection was made to Beehive's motion for protective order and the order was granted.¹³

D. Hearing

On June 25, 2013, the Commission held a duly-noticed hearing. At the hearing, attorney David R. Irvine appeared on behalf of Beehive.¹⁴ Justin Jetter, assistant Utah attorney general, appeared on behalf of the Division and was accompanied by William Duncan, manager of the Division's telecommunications section. Paul Proctor, assistant Utah attorney general, appeared on behalf of the Office of Consumer Services ("Office") and was accompanied by Michele Beck, director of the Office.

¹⁰ Id.

¹¹ Utah Admin. Code R746-344-5(B), in particular, states: "The applicant may limit the change to known and measurable changes from the Federal Communications Commission's or state policies, if the revenue change is only required because of changes in those policies."

¹² See Motion for Protective Order, filed June 24, 2013.

¹³ See Transcript of Hearing, dated June 25, 2013, at 3; lines 8-25.

¹⁴ Mr. Irvine noted he was expecting Beehive's consultant, Ray Hendershot, to appear and respond to questions in this docket. See id. at 6; lines 21-25. However, Mr. Hendershot never appeared.

1. Beehive's Position

Mr. Irvine explained that Beehive filed its notice of intent for a rate increase in response to an order from the FCC, FCC 11-161, which is further codified at 47 C.F.R. § 54.318.¹⁵ Mr. Irvine further explained that Beehive and other similarly situated carriers who seek CAF participation are required to establish an FCC mandated floor rate of \$14 per access line, effective July 1, 2013; thus, Beehive is seeking a \$2.33 per month per line increase to bring it in compliance with the FCC's mandate.¹⁶ Mr. Irvine stated, "...the request for a rate increase is pretty straightforward. It would not result in a net increase to Beehive in terms of annual revenue. It would keep the company essentially stable [with] neither a net loss nor a net gain over the next year."¹⁷ Mr. Irvine also clarified there was a computational error in Beehive's filing; specifically, in paragraph 5 of Beehive's notice of intent to file a rate case it should read: "If Beehive cannot meet the CAF eligibility requirements, it will result in an annual loss or reduction to the Company of \$17,727, which will otherwise have to be collected in the Company's rates."¹⁸ Further, regarding the letter filed by a customer concerned about call blocking, Mr. Irvine did not "take that as a substantive objection to the rate increase that Beehive is proposing . . . [but] as a separate service issue [the customer is] concerned about."¹⁹

¹⁵ See id. at 4; lines 22-25. Mr. Irvine provided a copy of FCC 11-161 at the hearing. See Beehive Exhibit #1.

¹⁶ See Transcript of Hearing at 5; lines 6-12. See also id. at 10; lines 22-25 ("The Hearing Officer: So is it correct that by increasing your rates by \$2.33, you achieve[] the \$14 [per] access line? Mr. Irvine: Yes, it is.")

¹⁷ Id. at 6; lines 10-14.

¹⁸ Id. at 7; lines 12-19. Originally, Beehive alleged the loss of CAF funding would result in an annual loss of \$212,720. See Petition, filed May 31, 2013, at 2, ¶ 5.

¹⁹ Transcript of Hearing at 16; lines 19-22.

2. Division's Position

Mr. Jetter stated the Division believes Utah Code Ann. § 54-1-12(8), together with Utah Admin. Code R746-344, allows the Commission to apply an abbreviated process to smaller rural telephone companies like Beehive; and it may be appropriate in proper situations to do so without a 240-day rate case proceeding.²⁰ Mr. Jetter expressed concern that Beehive customers may not have received proper notice, given the difference between the \$212,270 figure reflecting the annual loss Beehive would incur without the rate increase, and the approximately \$17,000 correction noted by Beehive at the hearing.²¹ However, in reading Utah Code Ann. § 54-7-12(8)(a)(ii) aloud,²² Mr. Jetter acknowledged Beehive's customer notice may meet the notice standard as it identifies the \$2.33 per line increase Beehive is seeking, but he nevertheless suggested the Commission consider the issue.²³ In addition, Mr. Jetter stated "[t]he Division . . . doesn't have a real strong position either way" but the Commission may wish to review this rate increase through a standard rate case;²⁴ however, Mr. Jetter also acknowledged that the cost of doing so may significantly outweigh the small rate increase Beehive seeks and possibly defeat or thwart Beehive's ability to receive the federal funding they are seeking.²⁵

Mr. Duncan testified on behalf of the Division that the \$2.33 increase requested by Beehive may be just and reasonable, provided the Company is not over earning as a result of the

²⁰ See *id.* at 17; lines 3-8.

²¹ See *id.* lines 15-25.

²² As Mr. Jetter recited, Utah Code Ann. § 54-7-12(8)(a)(ii) states: "The telephone corporation shall notify the commission and all potentially affected access line subscribers of the proposed rate increase 30 days before filing the proposed rate increase or change." (Emphasis added).

²³ See Transcript of Hearing at 18; lines 9-13.

²⁴ *Id.* lines 17-18.

²⁵ See *id.* lines 18-24.

increase.²⁶ Mr. Duncan also reiterated concerns expressed earlier by Mr. Jetter that, with the adjustment from approximately \$212,000 to roughly \$17,000, a 240-day rate case “would probably cost far in excess of that \$17,000 [Beehive is] requesting.”²⁷ Mr. Duncan further noted the Commission has approved \$16.50 per access line Utah USF cases, so what Beehive is requesting is actually less than what has been granted to other companies as just and reasonable;²⁸ but this does not do away with the Division’s concern that Beehive could still be over earning.²⁹ In response to this concern, Mr. Irvine expressed, “We are . . . here at the pleasure of the Commission to provide whatever information the Commission [and] parties would like us to provide. And Beehive will be absolutely cooperative in . . . performing as it’s requested to perform.”³⁰

3. Office’s Position

Mr. Proctor suggested the procedural uncertainties surrounding Beehive’s rate increase request could have been mitigated had Beehive filed its request sooner.³¹ Mr. Proctor also agreed with the Division that additional information is needed to ensure Beehive is not over earning.³²

Ms. Beck testified on behalf of the Office that it supports the Division’s recommendation³³ and noted, although others have focused on the small rate increase at issue,

²⁶See id. at 20; lines 13-20. See also id. at 23; lines 1-3.

²⁷Id. at 22; lines 6-7. Mr. Irvine expressed a similar concern. See id. at 25; lines 2-4.

²⁸See id. at 23; lines 13-19.

²⁹See id. lines 20-25. See also id. at 24; lines 1-3.

³⁰Id. at 26; lines 9-13.

³¹See id. lines 18-24.

³²See id. at 29; lines 2-6; lines 23-25. See also id. at 30; line 1.

³³See id. at 31; lines 1-2.

this rate increase results in a “20 percent increase for [Beehive] customers.”³⁴ As for the Office’s position on whether a rate case should be required, Ms. Beck deferred to the Division since “by and large . . . [rate cases] are conducted by the Division. . . .”³⁵

E. Post-Hearing Matters

On June 26, 2013, Beehive filed a letter explaining how the FCC order, and more particularly 47 C.F.R. § 54.318, relied upon at the hearing applies to Beehive.³⁶ On July 1, 2013, Beehive filed a petition requesting an immediate rate increase, effective July 1, 2013.³⁷

ORDER

Based on Beehive’s application, the recommendation of the Division, the testimony presented at the hearing from Beehive, the Division, and the Office, and Beehive’s post-hearing brief filed June 26, 2013, showing the applicability of FCC 11-161 to Beehive, the Commission enters the following order:

1. Beehive’s notice to its customers was adequate;
2. Beehive’s customer who complained about alleged “blocking” has been contacted by the Commission and instructed on how to file a complaint with the Division;
3. Beehive has provided adequate support showing that FCC order, FCC 11-161, codified at 47 C.F.R. § 54.318, applies to Beehive;

³⁴ Id. at 31; lines 4-5.

³⁵ Id. at 33; lines 19-20.

³⁶ See Letter from David R. Irvine, to the Commission, filed June 26, 2013 (“The [FCC] 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 [federal] USF support...”). Mr. Irvine’s letter is further supported by several FCC statements in FCC 11-161, §§ 237-39, attached to Mr. Irvine’s letter. See id.

³⁷ See Pleading, filed July 1, 2013.

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4. A \$2.33 monthly increase per residential access line is approved, effective July 1, 2013, conditioned upon an audit to be completed by the Division. As noted in the hearing, the Commission is sensitive to the concerns raised that a full rate case and the burdens and expenses involved with a full rate case may or may not be justified in this situation. To that end, the Commission directs the Division to begin its audit within sixty days of the date of this order and provide a report and recommendation to the Commission at the completion of that audit;
5. In addition, considering the FCC has stated in FCC 11-161 that a subsequent rate change is anticipated beginning July 1, 2014, and each subsequent year,³⁸ the Commission directs Beehive to file any subsequent rate increase request under FCC 11-161 as soon as practicable after the FCC defines what the new or revised rate(s) will be.

DATED at Salt Lake City, Utah, this 2nd day of August, 2013.

/s/ Melanie Reif
Administrative Law Judge

³⁸ See Beehive Exhibit No. 1 at 2. FCC 11-161 (codified at 47 C.F.R. § 54.318 High cost-support; limitations on high-cost support) (“(f) Schedule. . . (3) Beginning July 1, 2014, and thereafter, the local urban rate floor will be announced annually by the Wireline Competition Bureau.” (Emphasis added)).

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Approved and confirmed this 2nd day of August, 2013, as the Report and Order of the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
D#246041

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order 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. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I CERTIFY that on the 2nd day of August, 2013, a true and correct copy of the foregoing REPORT AND ORDER, was served upon the following as indicated below:

By Electronic-Mail:

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