- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Quality of Telephone	)	DOCKET NO. 98-051-04
Service Within the Territory Served by	)	
BEEHIVE TELEPHONE COMPANY,	)	ORDER ON REMAND
Respondent	)	

ISSUED: August 23, 2004

SYNOPSIS

This case having been remanded by the Utah Supreme Court with instructions to recalculate the fine previously imposed, the Commission orders Respondent to pay a fine in the amount of $10,000.

By the Commission:

PROCEDURAL HISTORY

This case stems from an order the Commission issued April 10, 1997 in Docket No. 96-051-04 in which we fined Beehive Telephone Company (Beehive) $182,500 for poor service and billing violations contrary to Beehive's tariff. The Commission suspended the entire fine subject to Beehive conforming with the terms of the order. One of the provisions of that order required that Beehive cease billing it customers toll charges for completing calls to wireless subscribers within Beehive's local calling area. Beehive appealed the April 10, 1997 order to the Utah Supreme Court but that appeal was stayed pending the outcome of subsequent proceedings before the Commission discussed below.

During a Beehive customer service survey ordered by the Commission, the Division of Public Utilities (Division) discovered that Beehive had continued charging its customers toll charges, apparently in violation of our order. On October 13, 1998, the Division petitioned the Commission for an Order to Show Cause why Beehive should not be found in violation of the April 10, 1997 order. That petition initiated this proceeding. By order dated November 3, 1999, the Commission, after hearing, vacated the suspended fine of $182,500.

On November 23, 1999, Beehive petitioned the Commission to review the November 3, 1999 order. After

its petition was deemed denied, Beehive filed a notice of appeal to the Utah Supreme Court. By stipulation, the Court

held the case in abeyance after the Commission agreed that it should reconsider its order. The Court returned the matter

to the Commission and the Commission granted Beehive's petition to review on December 20, 1999.

Upon review, the Commission determined that, rather than considering each day from March 1996 to

April 1997 as a separate and distinct violation, it would consider each monthly billing to be a single violation. On

February 5, 2002, the Commission issued its Order on Review imposing a $1,250 fine for each of twelve monthly

billing cycles from March 1996 to April 1997, reducing the $182,500 fine to $15,000.

On appeal, the Utah Supreme Court affirmed the fine in part and affirmed vacation of the fine's

suspension. Because it found that the record does not contain clear and convincing evidence of Beehive's continuing

violations between November 12, 1996, and April 10, 1997, the Court held that Beehive may only be fined for billing

cycles occurring between March 1996 and November 12, 1996. Since the record did not include billing statements for

this period, the Court remanded the case to the Commission for further proceedings consistent with its opinion.

On June 21, 2004, the Commission sent a memorandum to Beehive's attorney, Alan L. Smith, requesting

the following information: "How many monthly customer billing cycles did Beehive perform during the period March

1, 1996, to November 12, 1996?" On behalf of Beehive, Mr. Smith responded to this inquiry by memorandum dated

July 19, 2004 stating that Beehive performed eight monthly billing cycles during this period. On August 16, 2004,

Beehive requested that the Commission reconsider the levying of any fines or, in the alternative, order further hearing or

conference in this matter.

DISCUSSION AND FINDINGS OF FACT

In examining Beehive's request, we note that Beehive has previously requested and been granted

reconsideration of our decision to vacate suspension of the fine. Our February 2002 order reducing the fine to $15,000 is

the product of that reconsideration. The Utah Supreme Court has affirmed our decisions to levy the fine and vacate its

suspension. The only action left to us is to recalculate the fine in accordance with the Court's opinion.

Furthermore, the substance of Beehive's request for reconsideration is that it has invested millions of dollars to upgrade its facilities over the last five years and that its level of customer complaints has substantially decreased. However, our order vacating suspension was predicated not on customer service quality issues but on Beehive's failure to cease billing its customers toll charges in violation of its tariff. Even if we were not already well beyond the stage in these proceedings when a request for reconsideration would be appropriate, we see nothing in Beehive's request to persuade us that the fine is not appropriate in light of Beehive's past violation of Commission orders.

We previously determined a fine of $1,250 per violation to be just and reasonable under the circumstances, and we continue to do so. Based on Beehive's response to our inquiry, we find that Beehive violated our April 1997 order on eight occasions between March 1 and November 12, 1996. Multiplying $1,250 per violation times eight violations results in a total fine of $10,000.

CONCLUSIONS OF LAW

1.   At this stage of the proceedings, neither statute nor Commission rule authorizes or requires reconsideration of our prior decisions to levy a fine or to vacate its suspension, and we decline to do so.

2.   A $10,000 fine is just and reasonable under the circumstances of this case.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1.   Beehive's fine be reduced to $10,000 for its violations.

2.   This order be effective immediately.

3.   Any person aggrieved by this order may petition the Commission for review within 20 days of the date of this order. Failure to do so will forfeit the right to appeal to the Utah Supreme Court.

Dated at Salt Lake City, Utah, this 23rd day of August, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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