

2002

In the Matter of the Quality of Telephone Service Within the Territory Served by Beehive Telephone Company. Beehive Telephone Company v. Utah Public Service Commision : Petitioner's Appendix

Utah Supreme Court

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Alan L. Smith; Counsel for Petitioner.

Sandy Mooy; Counsel for Respondent.

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Supplemental Submission, *Beehive Telephone Company v. Utah Public Service Commision*, No. 20020182.00 (Utah Supreme Court, 2002).

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In the Matter of the Quality
of Telephone Service Within
the Territory Served by
Beehive Telephone Company.

Beehive Telephone Company,

Petitioner,

vs.

Utah Public Service
Commission,

Respondent.

Supreme Court No. 20020182

Utah Public Service
Commission,

Respondent.

On Petition for Review of Orders of the Utah Public Service Commission

Counsel for Respondent:
Sandy Mooy (Utah Bar No. 2309)
Heber M. Wells Building, 4th Floor
Salt Lake City, Utah 84111
Telephone: (801) 530-6708

PAT BARTHOLOMEW
CLERK OF THE COURT

BEFORE THE UTAH SUPREME COURT

In the Matter of the Quality)	
of Telephone Service Within)	
the Territory Served by)	
Beehive Telephone Company.)	
)	
Beehive Telephone Company,	)	UPSC Docket No. 98-051-04
)	
Petitioner,	)	Supreme Court No. 20020182
)	
vs.)	
)	
Utah Public Service)	
Commission,)	
)	
Respondent.)	

PETITIONER'S APPENDIX

On Petition for Review of Orders of the Utah Public Service Commission

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Assistant Attorney General
Division of Public Utilities
JAN GRAHAM # 1231
UTAH ATTORNEY GENERAL
160 East 300 South
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Salt Lake City, Utah 84114-0857
Telephone: 366-0353

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Quality of Telephone Service	)	Docket No. _____
Within the Territory Served by Beehive Telephone	)	Petition for Order to Show Cause
Company.)	

Pursuant to Rule R746-100 of the Commission's Rules of Practice and Procedure the Division of Public Utilities ("Division") hereby submits its Petition for Order to Show Cause against Beehive Telephone Company ("Beehive") for failing to provide adequate service in the Rush Valley, Vernon and Terra exchanges pursuant to Utah Code Ann. section 54-3-1. The Division also maintains that Beehive is charging subscribers for local cellular calls which procedure is not included in its tariffs and is not following proper account billing procedures in accordance with Commission Rule R746-240-4.

During the months of March, April and May, 1996, the Division was contacted by subscribers complaining about the poor quality of service Beehive Telephone Company was providing in the Rush Valley, Vernon and Terra exchange areas. On May 21, 1996 a letter was sent to the Division by a representative of the citizens of Rush Valley, Utah restating some of the

complaints the Division had received verbally. On March 18, 1996 the Division received a Commission utility complaint request to investigate subscriber complaints in the aforementioned areas. The complaints listed below initiated a Division investigation into the quality of service problems.

Service Complaints

- * Beehive subscribers are blocked from receiving or making toll calls.
- * Phone calls that are completed. are often cut off during the call, requiring the subscriber to redial the call.
- * Service interruption problems are not repaired in a timely manner.
- * Poor quality transmission signal on lines.
- * Held Orders in Rush Valley, per Docket No. 96-051-02.
- * Subscribers cannot dial 800 numbers.

Utah Code Ann. Section 54-3-1 states that every public utility “shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public as will be in all respects adequate, efficient, just and reasonable.” The Division believes that Beehive is not meeting its service obligations and should be ordered by the Commission to rectify the above referenced service problems.

Billing Complaints

- * Beehive bills toll charges to subscribers who make calls to the Tooele 830 and 840 prefix (cellular prefix). Tooele has EAS with Rush Valley and Vernon, therefore. Beehive’s subscribers are paying for EAS and the originating calls to a cellular line.

- * Subscribers are often billed in advance.
- * Subscribers often receive double bills.
- * Beehive charges different prices per minute for calls being made to the same number at the same time of day.

The Division believes that Beehive is not following proper billing procedures pursuant to Commission Rule R746-240-4 and should be ordered to explain why it is double billing, why subscribers are being billed in advance and why it charges different prices per minute for calls being made to the same number at the same time of day.

Inappropriate Cellular Toll Charges

A complaint was received by the Commission on March 18, 1996 alluding that Beehive was assessing toll charges for calls to a cellular prefix in Tooele (830 and 840) (See attachment 1). The Division commenced to investigate the complaint and on April 11, 1996 the Division discussed the allegation with Mr. Brothers. On May 10, 1996, the Division sent a letter to Mr. Art Brothers, Manager of Beehive Telephone Company, asking him to discontinue charging for subscriber calls to the cellular prefix's in Tooele. (See attachment 2).

On May 10, 1996 the Division received a reply from Mr. Brothers with proposals that are not in line with Beehive Telephone Company's Tariff (See attachment 3).

The Division does not believe that Beehive's tariffs allow the Company to charge subscribers in such a manner and therefore requests the Commission to order Beehive to cease and desist in this practice. (See attachment 4, copy of Beehive's tariff)

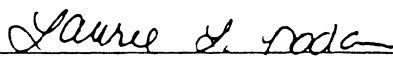
Numerous complaints have been received by the Division and Commission regarding the poor service that Beehive Telephone Company is providing to its subscribers. The Division has contacted Beehive on all complaints, each time Beehive has assured the Division that the problem would be taken care of. (See attachment 5 for copies of some of the complaints).

On May 21, 1996 the Public Service Commission received a letter from Vikki Hansen, a representative for the Beehive Subscribers in Rush Valley, restating the same complaints that the Division has been receiving, which indicates that the service problems still exist. (See attachment 6).

Recommendation

The Division requests that the Public Service Commission hold a public hearing in the Rush Valley area for the purpose of better understanding the public concerns. Additionally, the Division requests that the Public Service Commission issue an Order to Show Cause requiring Beehive to appear and show cause, if any it has. 1) why it is not in violation of Utah Code Ann. Section 54-3-1 for failing to provide adequate service. 2) why it is not in violation of Commission rule R746-240-4 governing account billing procedures and 3) why it is charging subscribers toll charges for local cellular calls.

Dated this 8th day of July, 1996.



Laurie L. Noda
Assistant Attorney General
Division of Public Utilities

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Petition for Order to Show Cause was sent first class postage prepaid this 8th day of July, 1996 to the following:

David Irvine
124 So. 600 E.
Suite #100
Salt Lake City, UT 84102

Yurie Noda

6

UTILITY COMPLAINT FORM

Utility Name Beehive Telephone Co.Complainant Kent SagersStreet Address P.O. Box 93City/State/Zip Code Vernon, VT 24080Home Phone 839-3424Work Phone 522-5956 (530-2741 Mobile.)

Message Phone _____

Account No _____ Type of Complaint _____

Received by L. Fuller Date Rec'd 3/18/96 Time 11:45a

Referred to _____ Follow up by _____ Date _____

Closed by LF Date Closed 3/18/96

Summary of Complaint Vernon customer being billed toll charges ~~full~~ for calls to Toole 830 prefix which an EAS call. Many neighbors are also being billed toll charges also. This is the first month toll calls have been toll rated by Beehive.

Response Beehive must provide the service as EAS in accordance with its tariffs. Toll charges between Vernon and Toole would only apply only on an overflow basis and only when the customer calls 1-201-etc. Beehive is billing incorrectly. Is the complainant to call Beehive and first attempt to resolve issue with the company. If ~~the~~ the company refuses to remove toll charges then call back to Ken Petersen.



DEPARTMENT OF COMMERCE
DIVISION OF PUBLIC UTILITIES

Heber M Wells Bldg 4th Floor
160 East 300 South / Box 146751
Salt Lake City UT 84114-6751

Telephone No (801) 530-6651
FAX (801) 530 6512 OR (801) 530-6650

ATTACHMENT

2

Art Brothers
C O Beehive Telephone Company
5160 Wiley Post Way Suite 200
Salt Lake City, Utah 84116

May 10 1996

Dear Art

On March 18 1996 an informal complaint was taken by the Division against Beehive Telephone Company from a Beehive subscriber in Vernon Utah. The complaint stated that the Vernon customer was billed for toll calls to the Tooele 830 prefix. According to the Beehive Tariff, calls to the Tooele exchange are EAS and therefore should not be charged as toll calls. The complainant further states that Beehive Telephone Company has charged many of his neighbors in the same manner.

The Division maintains that Beehive Telephone Company is in direct violation of their tariff.

The Division expects to see this problem corrected immediately. Additionally, we ask that Beehive Telephone Company provide the Division with a written explanation of the violation and any action that is taken to resolve the problem within two weeks. If Beehive fails to adhere to the request of the Division we will file a petition for Order To Show Cause with the Public Service Commission for violating the approved tariff.

Please feel free to contact Peggy Egbert (801) 530-6703 if you would like to discuss this matter.

Sincerely,

Audrey Curtiss
Audrey Curtiss

Manager Telecommunications

cc Kent Sagers Complainant
David R Irvine Attorney for Beehive Telephone Company





Kent Sagers
AN: Audrey Curtis

May 1996 newsletter

from Beehive Telephone Co., Inc.
 Art Brothers

Early in 1995, we signed a contract for a new billing system. We had hoped to have it operational by June or July. Well - ten months late for something like this is, we are sorry to say - typical in this business. We liked the old system's paper size, but were unable to make the new system fit that kind of paper - so what you have is the best we were able to get.

RUSH VALLEY AND VERNON

Several of you have asked why you can't dial 830 xxxx and 840 xxxx numbers toll free anymore. These numbers are assigned to pagers and Cell telephones. Initially we allowed toll free calling to those numbers but those companies never signed agreements with us to compensate us for the expense of completing those calls to the non-wire line telephone companies operating out of Tooele. No more. If you wish to call those prefix's it is only possible by your paying the long distance charge. Those customers who have deducted the long distance charges to call will be expected to pay the long distance charges to call those numbers.

RUSH VALLEY

We have a new dual processor switch to place into operation in Rush Valley. It will be placed in the new building on the lot we purchased for telephone use which is inbetween the old and new fire stations. Despite the issuance to us of two building permits for new structures for telephone use on the lot, it appears that the City has no records of what its contract building official in Grantsville did. We have been directed to formally ask the City planning commission to approve a change of zoning on the property from what ever it is - to business. So until that is accomplished, we have slowed down cut-over of the new switch.

INTERNET

Bill Dunlop tells me we are moving along on our new computer for Internet service at Wendover. Besides all Wendover access - it will enable digital internet access even when the video is being used at the Park Valley/Grouse Creek/West Desert schools - plus access by dial-up modem and later by 56 kb digital from Garrison/Partoun/Ibapah/Grouse Creek/Park Valley and Oasis in Nevada. We will extend a 56 kbite link into the Wendover school with a 1.5 mibyte link to the U of U in SLC as well as later to the Community College in Elko.

HELP WANTED

We need two or three hands for summer construction. We've a lot of cable to get buried. Call Bill at 1-800-629-4663 or 1-801-234-0111.

(9)

May 17, 1996]

Audrey Curtiss

DPUC

160 E 300 S, 4th floor

SLC, Utah 84116-4675

May 17, 1996

Dear Audrey,

This is in reply to your letter of May 10, 1995 in re our policy of not allowing use of EAS trunks to Tooele to interconnect with non-wire-line non-LEC telephone carriers.

It is our opinion that if such competitive carriers desire to have their customers from our exchanges access their services, that they should contract with Beehive for access and arrange to compensate Beehive for that expense.

We further note that U.S. West has filed tariffs for "caller pay" where their wire line customers even within the exchange area would pay for the cellular completion costs of the call. Our requirement that the Beehive caller pay by using the long distance circuits and pay for the call charged as a DDD rate is proper and reasonable.

We further point out that a number of years ago, the Division supported a policy of LEC denial of calls to reseller companies who acquired a 882 line (Tooele) and had our Rush Valley customers by-passing the toll network to get a free ride on the EAS to access Tel-America. The Division position was that Tel-America was wrong and asked that they not take customers in non-Bell areas where EAS was being used by by-pass the toll network.

We also note that the Commission supported the denial of call completion for Ogden to SLC calling when USW objected to it and this situation is similar.

For those reasons, we would be happy to open up our EAS circuits on order of the Commission which we would expect would allow us to be compensated for such expense. So we are not planning to allow such use without a PSC order.

I hope this is an acceptable method of resolving this problem for the Vernon customer. Let me know if I can be of any further help on this matter.

Sincerely Yours,

A. W. Brothers

cc: Kent Sagers, Vernon

11-67-701

(10)

Beehive Telephone Co., Inc.
Wendover, Utah 84083

UPSC Schedule 1 dated 6/29/94
replaces all prior schedule 1

Schedule No. 1 - RATES FOR SERVICE

These Rates are applicable to all classes of exchange customers in Utah, except as otherwise indicated.

Rates shown are for annual service as billed on a monthly basis. Only single party service is available.

	<u>Business</u>	<u>Residence</u>	
Rate all areas, per month	\$16.00	\$11.67	(R)
except: Ticaboo	\$27.50		
Rush Valley/Vernon	\$ 1.00	\$ 1.00	
Private pay phone and key system	\$36.00	n/a	(N)
Severance and reconnection charge	\$15.00	\$15.00	

Note:

1) A late fee of 1.5% of the unpaid balance due is applied each billing period plus a one dollar administrative fee to all accounts for which payment is not received by the close of each month's accounts receivable which is 20 days after bills are mailed.

2) Toll Station and radio takes the Key System rate. (R)

3) Service shall be provided only as lines are available, otherwise construction charges apply per Schedule 2.

4) Installation charges are outlined in Schedule 2.

5) Long Distance and Operator service charges are the same as filed by USWC.

6) EAS is provided from Rush Valley and Vernon only to USWC's Tooele Exchange and EAS service area associated thereto. During heavy EAS calling times, circuits may not be available. Customers may use DDD circuits (1+ the EAS number) when encountering a short term EAS busy condition by paying the DDD rate for those calls.

Issued 6-29-94
Effective: 7-01-94

by: A. W. Brothers, President

DEPARTMENT
BUSINESS REGULATION
DIVISION of
Public Utilities

Anthony Pappo
742 No. Douglas St.
Kearney Neb

839-3443

Beckwith T. Co.

12/21 - too much noise
Boeing - he's taking it out
in them for complaining

Frank Wheeler
747-7171

James B. K.

(A. B.)

The seal of the State of Utah Department of Public Utilities is located in the top right corner. It features a circular design with a mountain range and a river, surrounded by the text "STATE OF UTAH" and "DEPARTMENT OF PUBLIC UTILITIES".

3/15/96 - Fri

— Patricia Holden
(800) 839-3464 hms.
(202) 839-3423 Wk

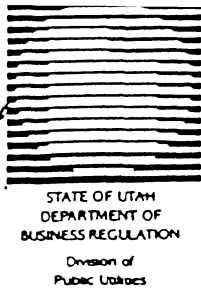
Behind Title.

Belting all fouled up -
many parts. not credited

3/18 - Not able to reach on Fr
called Mon. - she got new
bill but still not in

R. Creer
530-6651

Red Rodd - not in left
" " " " " "



Rodd Baird

Wk 884-0123

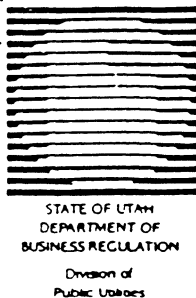
Ext. 135 781^{2nd fl}

New service from
Chive Tel. - can't get
it - even Val has not
~~left to get~~
~~back to him~~
in call - 827-2104
Rush Valley

525 Division

ph N. Creer
530-6651

84758



1/22/96

is in Hager - d
R. Baird Tel.
755-2104 (847-3000)
Baird Tel. - d
enough, thanks

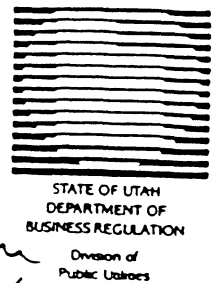
with value & V. man - not prof.
K. Problem Areas

Ralph N. Creer
530-6651

(12)

6/21/95

Gaynell Jordan
26661 So. Hwy 36
839-3450



Beeline Tel. Mt.
lines out & won't

repair & restore service

6/21/95 - Talked to Glenn -
phone lines all back in
operation by 6/26. -

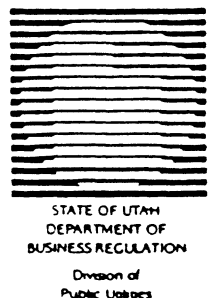
Left word w/ friend of G.
Don't

Ralph N. Creer
530-6651

1/31/96

Robert Bennett
(Baron M. M. M.)

P.O. Box 5

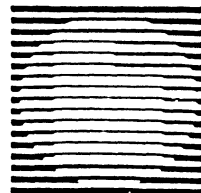


Division, Mt. 74758
Ph. 755-2155

Don't get out
out about 10% of the
time. (Beeline)

Confidential - get

Ralph N. Creer
530-6651



STATE OF UTAH
DEPARTMENT OF
BUSINESS REGULATION

Division of
Public Utilities

4/11/96

David Bayley, Calio, UT.
277-3878 also J.L.C.

Reelme Tele.

need more trunk lines
to the area. Can't call
in or out.

Called 4/11 - Got new phone -
left message
called again - explained problem
to them.

ATTACHMENT 6

14

Vikki Hansen
PO BOX 305
Rush Valley Ut 84069
(801) 837-2255

Sirs;

May 17th, 1996

I am writing to you on behalf of the citizens of Rush Valley Utah.

We have numerous complaints and problems with our telephone company, Beehive Telephone, 5160 Wiley Post Way, SLC ut 84116. A.W. Brothers owner/president. Some of the complaints are as follows:

1. Sometimes people cannot dial out on their cellphones.
2. Being charged to dial local calls.
3. Not being able to call 800 numbers.
4. Charged for long distance calls that were not answered.
5. Unable to or unwilling to break in on calls for emergency calls.
6. Being billed in advance.
7. Getting double bills.
8. The length of time getting problems solved.
9. Phone calls being cut off, sometimes several times in one call.
10. Sending news letters with our bills knocking our community and it's officials. (as per copy of news letter inclosed)
11. Being charged different prices per minute for calls being made to the same number at the same time each day.
12. Being charged for cellphone calls that are being billed and by and paid to other phone companies. (as per copy of news letter inclosed)

We would also like to know why we are paying for Enhanced 911 each month on our bills but we do not have it on our phones? This question was put to Mr. Brothers by a citizen on April 17th, 1996 at a local Planning and Zoning meeting in Rush Valley. His reply was, "We are all hocked up and ready to go we are just waiting for the go-a-head from US West. US West has been sending me a check each month but has not told us to go-a-head." I believe he said that it has been ready for two or three years now.

We also have families that live within 5 miles of our town limits who have been trying to get phone lines to their homes for two or more years. There is always some excuse or other.

Our neighbors, the towns of Vernon and Terra have experienced similar problems. It has been stated to me twice now that Vernon is in the habit of waiting 3 days for phone service to be restored when there has been a cutoff for any reason. These communities are too isolated to be with out phone service for such time periods.

Our desire is to get another phone company to buy our contract from beehive Telephone. Someone who will take better care of our communities communications needs. Your help, interest or information you can give to aid us in our endeavor would be greatly appreciated.

Respectfully

May 1996 newsletter

from Beehive Telephone Co., Inc.
Art Brothers

Early in 1995, we signed a contract for a new billing system. We had hoped to have it operational by June or July. Well - ten months late for something like this is, we are sorry to say - typical in this business. We liked the old system's paper size, but were unable to make the new system fit that kind of paper - so what you have is the best we were able to get.

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HELP WANTED

We need two or three hands for summer construction. We've a lot of cable to get buried. Call Bill at 1-800-629-4663 or 1-801-234-0111.

BEEHIVE TELEPHONE CO INC.

February 1996 newsletter
to RUSH VALLEY RESIDENTS

from Beehive Telephone Co., Inc.

MERRY NEW YEAR!

Reminder - all long distance calls must be dialed 1+10 digits now. Part of the problem in dialing revised Arizona locations was due to U.S. West not making computer program changes for AT&T. The clue was the recording that said "...we're sorry...". AT&T told us they never say they are sorry. Only U.S. West says that. So we finally knew where to look to get the problem fixed.

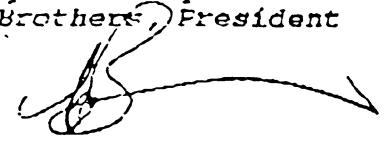
> Three years ago started to work on plans to replace the central office switch in Rush Valley by 1995. Parts are no longer available. It is worn out. We needed a new building at a location very close to the existing cable boxes outside the old fire station. The City declined to allow us to purchase land in back of the old fire station. Other options were across the street east (best) or across the street south (2nd best). Family litigation and confusion over ownership of the land east would have required us to condemn the land and due to the many owners - that option was passed over. We purchased the triangle south. Next step was building permits. It took 6 months. With building permits in hand for two buildings (one for a new switch building with a two vehicle garage and a very large storage building) we then submitted our money request to RUS in Washington. That takes years for approval.

We let a contract a year ago. The contractor was told "no" by the Mayor. Said we had no building permit. Then something about water. Then it was "use". Last summer our lawyer came to a meeting and reported that your planning folk approved the "use". The building permits were recognized as having been issued. By then our contractor was no longer available. We took delivery of the new switch. No building that year.

By fall, the existing switch had reached its capacity. There are no lines for new customers. The Chemical Depot is scheduled for mid '96 operation, and if for no other reason, our new switch must get on line for the potential safety to the public from having that danger next door. (The existing switch does not have fail-safe computers and could fail for hours or days as parts are no longer available).

I consulted with the Mayor. I told him our story. We had to use a portable container building. In the future, we'd work that building into changed needs on our ground. In a conference call last month with the County engineering department and the Mayor and UF&L, it was agreed UF&L would connect the power to our work site ASAP. In the meantime we use big extension cords from our office across the street. A month later despite promises, the County refuses to let UF&L connect. The County says the "Mayor" says (again) we don't have building permits cause they have expired. We can't get anything in writing. There is to be yet another meeting of the Rush Valley planning and zoning folks on February 7th.

I think folks forget our only source of money is from your local service charges... In 20 years, only PLM has given me more hassle to upgrade telephones in a community. If you have suggestions for us - I'm at "611". Thanks, Art Brothers, President



Memo to Grant Smith
Rush Valley Planning and Zoning Commission
Rush Valley, Ut 84069

February 27, 1996

Dear Grant,

Thanks for the conditional use permit.

However, as we discussed on the phone, there is nothing on our use which is conditional as to time as the ~~facility is to replace~~ switching equipment now housed within the old fire station which is obsolete and not large enough to handle current needs of the area.

Thus, some explanation of the conditions need discussions for the file.

1. We have permits for not only the concrete building with a two vehicle garage, but a larger storage building for wire, equipment, etc. It is our opinion these permits are valid and we will commence with the storage building this summer.

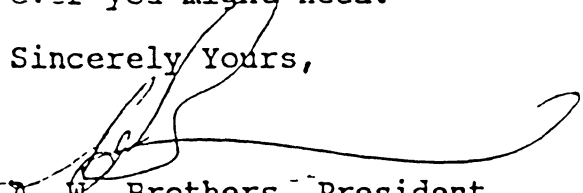
2. Fencing is planned and depends on release of funds for that purpose. Because RUS is beyond our control, we do what we can as funds are made available.

3. This is acceptable.

4. A toilet is planned for the future, but of course requires a well for water and a septic tank. Both costs are within the scope of RUS and loan funds.

5. We have no idea, nor do we intend to inquire of any requirements from OSHA for this provision. We do meet requirements of RUS which is the Department of Agriculture. We therefore question what provisions you might have in mind on this matter. If there is a specific item of concern, please let me know. We would be happy to clarify or assist your group for what ever you might need.

Sincerely Yours,


A. W. Brothers, President
5160 Wiley Post Way, SLC, Ut 84116

CC: Dave Irvine, esq

COPIES OF THIS INFORMATION AND LETTERS HAVE BEEN SENT TO ALL THE
NAMES LISTED BELOW.

Steve Mecham
Public Service Commission
160 E 300 SO
SLC UT 84145

Phil Bullock
Committee of Consumer Services
160 E 300 SO
SLC UT 84145

Audrey Curtiss
Division of Public Utilities
160 E 300 SO
SLC UT 84145

Industrial Commission (OSHA)
PO BOX 146650
SLC UT 84114-6650

Dan Sutton
TCI Cablevision of Utah
1350 E Miller Ave.
SLC UT 84106

(as possible interested to take
over our contract)

A. W. Brothers
Beehive Telephone
5160 Wiley Post Way
SLC UT 84116

Cosetta Costagno
Mayor of Vernon
PO BOX 39
Vernon UT 84080

Andrew Dicarlo
President of the Board Terra
PO BOX 185
Dougway UT 84022

Odell Russell
Mayor of Rush Valley
PO BOX 314
Rush Valley UT 84069

All Board members and Planning and Zoning members
of the town of Rush Valley

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Quality of Tele-)
phone Service Within the Territory)
Served by BEEHIVE TELEPHONE COMPANY)

DOCKET NO. 96-051-04
ORDER TO SHOW CAUSE

ISSUED: July 23, 1996

By the Commission:

Pursuant to Rule R746-100 of the Commission's Rules of Practice and Procedure the Division of Public Utilities ("Division") has filed with the Commission a Petition for Order to Show Cause against Beehive Telephone Company ("Beehive") for failing to provide adequate service in the Rush Valley, Vernon and Terra exchanges pursuant to Utah Code Ann. Section 54-3-1. The Division also maintains that Beehive is charging subscribers for local cellular calls which procedure is not included in its tariffs and is not following proper account billing procedures in accordance with Commission Rule R746-240-4. More specifically, the Division represents the following:

During the months of March, April and May, 1996, the Division was contacted by subscribers complaining about the poor quality of service Beehive Telephone Company was providing in the Rush Valley, Vernon and Terra exchange areas. On May 21, 1996, a letter was sent to the Division by a representative of the citizens of Rush

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Valley, Utah, restating some of the complaints the Division had received verbally. On March 18, 1996, the Division received a Commission utility complaint request to investigate subscriber complaints in the aforementioned areas. The complaints listed below initiated a Division investigation into the quality of service problems.

Service Complaints

- * Beehive subscribers are blocked from receiving or making toll calls.
- * Phone calls that are completed, are often cut off during the call, requiring the subscriber to redial the call.
- * Service interruption problems are not repaired in a timely manner.
- * Poor quality transmission signal on lines.
- * Held orders in Rush Valley, per Docket No. 96-051-02.
- * Subscribers cannot dial 800 numbers.

Utah Code Ann. Section 54-3-1 states that every public utility "shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public as will be in all respects adequate, efficient, just and reasonable." The Division believes that Beehive is not meeting its service obligations and ~~shou~~ld be ordered by the Commission to

DOCKET NO. 96-051-04

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rectify the above referenced service problems.

Billing Complaints

- * Beehive bills toll charges to subscribers who make calls to the Tooele 830 and 840 prefix (cellular prefix). Tooele has EAS with Rush Valley and Vernon, therefore, Beehive's subscribers are paying for EAS and the originating calls to a cellular line.
- * Subscribers are often billed in advance.
- * Subscribers often receive double bills.
- * Beehive charges different prices per minute for calls being made to the same number at the same time of day.

The Division alleges that Beehive is not following proper billing procedures pursuant to Commission Rule R746-240-4 and should be ordered to explain why it is double billing, why subscribers are being billed in advance and why it charges different prices per minute for calls being made to the same number at the same time of day.

Inappropriate Cellular Toll Charges

A complaint was received by the Commission on March 18, 1996, alluding that Beehive was assessing toll charges for calls to a cellular prefix in Tooele (830 and 840) (See attachment 1). The Division commenced to investigate the complaint and on April 11, 1996, the Division discussed the allegation with Mr. Brothers. On May 10, 1996, the Division sent a letter to Mr. Art Brothers,

DOCKET NO. 96-051-04

- 4 -

Manager of Beehive Telephone Company, asking him to discontinue charging for subscriber calls to the cellular prefixes in Tooele. (See attachment 2).

On May 10, 1996, the Division received a reply from Mr. Brothers with proposals that are not in line with Beehive Telephone Company's Tariff (See attachment 3).

The Division does not believe that Beehive's tariffs allow the Company to charge subscribers in such a manner and, therefore, requests the Commission to order Beehive to cease and desist in this practice. (See attachment 4, copy of Beehive's tariff).

Numerous complaints have been received by the Division and Commission regarding the poor service that Beehive Telephone Company is providing to its subscribers. The Division has contacted Beehive on all complaints, each time Beehive has assured the Division that the problem would be taken care of. (See attachment 5 for copies of some of the complaints).

On May 21, 1996, the Public Service Commission received a letter from Vikki Hansen, a representative for the Beehive Subscribers in Rush Valley, restating the same complaints that the Division has been receiving, which indicates that the service problems still exist. (See attachment 6).

Based on the foregoing, the Division requests that the Public Service Commission issue an Order to Show Cause requiring

DOCKET NO. 96-051-04

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Beehive to appear and show cause, if any it has, why 1) it is not in violation of Utah Code Ann. Section 54-3-1 for failing to provide adequate service, 2) it is not in violation of Commission rule R746-240-4 governing account billing procedures, and 3) it is charging subscribers toll charges for local cellular calls.

Beehive has filed a letter dated July 12, 1996, with the Commission responding to one of the complaints against it and, in effect, requesting that the Commission hear and investigate the matter.

The Commission has reviewed the Division's request and finds there is cause for further proceedings. Accordingly, Beehive Telephone Company is directed to appear before the Commission's Administrative Law Judge, whose number is (801)530-6716, for a formal investigation and adjudication of the Division's show cause request, on Wednesday, August 28, 1996, at 9:00 a.m., at the Commission offices, Heber M. Wells Building, 4th Floor, 160 East 300 South, Salt Lake City, Utah.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this hearing should notify Julie Orchard, Commission Secretary, at 160 East 300 South, Salt Lake City, Utah, 84111, (801)530-6713, at least three working days prior to the hearing.

DOCKET NO. 96-051-04

(24)

- 6 -

DATED at Salt Lake City, Utah, this 23rd day of July,
1996.

/s/ Stephen F. Mecham, Chairman

(SEAL)

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

FAX 501-596-5500

596-9512 ext 12
9509

ATTACHMENT

1

UTILITY COMPLAINT FORM

25

Utility Name: Beehive Telephone Co.

Complainant Kent Sagers

Street Address P.O. Box 73

City/State/Zip Code Vernon, IA 84080

Home Phone 839-3424

Work Phone 522-5956 (530-2741 Mobile)

Message Phone _____

Account No. _____ Type of Complaint _____

Received by: L. Fuller Date Recv'd: 3/18/96 Time: 11:45a

Referred to: _____ Follow up by: _____ Date: _____

Closed by: LFR Date Closed: 3/18/96

Summary of Complaint Vernon customer being billed toll charges ~~for~~ for calls to Tooele. 830 prefix which an EAS call. Many neighbors are also being billed toll charges also. This is the first month these calls have been toll rated by Beehive.

Response: Beehive must provide the service as EAS in accordance with its tariffs. Toll charges between Vernon and Tooele would only apply only on an overflow basis and only when the customer dials 1-801-etc. Beehive is billing wrongfully. Told the complainant to call Beehive and first attempt to resolve issue with the company. If ~~the~~ the company refuses to remove toll charges then call back to Red Petersen.



Michael O. Leavitt
Governor
Douglas C. Borba
Executive Director
Ric Campbell
Division Director

State of Utah

DEPARTMENT OF COMMERCE
DIVISION OF PUBLIC UTILITIES

Heber M Wells Bldg., 4th Floor
160 East 300 South / Box 146751
Salt Lake City, UT 84114-6751

Telephone No: (801) 530-6651
FAX: (801) 530-6512 OR (801) 530-6650

ATTACHMENT
2

26

Art Brothers
C/O Beehive Telephone Company
5160 Wiley Post Way, Suite 200
Salt Lake City, Utah 84116

May 10, 1996

Dear Art,

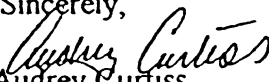
On March 18, 1996 an informal complaint was taken by the Division, against Beehive Telephone Company, from a Beehive subscriber in Vernon, Utah. The complaint stated that the Vernon customer was billed for toll calls to the Tooole 830 prefix. According to the Beehive Tariff, calls to the Tooole exchange are EAS and therefore, should not be charged as toll calls. The complainant further states, that Beehive Telephone Company has charged many of his neighbors in the same manner.

The Division maintains that Beehive Telephone Company is in direct violation of their tariff.

The Division expects to see this problem corrected immediately. Additionally, we ask that Beehive Telephone Company provide the Division with a written explanation of the violation and any action that is taken to resolve the problem within two weeks. If Beehive fails to adhere to the request of the Division we will file a petition for "Order To Show Cause" with the Public Service Commission for violating the approved tariff.

Please feel free to contact Peggy Egbert (801) 530-6793 if you would like to discuss this matter.

Sincerely,


Audrey Curtiss

Manager, Telecommunications

cc Kent Sagers, Complainant
David R Irvine, Attorney for Beehive Telephone Company



m: Kent Sagers
ATTN: Audrey Curtis

27

May 1996 newsletter

from Beehive Telephone Co., Inc.
Art Brothers

Early in 1995, we signed a contract for a new billing system. We had hoped to have it operational by June or July. Well - ten months late for something like this is, we are sorry to say - typical in this business. We liked the old system's paper size, but were unable to make the new system fit that kind of paper - ~ what you have is the best we were able to get.

RUSH VALLEY AND VERNON

Several of you have asked why you can't dial 830 xxxx and 840 xxxx numbers toll free anymore. Those numbers are assigned to pagers and Cell telephones. Initially we allowed toll free calling to those numbers but those companies never signed agreements with us to compensate us for the expense of completing those calls to the non-wire line telephone companies operating out of Tooele. No more. If you wish to call those prefix's it is only possible by your paying the long distance charge. Those customers who have deducted the long distance charges to call will be expected to pay the long distance charges to call those numbers.

RUSH VALLEY

We have a new dual processor switch to place into operation in Rush Valley. It will be placed in the new building on the lot we purchased for telephone use which is inbetween the old and new fire stations. Despite the issuance to us of two building permits for new structures for telephone use on the lot, it appears that the City has no records of what its contract building official in Grantsville did. We have been directed to formally ask the City planning commission to approve a change of zoning on the property from what ever it is - to business. So until that is accomplished, we have slowed down cut-over of the new switch.

INTERNET

Bill Dunlop tells me we are moving along on our new computer for Internet service at Wendover. Besides all Wendover access - it will enable digital internet access even when the video is being used at the Park Valley/Grouse Creek/West Desert schools - plus access by dial-up modem and later by 56 kb digital from Garrison/Partoun/Ibapah/Grouse Creek/Park Valley and Oasis in Nevada. We will extend a 56 kbite link into the Wendover school with a 1.5 mbyte link to the U of U in SLC as well as later to the Community College in Elko.

HELP WANTED

We need two or three hands for summer construction. We've a lot of cable to get buried. Call Bill at 1-800-629-4663 or 1-801-234-0111.

BEEHIVE TELEPHONE

May 17, 1996]

Audrey Curtiss
DPUC
160 E 300 S, 4th floor
SLC, Utah 84111-4651

May 21 3 35 PM '96 May 17, 1996

Dear Audrey,

This is in reply to your letter of May 10, 1995 in re our policy of not allowing use of EAS trunks to Tooele to interconnect with non-wire-line non-LEC telephone carriers.

It is our opinion that if such competitive carriers desire to have their customers from our exchanges access their services, that they should contract with Beehive for access and arrange to compensate Beehive for that expense.

We further note that U.S. West has filed tariffs for "caller pay" where their wire line customers even within the exchange area would pay for the cellular completion costs of the call. Our requirement that the Beehive caller pay by using the long distance circuits and pay for the call charged as a DDD rate is proper and reasonable.

We further point out that a number of years ago, the Division supported a policy of LEC denial of calls to reseller companies who acquired a 882 line (Tooele) and had our Rush Valley customers by-passing the toll network to get a free ride on the EAS to access Tel-America. The Division position was that Tel-America was wrong and asked that they not take customers in non-Bell areas where EAS was being used by by-pass the toll network.

We also note that the Commission supported the denial of call completion for Ogden to SLC calling when USW objected to it and this situation is similar.

For those reasons, we would be happy to open up our EAS circuits on order of the Commission which we would expect would allow us to be compensated for such expense. So we are not planning to allow such use without a PSC order.

I hope this is an acceptable method of resolving this problem for the Vernon customer. Let me know if I can be of any further help on this matter.

Sincerely Yours,

A. W. Brothers
cc: Kent Sagers, Vernon

ATTACHMENT

4

(41)
94-051-461

RECEIVED
Beehive Telephone Co., Inc.
Wendover, Utah 84083

UPSC Schedule 1 dated 6/29/94
replaces all prior schedule 1

JUN 30 2 25 PM '94 Schedule No. 1 - RATES FOR SERVICE

These Rates are applicable to all classes of exchange customers in Utah, except as otherwise indicated.

Rates shown are for annual service as billed on a monthly basis. Only single party service is available.

	<u>Business</u>	<u>Residence</u>	
Rate all areas, per month	\$16.00	\$11.67	(R)
except: Ticaboo	\$27.50		
Rush Valley/Vernon	\$ 1.00	\$ 1.00	
Private pay phone and key system	\$36.00	n/a	(N)
Severance and reconnection charge	\$15.00	\$15.00	

Note:

1) A late fee of 1.5% of the unpaid balance due is applied each billing period plus a one dollar administrative fee to all accounts for which payment is not received by the close of each month's accounts receivable which is 20 days after bills are mailed.

2) Toll Station and radio takes the Key System rate. (R)


3) Service shall be provided only as lines are available, otherwise construction charges apply per Schedule 2.

4) Installation charges are outlined in Schedule 2.

5) Long Distance and Operator service charges are the same as filed by USWC.

6) EAS is provided from Rush Valley and Vernon only to USWC's Tooele Exchange and EAS service area associated thereto. During heavy EAS calling times, circuits may not be available. Customers may use DDD circuits (1+ the EAS number) when encountering a short term EAS busy condition by paying the DDD rate for those calls.

Issued 6-29-94
Effective: 7-01-94

by:  President

530-6651

(1)

ATTACHMENT
5

lph N. Creer
530-6651

12/2/95

Anthony DiPippo
742 No. Douglas Ave.
Vernon, UT

STATE OF UTAH
DEPARTMENT OF
BUSINESS REGULATION
Division of
Public Utilities

A.P.D. - not enough
trunks - many calls
do not go thru.

STATE OF UTAH
DEPARTMENT OF
BUSINESS REGULATION
Division of
Public Utilities

out of 839-3443
phones were
serv. Beehive Tele. Co.
Out of serv. since
3/2/21 - too much noise
Beeline - he's taking it out
on them for complaining

Ralph N. Creer
530-6651

STATE OF UTAH
DEPARTMENT OF
BUSINESS REGULATION
Division of
Public Utilities

Frank Wilbur
747-7171

Gross U.S. Inc.
(H. 1600) ...

They had ...
Beeline ...
Beeline Tele. - A.T. ...

Ralph N. Creer
530-6651

STATE OF UTAH
DEPARTMENT OF
BUSINESS REGULATION
Division of
Public Utilities

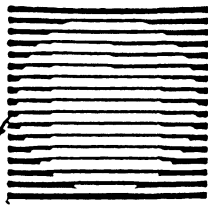
3/15/96 - Fri

Patricia Holden
(801) 839-3464 hmn.
(801) 839-3433 Wk

Beeline Tele.
Billing all fouled up -
many parts. not credited
3/18 - Not able to reach on Fri
called Mon. - she got new

Ralph N. Creer
530-6651

Call Todd - not in lift
" " " " mkt



STATE OF UTAH
DEPARTMENT OF
BUSINESS REGULATION
Division of
Public Utilities

Todd Baird

Wk 884-0123

East. 135 .18 per ft

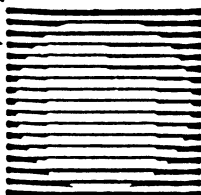
Re: New service from
Beckinside Tel. - can't get
it - even Val has not
able to get
back to him.

Jim Ball - 837-2104
Rush Valley

525 birds Dr.

Ralph N. Creer
530-6651

Estadale, Ut.
84728



STATE OF UTAH
DEPARTMENT OF
BUSINESS REGULATION
Division of
Public Utilities

1/22/96

Don Hayward

Beckinside Tel.

755-2143 (54205-3883)

Beckinside say don't have
enough trucks

Rush Valley & Vernon - no prob.
that's the problem as far as

Ralph N. Creer
530-6651

6/21/95

Gaynell Jordan
26601 So. Hwy 36
839-3450

STATE OF UTAH
DEPARTMENT OF
BUSINESS REGULATION
Division of
Public Utilities

Saffrey

Beckinside Tel. Ut.

lines cut & won't
repair & restore service

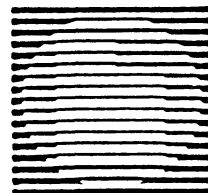
6/21/95 - Talked to Deann -
phone lines all back in
operation by 6/26.

Left word w/ friend of G.
Don 10 -

Ralph N. Creer
530-6651

1/31/96
Robert Bennett
(Dawn Murray)

P.O. Box 5



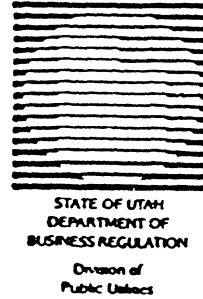
STATE OF UTAH
DEPARTMENT OF
BUSINESS REGULATION
Division of
Public Utilities

Harrison, Ut. 74728
Ph 855-3158

Can't get calls in or
out about 50% of the
time. (Beckinside)

Confidential - Yes

Ralph N. Creer
530-6651



4/1/96

David Bagley, Calio, UT.
277-3878 also S.L.C.

Beeline Tele.

need more trunk lines
to the area. Can't call
in or out.

called 4/11 - got answerphone -
left message
called again - explained problem
to them.

ATTACHMENT 6

Vikki Hansen
PO BOX 305
Rush Valley Ut 84069
(801) 837-2255

May 17th, 1996

I am writing to you on behalf of the citizens of Rush Valley Utah.

We have numerous complaints and problems with our telephone company, Beehive Telephone, 5160 Wiley Post Way, SLC ut 84116. A.W. Brothers owner/president. Some of the complaints are as follows:

1. Sometimes people cannot dial out on their cellphones.
2. Being charged to dial local calls.
3. Not being able to call 800 numbers.
4. Charged for long distance calls that were not answered.
5. Unable to or unwilling to break in on calls for emergency calls.
6. Being billed in advance.
7. Getting double bills.
8. The length of time getting problems solved.
9. Phone calls being cut off, sometimes several times in one call.
10. Sending news letters with our bills knocking our community and it's officials. (as per copy of news letter inclosed)
11. Being charged different prices per minute for calls being made to the same number at the same time each day.
12. Being charged for cellphone calls that are being billed and by and paid to other phone companies. (as per copy of news letter inclosed)

We would also like to know why we are paying for Enhanced 911 each month on our bills but we do not have it on our phones? This question was put to Mr. Brothers by a citizen on April 17th, 1996 at a local Planning and Zoning meeting in Rush Valley. His reply was, "We are all hocked up and ready to go we are just waiting for the go-a-head from US West. US West has been sending me a check each month but has not told us to go-a-head." I believe he said that it has been ready for two or three years now.

We also have families that live within 5 miles of our town limits who have been trying to get phone lines to their homes for two or more years. There is always some excuse or other.

Our neighbors, the towns of Vernon and Terra have experienced similar problems. It has been stated to me twice now that Vernon is in the habit of waiting 3 days for phone service to be restored when there has been a cutoff for any reason. These communities are too isolated to be with out phone service for such time periods.

Our desire is to get another phone company to buy our contract from beehive Telephone. Someone who will take better care of our communities communications needs. Your help, interest or information you can give to aid us in our endeavor would be greatly appreciated.

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of Quality of Telephone Ser-)	
vice Within the Territory Served By	)	<u>DOCKET NO. 96-051-04</u>
BEEHIVE TELEPHONE COMPANY,	)	<u>NOTICE</u>
Respondent)	

ISSUED: August 16, 1996

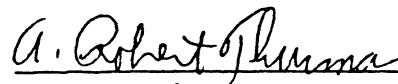
By the Administrative Law Judge:

Through filings with the Commission, it has come to the attention of the Administrative Law Judge, to which this matter has been assigned, that there are issues of discovery, as well as the appropriate venue, for the hearing in this matter. Accordingly,


ALL PARTIES AND INTERESTED PERSONS WILL TAKE NOTICE that the hearing in the above-captioned matter, scheduled for Wednesday, August 28, 1996, at 9:00 a.m., is hereby converted into a prehearing conference. All parties are requested to come prepared to define the precise issues, factual and legal, to be heard; to schedule discovery and hearing dates, and to discuss the appropriate venue for the proceedings.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this hearing should notify Julie Orchard, Commission Secretary, at 160 E. 300 So. SLC, UT 84111, 530-6713, at least three working days prior to the meeting.

Dated at Salt Lake City, Utah, this 16th day of August, 1996.


A. Robert Thurman
Administrative Law Judge

Attest:


Julie Orchard
Commission Secretary

RECEIVED AUG 21 1996

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of Quality of Tele-)
phone Service Within the Territory)
Served by BEEHIVE TELEPHONE COMPANY)

DOCKET NO. 96-051-04

ORDER

ISSUED: September 4, 1996

By the Commission:

On July 9, 1996, the Division of Public Utilities ("Division") filed a Petition for Order to Show Cause against Beehive Telephone Company for failing to provide service in the Rush Valley, Vernon and Terra Exchanges. The Division also alleged that Beehive is charging subscribers for local cellular calls and is not following proper account billing procedures in accordance with Commission rules.

On August 16, 1996, the Commission issued a Notice setting the matter for Prehearing and requesting the parties to define the issues, factual and legal to be heard, to schedule discovery and hearing dates and to discuss the appropriate venue for the proceedings.

The matter came on for Prehearing on August 28, 1996, at which time the following schedule was established:

September 3, 1996	Protective Order submitted to the Commission by Beehive. Beehive data response provided to the Division.
September 11, 1996	Joint statement of issues filed with the Commission.
October 6, 1996	Prehearing Conference 9:00 a.m. to set hearing dates.

Based upon the foregoing, with good cause appearing

DOCKET NO. 96-051-04

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therefore, the Commission will make the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the schedule as established by the parties at the Prehearing of August 28, 1996, and as set forth herein is adopted.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this hearing should notify Julie Orchard, Commission Secretary, at 160 East 300 South, Salt Lake City, Utah, 84111, (801)530-6713, at least three working days prior to the hearing.

DATED at Salt Lake City, Utah, this 4th day of September, 1996.

(SEAL)

/s/ A. Robert Thurman
Administrative Law Judge

Attest:

/s/ Julie Orchard
Commission Secretary

RECEIVED SEP 05 1996

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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of Quality of Tele-)
phone Service Within the Territory)
Served by BEEHIVE TELEPHONE COMPANY)

DOCKET NO. 96-051-04

PROTECTIVE ORDER

ISSUED: September 4, 1996

BY THE COMMISSION:

Beehive Telephone Company ("Beehive"), on the 3rd day of September, 1996, submitted a Motion to the Commission in the above-entitled proceeding seeking a Protective Order. Beehive states in its Motion that the entry of a Protective Order will expedite the production of documents and other information, and will afford necessary protection to valuable confidential, trade secret, and business information.

The Commission finds that sufficient grounds exist for entry of a Protective Order.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, That

1. (a) Confidential Information. All documents, data, information, studies and other materials furnished or made available pursuant to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery that are claimed by the parties to be of a trade secret, competitive or business nature shall be furnished pursuant to the terms of this Protective Order, and shall be treated by all persons accorded access thereto pursuant to this Protective Order

DOCKET NO. 96-051-04

-2-

as constituting confidential, competitive, trade secret, and business information, and shall neither be used nor disclosed except for the purpose of this proceeding, and solely in accordance with this Protective Order. All material claimed to be Confidential Information shall be so marked by the party or its affiliates by stamping each individual page with the designation, "CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. 96-051-04." All copies of documents so marked will be made on blue paper. For purposes hereof, notes made pertaining to or as the result of a review of Confidential Information shall be subject to the terms of this Protective Order. Parties serving on disk should serve both a confidential and non-confidential disk clearly marked as such.

- (b) Use of Confidential Information and Persons Entitled to Review. All Confidential Information made available pursuant to this Protective Order shall be given solely to counsel for the parties and shall not be used or disclosed except for purposes of this arbitration proceeding; provided, however, that access to any specific Confidential Information may be authorized by said counsel, solely for the purpose of this proceeding, to those persons indicated by counsel as being the party's experts in this matter. No such expert may be an

officer, director, employee (except in-house regulatory experts not involved in marketing and strategic planning for competitive services, major shareholder (holding 5% or more of total issued stock), principal of a party or the party's affiliate, who is or is to become a competitor of the responding party, or marketing employee of the party, unless this restriction is waived in writing by the responding party. Any dispute concerning this restriction which cannot be resolved by the parties, may be brought before the arbitrator for resolution. Any member of the Public Service Commission and its staff may, under and pursuant to the applicable provisions of Title 54, Utah Code Ann., the Utah Rules of Civil Procedure and the Rules of the Public Service Commission, have access to any Confidential Information made available pursuant to this order, and shall be bound by the terms of this Order, except for the requirement of signing a nondisclosure agreement.

- (c) Nondisclosure Agreement. Prior to giving access to Confidential Information as contemplated in paragraph (b) above to any expert designated to testify in this proceeding, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Protective Order to such person, and prior to disclosure

DOCKET NO. 96-051-04

- 4 -

such person shall agree in writing to comply with and be bound by this Protective Order. In connection therewith, Confidential Information shall not be disclosed to any person who has not signed a Nondisclosure Agreement in the form which is attached hereto and incorporated herein as Exhibit "A." The Exhibit "A" Nondisclosure Agreement (Exhibit "A") shall require the person to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party prior to the expert gaining access to the Confidential Information.

- (d) Availability of Documentation. As to highly sensitive documents and information, the parties shall have the right, at their option, to refuse to provide copies to counsel for the other party or to its experts as defined in paragraph 1(b). Should the parties refuse to provide copies, such documents shall be made available for inspection and review by counsel or experts at a place and time mutually agreed upon by the parties. Where

copies are not provided, the counsel or expert reviewing the Confidential Information may make limited notes regarding the Confidential Information for reference purposes only. Such notes shall not constitute a verbatim or substantive transcript of the Confidential Information. For purposes hereof, notes made pertaining to or as the result of a review of Confidential Information shall be considered Confidential Information and subject to the terms of this Protective Order.

2. (a) Challenge to Confidentiality. This Protective Order establishes a procedure for the expeditious handling of Confidential Information; it shall not be construed as an agreement or ruling on the confidentiality of any such document.
- (b) In the event that the parties hereto are unable to agree that certain documents, data, information, studies or other matters constitute Confidential Information or highly sensitive documents and information referred to in paragraph (d) above, the party objecting to the classification as Confidential Information or highly sensitive documents and information shall forthwith submit the said matters to the arbitrator review pursuant to this Protective Order.
- (c) Any party at any time upon ten (10) days prior notice may

DOCKET NO. 96-051-04

- 6 -

seek by appropriate pleading to have documents that have been designated as Confidential Information removed from the protective requirements of this Protective Order. If the confidential or proprietary nature of this information is challenged, resolution of the issue shall be made by the arbitrator after proceedings *in camera* which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential matter shall be present. The record of such *in camera* hearings shall be marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN NO. 96-051-04."

3. (a) Receipt into Evidence. Provision is hereby made for receipt of evidence in this proceeding under seal. At least ten (10) days prior to the use of or substantive reference to any Confidential Information as evidence, the party intending to use such Confidential Information shall make that intention known to the providing party. The requesting party and the providing party shall make a good faith effort to reach an agreement so the information can be used in a manner which will not reveal its trade secret, confidential or proprietary nature. If such efforts fail, the providing party shall separately identify, within five (5) business days, which portions,

DOCKET NO. 96-051-04

- 7 -

if any, of the documents to be offered or referenced on the record containing Confidential Information shall be placed in the sealed record. Only one (1) copy of documents designated by the providing party to be placed in the sealed record shall be made and only for that purpose. Otherwise, parties shall make only general references to Confidential Information in these proceedings.

- (b) In Camera Hearing. Any Confidential Information which must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the Confidential Information under this Protective Order. Similarly, cross examination on or making substantive reference to Confidential Information as well as that portion of the record containing references thereto shall be marked and treated as provided herein.
- (c) Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Protective Order, and shall be returned to counsel for the providing party

within 30 days after final settlement or conclusion of this matter including administrative or judicial review thereof.

4. Use in Pleadings. Where reference to Confidential Information in the sealed record is required in pleadings, cross-examinations, briefs, argument or motions, it shall be by citation of title or exhibit number or by some other nonconfidential description. Any further use of or substantive references to Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the arbitrator under seal. This sealed section shall be served only on counsel of record (one copy each), who have signed a Nondisclosure Agreement. All the protections afforded in this Protective Order apply to materials prepared and distributed under this paragraph.
5. Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this Protective Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of this proceeding, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure and in accordance with the purposes and

DOCKET NO. 96-051-04

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intent of this Protective Order.

6. Reservation of Rights. The parties hereto affected by the terms of this Protective Order further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Order in response to interrogatories, requests for information or cross-examination on the grounds of relevancy or materiality.

This Protective Order shall in no way constitute any waiver of the rights of any party herein to contest any assertion or finding of trade secret, confidentiality or privilege.

7. The provisions of this Protective Order are specifically intended to apply to data or information supplied by or from any party to this proceeding.

DATED at Salt Lake City, Utah, this 4th day of September, 1996.

/s/ Stephen F. Mecham, Chairman

(SEAL)

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

DOCKET NO. 96-051-04

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EXHIBIT "A"

I have reviewed the foregoing Protective Order dated September 4, 1996, in Docket No. 96-051-04, with respect to the review and use of Confidential Information as defined therein, and in consideration of being granted access to such information which I could not otherwise readily obtain, I agree to be bound by the terms and conditions of such Protective Order.

Signature

Name (type or print)

Residence Address

Employer or Firm

Business Address

Party

Date

47

Laurie L. Noda # 4753
Assistant Attorney General
Division of Public Utilities
JAN GRAHAM # 1231
UTAH ATTORNEY GENERAL
160 E. 300 South
Salt Lake City, Utah 84114
Telephone: 366-0328

RECEIVED
SEP 11 5 00 PM '96
SALT LAKE CITY

- BEFORE THE PUBLIC SERVICE COMMISSION -

In the Matter of the Quality of Telephone Service)
Within the Territory Served by Beehive)
Telephone Company.)

Docket No. 96-051-04

On August 16, 1996, Administrative Law Judge, A. Robert Thurman requested that the parties provide a joint statement of issues. Listed below are the issues that the Division contends remain problematic for the Beehive customers:

1. Inappropriate Cellular Toll Charges: Beehive bills toll charges to subscribers who make local calls to the Tooele 830 and 840 prefix (cellular prefix). Tooele has EAS with Rush Valley and Vernon, therefore, Beehive's subscribers are paying for EAS and the originating calls to a cellular line. Beehive has no approved tariff to effect its billing for Cellular services.

* Beehive and the Division agree on this issue.

2. Beehive subscribers are unable to receive and dial **Intra-LATA** Toll calls: Not only have the subscribers complained to the Division on this matter, the Division has experienced the same problem when trying to reach Beehive customers.

* The Division supports this issue - Beehive does not.

3. Phone calls that are initially completed, are often cut off during the call, requiring the subscriber to redial the call. (refer to attached petition).

* The Division supports this issue - Beehive does not.

4. Poor quality transmission on lines (refer to petition).

* The Division supports this issue - Beehive does not.

5. Repair problems that are not cleared in a timely manner (refer to petition).

* The Division supports this issue - Beehive does not.

6. Improper billing procedures (refer to petition and customer comments).

The Division supports this issue - Beehive does not.

Refer to Rush Valley petitions that are attached for further explanation. Vernon and Terra petitions will be filed when the Division receives them.

Legal Issues:

1. Utah Code Ann. Section 54-3-1 states that every public utility "shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote safety, health, comfort and convenience of its patrons, employees and the public as will be in all respects adequate, efficient, just and reasonable." The Division believes that Beehive is not meeting its service obligations and should be ordered by the Commission to rectify the above reference service problems.

2. R746-240-6 - Termination of Service (refer to petition)

A.(2) Delinquent Account-- When an account is delinquent, the local exchange carrier, before termination, shall issue a written late notice to inform the account holder of the delinquent status.

3. R746-340-5(b) Customer Trouble Reports. This rule is applicable to all operating telephone companies in Utah.

The issue surrounding the blocking of inter-LATA toll and 800 calls has been mandated back to the FCC by the Civil Court Judge. A new Docket will be filed by AT&T with the FCC in the near future. As a result this issue will not be addressed in this case.

The Division continues to strongly encourage the hearing be held in Rush Valley for the purpose of accommodating the witnesses in the area. It is felt that a more definitive understanding of the issues will be gained if subscribers are allowed to express their opinions on the record.

Discovery : October 8, 1996 to October 25, 1996

Recommended Hearing Date: November 1, 1996

for Laurie Noda & Mike Ginsberg

Laurie L. Noda

Assistant Attorney General

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the matter of quality of service)
of Beehive Telephone Co., Inc.)

Docket No. 95-051-04

To ALJ Thurman:

BEEHIVE'S STATUS OF SETTLEMENT REPORT

1. This is a report on efforts to narrow the issues of this matter. It incorporates comments related to the Division's undated submission stamped Sept 11 with unverified attachments. Our analysis of the "public" complaints in this matter appear to mostly originate from the parties who want free calling to cellular phones - which we refuse to do without clarification of settlement issues related thereto. The other complaints are the typical stuff people use to throw mud on issues to make it look worse than it might otherwise be.

2. In that filing, par 1 attempts to miscolor Beehive's practice relating to calls to exchanges with prefix numbers 830 and 840. Both of these exchanges were established without sanction of this Commission by U.S. West in which they held themselves out to provide Access to competitive carriers who utilize wireless methods (called "Cellular") with some unspecified method of accounting or revenue to U.S. West by virtue of the unspecified business practices pertaining to their business relationships. Beehive has no contracts to provide access to those prefixes nor is there any known Commission policy or direction related to the question which is - should Beehive provide free access over its facilities for Beehive customers who would bypass conventional toll networks to complete calls over circuits that are established only to complete calls to and from Beehive customers to the wireline customers of U.S. West in Tooele, Cransville and Dugway. Beehive therefore only allows access to those Cellular numbers by the customer dialing 1+801+7 digits and paying for the call as toll based on the V and H coordinates the same as we bill for any DDD call.

BEEHIVE REFUSED AN ORDER BY THE DIVISION TO ALLOW THE FREE CALLING. WE SAID WE WOULD ONLY PERMIT THE "SOMETHING FOR NOTHING" ACCESS IF SO ORDERED BY THE COMMISSION. IT IS OUR VIEW THAT THE NUB OF THIS MATTER IS THIS SINGLE ISSUE. NOTHING ELSE WARRANTS CONSIDERATION.

3. The Division complains that Beehive subscribers are unable to receive and dial Intra-state (State) calls. The responsibility of providing sufficient trunks for this is that of USW. We have no notice that the trunks provided to Beehive are not sufficient. Our traffic studies show that there are sufficient Beehive facilities for our traffic needs. We have furnished the Division massive traffic information and they have been unable to find any basis to allow us to change anything beyond their jumping to conclusions based on false assumptions.

THIS ISSUE SHOULD BE STRUCK FROM CONSIDERATION.

4. Phone calls cut off. This is a concern to any telephone company. Our records do not reflect any similar complaints which were outside of the customer's own telephone sets and wiring, or within the Beehive end of the call. The Division has been unable to provide to Beehive specific details upon which we could investigate these alleged claims. Our maintainer in Rush Valley makes many calls to our offices nearly every day and we have never experienced a Beehive cut off problem.

AGAIN WITHOUT PROPER DOCUMENTATION AND OPPORTUNITY TO INVESTIGATE, THIS ISSUE SHOULD BE STRUCK.

5. Poor quality transmission. See the above comments and prayer.

6. Repair problems. See par 4 comments and prayer.

7. Improper billing procedures. Beehive resents what appears to be inflammatory language as saying "improper". We are unable to find any claims of what is improper and lacking specific rules and examples of violation of those rules or law, these claims must also be rejected as there is nothing from the Division which is cause for concern in this Docket.


8. LEGAL ISSUES: The paragraph stated by the Division is overly broad and subject to as many variations as there are people who will debate the issues. Lacking specific examples of defined equipment or facilities, the Division appears to be attempting to make mud pies from river bank eddies. If the pie is not tasty to rain - does that mean it is not tasty to the river that reclaims it?

9. Termination of Service. There is no showing by the Division that this specific provision is not complied with by Beehive. Ditto customer trouble reports. Therefore, we submit that the Division has failed to state cause in its petition that supports debate on these specific defined rules.

10. Holding a hearing in Rush Valley. This is a complete waste of time and expense for the parties. Rush Valley is about an hour away from Salt Lake City. The only issue is that of allowing use of EAS circuits to bypass toll to call competitive telephone companies. Beehive is willing to stipulate that residents of its service area would rather have such service free than pay for it, and a public form is not the way these matters are resolved. As to specific complaints, Beehive has asked the Division to furnish names of potential witnesses and their testimony as to any other issues. The Division has refused. Lacking this information and the fact that construction to provide dial tone to prior unserved remote dwellings has been completed (to the satisfaction of the Division) by Beehive in September, - there is no foundation to include anything but the cellular issue herein. The Division opposes this narrowing of issues.

Thus, Beehive moves the Honorable ALJ to narrow the scope of this proceeding to Cellular only.

Respectfully Submitted this 30th day of Sept, 1996



A. W. Brothers, President, Beehive Telephone Inc.
5160 Wiley Post Way, SLC, Ut 84116 Fax 596 9504

copies served by FAX to:

- Judge A. R. Thurman, PSC - 530 6796
- Laura Noda, Atty General -
- Peggy Ekbert, Division - 530 6512
- D. Irvine, esq - 299 8655

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96-09-05 (52)

Post-It Fax Note 7871		Date	# of pages
To: <u>Beehive</u>	From: <u>P.S.C.</u>		
Co. Dept. <u>Complaint Dept.</u>	Co. <u>Response in 20 days</u>		
Phone #	Phone #		
Fax # <u>231-019</u>	Fax #		

PLAINT FORM RECEIVED

U T A H P U B L I C

ate Office Building
th, Fourth Floor

AUG 9 9 07 AM '96

UTAH PUBLIC
SERVICE COMMISSION

PO Box 45585
Salt Lake City, Utah 84145

1. Name of Complainant: Randy Faber

Address: 50 Circle Drive

Eskdale, UT 84728-9702

Telephone No.: home: (801)855-2146 office: (801)855-2140

2. The utility being complained against is AT&T/Beehive

3. What did the utility do which you (the Complainant) think is illegal, unjust, or improper? Include exact dates, times, locations and persons involved, as closely as you can.

The "ALL CIRCUITS ARE BUSY" message is frequently complained about by our customers but the last two weeks of July was especially bad, without regard to time of day or day of week. What long distant calls we did receive from non-Utah sources complained that they had to make repeated attempts to get past the "ALL CIRCUITS ARE BUSY" message. We have ads in national magazines for mail order items and many other business customers outside our calling area that need to contact us. We understand from Beehive Telephone Company that A.T. & T. refuses to release sufficient circuits to handle the incoming traffic to our area. We believe that either Beehive Telephone Company is using the circuits for something other than providing service to our area or that A.T. & T. is blocking the circuits as Beehive claims.

4. Why do you (the Complainant) think these activities are illegal, unjust or improper?

I believe that Beehive Telephone Company and A.T. & T. are engaged in a legal dispute and are depriving the Beehive service area of adequate and equal access so that customer complaints will pressure the other party into yielding their position.

Our position is that the telephone companies are required to provide the service agreed upon and that they should conduct their disagreements with the Public Service Commission or in the courts and not jerk their customers around in the process.

5. What relief does the Complainant request?

We want consistent and adequate service to meet our business and personal needs.

6. Signature of Complainant Randy Faber

Dated: August 5, 1996

Maria Arias-Chapleau, Esq.
Richard S. Wolters, Esq.
AT&T Communications of the
Mountain States, Inc.
1875 Lawrence Street, Room 1575
Denver, Colorado 80202
(303) 298-6741

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of Quality of Tele-) DOCKET NO. 96-051-04
phone Service Within the Territory) PETITION TO INTERVENE
Served by BEEHIVE TELEPHONE COMPANY) OF AT&T

AT&T Communications of the Mountain States, Inc. ("AT&T")
hereby petitions the Utah Public Service Commission
("Commission") for leave to intervene in the above-captioned
matter, and in support thereof states as follows:

1. On July 9, 1996, the Division of Public Utilities filed a
Petition for Order to Show Cause against Beehive Telephone
Company for failing to provide service in the Rush Valley, Vernon
and Terra Exchanges. On August 16, 1996, the Commission issued a
Notice to set the matter for Prehearing.
2. AT&T is a public utility certificated by the Commission to
provide local exchange, interexchange intraLATA, and interLATA
telecommunications services in the State of Utah.
3. There have been unsubstantiated allegations that the service
problems in the Beehive Telephone Company exchanges that are the
subject of this proceeding are a result of some actions or
inactions of AT&T.

4. Any decision entered by the Commission to resolve service problems in Beehive Telephone Company exchanges may affect AT&T.

5. Accordingly, AT&T has a direct and substantial interest in the subject matter of this case and seeks through this intervention to protect that interest as it may appear.

6. AT&T's participation in this docket will be in the public interest and may also be of assistance to the Commission in rendering a formal decision on the issues before it.

7. Copies of all documents, pleadings, data requests and answers should be served on:

AT&T Communications
Cathy Brightwell
675 East 500 South
Suite 390
Salt Lake City, UT 84102
(801)237-1620

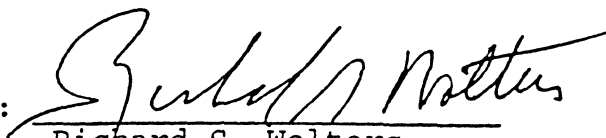
AT&T Communications
Richard S. Wolters, Esq.
1875 Lawrence Street
Room 1575
Denver, Colorado 80202
(303)298-6741

WHEREFORE, AT&T requests that the Commission enter an order permitting AT&T to intervene as a party to this proceeding and to participate to the full extent allowed by Commission's rules and Utah law.

Respectfully submitted this 26th day of September, 1996.

Attorneys for AT&T
Communications of the
Mountain States, Inc.

Maria Arias-Chapleau, Esq.
Richard S. Wolters, Esq.
1875 Lawrence Street, Room 1575
Denver, Colorado 80202
(303)298-6741

By: 
Richard S. Wolters

(5)

CERTIFICATE OF SERVICE

I hereby certify that an original and 15 copies of the Petition to Intervene of AT&T Communications of the Mountain States, Inc., in reference to Docket No. 96-051-04 and a diskette in ASCII format were sent via overnight delivery on this 26th day of September, 1996 to the following:

Julie Orchard, Secretary
Utah Public Service Commission
Heber M. Wells Bldg., 4th Floor
160 East 300 South
Salt Lake City, UT 84111

and a true and correct copy was mailed, postage prepaid, this 26th day of September, 1996 to:

Kent Walgren, Esq.
Assistant Attorney General
Committee of Consumer Services
4120 State Office Building
Salt Lake City, UT 84114-0811

Michael Ginsberg, Esq.
Laurie L. Noda, Esq.
Assistant Attorney General
Division of Public Utilities
4120 State Office Building
Salt Lake City, UT 84114-0811

A. W. Brothers, President
Beehive Telephone Company
5160 Wiley Post Way, #220
Salt Lake City, UT 84116

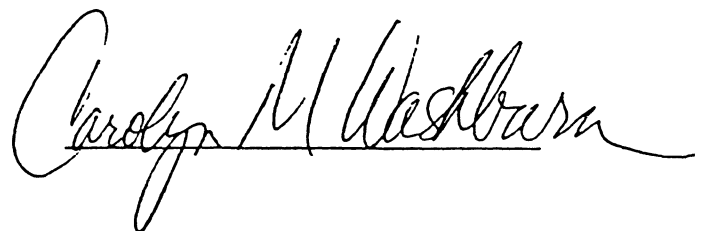
David R. Irvine, Esq.
126 South 600 East, #100
Salt Lake City, UT 84102

Thomas F. Dixon, Esq.
William Levis, Esq.
MCI Telecommunications Corporation
707 17th Street, #3900
Denver, CO 80202

Douglas N. Owens, Esq.
U S WEST Communications, Inc.
1600 Seventh Avenue, Ste. 3206
Seattle, WA 98191

Carol Sjoberg
U S WEST Communications, Inc.
250 Bell Plaza, Room 1610
Salt Lake City, Utah 84111

Nancy Gibbs, Executive Director
Exchange Carriers of Utah
2021 Mapleview Drive
Bountiful, UT 84010



BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the matter of Service Quality)
of Beehive Telephone Co., Inc.)

Docket 96-051-04

to: Judge Thurman

Response of Beehive to AT&T petition to intervene

1. On a petition dated 9-26-96, AT&T (AT) asked to intervene in this matter. Beehive received a mailed copy yesterday.

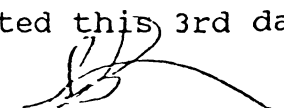
2. A status conference is scheduled at 9 AM, 10-9-96 for purposes of narrowing the prior defined issues of this proceeding.

3. Beehive has no objection to AT participation in the cellular blocking issue. We might not object (but reserve the right to object) to any other AT participation. AT has nothing to do with Beehive service quality other than providing enough trunks to enable Beehive customers to receive calls directed to them by AT customers. Therefore, we would not object to AT participation on that narrow issue and that they accordingly agree to be bound an Order of the Commission that might direct AT to provide adequate trunks to enable Beehive Customers to receive calls to them by AT&T customers.

4. Beehive suggests that AT appear at the issues conference for purposes of deciding this issue and nature of their purpose in this proceeding.

5. At that time the Commission may then decide the AT intervention petition.

Submitted this 3rd day of September, 1996


A. W. Brothers, Beehive Telephone Co. Inc. 5160 Wiley Post
Way, SLC 84116, Fax 801 596 9504, tel 801 234 0111

Copy by FAX to:

Judge A. Robert Thurman, PSC	530 6796
Laurie Noda, esq - DPU % DPU	530 6512
Peggy Ekbert, DPU -	530 6512
R Wolters, esq - AT&T -	303 298 6591
David Irvine, esq -	299 8655

replyat.psc.lp

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

* * * * *

COPY

In the Matter of:) DOCKET NO. 96-051-04
The quality of telephone)
service within the area) October 7, 1996
served by the Beehive) REPORTED BY:
Telephone Company.) Shirlyn Sharpe, CSR
A. Robert Thurman
Administrative Law Judge

* * * * *



REPORTING SERVICES, LLC

525 FIRST INTERSTATE PLAZA
170 SOUTH MAIN STREET
SALT LAKE CITY UTAH 84101

(801) 328-1188 / 1-800-DEPOMAX

DEPOMAX REPORTING SERVICES, LLC

APPEARANCES

For the Division: LAURIE NODA,
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114

For AT&T: CATHY L. BRIGHTWELL,
Assistant Vice President
Montana/Utah
State Government Affairs
675 East 500 South
Salt Lake City, Utah 84102

For Beehive: A. W. BROTHERS, CEO
Beehive Telephone Company
5160 W. Wiley Post Way
Suite 220
Salt Lake City, Utah 84116

1 SALT LAKE CITY, UTAH MONDAY, OCTOBER 7, 1996 9:04 A.M.

2 * * * * *

3 THE COURT: All right. The record shows this is
4 the time set for the prehearing in docket No. 96-051-04
5 before the Public Service Commission of Utah in the matter
6 of the quality of telephone service within the area served
7 by the Beehive Telephone Company.

8 The Administrative Law Judge this morning is
9 A. Robert Thurman. I'll take the appearances for the
10 record.

11 MS. NODA: Laurie Noda for the Division of Public
12 Utilities.

13 MR. BROTHERS: Arthur Brothers for Beehive
14 Telephone Company.

15 THE COURT: Is there anyone here from AT&T?

16 MS. BRIGHTWELL: Yes, Your Honor. Cathy
17 Brightwell representing AT&T.

18 THE COURT: Okay. If I understand the response
19 filed by the Division as far as trying to narrow these
20 issues concerning these matters, the Division is willing to
21 defer, at this time, the problem of inter LATA access?

22 MS. NODA: That's correct, because of the federal
23 case that was mandated back to the FCC. That issue, the
24 Division has withdrawn.

25 THE COURT: That being the case, Ms. Brightwell,

1 does AT&T have any further interest in these proceedings?

2 MS. BRIGHTWELL: Excuse me, Your Honor. AT&T, as
3 we stated in our Motion to Intervene, the only interest we
4 have in this case is to monitor the case in order to protect
5 our interests if it is determined that anything that AT&T
6 has provided or may provide in the future to Beehive
7 Telephone Company affects the issues here in this case. We
8 are willing to limit our participation to only that.

9 THE COURT: Well, judging -- or taking the
10 Division's position at face value, I don't see that that's
11 likely, at this point, to become an issue in the
12 proceeding.

13 MS. BRIGHTWELL: That's correct. Their position
14 now to withdraw the inter LATA portion clearly limits our
15 participation even more, although there is some long
16 distance -- whether its inter LATA or intra LATA -- that may
17 affect our interest.

18 THE COURT: Any objection to their participation?

19 MR. BROTHERS: I have two points. Number one, is
20 Cathy Brightwell an attorney?

21 THE COURT: Ms. Brightwell?

22 MS. BRIGHTWELL: No, I'm not an attorney. Our
23 attorney is in a hearing this morning and was unable to
24 attend and contacted me over the weekend and asked me to
25 come here to respond to this motion, since he was unable to

1 attend.

2 MR. BROTHERS: For the record, we would object to
3 Ms. Brightwell representing AT&T.

4 MS. NODA: Your Honor, if I could respond. The
5 Commission's rules allow a party to be represented by -- not
6 by an attorney. In fact, the Division had some concerns
7 about Mr. Brothers representing the company. And the
8 Commission's rules allow for flexibility on that.

9 Mr. Walters did call me and left a message saying
10 that he did have a hearing; that he was aware of the
11 prehearing conference but at a very late date, so that he
12 really could not respond but could send Ms. Brightwell.

13 The question of intervention was something that he
14 was aware of, but was not able to fully address. He sent
15 Ms. Brightwell to monitor, as far as hearing dates, because
16 AT&T wanted to at least participate as far as hearing dates
17 and a schedule.

18 But as far as the attorney representing the
19 company at this point in time, I believe the Commission's
20 rules are flexible on that. Otherwise, Mr. Brothers would
21 not be allowed to represent the company, as well.

22 THE COURT: Well, I have to say that that's true
23 enough, that we let you represent Beehive Telephone Company,
24 Mr. Brothers. I guess we can have some flexibility, at
25 least here this morning.

1 this docket right here and now so we can take it on appeal
2 to the Commission and even the Supreme Court. I feel very
3 strongly about this.

4 MS. NODA: Your Honor, I think AT&T is going to be
5 taking a limited interest in this case. I believe they may
6 not even want access to the information that has been given
7 to the Division. I believe Ms. Brightwell can respond to
8 that.

9 MS. BRIGHTWELL: That's correct. We did submit
10 Exhibit A's pursuant to the protective order in this case
11 when we learned there was proprietary information here, so
12 that we could participate. Given the fact that the Division
13 and the company -- I'm not sure if they stipulated, but that
14 the Division has withdrawn a large part of that case, I'm
15 not sure we are even going to need access to that
16 information.

17 Mr. Brothers is correct, we are dealing with him
18 on some of these and other issues, and I don't have a
19 problem at all limiting our participation and not having
20 access to that.

21 As far as Beehive Telephone Company's objection
22 which, as I see as No. 3 in his response, this is not a
23 proceeding regarding AT&T's service quality. This is a
24 proceeding regarding Beehive Telephone Company's. As I said
25 before, AT&T is here only to monitor this proceeding as it

55

1 that. So, at this point, I think we're going to limit the
2 proceeding to those six issues. And I suppose that, given
3 the apparent strength of the feelings out in Rush Valley,
4 we'd better have a hearing out there to at least give people
5 a chance to air their concerns.

6 Quite frankly, I think the major issue is the
7 question of the access billing in regard to the cellular
8 numbers. It seems to me that's pretty much a question of
9 law. I don't see that is a very major factual issue. So, I
10 would suggest that you get ready to brief me rather
11 extensively on that issue.

12 MS. NODA: Yes, we are aware that that is more of
13 a legal question. So, we would be prepared to file a
14 prehearing or post-hearing brief on that, whichever you
15 prefer.

16 THE COURT: All right. Now, who wants to take
17 responsibility -- well, let's try and set a date first.
18 Let's try and get this thing heard as soon as possible. Is
19 it possible sometime in the rest of this month?

20 MS. NODA: We had recommended a hearing date of
21 November 1st, and with AT&T's intervention, we thought they
22 would need more time. So, we were going to recommend
23 November 7th. However, Ms. Brightwell informs me that
24 Mr. Walters will be in a hearing that day. So, she said an
25 earlier date would be better, or after that. But she said

1 November 1st would be fine for her. I don't know whether
2 Beehive Telephone Company's schedule could accommodate
3 that.

4 MR. BROTHERS: I don't think -- November 1st is
5 okay, provided we can get the responses to the interogs,
6 the questions we have asked, providing the witnesses, who is
7 going to say what.

8 THE COURT: Let's get to that. Ms. Noda.

9 MS. NODA: That is a concern of the Division's as
10 well. We would need a fast turn-around on discovery
11 responses.

12 As far as the list of witnesses, we are in the
13 process of preparing a document, at least a witness list,
14 because we have at least three witnesses right now that we
15 indicated earlier, and that would be Patricia Holden, Kent
16 Sager and Vickie -- I believe her name is Vickie Hansen.
17 She is one of the City Council persons. And those were the
18 main three witnesses the Division was going to put on the
19 stand to testify as to the customer service complaints,
20 quality of service complaints.

21 There were also, we believe, a number of public
22 witnesses who wanted to testify concerning the complaints
23 that basically have been lodged about the quality of
24 service.

25 THE COURT: Well, I think if those are your three

1 witnesses, you better provide Mr. Brothers with at least a
2 summary of their testimony.

3 MS. NODA: We have basically already done that to
4 some extent. We did that in our earlier filing. We will
5 try to get him the names and numbers of the additional
6 complaints that have been filed, with our position
7 statement. We will get him the names and numbers of those
8 people so he can contact them as well. I believe he wanted
9 that.

10 THE COURT: How soon can that be done?

11 MS. NODA: We have someone working on that right
12 now. I don't know when she can have it done but as soon as
13 possible. I will get in touch with her today.

14 THE COURT: From your side, Ms. Noda, is there any
15 outstanding discovery requests that you have of Mr. Brothers
16 that have not been met?

17 MS. NODA: I believe there will be requests, maybe
18 one or two, concerning some traffic studies and I think that
19 Ms. Edward needed to get those in order to go forward.

20 THE COURT: How soon will you have those out?

21 MS. NODA: As soon as she gets back. She is due
22 back today and she's going to try to get those to
23 Mr. Brothers very soon, this week.

24 THE COURT: I think the first week or second week
25 in November for your outstanding discovery.

1 Okay. I'm just going to put it on this basis.
2 There is going to be a discovery cut-off as of Friday, 1st
3 of November. I don't care how you do it, but you get all
4 your discovery taken care of by then.

5 MS. NODA: We assume it would have been done by
6 then. We had set a cut-off date of October 25th.

7 THE COURT: How is the week of November 11th? The
8 11th is a holiday.

9 MS. NODA: Tuesday, November 12th?

10 THE COURT: The 12th?

11 MS. NODA: That's fine for us.

12 MR. BROTHERS: Excuse me, November 11th what?

13 THE COURT: I'm talking hearing date. Discovery
14 will be cut off November 1st. Whatever is done is done by
15 then.

16 MR. BROTHERS: What you are saying, responses to
17 any data requests have to be in by then?

18 THE COURT: That's right.

19 MR. BROTHERS: That will be the testimony of
20 witnesses that the Division proposes to produce?

21 THE COURT: I'm not going to require them to do
22 pretrial testimony, but you will be entitled to a summary of
23 the testimony they should expect to elicit.

24 MR. BROTHERS: I think we should be entitled to
25 receive the testimony of the witnesses. As you indicated in

1 the last proceeding, this is not a rate case where people
2 walk in and belly-ache about --

3 THE COURT: That's true, but I think --

4 MR. BROTHERS: The Division can provide this. It
5 is their case, Your Honor.

6 MS. NODA: We can provide a summary, Your Honor,
7 of basically what the witnesses will testify.

8 MR. BROTHERS: There is no reason -- excuse me.

9 THE COURT: What you are asking, Mr. Brothers,
10 given the subject matter here, it is not the same as
11 prefiled expert testimony. I'm not going to require the
12 Division, at this point, to go to the expense of, in
13 effect, deposing these witnesses. But I think you are
14 entitled to a reasonably detailed summary of what the
15 Division expects to elicit from them. That, I expect they
16 will supply you by November 1st.

17 MS. NODA: We will be happy to do that.

18 THE COURT: And I will allow public witnesses just
19 because it sounds like feelings are running high enough to
20 do that.

21 MR. BROTHERS: Under oath?

22 THE COURT: It will be the same rules as any other
23 public witness. If they expect us to make any findings, it
24 will have to be under oath. Otherwise, we'll disregard
25 it.

1 MR. BROTHERS: So, we won't know who these people
2 will be, then?

3 THE COURT: No. So, for the hearing date itself,
4 November 12th, does that work?

5 MS. NODA: That's fine with the Division.

6 MR. BROTHERS: I believe so.

7 THE COURT: Now, who is going to take
8 responsibility of finding a facility?

9 MS. NODA: The Division will. We will be happy to
10 set up -- I believe the council chambers might be available
11 and we will work with Vickie Hansen on that. Also, did you
12 want to hold the hearings later in the afternoon or later on
13 in the evenings? I think there was some question about
14 whether or not we would do something like that.

15 THE COURT: I'm not going up there in the evening,
16 Ms. Noda. That's out.

17 MR. WALGREN: That's fine. What time would you
18 like us to set it for, the morning?

19 THE COURT: Set it at 10:00 a.m.

20 Okay, anything else we need to settle?

21 MS. NODA: Did you want the Division to prepare
22 the order on this?

23 THE COURT: No, I'll take care of it myself. Any
24 questions? Thank you, ladies and gentlemen.

25 (Whereupon proceedings were adjourned at 9:26 a.m.)

1 STATE OF UTAH)

2 : ss.

3 COUNTY OF SALT LAKE)

4 I, SHIRLYN SHARPE, C.S.R, R.P.R. and Notary Public for
5 the State of Utah, residing in Davis County, certify:

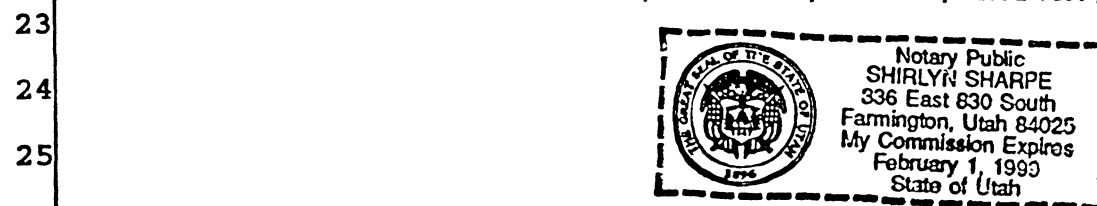
6 That I attended the afore-mentioned hearing before
7 the Public Service Commission at the time and place herein
8 set forth;

9 That the testimony of the witnesses and all
10 objections made and all proceedings had of record at the
11 time of the said hearing were recorded stenographically by
12 me and were thereafter transcribed into typewritten form by
13 me, and I hereby further certify that the foregoing
14 typewritten pages 3 to 14 inclusive, is a full, true
15 and correct record of my stenographic notes so taken;

16 I further certify that I am neither counsel for
17 nor related to any party to said action nor in anyway
18 interested in the outcome thereof.

19 IN WITNESS WHEREOF, I have subscribed my name and
20 affixed my seal this 14th day of October 1996.

21
22 
23 SHIRLYN SHARPE, C.S.R, R.P.R., C.M.



- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Quality of	)	<u>DOCKET NO. 96-051-04</u>
Telephone Service Within the)	
Territory Served by BEEHIVE TELE-	)	<u>RULING & NOTICE</u>
PHONE COMPANY,)	
Respondent)	

ISSUED: October 10, 1996

Appearances:

Laurie L. Noda, Assistant Attorney General	For	Division of Public Utili- ties, Utah Department of Commerce, Complainant
Arthur W. Brothers, President		Beehive Telephone Company, Respondent

By the Administrative Law Judge:

PROCEDURAL HISTORY

Pursuant to a prehearing conference conducted the seventh day of October, 1996, the Administrative Law Judge enters the following

RULING

WHEREFORE, IT IS HEREBY RULED that:

- The Petition of AT&T to intervene be, and it is, granted.
- The issues to be resolved in this matter are limited to the following:
 - Beehive Rush Valley Customers' access to and/or charges for calls to prefixes served by wireless telephone providers.
 - Adequacy of Beehive's Trunks to provide intra-LATA service to Rush Valley Customers.

DOCKET NO. 96-051-04

- 3 -

DATED at Salt Lake City, Utah, this 10th day of October,
1996.

/s/ A. Robert Thurman
Administrative Law Judge

Attest:

/s/ Julie Orchard
Commission Secretary

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

STATE OF UTAH)
) ss.
County of Salt Lake)

I hereby certify that the foregoing consisting of 3 pages numbered
1 to 3 inclusive, is a true and correct copy of the original.

DOCKET NO. 96-051-04, RULING & NOTICE, In the Matter of the
Quality of Telephone Service Within the Territory Served by
BEEHIVE TELEPHONE COMPANY, Respondent.

in the foregoing entitled matter or cause, now of record or on file in the office of the Public
Service Commission of Utah.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said
Commission this 10th day of October, 19 96


Secretary of said Commission

Laurie L. Noda #4753
Assistant Attorney General
Division of Public Utilities
Jan Graham #1231
Utah Attorney General
160 East #00 South
Salt Lake City, Utah 84114
Telephone No. 801-366-0328

BEFORE THE UTAH PUBLIC SERVICE COMMISSION

In the Matter of the Quality of Telephone	)	DOCKET NO. 96-051-04
Service Within the Territory Served	)	Prehearing Position Statement
by BEEHIVE TELEPHONE COMPANY	)	Of The Division Of Public
	)	Utilities Regarding Cellular
	)	Call Billings

November 1, 1996

A. General

1. This position statement is filed on behalf of the Division of Public Utilities (Division) to define the reasons for the Division's objections to Beehive Telephone Co. (Beehive) billing its Rush Valley and Vernon customers toll charges when they place extended area service calls to the Tooele local exchange numbers of Cellular interconnect carriers. The actions by Beehive are not supported by the Commission approved tariffs of Beehive, result in redundant charges to Beehive's customers, and result in highly discriminatory and anti-competitive behavior on the part of Beehive.
2. To help understand the Division's objections on this issue, it is necessary to first describe how the cellular companies and the wireline local exchange carriers have established interconnected service between each other's networks for the joint provisioning of local and interexchange calling between their

customers. We will describe the authority and actions that the Utah Public Service Commission (Commission) and the Division have exercised in approving such network interconnections, and in establishing the inter-company rates and charges. We will also identify how Beehive should now be compensated for any local or interexchange calling between its local exchange customers and the cellular carrier customers.

3. The Division will also respond to the previous statements of Beehive to justify its action to begin billing toll charges for local calls to the Tooele cellular telephone numbers.

B. INTERCONNECTION ARRANGEMENTS AND CHARGES
BETWEEN WIRELINE AND CELLULAR CARRIERS

1. The cellular carriers (primarily AT&T Wireless, Inc., Airtouch Cellular, Inc. and Triad Cellular, Inc.) are common carriers as defined by the FCC. The cellular carriers are providing competitive local and interexchange services that are direct substitutes for wireline common carrier services. Therefore, all relationships, interconnection and interchange of traffic between the cellular carriers and the wireline local exchange carriers have been based on the principles of joint provisioning, which are the same principles used for the negotiated and contracted arrangements for the interchange of traffic between two wireline local exchange carriers.
2. Based on the joint provisioning principles, the cellular carriers have established their local exchange interconnection services pursuant to Public Service Commission approved contracts between the cellular carriers and the wireline local exchange carriers that serve the primary central office(s) within

each local and EAS calling area throughout the state. When the original contracts were developed and approved. after many months of negotiations and hearings, the cellular carriers were fully regulated by the Commission.

Therefore, it was the Division's objective during the negotiations to have fair and reasonable conditions established for the joint provisioning of service between the competing service providers. In 1991, the cellular carrier's service and customer rates throughout the state were deregulated by the Commission (Docket No. 91-999-01), in accordance with the requirements of Utah Code 54-2-1(24). However, the Commission continues to maintain authority over the intercompany interconnection contract conditions, rates, charges, annual service area reports of cellular carriers, and the Utah universal service fund payments by all cellular carriers.

3. The primary conditions of the intercompany contracts are as follows:
 - a. The cellular carriers can establish local exchange numbers and interconnect lines, trunks and DID services that provide the same local and EAS calling area as that provided to wireline local exchange customers of the interconnected central office. The cellular carriers agreed to connect such local exchange lines and trunks to their wireless transmitter/receiver site(s) in a manner that provides local calling capability to and from wireless and wireline customers for at least the same geographic area as that provided to the wireline customers of the local exchange carriers interconnect central office. This agreement was needed to prevent a general discrimination between the wireline and cellular customers in pricing calls as local service versus toll service. In reality, the cellular customers almost always have a larger geographic local

calling area than the wireline customers because of the transmitter/receiver area of coverage, or FCC authorized signal area foot print.

- b. In this case, two cellular carriers have established their interconnection at the US West Communications (USWC) Tooele central office, using local exchange numbers 830-XXXX and 841-XXXX. As shown on the attached USWC tariff page 23 of Section 5, and the Beehive tariff Schedule No. 1, the local and EAS calling area of Tooele includes Beehive's Rush Valley and Vernon local exchange areas, plus the USWC Grantsville and Dugway local exchange areas. This means that all calling between wireline and cellular customers located at least within these areas will be rated as local service.
- c. The intercompany charges of the wireline carrier to connect the cellular network to the wireline network are negotiated charges for the local exchange line or trunk units, the direct or indirect local facilities at single service channel rates for low volume sites, or DS1 for high volume sites, and DID common equipment and numbers in blocks of 20. For cellular customer calls made to wireline customers, the cellular company pays the wireline company a per minute use rate that increases by interoffice route distance from the interconnect central office to the called party's serving central office, where all such calls are rated as local when such distances are 25 miles or less. The cellular carriers pay the wireline carriers a negotiated charge when a cellular customer uses the wireline carriers directory assistance or operator assistance services. At this time, there are no direct charges from the cellular carriers to the wireline carriers for local calls from a wireline customer to a cellular customer, except for the "Calling Party Pays" tariff of USWC that will be explained later.

- d. The charges that customers would pay for joint network use was highly controversial during the negotiations. The agreements that were reached, and approved by the Commission provided that cellular customers would pay rates based on the airtime usage for both originated and received calls, and the wireline customers would pay for their originated and received calls only as a part of their local exchange and EAS usage rates. The primary reason that these customer rate plans were adopted was the generally accepted assumption that the vast majority of wireline customers would not be willing to call cellular customers if they were to be charged for the airtime use of the cellular network. This inhibition of the wireline customers would substantially reduce the value of the cellular carrier services of prospective cellular users, as they would expect to receive two-way service. In 1991, the cellular airtime rates ranged from \$.45 to \$.70 per minute for local calling, with added charges for roaming and long distance services. Subsequently, the growth in the cellular service subscriptions and network expansions have allowed the rates for local calling service to be reduced to a rate range of \$.14 to \$.35 per minute.
- e. Beehive does not provide any interconnection circuits or facilities for cellular carriers, nor does it incur any interconnect costs. Beehive does not incur any different costs when its customers originate or receive EAS calls with cellular carrier customers served by the Tooele exchange than it does when its customers originate and receive EAS calls with the USWC wireline customers served by the Tooele exchange. Beehive and USWC have had a bill and keep agreement for their joint provisioning of EAS between their exchanges ever since Beehive established its service. That is, Beehive bills its Rush Valley and

Vernon customers a monthly EAS charge which it keeps to support its costs of providing its portion of the EAS networks. USWC bills and keeps its customer's monthly EAS charges to support its EAS costs. Therefore, the rates charged by USWC to the cellular companies for terminating local and EAS calls is retained by USWC as a part of the bill and keep agreement. If there is evidence that the monthly EAS rates do not fully support a company's EAS costs, then that company must justify any rate increase as part of a rate case filing to the Commission.

C. BEEHIVE'S BILLING OF TOLL CHARGES FOR CELLULAR CALLS

1. When Beehive bills its Rush Valley and Vernon customers the \$.14 per minute toll charges for calls that are EAS to the Tooele exchange 830-XXXX and 841-XXXX numbers assigned for local service access to cellular customers, it is double billing its customers for the same service. They already pay \$1.00 per month per line for EAS calling to the Tooele, Grantsville, and Dugway exchanges, as provided in Beehive's tariff Schedule 1, which is attached hereto.
2. Beehive is forcing its customer to use the toll network for calling the Tooele exchange local cellular numbers by requiring that they dial 1-801-830-XXXX, or 1-801-841-XXXX. This action creates much higher network costs, and increases Beehive's own costs by having to pay USWC switched access charges. The higher network costs are created because the toll calls from Rush Valley and Vernon are directly routed from Rush Valley to USWC toll circuits and toll tandem switch in Salt Lake City, and then routed back to Tooele on additional toll circuits for completion to the cellular numbers. When Beehive passes calls to the USWC toll network it must pay USWC switched access

charges of approximately \$.0471 per minute, in accordance the intercompany joint provisioning agreements approved by the Commission. EAS calls from Rush Valley and Vernon are routed on direct EAS circuits facilities to Tooele. Therefore, by Beehive's forcing calls that are EAS to begin with to the toll network, Beehive substantially increases total network usage, as well as the call processing charges to itself. This is a highly uneconomic use of the toll network.

3. In the event that Beehive may be routing the cellular calls to the EAS facility routes, after forcing its customers to pay added toll charges and in requiring the dialing the 11 digit toll number, would be viewed by the Division as a highly improper charging scheme.

D. BEEHIVE ACTIONS ARE DISCRIMINATORY AND ANTI-COMPETITIVE

1. Beehive's action in billing toll charges for local cellular customer calls to Tooele, but only requiring the payment of monthly EAS charges for wireline calls to Tooele is highly discriminatory. The relative level of the charges for the cellular calls is much greater than for wireline calls.
2. As discussed earlier, the customer charging methods approved by the Commission for the interchange of calls between wireline and cellular customers was specifically designed to not inhibit the wireline customers from calling cellular customers by charging per minute airtime rates to the wireline customers. Beehive's action to bill its customers additional toll charges for local calls to cellular customers, creates the same inhibitions. Some residents located within Beehive's certified territory have subscribed to cellular service to supplement or improve their total communications capability, and for having primary local exchange and toll services. The assessment of toll charges by

Beehive to its customers penalizes such customers. The Division believes this may be viewed as anti-competitive behavior.

E. RESPONSE TO BEEHIVE'S JUSTIFICATIONS FOR BILLING
TOLL CHARGES TO ITS CUSTOMERS FOR EAS CALLING.

1. Beehive has attempted to justify its actions by alluding that USWC charges its customers added charges for calling cellular customers, and that the cellular carriers are providing toll by-pass in the same manner as was judged to be illegal by the Commission in the Bridge and ALD cases. These allusions are incorrect.

2. USWC does not bill its customer added charges for calling cellular subscribers. However, USWC has received Commission approval for a tariff whereby it acts as a billing agent for Airtouch Cellular, Inc. (Airtouch)(formerly US West NewVector), which tariff is commonly referred to as "Calling Party Pays". By this tariff USWC has agreed that it will collect the Airtouch airtime charges from the wireline customers and remit such charges to Airtouch. Airtouch pays USWC a billing and collections fee. This service is only provided by Airtouch from for central offices in the Wasatch Front using separate central office numbers from the normal cellular numbers. In approving the USWC tariffs, the Commission's order required that Airtouch must provide an announcement to the wireline calling customer, notifying the customer that they will be billed for the airtime charges upon completion of the call to the specific cellular user. This announcement requirement was recommended by the Division. Airtouch has complied with the order in implementing the announcement and providing 5 seconds for the wireline customer to disconnect

if the customer does not elect to pay the airtime charges. No other Utah cellular company has requested the use of such service. It is our understanding that Airtouch has had very few cellular customers subscribe to the calling party pays service.

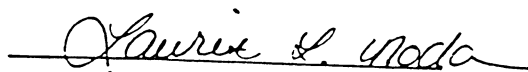
3. Beehive's allusion that the cellular carriers are providing service similar to Bridge or ALD is totally without merit. Cellular carriers are common carriers and subscribe to interconnect services that are arranged and rated for local and interexchange resale in the same manner as the services provided to interexchange carriers. The rates charged to cellular companies were developed by the Division based on interexchange switched access rate plans, and they are fully compensatory. Bridge and ALD were private entities that created a toll by-pass service by using local exchange services that are not provided or priced for resale. The hearing Administrative Law Judge, and later the Commission, ordered that the services were illegal. The appeal case to the Utah Supreme Court was withdrawn by the appellants.

CONCLUSIONS and RECOMMENDATIONS:

Beehive is billing its customers toll charges without authority, and contrary to the Commission approved interconnect agreements or the approved tariffs of Beehive and USWC. Beehive's action has resulted in double billing its customers for the same service. Beehive's actions have resulted in highly discriminatory charges for customer calling from Beehive exchanges to the USWC Tooele exchange. Beehive's actions may be viewed as anti-competitive behavior. The Division recommends that Beehive be ordered to discontinue its practice of billing its Rush Valley and Vernon exchange customers toll charges for calls to the Tooele local exchange cellular carrier numbers.

We further recommend that Beehive be required to repay its customers for all billed toll charges to the Tooele cellular carrier numbers that have previously been paid by such customers, along with interest at 1.5 percent a month from the date of payment.

Signed and filed the 1st day of November, 1996.


Laurie L. Noda
Assistant Attorney General

cc: Parties of record

(85)

94-051-40

RECEIVED
Beetle Telephone Co., Inc.
Wendover, Utah 84083

UPSC Schedule 1 dated 6/29/94
replaces all prior schedule 1

JUN 30 2 25 PM '94 Schedule No. 1 - RATES FOR SERVICE

These Rates are applicable to all classes of exchange customers in Utah, except as otherwise indicated.

Rates shown are for annual service as billed on a monthly basis. Only single party service is available.

	<u>Business</u>	<u>Residence</u>	
Rate all areas, per month	\$16.00	\$11.67	(R)
except: Ticaboo	\$27.50		
Rush Valley/Vernon	\$ 1.00	\$ 1.00	
Private pay phone and key system	\$36.00	n/a	(N)
Severance and reconnection charge	\$15.00	\$15.00	

Note:

1) A late fee of 1.5% of the unpaid balance due is applied each billing period plus a one dollar administrative fee to all accounts for which payment is not received by the close of each month's accounts receivable which is 20 days after bills are mailed.

2) Toll Station and radio takes the Key System rate. (R)

3) Service shall be provided only as lines are available, otherwise construction charges apply per Schedule 2.

4) Installation charges are outlined in Schedule 2.

5) Long Distance and Operator service charges are the same as filed by USWC.

6) EAS is provided from Rush Valley and Vernon only to USWC's Tooele Exchange and EAS service area associated thereto. During heavy EAS calling times, circuits may not be available. Customers may use DDD circuits (1+ the EAS number) when encountering a short term EAS busy condition by paying the DDD rate for those calls.

Issued 6-29-94
Effective: 7-01-94


by: A. W. Brothers, President

U S WEST COMMUNICATIONS

EXCHANGE AND NETWORK
SERVICES TARIFF
UTAH

SECTION 5
Page 23
Release 1

Issued: 2-18-94
(A.L. 94-07)

Effective: 3-21-94

5. EXCHANGE SERVICES

5.1 EXCHANGE AREAS

5.1.1 EXTENDED AREA SERVICE (EAS)

B. List Of Central Office And Local Calling Areas (Cont'd)

CENTRAL OFFICE	INCLUDED IN EXTENDED AREA SERVICE
Salt Lake South	Bountiful, Cottonwood, Draper, Farmington, Holladay, Kaysville, Kearns, Magna, Midvale, Murray, Riverton, Salt Lake East, Salt Lake Main, Salt Lake West
Salt Lake West	Bountiful, Cottonwood, Draper, Farmington, Holladay, Kaysville, Kearns, Magna, Midvale, Murray, Riverton, Salt Lake East, Salt Lake Main, Salt Lake South
Smithfield	Hyrum, Logan, Richmond
Spanish Fork	Goshen, Orem, Payson, Provo, Salem, Santaquin, (Spanish Fork Canyon), Springville
Springville	Orem, Payson, Provo, Salem, Santaquin, Spanish Fork
St. George	Hurricane, Leeds, Veyo
Tooele	Dugway, Grantsville, (Rush Valley), (Vernon)
Veyo	St. George
Wendover	(Wendover, Nevada)

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the matter of quality of service)
of Beehive Telephone, Inc.) DOCKET 96-051-04

Assigned to: Examiner R. A. Thurman

FIRST DATA REQUEST TO AT&T

Beehive Telephone hereby makes its first data request to AT&T in this proceeding. This data request is not inclusive and additional requests may be forthcoming.

1. Please provide a study of all calls to Beehive's Utah exchanges for the period by day, from August 15th, to and including September 30th, 1996, by class and type.

2. Please provide information and all peg count data of traffic destined to Beehive's exchanges which have been blocked in any way by AT&T in the period from August 15th, 1996, to September 20th, 1992. If this is or is not available, what data is available.

3. With respect to item 2, please furnish the names, job description, phone numbers and addresses of each and every person with knowledge of the blocking of calls to Beehive exchanges and copies of all orders and other written information pertaining to this practice.

4. Provide names, addresses and phone numbers of all employees of AT&T who have knowledge of, or who have mentioned to others words more or less that "AT&T does not have to complete calls for its customers if it doesn't want to". Please provide specific responses to this by all parties who signed the confidentially agreement filed with the Commission in this Docket as well as Mr. Joe Pridy, (an AT&T attorney in New Jersey exact spelling may not be correct). If there are any documents with this topic discussed please furnish copies of all such documents.

5. Please identify the location and provide an index of all files and correspondence or internal communications which have reference to Beehive or its president, Mr. Arthur W. Brothers.

6. Please identify the location and provide an index of all files and correspondence to/from any individual wherein the topic was/is Beehive or other individuals which pertain to Beehive or its founder or children or relatives.

7. Please provide copies or index's of any documents to/from Government agencies by any AT&T employee or agent wherein Beehive or its founder or employees may have been mentioned.

8. With respect to question 6, 7 and 8, would you be willing to provide Beehive with copies of the above information with its

concurrent delay, as opposed to our subpoena ducas tecum to inspect? If the former, please state a reasonable time table to assemble the documents and state where they would be made available for inspection.

9. Does AT&T believe it has to pay NECA imposed Carrier Common Line (CCL) flow-through charges billed to AT&T in behalf of NECA by Beehive? If not, why not?

10. Please identify by name each and every witness who will be called by AT&T in this proceeding and a copy of their testimony.

11. Counsel for the Division has stated that it has been informed by AT&T that the reason it has withdrawn its desire for the Commission to be concerned about the quality of Beehive interstate telephone service, is that these issues are dismissed in proceedings between Beehive and AT&T (in) the Federal District court of Utah which relate to (lack of) payment to Beehive, and that there are pending complaints before the FCC on this same subject. If AT&T has alleged this to Division staff, please identify which AT&T people told which DPUC employees this information and provide Beehive with the same with dates.

12. Please furnish all contracts for services including applicable tariffs and facilities furnished and records of payments rendered to USW by AT&T's Cellular system interconnected at Tooele, Utah.

13. Does AT&T's Cellular system have any agreements for terminating or origination of wire line to Cellular from Beehive exchanges that have EAS with USW's Tooele exchanges?


14. Provide a coverage area map of AT&T's Tooele connected Cellular system including number of transmitters and its wire line interconnected schematic.

14. Please provide copies of each and every Cellular interconnect agreement where AT&T has access by EAS to a different wire line telephone company than that company interconnected to.

15. Is AT&T considering adopting any type of Cellular or PSC billing where the "calling party pays". Where and what is the status of these concepts?

Please provide the answers to these data requests within 10 days.

Respectfully submitted this 9th day of October, 1996.

 A. W. Brothers, President, Beehive Telephone Co., Inc.
5160 Wiley Post Way, SLC, Ut 84116. FAX 801 596 9504

copies served by FAX on Examiner Thurman, Peggy Egbert, Lurie Noda, and WP51 disk and copy mailed to Secretary, UPSC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the matter of Service Quality)
of Beehive Telephone Co., Inc.)

Docket No. 96-051-04

To: Examiner Thurman

MOTION TO COMPEL

1. Beehive Telephone is in receipt of the replies of AT&T to Beehive's data requests in this matter.

2. AT&T refuses to answer any of the questions Beehive asked.

3. In reverse order - for this hearing, AT&T implies it is one of hundreds if not thousands of companies which combined make AT&T a multiple headed creature. To suggest that AT&T has no cellular operations in the Tooele area is deceitful. If the ALJ allows AT&T to insult this Commission by hiding behind its multiple shells of business all owned by the stockholders - is not good regulatory policy in that if they get away with this, they will have demonstrated they can. If AT&T appears in this matter, the Commission must insist its rules are not narrow that any AT&T includes the whole of the octopus, and not just one arm.

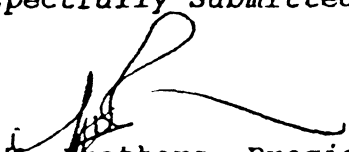
4. The major thrust of this hearing has to do with Beehive's policy of blocking use of its EAS circuits to access Cellular providers. Many of our data requests AT&T go directly to this issue. AT&T must be compelled to answer the questions posed or in the alternative to strike all issues in this proceeding that refer to Cellular.

5. Other data requests go directly to the issue of purgery. Beehive believes that at least two of the individuals who signed the confidentially agreement have personal knowledge of the questions. We require answers to the questions in order that we may demonstrate for the Record the In addition as AT&T said when it attempted to justify its appearance in this case by saying for the record, that it did handle State (v interstate) calls to from Beehive and as such it had and interest in this proceeding. The data requests made by Beehive go directly to that issue. Any guilt complex AT&T may have by its refusal to participate by its own interpretation of how the answers may or may not be used is not for them to judge - but only for the Commission.

6. AT&T doesn't even do a good job of dancing around its refusal to comply with the Rules of this Commission. The record is replete with assertions by the DPUC that certain things are of no business to this Commission because of actions filed before the FCC, or that there is a dismissal of a current case before the Federal District Court in Salt Lake. In every case, it appears that the allegations to the Commission have come from assertions made by AT&T people. We have a right to know who said what and where.

WHEREFORE, Beehive moves that the Commission continue this proceeding for three months while we work out the problems to a fair and complete record; and that it issue an Order to Compel AT&T to answer to Beehive's data requests; or in the alternative to dismiss this proceeding. If this prayer is denied, the hearing scheduled for November 12th in Rush Valley must be continued to permit Beehive to appeal this matter to the Commission as a whole.

Respectfully Submitted this first day of November, 1996



A. W. Brothers, President, Beehive Telephone Co, Inc.
5160 Wiley Post Way, Suite 220, SLC, Ut 84116
tel 801 596 9512 fax 801 596 9512

Copies served by FAX on DPUC
AT&T
Dave Irvine, esq

Maria Arias-Chapleau, Esq.
Richard S. Wolters, Esq.
AT&T Communications of the
Mountain States, Inc.
1875 Lawrence Street, Room 1575
Denver, Colorado 80202
(303)298-6741

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of Quality of Tele-) DOCKET NO. 96-051-04
phone Service Within the Territory)
Served by BEEHIVE TELEPHONE COMPANY)

MOTION OF AT&T FOR LEAVE TO WITHDRAW

AT&T of the Mountain States, Inc. ("AT&T"), by its attorney, hereby moves for leave to withdraw from the above referenced proceeding.

1. On September 4, 1996, the Utah Public Service Commission initiated the instant proceeding to investigate the quality of telephone service of Beehive Telephone Company (Beehive).

2. Based on what it believed to be the anticipated scope of the proceeding, AT&T petitioned for leave to intervene.

3. Beehive did not oppose intervention by AT&T. It did, however, propose limiting the scope of AT&T's intervention.


4. The Division issued a statement of issues to be investigated during the proceeding. The issues addressed by the Division are intrastate in nature.

the Commission grant its request to withdraw from the instant proceeding.

Respectfully submitted this 1st day of November, 1996.

Attorneys for AT&T
Communications of the
Mountain States, Inc.

Maria Arias-Chapleau, Esq.
Richard S. Wolters, Esq.
1875 Lawrence Street, Room 1575
Denver, Colorado 80202
(303)298-6741

By: 
Richard S. Wolters

CERTIFICATE OF SERVICE

I hereby certify that the original and fifteen copies of The Motion for Leave to Withdraw of AT&T Communications of The Mountain States, Inc., regarding Docket No. 96-051-04 were sent via overnight delivery on this 1st day of November 1996 to:

Ms. Julie Orchard
Executive Secretary
Utah Public Service Commission
Heber Wells Building - Fourth Floor
160 East 300 South
Salt Lake City, UT 84145

and a true and correct copy was sent via overnight delivery on this 1st day of November, 1996 to:

A. W. Brothers, President
Beehive Telephone Company
5160 Wiley Post Way, #220
Salt Lake City, UT 84116

and a true and correct copy was mailed, postage prepaid, this 1st day of November, 1996 to:

Kent Walgren, Esq.
Assistant Attorney General
Committee of Consumer Services
4120 State Office Building
Salt Lake City, UT 84114-0811

Michael Ginsberg, Esq.
Laurie L. Noda, Esq.
Assistant Attorney General
Division of Public Utilities
4120 State Office Building
Salt Lake City, UT 84114-0811

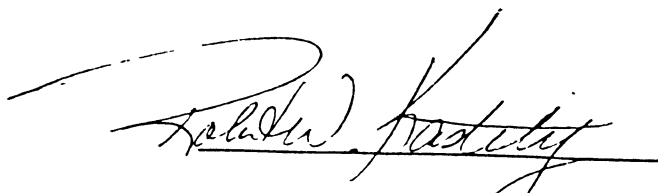
Thomas F. Dixon, Esq.
William Levis, Esq.
MCI Telecommunications Corporation
707 17th Street, #3900
Denver, CO 80202

Douglas N. Owens, Esq.
U S WEST Communications, Inc.
1600 Seventh Avenue, Ste. 3206
Seattle, WA 98191

Carol Sjoberg
U S WEST Communications, Inc.
250 Bell Plaza, Room 1610
Salt Lake City, UT 84111

Nancy Gibbs, Executive Director
Exchange Carriers of Utah
2021 Mapleview Drive
Bountiful, UT 84010

David R. Irvine, Esq.
126 South 600 East, #100
Salt Lake City, UT 84102



BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the)
Quality of Telephone)
Service Within the)
Territory Served by)
BEEHIVE TELEPHONE COMPANY)
Respondent.)
-----)

DOCKET NUMBER:
96-051-04

REPORTER'S TRANSCRIPT
OF PROCEEDINGS

Salt Lake City, Utah
November 12, 1996
10:00 a.m.

COPY

BEFORE:

A. ROBERT THURMAN, Administrative Law Judge



REPORTING SERVICES, LLC

525 FIRST INTERSTATE PLAZA
170 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84101
(801) 328-1188 / 1-800-DEPOMAX
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APPEARANCES

FOR DPU:

Laurie Noda
Assistant Attorney General
500 Heber Wells Building
163 East 300 South
Salt Lake City, UT 84114

FOR BEEHIVE:

Arthur Brothers
Beehive Telephone Company
Suite 220
5160 West Wiley Post Way
Salt Lake City, UT 84116

1 November 12, 1996

10:00 a.m.

2
3 PROCEEDINGS
4

5 JUDGE THURMAN: Let the record show this is
6 the time and place set for the hearing in Docket
7 Number 96-051-04 before the Public Service Commission
8 of Utah in the matter of the quality of telephone
9 service within the territory served by Beehive
10 Telephone Company. Administrative law judge this
11 morning is A. Robert Thurman. Take the appearances
12 of the parties.

13 MS. NODA: Laurie Noda for the Division of
14 Public Utilities.

15 MR. BROTHERS: Arthur Brothers for Beehive
16 Telephone Company.

17 JUDGE THURMAN: All right. Since I'm
18 informed that we have a number of public witnesses
19 who wish to be heard in this matter, I think we will
20 take those first this morning. And to explain that
21 procedure a little bit, those who wish to appear as
22 public witnesses may make statements, either sworn or
23 unsworn. The difference is if the statement is
24 sworn, then it is subject to all of the Rules of
25 Evidence, including being subject to cross

1 examination. If the statement is unsworn, it is
2 simply presented. However, the Commission may make
3 no findings based on unsworn testimony. And so at
4 best, it can serve simply as background. Therefore,
5 those who wish to appear as public witnesses, I think
6 there's already been a sign-up sheet. Has that --

7 MS. NODA: It's almost completed.

8 JUDGE THURMAN: Let's wait for that to be
9 completed. We'll call them in the order that they
10 have signed up. First, Kandy Sagers. Is Kandy
11 Sagers here? All right. Miss Sagers, do you wish to
12 make a sworn or unsworn statement?

13 MS. KANDY SAGERS: I just came to say what
14 the problem we had with them was.

15 JUDGE THURMAN: Again, the difference is if
16 the statement is sworn, I can base findings on it.
17 Otherwise, I cannot. On the record, the down side
18 for you is if it's sworn, then you are subject to
19 cross examination. If you're unsworn, you are not.
20 So what's your pleasure?

21 MS. KANDY SAGERS: Let's make it sworn, I
22 guess.

23
24
25 ///

1 A It would go out in the afternoons. When
2 they came out, they discovered a broken wire at our
3 house.

4 MS. NODA: Thanks.

5 MR. BROTHERS: No questions.

6 JUDGE THURMAN: Thank you, ma'am. Next,
7 Mr. Ben Blair.

8 MR. BEN BLAIR: I have no statement to make
9 at this time.

10 JUDGE THURMAN: All right. Ms. Margene
11 Sagers? Do you wish to make a sworn or unsworn
12 statement?

13 MS. MARGENE SAGERS: A sworn statement.

14
15 MARGENE SAGERS,

16
17 Having been duly sworn, was examined
18 and testified as follows:

19
20 JUDGE THURMAN: For the record, please
21 state your name and address.

22 THE WITNESS: Margene Sagers, 1235 North
23 Main, Rush Valley.

24 JUDGE THURMAN: All right. Go ahead.

25 THE WITNESS: I would like to know why we

1 don't have 911 enhanced. We're paying for it.

2 MS. NODA: Speak up.

3 THE WITNESS: I would like to know why we
4 don't have 911 enhanced. We're being charged for it,
5 I understand. There's a dollar charge for it. Mr.
6 Brothers tells us a reason, AT&T tells us another
7 reason, and US WEST tells us another reason.

8 MR. FULLER: Can I clarify the point?

9 THE WITNESS: Please.

10 MR. FULLER: The county assesses the 50
11 cent per telephone charge regardless of whether you
12 have enhanced or regular 911. The county is
13 collecting those fees to provide its dispatch
14 service.

15 Whether or not it becomes enhanced 911
16 depends upon the county and Beehive getting together
17 to get all of Beehive's telephone subscribers in
18 their database and for Beehive to provide the
19 necessary -- what we call automatic number
20 identification, ANI, from his exchange to the
21 dispatch center. To do that, you have to have
22 special trunking that Beehive and US WEST have to
23 jointly provide to the ANI controller operation,
24 which now is in a US WEST switching location.

25 So those arrangements have not been

1 taken care of. It was my last understanding since I
2 was the E 911 task force chairman for about four
3 years that the database has not been established by
4 Beehive and the county satisfactory to the county's
5 needs for making sure that they've got your correct
6 address and that sort of stuff. So that has to be
7 taken care of. And my understanding is that the
8 county is not aggressively pursuing getting that
9 established. That's just my personal understanding
10 at this point.

11 JUDGE THURMAN: Do you have anything else
12 you wish to say, ma'am?

13 THE WITNESS: Yes. I resent the
14 newsletters that we get that are a personal affront
15 to our community leaders. I feel if Mr. Brothers has
16 a complaint with our commissioners or our mayor that
17 he should address the letter to them and not to the
18 whole community.

19 JUDGE THURMAN: Questions, Ms. Noda?
20

21 CROSS EXAMINATION
22

23 BY MS. NODA:

24 Q Have you had any service problems?

25 A Well, right now we're having problems with

1 our phone with static and the likes.

2 Q And you can't hear the other person because
3 of the static, or it's hard to hear the other person?

4 A (Witness nodded head up and down.)

5 Q How long has that been going on?

6 A Jackie, help me. How long has that been
7 going on? A week or ten days.

8 Q Have you notified someone at the company?

9 A Have you called?

10 UNIDENTIFIED: Have I called? Yeah. No,
11 not reported. No.

12 THE WITNESS: No, he hasn't.

13 Q (BY MS. NODA) You have attempted to call
14 someone?

15 A No, he hasn't.

16 Q He hasn't.

17 MS. NODA: Thank you.

18 JUDGE THURMAN: Questions, Mr. Brothers?

19 MR. BROTHERS: Yes.
20

21 CROSS EXAMINATION

22
23 BY MR. BROTHERS:

24 Q You indicated that you thought the fee was
25 one dollar for 911?

1 JUDGE THURMAN: Do you wish to make a sworn
2 or unsworn statement?

3 THE WITNESS: I'll make a sworn statement.

4
5 CAMILE SAGERS,

6
7 Having been duly sworn, was examined
8 and testified as follows:

9
10 JUDGE THURMAN: For the record, please
11 state your name and address.

12 THE WITNESS: Camile Sagers, 390 West
13 Center, Rush Valley.

14 JUDGE THURMAN: Go ahead.

15 THE WITNESS: Well, I don't have too many
16 complaints with the service, but every time we have
17 to call a cellular number from our phone, we get
18 charged a long distance number to Tooele. And I've
19 got it right here on my bill to show you. And so --
20 like we have a cellular phone, and I have to get a
21 hold of my husband out in the field somewhere in an
22 emergency, we pay for it twice. And that's my
23 biggest complaint.

24 JUDGE THURMAN: Questions, Ms. Noda?

25 ///

1 CROSS EXAMINATION

2

3 BY MS. NODA:

4 Q How long has this been going on?

5 A Since the first of this year. That I
6 remember. First that I noticed.

7 Q And did you attempt to contact the company?

8 A Pardon?

9 Q Did you call the company to report the
10 problem?

11 A Well, no. But I have talked to other
12 people, especially the Vernon people out there, that
13 have had the same thing. But even our bill that we
14 got for this month -- my husband got called from a
15 government employee to check on a controlled burn up
16 above our place. And he was out on the road. And
17 when he had to call him back to tell him that it was
18 okay on his cellular, it's on our bill.

19 MS. NODA: Thanks, that's all I have.

20 JUDGE THURMAN: Questions, Mr. Brothers?

21

22 CROSS EXAMINATION

23

24 BY MR. BROTHERS:

25 Q Miss Sagers, you indicate you had to pay

1 twice to call. Do you mean once for the long
2 distance charge to call and once for the charge from
3 the cellular company as well?

4 A When we -- when I call from my home to get
5 my husband out in the field in an emergency, we pay
6 AT&T for the telephone call, we pay Beehive for the
7 telephone call. So we're paying twice. And it's
8 just a Tooele number.

9 Q And to dial that, do you dial 1 plus?

10 A 1-801. It won't go through. I tried.
11 Just -- oh, this last month I guess it was when they
12 were taking some equipment up past our place, they
13 accidentally -- they had a Caterpillar on the truck.
14 It took the line down going across the street. So I
15 tried to call Beehive on our cellular. And I
16 couldn't without calling long distance. So I went to
17 the neighbors and reported it. Why do we have to pay
18 twice for our own cellular number to go to Tooele?
19 It's a Tooele number.

20 Q I cannot address that right now. But I
21 would like to ask you that you're aware that anytime
22 you dial 1, it's a long distance charge as opposed to
23 just dialing a seven digit number?

24 A But you can't dial the Tooele Number 830.
25 It won't go through.

1 Q That's correct.

2 A It hasn't always been that way, but it's
3 been that way all this year.

4 MR. BROTHERS: Thank you, I have no other
5 questions.

6 JUDGE THURMAN: Thank you, ma'am. I've got
7 an Elaine, and I've got a Joe Parks. Is that -- is
8 Joe Parks -- let me put it this way. Is there a
9 couple, Elaine and Joe Parks?

10 MS. ELAINE AHLSTROM: No, I'm separate.
11 Elaine.

12 JUDGE THURMAN: You're Elaine?

13 MS. ELAINE AHLSTROM: Ahlstrom.

14 JUDGE THURMAN: A-L-T?

15 MS. ELAINE AHLSTROM: Ahlstrom,
16 A-H-L-S-T-R-O-M.

17 JUDGE THURMAN: Ms. Ahlstrom, do you wish
18 to testify this morning?

19 MS. ELAINE AHLSTROM: Yes.

20 JUDGE THURMAN: All right.

21 MS. ELAINE AHLSTROM: I've got my bag of
22 tricks too.

23 JUDGE THURMAN: Do you wish to make a sworn
24 or unsworn statement?

25 MS. ELAINE AHLSTROM: Sworn.

1 ELAINE AHLSTROM,

2
3 Having been duly sworn, was examined
4 and testified as follows:

5
6 JUDGE THURMAN: For the record, please
7 state your name and address.

8 THE WITNESS: Elaine Ahlstrom. 8459
9 Orchard, Rush Valley, Utah.

10 JUDGE THURMAN: Go ahead, ma'am.

11 THE WITNESS: I have -- I'm a widow, and I
12 pay every month. This is my bills. This is my
13 checks that I have right here. One month, I got two
14 bills. They were both different. I called out 611
15 to find out what I should pay. "Oh, I can't open it.
16 Nobody's here. Nobody can tell me." Six times I
17 called. So finally I figured my own bills out.

18 I pay every month. And one month, I got
19 one for \$55 here. I don't appreciate the trash that
20 he writes in my bills. If he's got something else to
21 say to me, he can either meet me personally. But if
22 I got a letter like that in every bill, the garbage
23 would go up to get rid of it. This is a small town.
24 It's a clean town. I can't see that Art Brothers has
25 contributed to our town to make it look better.

1 forthcoming.

2 Also, up until the first part of this
3 year, we were able to dial 830 numbers with prefix
4 830 for no charge. Now it's been fixed so that the
5 only way we can access those numbers is to dial a
6 long distance call. A lot of these 830 numbers
7 belong to the county emergency people. And we have
8 to dial long distance to get in touch with these
9 people on their cell phones.

10 I've also had problems getting phones
11 fixed. I called the -- well, it was the -- last part
12 of May or the first part of June to let them know
13 that the box that's out in front of our house that
14 contains the lines for the telephone was wide open,
15 and there were wires sticking out all over. And they
16 said, "We'll let them know, they'll get to it." It's
17 been approximately I would say two months ago that
18 they finally showed up to do that. We had several
19 rain storms in between, and our phones would go
20 staticky and we couldn't hear. And I don't think it
21 was really good for the system to have that box full
22 of water. And it was. That's my statement for now.

23 JUDGE THURMAN: Thank you, ma'am.
24 Appreciate it. Mr. Larry Russell? Wish to make a
25 sworn or unsworn statement?

()

1 shot your wire with a shotgun. There's a BB between
2 the two wires. It could be a bad connection
3 somewhere."

4 I went out and bought two telephones,
5 hooked them up, I still have static in the phone
6 line. Some days it's so bad I can hardly hear the
7 person on the other end. And when I call Salt Lake
8 and talk to my wife, before I even say hello, she
9 says "Hi, hon." I said, "How did you know it was
10 me?" "I can tell by the static on the phone line."
11 Every time. And it's kind of a give away before we
12 even talk to whoever it is who calls. And it's
13 really bad. And it's been like that for a long time.
14 Some nights it's not as bad as other times. But
15 sometimes -- sometimes I've had to go down to my cell
16 phone and call somebody because I can't hear them on
17 my land line phone.

18 Also, we can't call 900 numbers.
19 There's been several occasions I've needed to call a
20 900 number for different things, and I can't get out
21 on our Beehive Telephone system with that. So I have
22 to go to Tooele and use my sister's telephone to make
23 those phone calls.

24 I was getting a lot of wake-up phone
25 calls like 2, 3, 4, 5 o'clock in the morning.

1 Somebody would be calling me, they'd let it ring
2 until I answered it, then they'd hang up on me. And
3 this went on for a couple of years. I mean,
4 constantly. So I went and bought a Caller I.D. box.
5 I thought, I'll put this Caller I.D. box and find out
6 who it is calling me waking me up at these ungodly
7 hours in the morning. Then you can't go back to
8 sleep after somebody's harassed you.

9 Well, I got a Caller I.D. box, brought
10 it home, plugged it in, hooked it up, it wouldn't
11 work. So I called Beehive Telephone. I says, "I
12 can't get my I.D. box to work." They said, "Well,
13 they won't work on our system. It's not set up for
14 Caller I.D." I says, "So when do you plan on having
15 it functional so I can find out who's making all
16 these phone calls at 2, 3, 4, 5 o'clock in the
17 morning?" They said, "We don't plan on making it
18 functional. It's just not going to be in our
19 system."

20 So I took the Caller I.D. back to Home
21 Depot. Luckily, they refunded my money for it. I
22 still don't have any idea who's calling me at 3, 4, 5
23 o'clock in the morning to wake me up then hang up on
24 me.

25 Also my cell phone. I get charged

1 twice. If I call -- if I'm down in the field and I
2 call home to talk to my kids, I get charged a long
3 distance phone call at my place for the cell phone.
4 Which is a Tooele cell phone number. And I had it
5 set up -- I got it last year. I had it set up so
6 that it wouldn't be long distance calling locally
7 here. It make me feel bad if I'm down in the field
8 working, I need to call one of the kids at home that
9 work for me to have them come down to work, I'm
10 charging their parents with the long distance phone
11 call. Which I think is rude on my part. That if I'm
12 to call them from the field on my cell phone, they
13 have to pay for it. And it makes me feel bad.

14 What can we do about it? When I signed
15 up for that cell phone, they asked me if it was for
16 the Tooele area or the Salt Lake area. I said, "I
17 want it from the Tooele area." And we're still
18 getting long distance phone calls for a Tooele
19 number.

20 Also, I've been double billed for phone
21 calls for certain calls. It's been about two or
22 three years ago, I picked up my bill one time. I
23 don't figure each bill. But one day I sat down and
24 went through the bills. I'm getting double charged.
25 It come up to about \$12 difference. I called Beehive

A By Beehive.

Q And who did you talk to about your double billing problem? \$12 billing problem?

A Fran. I think it was Fran. If I remember right. It's been two or three years ago since I did that. In my mind, it was Fran I talked to.

Q They told you they would correct it?

A They did.

Q It was never done?

A Never corrected it.

MS. NODA: That's all.

JUDGE THURMAN: Mr. Brothers?

MR. BROTHERS: One moment, please.

CROSS EXAMINATION

BY MR. BROTHERS:

Q Larry, have you -- what comments have you gotten when you've called the office to ask about not being able to call 900 numbers? Just, we don't do it?

A I didn't ever call and ask about the 900 numbers. I asked them about the Caller I.D. box.

Q That was recently?

A Yeah, it was the last -- last winter.

1 Last -- last January or February, sometime through
2 there.

3 Q Okay. You indicated -- I thought I heard
4 you say that when you were down in the field and you
5 wanted to call home or somebody locally that you got
6 charged two times for that call. Is that correct?

7 A That's correct.

8 Q So how -- you take your cell phone, you
9 dial the number, and you tell it to go dial it, and
10 you call -- what do you dial? Just seven digits?

11 A Uh-huh. 837 -- if I dial my home,
12 837-2296, and it rings through.

13 Q You get a bill from --

14 A I get a bill --

15 Q From the cellular company?

16 A From cellular, and I get a bill from
17 Beehive. For one phone call. I can dial --

18 Q Do you have -- I'm hesitating, because I
19 haven't the slightest idea how that can happen. I'd
20 love to be able to have that data from your cellular
21 company. But we don't bill you for calls from the
22 cellular. We have no way of tracking it. Otherwise,
23 we'd send the bill to whoever your cellular company
24 is. So I'm just trying to clarify that. Would it be
25 possible that you could see that I got a copy of one

1 of those bills? Or tell me what month or something
2 it's on so that we can see that?

3 A Sure.

4 Q I can assure you that I don't believe
5 Beehive charges you for -- to receive cellular calls.
6 I don't know how we would do it. We do charge when
7 you dial 1 plus to call your cellular if you're out
8 in the field and the house wants to call you. But
9 that's one of the issues that brought this hearing up
10 was the cellular charge arrangements and how we can
11 be compensated for that. So I have no questions from
12 your house to your cellular. From your cellular to
13 the house is the thing that I'm really interested in
14 seeing if you can --

15 A I'll see if I have some records.

16 Q That would really be helpful if you can do
17 that.

18 A Okay.

19 Q The \$12 credit from two or three years ago,
20 if you were promised that, I'll see that that's taken
21 care of.

22 A I'm not going to worry about \$12.

23 Q I'm going to worry about it. But anyway, I
24 even circled it in red. Different rates for same
25 time of day calls. Was that this past summer?

1 A Yeah. It was -- it's been happening quite
2 a bit. Vikki, do you remember when I brought those
3 bills down?

4 MS. VIKKI HANSEN: The bill you gave me
5 that I can't find was a July bill. And that showed
6 two calls that were doubled. And then also, I think
7 you're getting kind of confused with the cell thing.
8 It showed your house calling to your cell phone, and
9 you were charged on that. It didn't show one that
10 you called from the cell phone to your house but from
11 your house to your cell phone.

12 THE WITNESS: Maybe that's what it is. I
13 might be wrong on that.

14 MS. VIKKI HANSEN: I had that bill for
15 evidence. With all this paperwork, I can't find it.

16 THE WITNESS: I may be wrong on that. I
17 thought I was being charged.

18 MS. VIKKI HANSEN: There's several from
19 your house to your cell phone.

20 Q (BY MR. BROTHERS) The calling or --
21 you've received reports from various and sundry
22 people I gather from your testimony that when they
23 have tried to call your house, and these are long
24 distance calls, that they're getting a busy signal?

25 A I've done that personally myself.

Q And counsel for the Division asked you if it was a faster than normal busy tone. And you indicated, no, it was a regular busy tone. I wanted to clarify that.

A Yes. There's several times that I know nobody's home. I've been in Salt Lake, called home --

Q Indicates your phone is busy?

A Yeah.

Q And you've indicated that your answering machine, sometimes the whole tape is loaded with a ticking?

A Yeah.

Q What we call a tick tone?

A Yeah. It --

Q It's like a clock ticking?

A Tick, tick, tick, tick for the whole tape.

MR. BROTHERS: I have no other questions, thank you very much. I'd like to talk to you later, though, about the problems. I think I can help you out a little bit.

JUDGE THURMAN: Thank you, sir.

MR. FULLER: On a point of clarification, I've discussed the billing of the cellular companies to the Rush Valley and Tooele customers. They do not

charge long distance charges when a call terminates locally within the Tooele extended area service area, which includes Rush Valley, Vernon, Tara, Dugway, Grantsville. The whole area. It's always a local call.

JUDGE THURMAN: All right. Thank you, sir. Jane Blair? Ms. Jane Blair? Do you wish to make a sworn or unsworn statement, ma'am?

MS. JANE BLAIR: Sworn.

JANE BLAIR,

Having been duly sworn, was examined and testified as follows:

THE WITNESS: This is going to be a little of history, and I don't want to bore anybody with this, but I think it stems to everything that's going on right now.

MR. BROTHERS: Excuse me --

THE WITNESS: Excuse me --

MR. BROTHERS: Could you identify yourself, please? Name, address, phone number?

THE WITNESS: Jane Blair. 9012 South Aarelanno, A-A-R-E-L-A-N-N-O, 837-2375. Okay. We

1 would not come across our property unless we were
2 hooked up to it. You wanted to know why I was going
3 to stop it. You need permits and everything else to
4 go up that road, and he was going to have to pay for
5 it. Your answer was, why are you trying to stop
6 this? That night you called Todd Bibb because that
7 night --

8 JUDGE THURMAN: Ma'am --

9 THE WITNESS: -- he showed up in my kitchen
10 and is accusing us of stopping it, and we're not.
11 We're dealing both ways here. So now I want to know,
12 and I -- what are the repercussions going to be after
13 this meeting today? What are their bills going to be
14 like? What's going to happen to us now?

15 JUDGE THURMAN: Based on what comes out at
16 this hearing, I will make a recommendation to the
17 Public Service Commission which might include fines
18 if I find that -- on the company if I find the
19 service has been substandard and the company is
20 negligent in any way in fulfilling. There may be
21 orders to improve certain aspects of the service.
22 That will depend on what comes out in the evidence
23 and how I assess it.

24 THE WITNESS: Even last night, my husband
25 had to go out and use the cell phone because he was

1 not able to use a 1-800 number when he got called
2 out.

3 JUDGE THURMAN: Questions?

4 MS. NODA: No.

5 JUDGE THURMAN: Mr. Brothers?

6
7 CROSS EXAMINATION

8
9 BY MR. BROTHERS:

10 Q What was the 800 number?

11 A I don't know. It was -- you can talk to
12 him.

13 MR. BROTHERS: No further questions.

14 JUDGE THURMAN: Thank you, ma'am. Connie
15 Hickman?

16 MS. CONNIE HICKMAN: I don't want a sworn
17 statement.

18 JUDGE THURMAN: Okay. State your name,
19 address and phone number.

20 THE WITNESS: Connie Hickman. 1173 North
21 Church, 837-2293. The stuff that's already been
22 discussed, I just was concerned about having the fee
23 assessed to our phone bill when calling a cell phone
24 number. Since then, we've had our cell phone number
25 changed to a Salt Lake line so that we can call -- we

1 might as well, because we were getting called --
2 charged for the Tooele area code. Or the Tooele 830
3 number.

4 Also, we had -- every day at 4 o'clock,
5 we had hang-up phone calls. This lasted for probably
6 four or five months. Every day at 4 o'clock, we
7 would get -- the phone would ring, and we would pick
8 it up, and it was a double ring, and we would pick it
9 up and say hello and wouldn't get anything, and it
0 would hang up. We haven't had any for probably the
.1 last month. And then our phone does go out a lot.
.2 Mostly when it rains and stuff like that. That's
13 about all the complaints I have with my phone.

14 JUDGE THURMAN: Thank you very much, ma'am.
15 Kim Shaeffer? Do you wish to make a sworn or unsworn
16 statement, ma'am?

17 MS. KIM SHAEFFER: It doesn't matter.

18 JUDGE THURMAN: Which?

19 MS. KIM SHAEFFER: Unsworn I guess is fine.

20 JUDGE THURMAN: All right.

21 THE WITNESS: Kim Shaeffer, 985 North Main,
22 Rush Valley, 837-2218. We have lived here about a
23 year.

24 MR. BROTHERS: Could you say your phone
25 number?

1 THE WITNESS: 837-2218. We've lived here
2 about a year. We came from Tooele, and since we've
3 moved here, we've had nothing but problems with the
4 phone system. The calls are extremely staticky.
5 When I call Tooele, I have to have them call me back.
6 Because they can't hear me, and I can't hear them.

7 We've had a problem with the cell phone.
8 My husband and I both have cell phones now because of
9 the phone system. We can't -- let's say we can't get
10 calls in. A lot of times the lines are down. If we
11 dial out, we'll get a busy signal before the call is
12 even completed, before we even finish dialing the
13 number.

14 Now we're being charged for our cell
15 phones to call a Tooele number, and they're both
16 Tooele prefixes. So we're being charged from the
17 cell phone company, plus we're being charged from
18 Beehive Phone Company. And that's for a call made
19 from our home phone to Tooele. It's a long distance
20 call.

21 When I've called customer service for
22 billing inquiries, they give me the run around. I've
23 never gotten a straight answer. I have called a
24 number of times to find out what the hourly rate --
25 the permanent rate is on the Beehive system, and

1 A It's Peggy Egbert, Division of Public
2 Utilities.

3 Q And by whom are you employed and in what
4 capacity?

5 A I'm employed with the State of Utah,
6 Division of Public Utilities. And I'm a rate
7 engineer and analyst.

8 Q Did you cause to be filed on November 1st a
9 summary of your testimony in this case?

10 A I did.

11 Q And could you please give just a brief
12 outline of that summary?

13 A Okay. I filed this show cause -- this show
14 cause on July 23rd, 1996. Because we felt that the
15 service, the quality of service out here in Rush
16 Valley, was not what it should be according to the
17 law. Commission Rule 746-240-4. And also the Utah
18 Code 54-3-1.

19 And during the months of March, April
20 and May, I was receiving constant calls about the
21 same problems. And doing the investigating found
22 that the problems that have been discussed today were
23 irritating the customers, and something had to be
24 done. Also, the billing, as they have described, was
25 not according to Rule 746-240-4. And we felt that

1 that needed to be investigated and put on the record.

2 All of the allegations that have been
3 discussed here today have also been substantiated via
4 petitions, personal experiences, as for myself in
5 contacting the people out here and talking with them,
6 I have experienced static on the lines, and also I
7 have experienced ticking on the lines, and I have not
8 been able to get through to some of the people. I
9 either get a ring delay or else no connection. I
10 have to hang up and call back. And this has happened
11 several times during my communication with them.
12 It's the Division's recommendation that -- do you
13 want me to go through this?

14 Q Yes.

15 A It's the Division's recommendation that
16 Beehive Telephone Company is in violation of the Utah
17 laws, and we're asking that Beehive correct their
18 billing problems by the next billing cycle. And the
19 Division will conduct a random sample survey of all
20 Beehive's customers to assure compliance.

21 We're asking that they correct the
22 deficiency in their network facilities, correct
23 transmission signal to perform at industry standards,
24 correct the network problems that create and exchange
25 call completion delays, and correct facility and

1 switching problems that create call cut-offs.

2 We're asking that Beehive establish a
3 standard trouble reporting procedure that is
4 accessible to all its customers. The trouble
5 reporting center and procedure will be implemented no
6 later than 30 days after the order is issued.

7 The reporting procedures will include
8 the following: Provide a dedicated 800 number
9 available seven days, 24 hours a day. Establish and
10 maintain a centralized trouble and reporting location
11 for standardized ticketing format and trouble
12 disposition. For the ticketing format, include time,
13 date the request was taken, time the trouble was
14 cleared, and include time and date -- excuse me. And
15 explanation of the trouble and what action was taken
16 to clear the trouble. Access to a centralized
17 trouble reporting center will be available to
18 Beehive's total customer base for a period of 60
19 days.

20 File a copy of all the trouble reports
21 and the disposition of the trouble with the Division.
22 In parentheses, no summaries. The report will be
23 issued to the Division every two weeks and will
24 include all 14 days. This report will be in the
25 Division's office no later than three working days

1 following the 14 days. File a monthly monitoring
2 report with the Division. Include all information
3 that is identified on the attached example. This
4 monitoring report will indicate to the Division that
5 the type of service Beehive is providing.

6 We're asking Beehive notify customers in
7 writing prior to disconnection of service. And we're
8 asking that Beehive will adhere to the Public Service
9 Commission rules as explained in Rule R746-340-n.

0 Q Is there a monitoring report that should be
1 attached?

2 A There is.

13 Q Give that to the reporter. We'll need to
14 have that attached to her summary. That is the
15 monitoring report that we ask Beehive follow.

16 MR. BROTHERS: May we have a copy of that,
17 please?

18 MS. NODA: Yes. We have copies.

19 THE WITNESS: In addition to this report,
20 there's another section that be added to this, which
21 is the 24 hour -- excuse me, the service carried over
22 48 hours. So that we can track that also.

23 Q (BY MS. NODA) And is it the Division's
24 position that these standards be held accountable by
25 the company, and if not, that the company be fined if

they're found in violation?

A Yes.

Q And is this similar to what the Division has recommended with US WEST?

A Yes.

Q Just some follow-up questions relating to testimony earlier given by public witnesses. There was a question, a concern relating a fast -- excuse me, a busy signal. When a person tries to call. I believe it was Mr. Russell's house. What's your opinion as to why that's happening?

A There's several things that could happen. It could be that the switch is full or that the trunks are full also. You could get it either way. And in reviewing, I have a traffic study that I ran on the trunks. And in reviewing those trunks, I found that the interLATA trunks, during the busy period, which is from 9:30 to 8, I have found that there's overflows on that period of time, and there's also overflows from 8 o'clock until about 11:30. And so to me, that indicates that Beehive needs to have additional trunks.

Q Have you discussed this with the company?

A I haven't at this point.

Q What about the switching?

1 A The switching, the problems that the people
2 are discussing today are -- could be due to the
3 switch. And we have talked with Art about -- Mr.
4 Brothers about the switch. And I have been told that
5 that switch will be replaced. So we just need to get
6 a time and date for that.

7 Q As to the static problems, what's your
8 opinion as to why they're having static problems?

9 A The static problems are probably due to the
0 transmission equipment. It could either be the
1 transmission equipment on the lines, or it could be
2 the outside plant wiring that needs attention.
3 Because it's so widespread, I would say it's probably
4 in the transmission equipment.

5 Q And is this something that could be readily
6 fixed by the company?

7 A Uh-huh. It would probably have to be
8 replaced.

9 Q Is there any time --

10 MR. BROTHERS: Excuse me. I didn't hear
11 the reply.

12 THE WITNESS: I said, it would probably
13 have to be replaced.

14 Q (BY MS. NODA) Was there any time frame
15 set for this?

A I haven't spoken with Mr. Brothers about replacement of that.

Q Have you received any complaints about billing in the last month?

A I have. We received a letter which discusses in detail the billing problems that were tracked. And this is from one of Beehive's other customers. And some of the things that they discussed were things that have -- that validate the things that have been discussed here today. And all calls were off a minute. They were -- there was a delay in the billing. Bills were carried over to the next month and not credited. They were charged for non-answer and busy signal calls --

MR. BROTHERS: Objection. Best evidence.

JUDGE THURMAN: Do you have the actual records, Ms. Egbert?

THE WITNESS: I do.

JUDGE THURMAN: Why don't you make those an exhibit.

MS. NODA: We'll make that part of her exhibit.

THE WITNESS: I've only got one copy. Can we wait until we get back to the office?

JUDGE THURMAN: Yes.

Q For the record, you are an engineer?

A (Witness nodded head up and down.)

Q Yes?

A Yes.

Q With respect to DPU 2, you indicated that you had knowledge of busy periods when trunks were not available. Do you have a study from US WEST on that --

A I just received it Friday, yes, I do.

Q And was that prepared at your request by US WEST?

A Yes, it was.

Q Is it normally the procedure for US WEST to keep track of capacity of trunk groups?

A If they're requested to. They keep track of their own trunks. But I specifically requested that they run a study. They don't run studies just arbitrarily. I requested that this study be run, so they ran it --

Q Do you have a copy of that study?

A I do. It's here.

Q I'd like to have a copy of it.

A Definitely.

Q Okay. The study indicated -- and this was both one for the EAS trunk groups, which Beehive has

21 between Tooele and here. And 21 two way LATA
trunks --

A I did it by trunk group. I did it on trunk
group 228, 206, 63, and 64.

Q Are those US WEST numbers?

A Those are US WEST numbers. For your
trunks.

Q And how many trunks are involved on those?

A They didn't give me the number of trunks.
They ran them on those trunk groups, and then they
gave me the total output for the trunk individually.

Q Would you be so kind as to tell me those
trunk group numbers again?

A Excuse me. Trunk group 228.

Q 220?

A 228. Trunk group -- let's see if they gave
it to me. Then I think it was 206. Just a minute.
206. 63 and 64. And 63 and 64 are your direct Rush
Valley trunks. And it's -- 64 is the one that is the
intraLATA trunks, and there's the ones that are
overflowing.

Q Okay. On which of these four trunk groups
are the long distance circuits that place and receive
calls within Utah? Basically?

A That would be 206 -- 228 and 206.

Q And how many circuits are involved there?
Can you tell me?

A They didn't list the number of circuits.
It's just the usage on the group as a total. The
usage, the number of attempts, the number of
overflows, and the maintenance on those trunks.

Q Then 63 and 64 are the EAS circuits to
Tooele?

A They're the Rush Valley to Salt Lake direct
trunks.

Q Did you have a study done for the EAS
circuits?

A Somebody help me on this. Are 63 and 64
the EAS trunks?

UNIDENTIFIED: Yes.

Q (BY MR. BROTHERS) 63 and 64 are not Salt
Lake direct, they're EAS --

A US WEST referred to them as the direct
trunks.

Q Are they two way?

A Uh-huh.

Q For the audience, EAS, what we're talking
about are the calls that you make, free calls back
and forth from Grantsville, Dugway, Tooele to Rush
Valley and Vernon?

1 A Uh-huh. And 63 is okay. Which is the
2 interLATA trunk. The intraLATA trunks are the ones
3 that are overflowing.

4 Q I'm confused, Peggy, I'm sorry. I
5 understood you to say that 228 and 206 --

6 A Those are your AT&T trunks.

7 Q Those --

8 A 228 and 206 are your AT&T trunks.

9 Q 228 and 206 is AT&T?

10 A Uh-huh.

11 Q Okay. Are they okay?

12 A (Witness nodded head up and down.)

13 JUDGE THURMAN: Please answer audibly.

14 THE WITNESS: I'm sorry, yes.

15 Q (BY MR. BROTHERS) And 63 is the LATA --

16 A The interLATA.

17 Q Okay. EAS then is 64?

18 A Yes.

19 Q All right. We'll exclude the 228 and 206,
20 because you indicate there's no problems with those?

21 A Nor 63.

22 Q The duration of this study was how long?

23 A Five days.

24 Q Five days?

25 A Uh-huh.

1 Q And it indicated that all the trunks were
2 busy what periods?

3 A From generally 9:30 -- 8:30, 9:30, 10:30 --

4 Q A.M. or P.M.?

5 A A.M. Then from 8 to 11:30 P.M.

6 Q One hour in the morning and one hour in the
7 afternoon?

8 A No. There was different ranges on
9 different days. So it was like for the range, it was
10 from about 8 to 11 A.M., then from 8 to about 11:30
11 P.M. And it was different for every day.

12 Q Okay. On the EAS, was that about the same
13 there too?

14 A Uh-huh.

15 Q Yes was the answer?

16 A Yes. Excuse me.

17 Q So sometime in that -- in the morning and
18 sometime in the afternoon, 5, 6 o'clock, the study
19 that you asked US WEST to do showed that there
20 were -- all trunks were busy a couple of times a day
21 for a floating period?

22 A That's right.

23 Q Okay. And my understanding of your
24 testimony earlier was that you don't -- I asked you a
25 question something like, and I don't want to burden

1 the record with repeating it, but I want to clarify
2 it, that US WEST doesn't as a matter of routine do
3 these kind of traffic studies?

4 A On your trunks or their trunks? They
5 routinely --

6 Q I would assume if they're joint that it
7 would be theirs as well. But help me out. What do
8 they do, and what do they not do?

9 A When I asked for the information, they did
10 not have any information to give me. And so I
11 requested a special traffic study to be done. And so
12 that indicates to me that they don't -- didn't --
13 hadn't done a traffic study.

14 Q Okay. We gave you at your request a
15 three-day period, I believe, 24 hours a day, of all
16 the calls out of our system.

17 A Uh-huh.

18 Q Both EAS and long distance, AT&T included.

19 A Uh-huh.

20 Q Did you do a study of that data?

21 A I did. As I -- I tried to compare what you
22 had given me, what Beehive had given me, compared
23 with what US WEST gave me for this data request. And
24 I also had them pull the same days that I asked you
25 for in August. And I could not get your -- your

1 information that you gave me to align with what US
2 WEST had given me. I couldn't find any comparisons.
3 I couldn't make the reports match. And so what I did
4 was took the October traffic study and the August
5 traffic study that US WEST gave me and looked at
6 those two, because they were like types of
7 information. And so that's how I came to my
8 conclusion.

9 Q Were you able to tell from the information
10 that Beehive gave you that there were similar busy
11 periods?

12 A No. And the reason is that Beehive
13 summarized theirs, and I couldn't get the time frames
14 to match. Because they were different time frames
15 than what I had for US WEST.

16 Q I'm speaking specifically to the Rush
17 Valley Vernon data which was raw, every single call.

18 A Uh-huh. And I -- and likewise, the
19 information that -- I couldn't get it to match. I
20 couldn't get like information from your report to
21 their reports. And that -- so I wasn't able to use
22 that. The only -- I just had to use what US WEST
23 gave me, because I couldn't make it -- couldn't make
24 it match.

25 Q So the information that Beehive furnished

to you, you really have not used?

A I've looked at it, but I didn't use it. Because I couldn't get it to match.

Q Without referring to the match, standing alone, did the data show busy periods?

A It did.

Q All trunks busy?

A Yes.

Q Are there any rules with the Commission with respect to quality of transmission on lines?

A Yes. Because I'm pretty new, I still don't have those down. But in 54 -- let's see. The rules are for telecommunications, 54-3-1. And in that, it explains the types of standards that should be followed without saying specifically, but it states that the telephone companies should provide adequate service for people to make telephone calls. And that -- it goes into repair, and it says that they should have it repaired, the service repaired, within 48 hours. And it goes through specifics. And if you want me to, I can go through and read those also.

Q What's US WEST's policy with respect to repairs in rural areas, if you know?

A US WEST is held to repairing within 48 hours. And they are currently under review, and new

1 rules are being developed as we speak to align and
2 make no difference between rural and urban.

3 Q Are you aware that in Wendover and
4 Hanksville, for instance, they only repair phones
5 every Wednesday?

6 A I am. And that's under -- we are reviewing
7 those right now.

8 Q In that case, the phone could be out seven
9 days before it's repaired?

0 A The most -- during the review, the most
1 they were out of service was three days.

2 Q It took ten days to fix ours in Hanksville.
3 Poor quality transmission on lines. You say that the
4 rules say that something should be done. Can you
5 give me an engineering definition of poor quality
6 transmission? Is there a standard for quality of
7 transmission?

8 A Yes. There is an engineering standard.
9 And I don't have that with me.

10 Q It's in the rules?

11 A No. It's not in the rules. But that's why
12 we're asking in our recommendation that you follow
13 the engineering standard.

14 Q Okay. There are no engineering standards
15 in the rules adopted by the Public Service Commission

1 with respect to quality of line transmission? I'm
2 not talking about industry standards or Bell system
3 standards. I'm referring only to what's in the rules
4 of the Public Service Commission.

5 A I think I'll defer to Larry Fuller on this
6 question, because I'm still getting acquainted with
7 the rules. And so I will defer to Larry on this.

8 MR. BROTHERS: Laurie, are you going to
9 have Larry testify?

10 MS. NODA: Yes, we can have Mr. Fuller
11 testify on that.

12 Q (BY MR. BROTHERS) Number 5 on the front
13 page of DPU 2, which is the bottom of the page, you
14 indicate repair problems not cleared in a timely
15 manner.

16 A Uh-huh.

17 Q And again, in the rules --

18 A A timely manner is 48 hours. Within 48
19 hours. There is a distinct rule on that.

20 Q Would you be so kind as to tell me what
21 that is?

22 A Let me get my book. It says provision
23 shall be made to clear other out of service repair
24 trouble not requiring unusual repair within 48 hours
25 of the report received by the utility unless the

1 customer agrees to another arrangement.

2 Q And what rule -- what is that, please?

3 A That's in 746-340-6. Number 3.

4 Q And again, it said -- I apologize. I
5 missed one word in there while you were reading it.

6 A It says provision shall be made to clear
7 other out of service trouble not requiring unusual
8 repair within 48 hours of the report received by the
9 utility unless the customer agrees to another
10 arrangement.

11 Q Is there a definition for what unusual
12 repair means?

13 A No, there's not.

14 Q And that evidently is a part of another
15 rule above it --

16 A It's on how companies should handle
17 customer trouble reports.

18 Q Thank you. Improper billing procedures,
19 which is Page 2 Paragraph 6 of DPU 2. This goes to
20 my earlier questions where you read rules, and we got
21 into a discussion. And you indicate there are some
22 items attached to this for further discussion. Of
23 improper billing procedures. Would you clarify for
24 me on this exhibit which ones you refer to here where
25 you say refer to Rush Valley petitions that are

1 attached for further explanation?

2 A That's --

3 Q The -- I don't want to belabor this,
4 because Judge Thurman has indicated not. And are the
5 improper billing procedures that are on your
6 Paragraph 6 those that you read into the record or
7 within that sphere of the rules that you read
8 earlier?

9 A It's the rule in total. Not just what I
10 read.

11 Q Okay. Now, you attached to DPU 1 a sheet
12 that purports to be some kind of a quality monitoring
13 report. Is this a standard -- this was developed for
14 what? For US WEST?

15 A This was developed for US WEST.

16 Q And you are proposing that Beehive adopt
17 this similar report?

18 A With an addition to that report which
19 covers service repaired or carried over 48 hours. So
20 there will be -- that will be modified to include
21 that. And I might mention that this -- this will be
22 a normal procedure for all companies in the near
23 future.

24 Q But it's not at this time?

25 A It's not at this time. Just US WEST at

1 this time.

2 Q Is US WEST making reports of repairs that
3 take over 48 hours?

4 A They are. We've just finished an audit,
5 and we're running a continual check on that.

6 Q Would you just give me one moment, please?
7 With response to held orders, would you tell me what
8 EOM means?

9 A End of month.

0 Q Okay. What does missed commitment mean?

1 A On provisioning, missed commitment means
2 that you don't -- that you commit to a time, and then
3 you miss that commitment.

4 Q Time meaning a day?

5 A Time, day and hour. Whatever the
6 commitment is.

7 Q What is BSM?

8 A That's -- that is US WEST's code. That
9 will be taken off.

0 Q What does H and PS mean?

1 A Home and personal services. That would
2 have to be modified. This is an example of what type
3 of monitoring report that you would have except that
4 some things definitely would have to be --

5 Q What does SEG mean?

see some kind of a report like this generated that Beehive would do, and I presume that you're asking all phone companies in the state to do this as well?

A We will be. We will be. We have not yet. We have only asked yourself and US WEST because of the problems in both areas.

Q You indicated that you've been working on this for, what, two or three months now?

A On this report?

Q No, on the Beehive case.

A I've been working on it since last year, actually. Since about this time last year.

Q There has been characterized by the testimony that there's static on the lines.

A Uh-huh.

Q Would it be -- would you agree that a fair characterization of that would be white noise?

A White noise? It could be.

Q A low level hissing?

A I haven't -- I've only heard the static, and the static to me as I've heard it wouldn't be a hissing. I wouldn't classify it as a hissing. I classified it as more a break-up of the transmission signal.

Q The voice breaking up?

1 JUDGE THURMAN: I'm going to receive them,
2 Mr. Brothers. I'm overruling your objection.

3 (Whereupon Exhibits DPU 1, 2 and 3
4 were admitted into evidence.)
5

6 LARRY FULLER,
7

8 Called as a witness, having been duly
9 sworn, was examined and testified as
10 follows:
11

12 DIRECT EXAMINATION
13

14 BY MS. NODA:

15 Q Please state your name for the record.

16 A My name is Larry F. Fuller, I'm a technical
17 consultant for the Division of Public Utilities,
18 Department of Commerce.

19 Q And Ms. Egbert was asked a question
20 concerning the transmission standards that telephone
21 companies are held to. Are you aware of the rule and
22 Commission's rules that applies to that transmission
23 standard?

24 A The rules as they apply to all
25 telecommunications carriers is contained in

1 R746-340-5. Excuse me, 340. And part of that
2 involving dash 3 is engineering. And then there's
3 also dash 5 is for maintenance of service and trouble
4 reports and so forth. It requires that all telephone
5 companies provide and engineer their service in
6 accordance with the industry standards. It's in the
7 same section that Ms. Egbert was earlier referring to
8 on the 48 hour rule.

9 MS. NODA: That's all we have for Mr.
10 Fuller at this time.

11 JUDGE THURMAN: Questions?

12 MR. BROTHERS: Yes.

13
14 CROSS EXAMINATION

15
16 BY MR. BROTHERS:

17 Q What are the standards on poor quality
18 transmission?

19 A Industry standards?

20 Q That's been testified to by the Division in
21 this proceeding?

22 A They be maintained at industry standards.
23 No more than six DP loss on local loops. Zero DP
24 loss on interoffice facilities are industry
25 standards.

1 Q And that's it?

2 A It requires that each company adopt a
3 program of tests, inspections, preventative
4 maintenance aimed at achieving efficient operation of
5 the system and running safe, adequate and continuous
6 service.

7 Q That's it?

8 A (Witness nodded head up and down.)

9 MR. BROTHERS: Thank you, no questions.

0 MS. NODA: On redirect, I have one
1 question.

2
3 REDIRECT EXAMINATION
4

5 BY MS. NODA:

6 Q Are these Bellcore standards?

7 A They are designed to be industry standards
8 that Beehive and all of the other companies have
9 agreed to maintain their services at. And in
0 engineering and designing their network to do
1 maintenance. Specifically, when we developed this
2 rule, we received assurance from all of the companies
3 that participated in creating this rule, I believe
4 Mr. Brothers participated in it, or he had the
5 opportunity to do so, we left them purposely at the

1 flexibility of the company, because they best know
2 what their engineering standards are. When we
3 attempted to insert details of what those
4 performances ought to be --

5 MR. BROTHERS: I think we're getting beyond
6 the realm -- excuse me, objection. We're getting
7 beyond the realm of the redirect.

8 JUDGE THURMAN: I find it helpful for him
9 to go ahead and finish.

10 THE WITNESS: The companies indicated to
11 the Division and the Public Service Commission that
12 the standards change based upon the technology used.
13 Therefore, to insert detailed information as it
14 applies to analog switching and analog transmission
15 would change over time to digital. Digital was
16 changing into fiber technology. The fiber technology
17 performance requirements was even more detailed.

18 We agreed with the companies that so
19 long as they could agree what their industry standard
20 for the types of technology that they provided, then
21 we would not require it be put in the rules.

22 MS. NODA: That's all I have.

23 JUDGE THURMAN: Recross, Mr. Brothers?

24 MR. BROTHERS: No.

25 MS. NODA: Could we go off the record?

DIRECT EXAMINATION

BY MS. NODA:

Q Please state your name.

A Kent Sagers.

Q Give us your address.

A 339 North Main, Vernon.

Q And your telephone number?

A 839-3424.

Q And did you have an opportunity to review the prehearing summary that was filed in this case on November the 1st?

A Yes.

Q And did you have any corrections or changes to that?

A No, that's it.

Q Could you please give us a brief summary of this testimony?

A Yes. My summary is mainly to do with the cellular phones. We purchased a cellular phone two years ago. And in -- I believe it was March or April that we started to receive billing from Beehive for the calls that we made from our Beehive phone to our cellular.

I called the Public Service Commission,

1 talked with Mr. Fuller. He told me an 830 number was
2 a local number, that they shouldn't be calling --
3 shouldn't be charging us for that. I called Beehive
4 and talked to the people in the office and asked them
5 why they were doing it, and they said it was under
6 direction of Mr. Brothers.

7 Later on -- at first when he started
8 charging us, we were just dialing the seven digit
9 number. Later on, we had to dial the 1-801 in order
10 to access our cellular phone.

11 I reported -- I was working with the
12 Public Service Commission, communicating back and
13 forth, sending them information. At one time, they
14 indicated that the problem was taken care of. It
15 still -- we are still getting billed for our cellular
16 phone calls from our Beehive Telephone calls.

17 Q Does that conclude the summary of your
18 testimony?

19 A Yes. I do have my phone bills if you want
20 more evidence.

21 Q How many do you have? We should probably
22 maybe take one.

23 A I can probably --

24 MR. BROTHERS: For the record, we'll submit
25 that we charge for calls to 830.

1 JUDGE THURMAN: All right.

2 MS. NODA: That's fine. We have no further
3 questions for Mr. Sagers.

4 JUDGE THURMAN: Cross?

5 MR. BROTHERS: One question.

6
7 CROSS EXAMINATION

8
9 BY MR. BROTHERS:

10 Q In your calls to Larry Fuller, did he tell
11 you these calls were illegal?

12 A I believe his exact words were that the 830
13 number was a EAS? Was that correct? Number. And
14 that they shouldn't be calling -- shouldn't be
15 charging for EAS numbers.

16 Q And you accepted -- that was basically the
17 end of the phone call?

18 A No. I visited with him at other times.
19 And Audrey Curtiss, I've visited with her trying to
20 get this matter taken care of. I am -- I took it
21 on -- I mean, there's several other people in Vernon
22 that I've been -- been working with. I've spoken to
23 them.

24 MR. BROTHERS: No further questions, thank
25 you.

everybody in the world was not a personal letter
against Mr. Brothers. And I was very affronted by
the letter that he sent to me accusing all of these
issues as being my personal issue and that he had not
heard from me personally on each of the issues. I
have a copy of the letter in case everybody else
doesn't. I think you've got a copy. The letter he
sent to me.

All the issues, and I have 12 here that
were in my original letter, are issues that were
brought to me by the people. One was sometimes
people cannot dial out on their cell phones. I'm not
sure exactly what that meant. Why they can't dial
out on their cell phones. I do know we were being
charged for cell calls.

And just to kind of touch base on the
cell thing, this was a newsletter that was sent in
our phone bill. And this is my copy. Paragraph here
says Rush Valley and Vernon. Several of you have
asked why you cannot dial 830 and 840 numbers toll
free anymore. These numbers are assigned to pagers
and cell phones. Initially, we allowed toll free
calling to go to those numbers, but those companies
never signed agreements with us to compensate us for
the expense of completing those calls to the nonwire

line telephone companies operating out of Tooele. No more. If you wish to call those prefixes, it is only possible by your paying the long distance charge. Those customers who have deducted the long distance charges to call will be expected to pay the long distance charges to call those numbers.

Well, I believe that if Mr. Art Brothers is not getting his money from these other telephone companies, he should go to them, not come to us, because that's not our problem. That's not our fault.

And Number 2 -- let's see. Okay. That was number two, being charged to dial local calls.

Number 3, not being able to call 800 numbers. Several people in the community have told me that they cannot dial 800 numbers. To call -- oh, just a minute. I know the company. Job Service, excuse me. Job Service has an 800 number, MCI. People -- they call in now. People when they're on -- through Job Service getting -- doing their job searches call in on 1-800 numbers to turn in their job search records. They cannot.

One woman was -- tried to call, she couldn't get through, she called the 611 Beehive number and questioned Beehive, why can't I get

1 somebody who cannot help you.

2 Phone calls being cut off. This was a
3 complaint by a lot of people. This was a complaint
4 that I have had, but I have not called it in. I'd be
5 talking long distance to somebody -- I called
6 Washington, D.C. twice in May and was cut off. I
7 don't know why, what happened. I get bleep, bleep,
8 bleep, bleep. It's not a busy signal. I don't know
9 what this sound is supposed to be.

10 Sending newsletters with our bills
11 knocking our community and public officials. That's
12 complaint 10. I have copies here, I sent copies to
13 the Division of Public Utilities. Not only does that
14 make Beehive look bad, like they're blaming everybody
15 else for their problems, but when the community is
16 reading these letters that's coming in their bills,
17 that makes them question what their officials and
18 their elected officials are doing. If somebody has
19 grievance with somebody else, they should go directly
20 to them, not publicize it through the whole
21 community. I am also on the planning and zoning
22 commission. And these letters are very offensive.
23 And I think if he has a problem, he should come to us
24 directly, come to our meetings, and talk to us about
25 them.

1 I do have -- I too have a bill here with
2 a cell phone call on it that I made. And also in our
3 last -- our last bill, we had this nice little
4 message that was very confusing and very upsetting to
5 a lot of us. If I can read it, it's just a short
6 message. From the thought you'd like to know
7 department. The Utah Department of Transportation,
8 UDOT, is under heavy pressure to expand the big city
9 freeway system to avoid present and future gridlock.
10 The governor is saying it must be done before the
11 world comes to Utah for six weeks to attend the 2002
12 Olympics. UDOT hopes to get millions for the road
13 projects by new taxes, \$10 per foot per year on all
14 telephone lines on state roads.

15 Rural telephone customers will see their
16 phone bill go up in some cases to nearly \$100 per
17 month. Rural legislators are outnumbered by the big
18 city voters and the governor, who support not only
19 the traditional concept of taxing property and gas
20 but now tax telephone service to pay for the
21 expansion of big city freeways for all these people
22 coming to Utah. A reminder: This bill must be paid
23 by the 20th, or service may be disconnected.

24 That little note was really upsetting to
25 a lot of people. Because there's not a soul here

1 that can afford to pay \$100 a month for just a
2 service charge on their telephone.

3 Another thing we'd like to know is when
4 a service call has been made, how come when it's
5 Beehive's problem, Beehive's line, why are people
6 being charged to pay for this? Instead of Beehive
7 taking care of their own problems.

8 Q That's all you have?

9 A Well, probably. I probably have a lot
10 more. But --

11 Q Did you say you had any bills for long
12 distance calls that were not answered? Do you have
13 any bills --

14 A No. I had one. I had one. But with all
15 my paperwork and stuff, I can't find it.

16 Q That's okay.

17 A I misplaced it. It was one of Mr.
18 Russell's.

19 MS. NODA: We'll go ahead and have Miss
20 Hansen's prehearing summary marked as DPU 8, and we
21 will move for its admission.

22 JUDGE THURMAN: Any objection?

23 MR. BROTHERS: No.

24 JUDGE THURMAN: It's received.

25 (Whereupon Exhibit DPU 8 was marked

1 the Division.

2 JUDGE THURMAN: How many witnesses will you
3 have, Mr. Brothers?

4 MR. BROTHERS: I move at this time that we
5 continue this hearing to a date to be set to allow
6 Beehive to prepare its testimony in this matter. The
7 Division has not provided us in response to our data
8 request the detail that's been evidenced today. We
9 have a lot of new evidence we've never heard before.
10 We've got to research quite a bit of this in order to
11 respond properly. We're happy to do this. We need a
12 reasonable time, a week to get the transcript, and
13 another 10 days or so, and then we can come in and
14 present our rebuttal testimony on this matter, Your
15 Honor.

16 MS. NODA: Your Honor --

17 JUDGE THURMAN: Well --

18 MR. BROTHERS: There's no way we can go
19 forward at this time consistent with due process.

20 JUDGE THURMAN: Do you have anything you
21 can go forward with today, Mr. Brothers?

22 MR. BROTHERS: No.

23 MS. NODA: Your Honor, we would oppose the
24 motion for continuance. We believe that Mr. Brothers
25 has had an ample time to review the complaints.

1 We've submitted our position for our order to show
2 cause almost three or four months ago. We attached
3 the complaints. We also -- in our position statement
4 that was filed September 11th also filed the copy of
5 the complaints. Once again, went through the issues
6 that we felt were problems. We gave Mr. Brothers the
7 names and addresses of all those people. We told him
8 which witnesses we were going to call, Mr. Sagers,
9 Mrs. Hansen, and Mrs. Holden. We gave him every
10 opportunity to ask questions on discovery, which he
11 did. We have had ample opportunity for the company
12 to respond, and at this time, we believe there should
13 be no need to continue the hearing.

14 JUDGE THURMAN: Well, whatever evidence
15 came in today seems to me, Mr. Brothers, just
16 cumulative from that that you've had notice of all
17 along. I'm going to deny your motion.

18 MR. BROTHERS: Then I object. I'd like to
19 take it on appeal to the Commission, Your Honor.
20 We're not prepared to go forward at this time, and
21 there's no way we can. We're being denied due
22 process in this case totally. The belief of counsel
23 has nothing to do with the facts of due process in
24 this case. The record will show what we have and
25 what was done with prior data requests and the

1 information we have been given, and it's been
2 completely inefficient -- it's been completely
3 lacking, and all we've been getting this whole period
4 is, well, you'll see when you get it.

5 MS. NODA: Your Honor, we believe that the
6 complaints show there have been service problems.
7 Mr. Brothers has in fact been contacted by some of
8 these people. The company can respond to some of
9 those responses that they've given to the customers.
10 The company also has been notified of the switching
11 problems. And should be able to at least address
12 some of those questions as well as transmission
13 questions Mrs. Egbert has talked to Mr. Brothers
14 about. There should be no need for the company to
15 require further time to get prepared. This is a
16 simple question of what the company has done to
17 respond to these service problems. And it should
18 take no more than Mr. Brothers, or if he has a repair
19 service personnel person here. Mr. Brothers can
20 respond to these, I believe. There should be no
21 problem with that.

22 MR. BROTHERS: We're going to respond with
23 facts. We're going to respond with data, counsel.
24 What you believe and what you think we should do has
25 no merit whatsoever with the facts. This is a very

1 serious case. You're asking for monetary forfeiture,
2 you're asking for the examiner to do a lot of things.
3 We're entitled to due process, and we demand that we
4 get the due process. And that means we cannot do it
5 in an instant. When you folks walk in and evidence
6 stuff and say, okay, now respond, that's crazy.

7 MS. NODA: Your Honor --

8 MR. BROTHERS: That's insane. It's not due
9 process.

10 MS. NODA: Your Honor --

11 MR. BROTHERS: And I object.

12 MS. NODA: On the due process issue, I
13 believe there really is no grounds. The company's
14 had ample opportunity to review these complaints. To
15 review the people that the Division has presented
16 today. Especially the three main witnesses, as well
17 as Miss Egbert. And Mr. Brothers has been in contact
18 with her as well as Mr. Fuller. There really is no
19 grounds for a continuance on this case.

20 If this were clearly a case where we
21 brought the case on a short time frame and we were --
22 we didn't -- didn't give the company time to respond
23 or didn't give them any discovery time, didn't give
24 them the names of our witnesses, he would arguably
25 have grounds. But on this case, we gave him every

1 opportunity to respond. We gave him everything in
2 advance in the case -- we were recently involved with
3 US WEST. We gave the company as well -- we gave US
4 WEST an opportunity to respond. We gave them
5 discovery. And it was put on a time frame roughly
6 approximate to this case. And there was no due
7 process argument made by US WEST in that case.

8 JUDGE THURMAN: It seems to me that you've
9 had ample notice as far as the problems that the
10 Division is alleging are concerned, Mr. Brothers.
11 I'll put it on this basis. I want post hearing
12 briefs in two weeks. If you want to submit some
13 affidavits at that time with your brief, I'll allow
14 it. But I'm not going to drag this thing out
15 inordinately. And you're well aware or should have
16 been well aware of exactly what problems are being
17 alleged. I don't see that there is a due process or
18 a notice problem.

19 MR. BROTHERS: Well, we've been denied any
20 ability to find out specifically the rules Beehive's
21 not complying with. Our position is that we're
22 complying with every rule the Commission has.

23 JUDGE THURMAN: All right. Then in your --

24 MR. BROTHERS: All the investigations we've
25 made on this matter, and I'm not speaking as

1 testimony, I'm just speaking as the same argument
2 counsel is, show that there was no issues here other
3 than the cellular issue, which we have admitted is
4 the primary issue that we wanted this hearing for.
5 And that cellular issue, we had expected the Division
6 to give us more information than they have.

7 JUDGE THURMAN: What information do you
8 need, Mr. Brothers?

9 MR. BROTHERS: We need to see the contracts
10 US WEST has with respect to the cellular companies.
11 The two cellular companies that have facilities in
12 Tooele. How are they being reimbursed? How many
13 calls we're getting from them? They're not parties
14 to this case. It's the Division's case. And they're
15 not giving us -- and they haven't done this. AT&T,
16 we thought we'd get it from them, and they backed
17 out. So consequently, we don't have very much to go
18 forward with. I've asked specifically for the
19 comments that the Division has.

20 The Commission is doing with respect to
21 calling party pays issues which US WEST has as area
22 wide in many cities, they filed tariffs for calling
23 party pays. I've been told by the Division that
24 those are things that are coming up before the
25 Division. Nobody's evidenced that. We're going in

1 here trying to ask you to make a decision on a
2 cellular issue when you don't even know what's going
3 on, because there's nothing in the record to show
4 this. We had hoped that the Division would have done
5 this --

6 JUDGE THURMAN: You have access, Mr.
7 Brothers, to the US WEST tariffs. And --

8 MR. BROTHERS: These are all secret.
9 They're not available.

10 MS. NODA: No, they're not. And there was
11 ample opportunity during discovery for Mr. --

12 JUDGE THURMAN: I think we can get you
13 access for that. I'll extend the briefing period.
14 Three weeks. If you think that you need to see those
15 tariffs in that time, I'm sure you can get access to
16 it.

17 MR. BROTHERS: I'll see what I can do on
18 that. In the meantime, we intend to appeal to the
19 Commission. I appreciate your courtesy.

20 JUDGE THURMAN: But it seems to me that
21 certainly all of these service issues which, quite
22 frankly, I'll say at this point I think are quite
23 serious, you've been on notice as far as those are
24 concerned --

25 MR. BROTHERS: I can put --

1 JUDGE THURMAN: -- for months.

2 MR. BROTHERS: I can put on a service
3 technician right now to speak to the service issues
4 if it will help the court.

5 JUDGE THURMAN: If it's here, let's get it
6 on the record, and let's do it.

7 MR. BROTHERS: Kevin Hall.

8 MR. FULLER: For the record, the tariffs
9 for billing party pays and the tariffs for Utah -- US
10 WEST EAS tariffs are public records. They're
11 available to anybody.

12 JUDGE THURMAN: All right. See that Mr.
13 Brothers gets a copy of them.

14

15 KEVIN HALL,

16

17 Called as a witness, having been duly
18 sworn, was examined and testified as
19 follows:

20

21 DIRECT EXAMINATION

22

23 BY MR. BROTHERS:

24 Q State your name.

25 A Kevin Hall.

1 MR. BROTHERS: We'll submit it in a
2 reasonable time. I think I can get it to you in a
3 week.

4 MS. NODA: That's all I have, thank you.

5 JUDGE THURMAN: Redirect?

6 MR. BROTHERS: No.

7 JUDGE THURMAN: Thank you, sir.

8 MR. BROTHERS: The information I have is
9 fragmented, but I guess I better get up there.

10

11 ARTHUR BROTHERS,

12

13 Having been duly sworn, was examined
14 and testified as follows:

15

16 THE WITNESS: My name is Arthur W.
17 Brothers. I'm president of Beehive Telephone
18 Company. Beehive Telephone has about 600 subscribers
19 statewide in 10 exchanges scattered in seven Utah
20 Counties. We have another company that operates in
21 three exchanges in Nevada. Serving -- actually we
22 serve about 10 or 12 customers in Nevada off three
23 exchanges south of Wendover, Ibapah and Partoun and
24 Garrison. Respectively about 51, 100, and 150 miles
25 south of Wendover. We have an exchange in northwest

1 Box Elder County, one in Park Valley, Utah, which is
2 west of Tremonton about 50, 60 miles, and another one
3 in Grouse Creek that is in turn about 50 miles
4 farther west than Park Valley.

5 We have -- those five western Utah
6 exchanges connect via Beehive facilities, digital
7 toll facilities. To a -- what's called a toll tandem
8 switch in Wendover. Where we have our primary office
9 and maintenance headquarters in Wendover.

10 In Wendover, we operate an operator
11 center. That was the first automated operated center
12 in the United States by a local exchange carrier. We
13 still provide operator services for our system
14 pursuant to authority of the Public Service
15 Commission.

16 We have an exchange in -- here in Rush
17 Valley, and 20 miles south of here in Vernon, we have
18 one in central Wayne County in a community called
19 Caineville which has been operational for two years.
20 And is between a 4 and \$500,000 investment for 30
21 customers. We have an exchange in Tacaboo, which is
22 in western Garfield County, that was built 12 years
23 or so ago to provide service to a uranium processing
24 mine and mill which turned out to be a big ghost
25 town. And slowly is coming back to life by virtue of

1 for those. We knew going in we were going to have
2 problems with the billing system. And no matter how
3 much the consultants say you won't have it, they
4 happen. They've happened to every company in the
5 United States. US WEST has had problems where they
6 haven't billed stuff for six or eight months behind
7 the power curve, and they've admitted it. It just
8 happens.

9 So with respect to local service
10 problems, I know of nothing. And we've spent a
11 considerable time on this and investigated all the
12 allegations and the complaints that are meritorious
13 at this point in time. The Division's been somewhat
14 cooperative in telling us what their opinions are.
15 And not that cooperative in some other areas.

16 The cell phone issue is an issue that
17 Beehive initially allowed calls to go free to the
18 cellular service providers, which are a competitive
19 company. While we attempted to resolve the problem
20 in discussions with US WEST and directly, and they
21 were a stonewall, so therefore, I made the decision
22 that we were not going to as a company policy allow
23 calls from competing telephone companies to be made
24 through our system unless we had some kind of an
25 agreement with the cellular companies. I was unable

1 to get it.

2 US WEST Cellular, whatever the name of
3 their company is, they don't talk to us. AT&T or
4 McCaw's, prior to AT&T buying it, they don't talk.
5 And that system was paid for with a lot of money from
6 the government to get very fancy facilities on the
7 mountain and immense duplicity in their system.
8 Primarily for the chemical depot alarm system.
9 Otherwise, it wouldn't be really as great as it is.

10 Five years ago, the issue of using EAS
11 to bypass, which this issue falls into, was discussed
12 at length. The Division and Mr. Fuller is aware of
13 this, because he was responsible for some of the
14 formation of policy, indicated that companies such as
15 Beehive could block calls on EAS where calls were
16 made, say, to Tooele to go into the resellers in Salt
17 Lake although had local numbers that could be
18 accessed to place toll calls.

19 And so there were people in Rush Valley
20 and Vernon and other areas down in central Utah
21 telephone territory that were using EAS service to
22 call resellers who had basically a long distance line
23 tied to a local number, in this case the local
24 numbers were in Tooele, and where we were being
25 deprived, Beehive Telephone was being deprived of

1 toll revenue on this bypass. So we were allowed to
2 block those. We reprogrammed our switches to block
3 calls to those.

4 Some people complained and hollered
5 about it. And the instructions as I recall it that
6 the Division, i.e., the Commission told the resellers
7 that they weren't supposed to solicit business in
8 areas such as Fairview, Utah, Rush Valley, where
9 these type of calls could be done. I don't know
10 whether they're doing that to this day or not. I
11 haven't checked it.

12 MS. NODA: Your Honor, instead of us having
13 to call Mr. Fuller to respond, I think this is an
14 issue we've reserved for the briefs?

15 JUDGE THURMAN: Yes. I think at this
16 point --

17 MS. NODA: Otherwise, we're going to have
18 to bring Mr. Fuller on. We see no need for this.

19 THE WITNESS: That's fine. So the cellular
20 issue is a primary issue that I think -- as the judge
21 said in his initial order that --

22 JUDGE THURMAN: I think, Mr. Brothers --
23 it's primarily a question of law. I think we'll
24 treat that primarily --

25 THE WITNESS: Exactly what you said. I'll

1 leave that at this point in time. The cellular
2 people are using EAS circuits to complete calls into
3 this area. For which we're not getting any notice on
4 or anything else.

5 The calls to 800 numbers. We changed
6 earlier this year the programming at our switch in
7 Rush Valley. It used to be you did not have to dial
8 1 plus to place long distance calls, including 800.
9 When I added the 1 plus, we did get a lot of
10 complaints about the inability to complete long
11 distance calls. There is an education process for
12 everybody to decide we've got to dial 1 plus.

13 There evidently were some 800 numbers
14 that couldn't be dialed, and I don't recall what the
15 problem is, but as of today, I don't know of any 800
16 numbers that can't be dialed in our system. Because
17 they're all opened up. Originally, we had some 800
18 numbers were going to AT&T directly. When those 800
19 numbers were transferred to another carrier like MCI,
20 then our calls were trying to knock on AT&T's door.
21 We killed all of those and transferred them over to
22 US WEST. And to my knowledge, there are no problems
23 on 800.

24 Unable or not willing to break in on
25 call for emergency. This system has the ability that

1 service for a number of days and weren't complaining?
2 I mean, assuming being without service --

3 A The Blacks complained, but nobody else did
4 that I know about. The motel people down there rely
5 on their phone -- everybody relies on their phone
6 once they get it, sure. I'd be aggravated if the
7 phone was out for six days too. It was. Our phone
8 from US WEST was out for ten.

9 Q You understand the aggravation that these
10 people here today feel about their service out here?

11 A I'm sympathetic to any and all the
12 complaints. I want to find out why and solve the
13 problem.

14 Q And are you willing to work with the
15 Division in implementing some standards --
16 implementing some guidelines to help the company in
17 meeting these repair problems and service problems?

18 A No.

19 MS. NODA: That's all I have, thank you.

20 JUDGE THURMAN: Thank you, Mr. Brothers.

21 THE WITNESS: I should comment. We're
22 willing to work with the Division, I'm happy to work
23 with the Division. But we're not willing to let them
24 run the company. That's all.

25 JUDGE THURMAN: All right. Let's make

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the matter of service quality)
of BEEHIVE TELEPHONE CO., INC.)

Docket No. 96-051-04

To: Examiner Thurman

PETITION FOR RECONSIDERATION OF ADVERSE RULING

1. Beehive Telephone Co., Inc, by its President, A. W. Brothers hereby moves for reconsideration of the Examiners adverse ruling in this matter held at Rush Valley, Tooele County, on 12 November 1996 wherein Beehive asked for a reasonable time period to evidence it's rebuttal to the Division's formal presentation wherein they alleged that Beehive (had/has) service problems which merited a Commission Order for sanctions.

2. On conclusion of the Division's direct Case, Beehive moved that it be permitted sufficient time to study the transcript and evidence and respond with our rebuttal case in (a minimum of) 10 working days after receipt of the transcript (tr 133-12). This motion was objected to by the Division. We submit that the Order at tr 134-14 indicated a prejudicial denial of due process to which Beehive objected at tr 134-21 through 136-11.

3. The Division refused to provide testimony of who would testify at this hearing and what they were going to say. It made only vague statements which did not meet the test of prefiled testimony. This includes testimony from one Vickie Hansen (tr 119-19) who had no prefiled testimony and was permitted to testify on what "others" said who were not present. At tr 120-11 Beehive's objections were overruled. Beehive was denied the opportunity to test the witness and determine factual ground for what turned out to be a personal vendetta against Beehive for denial of Ms. Hansen and friends free calling to competitive telephone companies. She has used her position in the town counsel to obstruct Beehive's two year effort to replace fully depreciated switching equipment in the town. The so-called public complaints evidenced by the Division consist mostly of complaints written in Ms Hansen's own handwriting. The refusal to permit Beehive time to prepare rebuttal is clearly a denial of due process (see also tr 100-18).

4. The Division's witness said that certain engineering data from U.S.West indicated that Beehive did not have enough trunks to handle its Rush Valley Traffic. Beehive objected to this testimony as not being best evidence (tr 82-8) and was admonished by the Examiner at line 18. We were not offered copies of exhibits at the hearing which is also denial of due process (see tr 76 and 77-3, et. al.) The proper time for Beehive to proffer its case (tr 79-2) has been denied to Beehive. The fact is that the so called traffic study was not evidenced and when Beehive obtained a copy of it a few days later we determined that the basis for the conclusion that all Beehive trunks were busy was completely false and further conversations Beehive personnel had with U.S.West traffic engineers refuted Ms. Ekbert's testimony. Mr. Brothers has personally asked witness Ekbert and Fuller after the hearing to provide the "p" factor on the study and this information has not been furnished

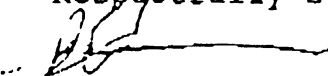
along with USW Cellular information promised and not furnished.

5. The only issue of this proceeding that is a matter of law is that of using EAS trunks to access competitive telephone service such as Cellular. Beehive's tariff permits us to charge toll amounts to access such service via the toll network. AT&T was withdrew from this proceeding rather than answer Beehive's data requests pertaining to Cellular. The Division declined to provide data sufficient for a decision of law to be adjudicated by this hearing. It is not fair to the Examiner to be required to base decisions on an incomplete record and deny Beehive's due process to rebut the casual "evidence" of the Division - which violates all cannons of evidence and law.

6. Proffer: Beehive intends to introduce evidence in this record which will refute all claims that the quality of service provided within the service area of Beehive is less than that set forth in rules of the Commission. We will show by testimony that the traffic study of the Division does not merit the reliance the Division placed on it to show Beehive has not had enough trunks to Rush Valley. Beehive will challenge and establish that those hearing issues summarized by the Examiner have no basis being considered in this docket except the Cellular issue. We will add to the uncontroverted evidence that one customer in the community created a vendetta which the Division relied on to create the flame of this proceeding which must be quenched by fact, not the innuendo and denial of due process by which Beehive is denied the right to present its case to defend the attack on our service which is consistent with guidelines set forth by the Commission. We can't be expected to do this on the unnecessarily accelerated timetable expected by the Examiner. As to the issue of the Cellular, the last minute withdrawal of AT&T deprived Beehive of the ability to get evidence into the record to support our position that we either be permitted to charge our State terminating access for cellular calls received from Cellular calls - and our originating access to the cellular customer from Beehive subscribers. This is a simple and equitable way to resolve this issue, which we are being denied the right to evidence for consideration by the Commission.

Wherefore, fair play demands that the Order denying Beehive the right to offer its case in response to the record must be reconsidered and a date set in January, 1997 to permit the establishment of a fair and equitable record which will demonstrate that Beehive's telephone service is in compliance with statute and there is simply no need for adverse findings. Commission findings on the cellular issue will be made on a complete record, which lacks substance at this time.

Respectfully submitted this 3rd day of December, 1996


A. W. Brothers, President, Beehive Telephone Co., Inc.
5160 Wiley Post Way, suite 220, SLC, Ut 84116

cc: Laurie Noda, 500 Heber Wells Build, SLC 84114
Secretary, UPSC
disk wp5.1 to Secretary, UPSC (appeal1.psc)

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Investigation)	<u>DOCKET NO. 96-051-04</u>
of Service Quality of BEEHIVE TELE-)	
PHONE COMPANY,)	<u>RULING</u>
Respondent.)	

ISSUED: December 11, 1996

SYNOPSIS

Respondent having demonstrated no meritorious grounds for granting the opportunity to present additional evidence, the motion for the same is denied.

Appearances:

Laurie Noda	For	Division of Public Util-
Assistant Attorney General		ities, Utah Department of
		Commerce
Arthur W. Brothers		Beehive Telephone Co.

By the Administrative Law Judge:

PROCEDURAL HISTORY

Pursuant to notice duly served, and a prehearing conference, this matter came on regularly for hearing the twelfth day of November, 1996, at the Fire House, Rush Valley, Tooele County, Utah. Evidence was offered and received. Following presentation of the case in chief of the Division of Public Utilities, Utah Department of Commerce ('DPU'), and the testimony of a number of public witnesses, Respondent asserted it had had insufficient time and/or discovery opportunity to present a response and moved for a continuance. The Administrative Law Judge denied said motion, and Respondent presented evidence through three witnesses. At the conclusion of the hearing, the Administrative

Law Judge, with the participation of the parties, set a briefing schedule, with the first brief due date set for December 5, 1996. On December 3, 1996, two days prior to the first brief due date, Respondent filed a pleading moving the Administrative Law Judge to reverse his ruling regarding a continuance and allowing Respondent to submit further evidence. DPU filed a response to said Motion December 10, 1996. The Administrative Law Judge, having been fully advised in the matter, now enters the following Ruling.

DISCUSSION

Respondent asserts various grounds for its motion, most of which boil down to inadequate discovery opportunity and/or failure of DPU to file pre-filed testimony on behalf of its witnesses. We reject such claims as without merit. This matter was commenced July 8, 1996, with copies of customer complaints attached to the petition for Order to Show Cause. Thereafter, Respondent was made aware of the tenor of customer complaints through numerous contacts with DPU personnel, and was furnished a witness list and summary of testimony to be elicited. Respondent had time to depose the witnesses if it thought such detail necessary.

While the Commission encourages the use of pre-filed testimony, particularly in regard to highly technical evidence, as an aid to comprehension and economizing hearing time, pre-filed testimony is not an absolute requirement, nor is it a necessary

component of due process.¹ In fact, Respondent had present at the hearing personnel who were knowledgeable concerning the factual issues raised by DPU and the public witnesses, and who testified cogently regarding the same. It is difficult to see how additional testimony would add any substantial factual matter not already on the record.

As to Respondent's claim that it had inadequate time to respond to a traffic study prepared by U.S. West Communications, Inc., regarding intra-LATA traffic, DPU's own witness stated the study was of limited value. We do not believe Respondent was substantially prejudiced by submission of the exhibit at the hearing, and in any event Respondent had the opportunity to respond to and address the matter in its brief.

We find likewise without merit Respondent's claim it was prejudiced by the withdrawal of A.T. & T. as a party in this matter. That removed from these proceedings the issue of adequacy of Respondent's trunking vis-a-vis inter-LATA traffic — in our estimation more to Respondent's advantage than otherwise.

CONCLUSIONS OF LAW

Respondent's motion should be denied. As a matter solely of indulgence, Respondent should be granted a short time extension to file its brief, and the due date for reply briefs should be adjusted accordingly.

¹We take administrative notice that in court proceedings, pre-filed testimony is the exception, not the rule.

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RULING

NOW, THEREFORE, IT IS HEREBY RULED that:

- Respondent's motion for a continuance for the purpose of preparing and presenting additional evidentiary matter be, and it is, denied.
- Respondent is accorded until December 30, 1996, to file its first brief, and reply briefs, if any, will be due January 10, 1997.

DATED at Salt Lake City, Utah, this 11th day of December,
1996.

/s/ A. Robert Thurman
Administrative Law Judge

Attest:

/s/ Julie Orchard
Commission Secretary

Laurie L. Noda #4753
Assistant Attorney General
Division of Public Utilities
JAN GRAHAM #1231
UTAH ATTORNEY GENERAL
Heber Wells Building
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P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone: 366-0353

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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Quality)	Docket No. 96-051-04
of Telephone Service Within	)	Posthearing Reply Brief
the Territory Served by	)	of the Division of Public
Beehive Telephone Company.	)	Utilities

Pursuant to Rule R746-100-10(L) of the Commission's Rules of Practice and Procedure, the Division of Public Utilities ("Division") hereby submits its Reply Brief on the following issues:

1. Beehive's Billing of Toll Charges for Cellular Calls. The Division disputes Beehive's claim that it is allowed under an existing tariff to charge its Rush Valley and Vernon customers toll charges when they make extended area service (EAS) calls to Tooele cellular numbers. Beehive cites to a tariff that applies only to switched access charges for jointly provided toll traffic between itself, interexchange carriers and US WEST. The tariff has no application to the issue of toll charges for local calls to cellular numbers. In fact, Beehive almost admits that it does not have authority as it requests a solution that would require the Commission to allow it to amend its tariff, establish contracts with cellular carriers, or allow it change its existing tariff 12. As the Division pointed out in its posthearing brief, there is no tariff provision that allows

Beehive to force its customers to pay toll charges when making EAS calls to Tooele cellular numbers.

Beehive also claims that there is no evidence that Beehive is double billing for the calls in question. The Division believes that Beehive misunderstands what the Division means by double billing. The Division interprets double billing to mean that Beehive is charging its customers for EAS and is also billing toll charges for local calls to Tooele cellular numbers. Beehive seems to miss this point and believes that double billing refers to billing from both Beehive and the cellular carriers for the same service. Beehive confuses the issue and seems to believe that double billing is not occurring when in fact it is because the customer is being forced to pay twice, once for EAS and again for the toll charge to make a local call to a cellular number.

The allegation that Beehive makes concerning discrimination also misses the point. Beehive claims that there is no discrimination because there is no unequal treatment between customers. In this case, however, there is unequal treatment because a Beehive customer who wishes to make a local EAS call to a Tooele cellular number must pay more than a customer who is making a local EAS call to a Tooele wireline number. This unequal treatment between customers is not allowed under §54-3-8 Utah Code Ann. See also Mountain States Legal Foundation v. Public Service Commission, 636 P.2d 1047 (Utah 1981) . In Mountain States, the Court ruled that discriminations with no rational basis and discriminations based on factors foreign to the regulatory scheme are prohibited under the preference statute. In this case there is no rational basis for Beehive to charge different rates for essentially the same service i.e., local EAS calls to Tooele.

2. Service Issues. The Division believes that there was substantial evidence showing that

service in the Rush Valley and Vernon areas is not adequate. Testimony from public witnesses as well as from Division witnesses including Vikki Hansen, Kent Sagers, Patricia Holden and Peggy Egbert were quite extensive on the problems in the area including poor transmission quality, poor service response time, slow connect time, customers not receiving calls, charges for calls not made, charges for long distance calls that were not answered, customers being billed in advance, being charged different prices per minute for calls being made to the same number at the same time of day. Beehive claims that it has resolved most if not all of the complaints, however, this is not the case. Beehive has yet to resolve a billing dispute with a customer and refuses to work with the Division to resolve the problem.

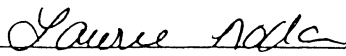
The Division believes that it has met its burden showing that service is inadequate and that standards need to be put in place to monitor Beehive's service problems. The standards are not unduly burdensome or costly. The Company did not put on evidence at the hearing that it was having financial difficulty or that it did not have the financial resources to meet the Division's recommended monitoring requirements. Under §54-3-1 Utah Code Ann., a utility has an obligation to provide adequate service and the Commission has the authority to enforce that obligation. Although claims of financial inability to make service improvements were raised by Pine Hollow Water Company in Docket No. 95-2165-01, the Commission nevertheless ruled that a utility has an obligation under the public utility code to provide adequate service. The Commission also noted that it would allow Pine Hollow to recover its costs for making improvements but that it could not hold ratepayers or regulators hostage by simply claiming financial inability.

3. Procedural Issues. The Division has already addressed the procedural issues in its

response in opposition to Beehive's Motion for Reconsideration. In summary, the Division believes that the record is adequate to address the issues raised by the Division in this proceeding. The Company was allowed the opportunity to present its case and in fact did so at the hearing on November 12, 1996. In this case Beehive had over three months to respond to the allegations raised by the Division in its Petition for Order to Show Cause. The Company was properly notified of the hearing and agreed to the schedule in the case and was allowed to cross examine witnesses. Beehive's request for an extension has already been denied and the Division would oppose any attempt to re-open the case for further hearings at this time.

Based upon the foregoing, the Division requests that its recommendations concerning the monitoring and correction of Beehive's service problems be adopted. (See Posthearing Brief of the Division at pages 11 and 12). In addition, the Division recommends that Beehive be ordered to discontinue its practice of billing its Rush Valley and Vernon customers toll charges for calls to Tooele local exchange cellular carrier numbers. The Division further recommends that Beehive be required to repay its customers for all billed toll charges to the Tooele cellular carrier numbers that have previously been paid by such customers, along with interest of 1.5 percent a month from the date of payment.

Dated this 23rd day of January, 1997.


Laurie L. Noda
Assistant Attorney General
Division of Public Utilities

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Reply Brief of the Division of Public Utilities in Docket No. 96-051-04 was mailed first class, postage prepaid this 23 day of January, 1997 to the following:

Arthur Brothers
5160 Wiley Post Way
Suite 220
Salt Lake City, UT 84116

Alan Smith
31 L Street, No. 107
Salt Lake City, UT 84103

Laurie Noda

In the Matter of the Quality of Telephone	)	<u>DOCKET NO 96-051-04</u>
Service Within the Territory Served by)	
BEEHIVE TELEPHONE COMPANY,	)	<u>REPORT AND ORDER</u>
Respondent)	

ISSUED: April 10, 1997

SYNOPSIS

The Commission determined that adequate telephone service within the meaning of § 54-3-1, UCA 1953, as amended, includes, *inter alia*, line quality allowing normal conversation; dial tone and intra-LATA call completion without undue delay; operability during normal weather conditions; and prompt response to trouble reports. The Commission further determined that the same statute requires accurate determination and billing of charges and prompt correction of errors. The Commission further determined that Respondent's tariffs do not allow it to charge toll for calling any telephone number within the EAS within which Respondent serves, and that this constitutes a violation of § 54-3-7, UCA 1953, as amended. The Commission determined that Respondent violated the statutes, ordered compliance, and imposed sanctions.

Appearances:

Laurie L. Noda, Assistant
Attorney General

For

Division of Public Utilities, Utah
Department of Commerce,
Complainant

Alan L. Smith

"

Beehive Telephone Company,
Respondent

By the Commission:

PROCEDURAL HISTORY

Pursuant to notice duly served, this matter came on regularly for hearing the twelfth day of November, 1996, before A. Robert Thurman, Administrative Law Judge for the Commission, at the Rush Valley Fire House, Rush Valley, Tooele County, Utah. Previously to the hearing, one issue, adequacy of Respondent's trunks to handle inter-LATA traffic, was eliminated when that issue was determined to be pending before the Federal Communications Commission. Accordingly, an

intervenor in these proceedings, A T & T, withdrew.¹ At the hearing, evidence was offered and received. Following post-hearing motions and briefs, the matter is now at issue. The Administrative Law Judge, having been fully advised in the matter, now enters the following Report, containing proposed Findings of Fact, Conclusions of Law, and the Order based thereon.

FINDINGS OF FACT

1. Beehive Telephone Company (hereafter "Respondent") is a telephone corporation certificated by this Commission. The Division of Public Utilities, Utah Department of Commerce (hereafter "DPU") is an agency of Utah State Government charged, *inter alia*, with the responsibility of investigating and bringing to the Commission's attention violations of the applicable law and Commission rules and orders.
2. Respondent's service area extends to central Tooele County, Utah, including the communities of Rush Valley, Terra, Vernon, and parts of the Skull Valley area. DPU and the Commission have received numerous complaints from Respondent's ratepayers in the Tooele County area. The complaints involve inadequacy of service, erroneous billing, and toll billings for completing calls to subscribers of wireless carriers operating in the city of Tooele, which is part of the Extended Area Service region in which Respondent serves. We will detail the evidence received relevant to these complaints under corresponding headings..

Service Problems

3. Respondent's ratepayers have experienced unreasonably long response times to
-

service complaints,² in one case extending to one month for an intermittent outage problem.³

4. Respondent's ratepayers in the Skull Valley area have experienced numerous extended outages and, even when the lines are operable, so much noise as to render voice communication difficult and digital communication impossible.⁴ Other customers in Respondent's service area have likewise experienced noisy lines.⁵ The service problems have been experienced by callers into the service area, including a DPU employee.⁶
5. Respondent's ratepayers have experienced additional service problems including call cutoffs⁷, inability to dial 800 numbers, and inability to receive calls.⁸
6. Respondent's witnesses admitted that there are service deficiencies,⁹ but represented that Respondent is diligently working to correct them and has effected some improvement.¹⁰

²Testimony of Elaine Ahlstrom, Transcript of proceedings, November 12, 1996 (hereafter "Transcript") at 29; Testimony of Joe Park, Transcript at 32.

³Testimony of Kandy Sagers, Transcript at 10.

⁴Testimony of Cheryl Mallet, Transcript at 17-22.

⁵Testimony of Larry Russell, Transcript at 37; Testimony of Vikki Hansen, Transcript at 124.

⁶"as for myself in contacting the people out here and talking with them, I have experienced static on the lines, and also I have experienced ticking on the lines, and I have not been able to get through to some of the people. I either get a ring delay or else no connection. I have to hang up and call back. And this has happened several times during my communication with them." Testimony of Peggy Egbert, Transcript at 62.

⁷Testimony of Joe Park, Transcript at 32.

⁸Testimony of Larry Russell, Transcript at 37.

⁹Testimony of Kevin Hall, Transcript at 148.

7. Respondent represents that part of the problem may be attributable to an obsolete switch, which is operating at capacity, located in an old firehouse building which serves as the company's central office in Rush Valley. In addition to the obsolescence of the switch itself, the premises apparently do not lend themselves to proper electrical grounding.¹¹
8. Respondent proposes to replace the obsolete switch and to place the new one in a prefabricated building which he has already placed near the present facility. The site on which Respondent proposes to house and operate the new switch is currently zoned for residential use only. The local zoning board, at the time of the hearing, apparently believed no proper application for a zoning change was pending.¹²
9. Respondent's witnesses conceded that the problems may extend beyond the obsolete switch, and that solutions may require additional plant investment.¹³
10. The slow trouble response time may be attributable, at least in part, to the fact that Respondent relies on a single technician to service problems in the area. The technician lives in South Jordan Utah,¹⁴ and is also responsible for responding to trouble calls at Ticaboo, Garfield County, and Caineville, Wayne County.¹⁵ The technician does not work weekends or evenings.¹⁶

¹¹*Id.* at 147.

¹²Testimony of Vikki Hanse, Transcript at 131;

¹³Testimony of Kevin Hall, Transcript at 160; Testimony of David Jordan, Transcript at 185.

¹⁴Testimony of Kevin Hall, *Id.* at 155..

¹⁵*Id.* at 154.

Erroneous Billing

11. Respondent's ratepayers have experienced erroneous billings, including duplicate charges for the same toll call,¹⁷ differing charges for calls to the same area at the same time of day,¹⁸ and charges for busy signals.¹⁹ Ratepayers have also experienced undue delays in getting payments credited.²⁰
12. Through one of its witnesses, Respondent admitted to billing problems and attributed them to inadequacies in an old automated billing system which it is replacing and, more recently, to problems associated with installation of the new system.²¹ Respondent expects all problems associated with the new system to be resolved within a reasonably short time.²²

Charges for Completing Calls to Wireless Service Subscribers

13. The Rush Valley and Vernon exchanges are part of the Tooele Extended Area Service (EAS) region which encompasses Tooele, Rush Valley, Vernon, Terra, Dugway and Grantsville.²³ This means that all telephone subscribers in the EAS pay a monthly surcharge on their telephone bills for the privilege of calling toll-free within the EAS. Respondent receives and keeps the EAS surcharge which it bills.

¹⁷Testimony of Larry Russell, Transcript at 40.

¹⁸*Id.* at 42.

¹⁹Testimony of Patricia Holden, Transcript at 111.

²⁰Testimony of Vikki Hansen, Transcript at 124.

²¹Testimony of David Jordan, Transcript at 174-180.

²²*Id.* at 188-190.

14. Two telephone number prefixes within the Tooele EAS, 830 and 841, are reserved for wireless telephone service subscribers. Nevertheless, the two prefixes are assigned as local to the EAS and the wireless providers charge only local rates for calls to and from the prefixes.²⁴
15. Since March, 1996, Respondent has been imposing toll charges for calls to the prefixes in question. This means that Respondent's subscribers, who also subscribe for wireless service, get billed toll charges for calls to their own wireless number in addition to the charges from their wireless provider.²⁵ Respondent justifies such action on the legal argument discussed hereafter. Respondent does not deny imposing such charges.

DISCUSSION

Adequacy of Service

The Utah statutes mandate that each public utility maintain "such service, instrumentalities, equipment and facilities . . . as will be in all respects adequate, efficient, just and reasonable."²⁶ The first issue to be here resolved is whether Respondent has met the statutory mandate.

While it is true that the statutory language is broad and general, given the experiences of Respondent's customers, which are unrefuted on the record, Respondent's service falls short of the statutory requirement. The *raison d'être* of a telephone system is to provide an avenue of communication, and when telephone lines are inoperable, or so noisy as to render speech

²⁴*Id.*

²⁵See Testimony of Larry Russell Transcript at 47.

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unintelligible, the system's object is totally defeated. Its utility is considerably diminished if it is so overloaded at certain times of the day that subscribers can't get a dial tone or have calls completed. By no stretch of language, or even imagination, can such service be considered "adequate," let alone "efficient."

As a component of adequate service, this Commission has adopted rules governing response time to trouble reports. Those rules require that each carrier shall "provide for the receipt of customer trouble reports *at all hours*, and shall make a full and prompt investigation of and response to each complaint."²⁷ The rule further requires that the utility clear non-emergency trouble reports within 48 hours, and that for emergencies, the utility provide 24-hour response capability.²⁸ Again, from the unrefuted evidence presented, we must conclude Respondent has not been meeting the Commission's requirements; and given what appears to be an inadequate maintenance staff, we have difficulty believing Respondent *can* meet the requirements under the existing arrangements.

This brings us to the question of an adequate remedy.

DPU has requested a broad order to correct the deficiencies and a somewhat Draconian regime of monitoring²⁹ to ensure that Respondent proceeds as rapidly as possible to

²⁷ § R746-340-5(B)(1), Utah Administrative Code. (Emphasis added.)

²⁸ *Id.*, § R746-340-5(B)(2).

²⁹

2. Correct deficiencies in Beehive's network facilities:
 - (a) Correct transmission signal to perform at industry standards.
 - (b) Correct network problems that create inter-exchange call completion delays.
 - (c) Correct facility and switching problems that create call cut-offs.

3. Establish a standard trouble reporting procedure that is accessible to all customers. The trouble reporting center and procedure to be implemented no later than thirty days after the order is issued. The reporting procedure will include the following:

- (a) Provide a dedicated 800 number, available 7 days a week/24 hours a day.
 - (b) Establish and maintain a centralized trouble reporting location with a standardized ticketing format and

DOCKET NO. 96-051-04

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remedy the deficiencies identified in our Findings of Fact above. Respondent argues against such an order on the basis that it would be too vague and open-ended, might impose unnecessary costs on Respondent, and the monitoring would not be cost effective.

In the last three or four decades, the Holy Grail of American Law, particularly regarding Administrative Law, has been the establishment of precise and measurable standards embodied in statutes and rules. The result has been to a great degree a focus on means, rather than the ends to be served, with considerable detriment to the latter.³⁰ In this case, we believe the objectives are fairly obvious: lines capable, at least, of carrying normal voice conversation without unusual effort (and hopefully capable of conducting digital communication at some reasonable speed) — signal loss of less than 6 db is the industry standard; lines operable in normal weather conditions, *i.e.*, absent flood, unusually severe wind, or extremely heavy snow; normal call termination after a customer puts her or his equipment on hook; ability to place and receive calls at any time of day without the call being cut off; and prompt (and effective) response to customer trouble reports. Rather than attempt to spell out in detail *how* Respondent should achieve these objectives, we believe it is sufficient to set them out and leave the implementation to Respondent's ingenuity — we believe other telephone companies in the state have been able in large measure to achieve these objectives without direction from the Commission as to means. The measure of

(c) Access to a centralized trouble reporting center to be available to Beehive's total customer base.

(d) For a period of sixty days, file a copy of all trouble reports and the disposition of the trouble with the Division. The report to be issued to the Division every two weeks and will include all fourteen days. This report will be be (sic) in the Division's office no later than three working days following the fourteen days.

(e) File a monthly monitoring report with the Division. Include all information that is identified on the attached example. This monitoring report will indicate to the Division the type of service Beehive is providing.

Respondent's success will be, of course, a significant diminution of customer complaints.

We recognize that in regard to the new switch Respondent proposes to install, bringing the unit on line is not entirely under Respondent's control. No sanctions should be imposed for failure to use the new switch so long as Respondent is seeking *in good faith* the requisite local government approvals and is making *good faith* efforts to comply with the associated requirements. We assume that local officials will not unnecessarily hinder Respondent's efforts. We note that a confrontational or antagonistic stance on either side is to no one's benefit.

Even with allowance for unavoidable delay in bringing the new switch on line, however, given the flippancy with which Respondent's CEO has treated the service complaints, and the obstinacy Respondent has displayed throughout these proceedings, we believe the only way to ensure that Respondent complies with an order to correct deficiencies is to institute monitoring. We, therefore, favorably view DPU's proposal.

Erroneous Billing

Respondent is under the statutory mandate to charge "just and reasonable" rates.³¹ We are of the opinion that a necessary component of just and reasonable charges is accuracy in billing. A further aspect, as embodied in our rules, is prompt adjustment for errors.³² There is no factual dispute in these proceedings that Respondent has fallen short on both counts.

We will accept provisionally Respondent's representation that it has remedied the problem with the installation of a new automated billing system. However, we are prepared to revisit this issue if future experience continues to disclose an inordinate number of billing errors, or if billing errors continue to go uncorrected.

Toll Charges within EAS

Under applicable law, Respondent may only charge in accordance with its tariffs.³³ Since there is no factual dispute that Respondent is imposing toll charges for calls to numbers with 830 and 841 prefixes, the only issue is whether such charges are allowed under Respondent's tariffs.

Respondent cites us to its UPSC Schedule No. 12 as sanctioning the charges it has imposed on its customers. This is totally erroneous and irrelevant. The tariff applies solely to switched access charges for interexchange carriers to complete calls into Respondent's service area and has no applicability whatever to Respondent's local exchange customers.

The applicable tariff is Respondent's UPSC Schedule 1 which expressly provides for EAS from Rush Valley and Vernon and imposes a \$1.00 monthly charge for the same. There is no exception for 830 and 841 prefix numbers within the EAS.

Nor should there be.

Respondent incurs no additional costs by handing over a call to a wireless provider, as opposed to handing it over to U.S. West Communications, Inc., for completion. That some of the wireless provider's customers may reside in Respondent's service area, and that the wireless provider may thus compete with Respondent is irrelevant.³⁴ Respondent's ratepayers pay for EAS and they are entitled to the full benefit thereof. In effect, Respondent is charging twice for the same service.

Respondent attempts to obfuscate the issue by comparing it to the situation

³³§ 54-3-7, UCA 1953, as amended.

³⁴How serious this perceived competition is at this time appears to us problematical. Wireless charges still, for the most part, considerably exceed wireline charges; most customers, therefore, will retain their wireline service. For most customers, the attraction of wireless service is the mobility it offers. A second wire line would not

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encountered by the Commission a couple of years ago in which EAS customers were reselling that service without legal right, and thus were allowing their customers to evade legitimate toll charges. No such situation exists here. Respondent's customers are merely completing EAS calls using a service for which they have paid.

As DPU correctly points out in its brief, Respondent has created a discriminatory situation in which callers to 830 and 841 prefixed numbers are at a disadvantage vis-a-vis callers to numbers with other prefixes within the EAS. Further, Respondent's actions are anti-competitive, since they seriously diminish, for wireless subscribers, the utility of their service — potential callers to cellular numbers are going to think twice about a call if they know they will incur toll charges. That, in turn, is likely to impact the decisions of those considering subscribing to wireless service.

For that very reason, the Commission has established a policy of joint provisioning of service between wireline and wireless providers meant to promote interchangeability between the services. To that end the Commission has approved contracts to ensure that wireless carriers can establish local exchange numbers and interconnect lines, trunks, and DID services that provide the same local and EAS calling areas as that provided to wireline local exchange customers of the interconnected central office. Respondent's action flies directly in the face of this Commission policy.³⁵

Our conclusion does not leave Respondent without a remedy; if Respondent deems its current EAS charge uncompensatory, it may apply for a rate increase.

³⁵That U.S. West Communications, Inc., wishes to renegotiate its interconnection agreements with Respondent does not alter our conclusion. If such renegotiation affects EAS, it will be time enough to reconsider the

Procedural Issues

After the hearing in this matter, Respondent has raised various procedural issues relating to inadequate notice, inadequate time to obtain counsel and/or prepare its case, and inadequate discovery. We find no merit in any of them. At the first prehearing conference, Respondent's CEO appeared and did not even mention wanting to obtain counsel. Respondent's CEO has been involved in enough proceedings before the Commission to know that he could have obtained a continuance for such purpose had he wished to do so.

Respondent's CEO participated fully in setting the discovery and hearing schedule, he cannot be heard to complain at this late date that the time was too short.

We reject also the claim of inadequate notice of the subject matter. Respondent was furnished summaries of the testimony of DPU's customer witnesses, and through contact with DPU personnel during the pendency of these proceedings, was well aware of the tenor of the service complaints. Judging from the testimony of Respondent's own witnesses at the hearing, they were well aware of the service problems and were able to testify cogently regarding the same. In short, this is not a complicated case, and the notice and time frame were adequate for preparing and hearing the case. Respondent was indulged more than it deserved in extending the time for filing its posthearing brief. This matter has been drawn out at more than sufficient length; it is time to resolve it.

CONCLUSIONS OF LAW

Respondent stands in violation of §§ 54-3-1 and 54-3-7, UCA 1953, as amended, as well as §§ R746-340-5(B) and R746-240-4, Utah Administrative Code. Each day of imposition of a charge not sanctioned by Respondent's tariff is a separate violation of § 54-3-7, and is subject to

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

- BEEHIVE TELEPHONE COMPANY immediately cease and desist imposing illegal toll charges on its customers for calls to telephone numbers with prefixes 830 and 841;
- BEEHIVE TELEPHONE COMPANY refund or credit, at the customer's election, within 60 days of the date of this Order, all such illegal charges it has imposed on its customers since March 1, 1996, together with interest at the rate of 1.5% per month for the period said company has held such illegal charges.
- BEEHIVE TELEPHONE COMPANY, within 60 days of the date of this Order, resolve all outstanding billing disputes, with refunds or credits where appropriate. At the end of said 60 days, DPU is directed to conduct a random sample survey of Respondent's customers to ensure compliance.
- BEEHIVE TELEPHONE COMPANY make an immediate and concerted effort to achieve, and achieve within 180 days of the date of this Order, the following service standards: lines meeting the industry standard for signal integrity of signal loss totaling less than 6 db with noise levels sufficiently low to allow normal voice conversation without unusual effort; lines operable in normal weather conditions, *i.e.*, absent flood, unusually severe wind, or extremely heavy snow; normal call termination after a customer puts her or his equipment on hook; ability to place and receive intra-LATA calls at any time of day without unreasonable delay to place the call and without the call being cut off; and prompt (and effective) response to

installation of a new switch, and installation of the same is impossible because of local governmental action, despite Respondent's *good faith* efforts to comply with local governmental requirements, Respondent may petition for an extension of the time to achieve compliance. Respondent shall file such petition when the need for such extension becomes known to the Respondent due to the local government's action.

- BEEHIVE TELEPHONE COMPANY, within 30 days of the date of this Order, establish a standard trouble reporting procedure that is accessible to all customers as follows:
 - Provide a dedicated 800 number, available 7 days a week/24 hours a day;
 - Establish and maintain a centralized trouble reporting location, accessible to Respondent's customers, with a standardized ticketing format and trouble disposition — format of the trouble ticket to include time and date the trouble report was taken, time the trouble was cleared, an explanation of the trouble, and the action taken to clear the trouble.
- BEEHIVE TELEPHONE COMPANY for a period of 60 days following the establishment of the procedure ordered in the preceding paragraph, file a copy of all trouble reports and the disposition of the trouble with DPU. Respondent shall submit said copies at two week intervals and include all trouble tickets generated during the full 14-day period. Respondent shall submit said copies no later than three working days following the close of each 14-day reporting period. DPU is directed, 180 days after the date of this Order, to conduct a random sample survey of Respondent's

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Respondent's service. The Commission may use the results of said survey to determine whether Respondent has achieved the service standard objectives set forth above.

- BEEHIVE TELEPHONE COMPANY notify customers in writing prior to disconnection of service and otherwise comply with Chapter R746-340, Utah Administrative Code.
- BEEHIVE TELEPHONE COMPANY be, and it is, fined in the amount of ONE HUNDRED EIGHTY-TWO THOUSAND FIVE HUNDRED (\$182,500) DOLLARS (\$500 for each day Respondent has been imposing illegal charges), the entire sum of which is suspended on condition Respondent complies fully with the requirements of the foregoing ordering paragraphs within the time frames there established; and if Respondent achieves such compliance, the suspension herein ordered shall be made permanent; otherwise said suspension shall be vacated and the full amount of the fine herein imposed shall be immediately due and payable.
- Any person aggrieved by this Order may petition the Commission for review within 20 days of the date of this Order. Failure so to do will forfeit the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 10th day of April, 1997.

/s/ A. Robert Thurman
Administrative Law Judge

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Approved and Confirmed this 10th day of April, 1997, as the Report and Order of
the Public Service Commission of Utah.

/s/ Stephen F. Meham, Chairman

(SEAL)

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

STATE OF UTAH)
) ss.
 County of Salt Lake)

I hereby certify that the foregoing consisting of 16 pages numbered
1 to 16 inclusive, is a true and correct copy of the original.

DOCKET NO. 96-051-04, REPORT AND ORDER, In the Matter of the
Quality of Telephone Service Within the Territory Served by
BEEHIVE TELEPHONE COMPANY, Respondent.

*in the foregoing entitled matter or cause, now of record or on file in the office of the Public
 Service Commission of Utah.*

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said
 Commission this 10th day of April, 1997


 Secretary of said Commission

Laurie L. Noda #4753
Assistant Attorney General
Division of Public Utilities
JAN GRAHAM #1231
UTAH ATTORNEY GENERAL
160 E. 300 So.
Salt Lake City, UT 84114
Telephone: 366-0328

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Quality of Telephone	) Docket No. _____
Service Within the Territory Served by	) Petition for Order to
BEEHIVE TELEPHONE COMPANY.	) Show Cause

Pursuant to Commission Rule R746-100-3, the Division of Public Utilities ("Division") hereby submits its Petition for Order to Show Cause against Beehive Telephone Company ("Beehive"). In support of its Petition, the Division alleges as follows:

1. On April 10, 1997 the Commission issued an Order in Docket No. 96-051-04 ruling that Beehive had violated sections 54-3-1 and 54-3-7 of the public utility code. Specifically the Commission ordered that Beehive cease and desist imposing illegal toll charges on its customers for calls to telephone numbers with prefixes 830 and 841. Beehive was also ordered to resolve all outstanding billing disputes, with refunds or credits where appropriate and to make an immediate and concerted effort to achieve within 180 days of the date of the Order appropriate service standards. The Commission also imposed a fine of \$182,500 which was suspended on condition

that Beehive comply fully with the requirements of the Order.

2. Since the Commission's order was issued the Division has received several inquiries and complaints about Beehive's billing procedures. The complainants indicated that they are still being billed double and triple charges for the same items and are being charged for cellular calls in an EAS calling area.

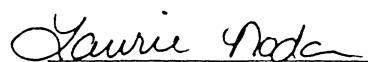
3. The Division has attempted to contact the President of the Company, Mr. Art Brothers on three separate occasions to discuss the problems that have been reported but has to date received no response.

4. The Division is continuing its audit of Beehive to determine the exact nature of the billing disputes and other service related problems but maintains that the Company has an obligation under the Commission's Order to cease and desist from charging for calls made to cellular phones and that its failure to do so constitutes a violation of the Commission's Order.

Based upon the Commission's Order in Docket 96-051-04, the Division recommends that Beehive be fined \$182,500 for failing to comply with the requirements set forth therein and that Beehive be required to appear and show cause why such fines should not be imposed.

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Dated this 13th of October, 1998



Laurie L. Noda
Assistant Attorney General
Division of Public Utilities

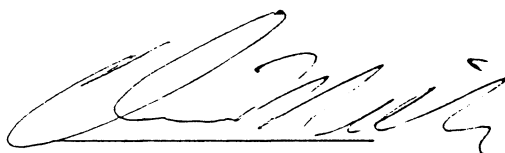
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Petition for Order to Show Cause was mailed first class postage prepaid this 27th day of October, 1998 to the following:

~~Alan Smith~~

31 L Street, No. 107
Salt Lake City, UT 84103

Arthur M. Brothers
Beehive Telephone Company
5160 Wiley Post Way #220
Salt Lake City, Utah 84116



BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Quality) Docket No. 98-051-04
of Telephone Service Within)

the Territory Served by) HEARING

BEEHIVE TELEPHONE COMPANY,)

Respondent.) DATE: February 3, 1999

BEFORE: Administrative Law Judge

A. ROBERT THURMAN

COPY



REPORTING SERVICES, LLC

525 WELLS FARGO PLAZA
170 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84101
(801) 328-1188 / 1-800-DEPOMAX
Fax 328-1189



1 Q. Well, I'm not asking you that. I'm
2 just asking about the April 10th order.

3 A. All right.

4 Q. And whether it required more than one
5 survey.

6 A. It did not. It required one survey.

7 Q. Do you have a copy of the order there
8 in front of you, Peggy?

9 A. I do.

10 Q. All right. If you would turn to Page
11 13, please.

12 MS. NODA: Excuse me, Your Honor, can I
13 have a clarification? I think she said 60 days.
14 The Division was supposed to conduct a survey, and
15 it was 180 days; isn't that correct?

16 MR. SMITH: I think we're going to
17 clarify that.

18 THE WITNESS: Okay.

19 Q. On Page 13 you'll see that page is
20 headed by the word Order. Are we on the same page?

21 A. No, we're not.

22 Q. It says Order at the top. This is the
23 actual order that was entered by the Commission.

24 A. Okay, it's Page 14 of my document.

25 Q. Okay. Now, looking at the third

1 paragraph from the top, it says Beehive Telephone
2 Company, within 60 days of the date of this order
3 -- are you with me?

4 A. Yes, I am.

5 Q. All right. There's a requirement there
6 that outstanding billing disputes and refunds and
7 credits, where appropriate, is to be accomplished
8 by Beehive. And then the second sentence of that
9 paragraph says, at the end of said 60 days, DPU is
10 directed to conduct a random sample survey of
11 respondent's customers to insure compliance.

12 A. That's correct.

13 Q. Do you remember that directive?

14 A. I do.

15 Q. Is this the survey that you were
16 thinking about in response to my earlier question?

17 A. No. Well, it's together, I mean on the
18 next page it goes into more detail about the 60
19 days and the 180 days.

20 Q. Okay. But I'm sticking here on Page 13
21 for the moment.

22 A. Okay.

23 Q. Now, this order was entered April 10th;
24 is that right?

25 A. That's right.

1 Q. And the Division got that at or about
2 the time it was entered; is that right?

3 A. That's correct.

4 Q. And it orders the Division -- is DPU,
5 does that mean you guys?

6 A. That's the Division.

7 Q. All right. Within 60 days of that
8 order -- that would be about what, June 10th?

9 A. Approximately.

10 Q. Okay. To conduct a random sample
11 *survey of respondent's customers to insure*
12 *compliance with this billing dispute question.* Was
13 that survey conducted within that 60-day period by
14 the Division?

15 A. It was not. It was extended beyond
16 that because of some things that Beehive was doing,
17 and we didn't want to take a survey that was not
18 fair, and so we waited.

19 Q. Did the Division get an order from the
20 Commission permitting the Division to extend the
21 survey time beyond the 60 days it was ordered by
22 the Commission?

23 A. No, it was not.

24 Q. The Division just unilaterally took
25 more time, took a longer time to conduct this

1 particular survey referenced on Page 13 of the
2 April 10th order?

3 A. Wait a minute, I don't understand your
4 question.

5 Q. Well, I think you answered my
6 question. The Division did not get an amendment to
7 the April 10th order permitting the Division longer
8 than 60 days to make the survey respecting billing,
9 did it?

10 A. No, it did not.

11 Q. It just unilaterally decided it
12 wouldn't follow the Commission's order and it would
13 take longer than 60 days to make the survey?

14 A. It was not our intention to disobey the
15 order. Our intention was to give Beehive a fair
16 survey.

17 Q. I'm not asking you your intention, I'm
18 just asking whether the decision to disregard the
19 Commission's order was made unilaterally by the
20 Division.

21 A. I would have to say yes, with other
22 circumstances.

23 Q. All right. When was this 60-day survey
24 finally taken?

25 A. It was taken in February.

1 Q. Of what year?

2 A. Of 1998.

3 Q. So the Division waited almost a year
4 from the date of the order?

5 A. It did. And I will follow up with my
6 answer that I did before, that we did that because
7 Beehive was changing switches and there were
8 problems that were occurring, and we decided not to
9 take a survey until after Beehive had a fair chance
10 to get their problems resolved.

11 Q. Now, looking at Page 14 and 15 of the
12 order, the bottom of Page 14.

13 A. You'll have to -- our pages are
14 different.

15 Q. How can that be, I wonder?

16 A. I don't know.

17 Q. Maybe I should give you this copy.

18 A. You can just refer me to the paragraph
19 and I can find it.

20 Q. Okay. They're not numbered, but this
21 is the paragraph that starts Beehive Telephone
22 Company, for a period of 60 days following the
23 establishment of the procedure. Are you with me
24 there?

25 A. All right.

1 Q. And looking down to the bottom portion
2 of that paragraph, there's a line that picks up, it
3 says DPU is directed, 180 days after the date of
4 this order, to conduct a random sample survey of
5 respondent's customers to ascertain the level at
6 that time of customer satisfaction with
7 respondent's service.

8 A. Correct.

9 Q. All right. Now, this seems to be a
10 survey at 180 days that goes to service other than
11 billing questions; is that right?

12 A. That's correct.

13 Q. And so the Commission's order that
14 we're looking at was April 10th, and 180 days from
15 April 10th is when?

16 A. It would be approximately -- June,
17 April, May, June, July, August -- it would be about
18 six months, so it would be roughly October.

19 Q. All right. Now, did the Division
20 follow the Commission's order and timetable in
21 conducting the survey? We'll call it the 180-day
22 survey.

23 A. I would answer that the same way I
24 answered your prior question. We did not follow
25 that direction of 180 days because of the new

1 switches that Beehive was installing and the
2 problems that they were incurring getting those
3 switches in, and we wanted to be fair to Beehive.

4 Q. All right. Again, the Division did not
5 seek any allowance or special dispensation from the
6 Commission in disregarding the order; is that
7 right?

8 A. No, we did not.

9 Q. It just took it upon itself
10 unilaterally to disregard the order; is that right?

11 A. Yes, not intentionally.

12 Q. Well, you intended to take longer than
13 the 60 days and the 180 days, didn't you?

14 A. I did.

15 Q. In fact, you did?

16 A. I did.

17 Q. Now, I have a question about -- when
18 was the survey, this written survey first taken?

19 A. The written survey was taken in
20 February of 1998.

21 Q. I notice from the pre-filed testimony
22 from Mr. Crosby that pertains to the survey and
23 that you reference in your pre-filed testimony,
24 Peggy, one of the exhibits which apparently is a
25 copy of the survey which was sent, and I'm looking

1 go out and test the line to see.

2 Q. Okay. Is that a matter of policy?

3 A. Not necessarily. We don't have the
4 equipment to test the line, in the first place.

5 Q. Okay, I'm just trying to get --

6 A. And so what we would do is we would
7 mediate with Beehive to assure that that customer
8 is satisfied and that things have been fixed or
9 repaired, and then we follow up with the customer
10 to assure that they are happy with the solution.

11 Q. Okay.

12 A. But the complaint of something being
13 broken is fixed by Beehive, not by the Division.

14 Q. I'm not talking about fixing. I'm
15 talking about investigating it.

16 A. Even investigating, in investigating
17 it, we are not ones that can actually go out and
18 test the line. We can ask Beehive to do it, we can
19 find out from them what they did.

20 Q. All right.

21 A. And so that's how we effectively do it.

22 Q. I'm looking at Rule 746-240-7. Do you
23 have a copy of that in front of you?

24 A. I don't.

25 MR. SMITH: May I Your, Honor? I have

1 a copy.

2 THE COURT: You may.

3 A. Which one did you want me to look at?

4 Q. 746-240-7.

5 A. Okay.

6 Q. Is this the rule that the Division
7 follows in handling consumer complaints of the type
8 that we have in Exhibit 1.1c, for example? /

9 A. I would say that we do try to abide by
10 this rule.

11 Q. All right, that wasn't my question. I
12 asked if this was the rule that governs?

13 A. It is the rule that governs, and we do
14 it.

15 Q. Thank you. And my follow-up question
16 would be, the one you did answer, namely, does the
17 Division attempt to follow this rule in handling
18 consumer complaints? And I take it your answer to
19 that question is yes?

20 A. That's correct.

21 Q. Does the Division have a policy manual
22 with procedures and guidelines that define or
23 elaborate upon or describe the procedures to be
24 implemented by the Division in compliance or
25 attempted compliance with Rule 746-240-7?

1 A. I would say that you'll have to refer
2 that question to Ms. Petersen.

3 Q. Okay. When you handle the complaint,
4 Peggy, do you refer to any such guidelines or
5 blueprints or rules?

6 A. No, I refer to what is outlined and my
7 own investigative knowledge on what should be done
8 to investigate a problem.

9 Q. Okay. Based on your personal
10 experience working at the Division, would you say
11 that other folks at the Division who are charged
12 with handling these complaints do the same as you
13 in this regard?

14 A. I would say that we all probably do it
15 differently, but we do the same things.

16 Q. All right. Looking at the Carter
17 complaint again, Exhibit 1.1c, and looking also at
18 the Rule 746-240-7, I note that the first sentence
19 of the rule says that a person who is unable to
20 resolve a dispute with -- and I guess that means a
21 local exchange carrier -- concerning the matter
22 addressed in these regulations. Do you read that
23 to require you to identify the point in the
24 regulation of the Commission that intersects with
25 the consumer's complaint?

1 would be. I would have to research that.

2 Q. All right. What did you do by way of
3 investigating this particular complaint, the Martin
4 Morse complaint?

5 A. I just talked with the customer to see
6 if his problem had been resolved.

7 Q. Did you do anything else besides
8 talking with the customer?

9 A. No, I did not. Ms. Petersen had
10 already referred it to Beehive, and so I didn't in
11 turn also do that. I just wanted to talk to the
12 customers.

13 Q. Okay. Did you make any particular
14 findings as to the Morse Martin complaint?

15 A. Not any other than what Ms. Petersen
16 has put down.

17 Q. Did you propose any solution?

18 A. No, I did not.

19 Q. To Beehive or the customer?

20 A. No, I did not.

21 Q. I notice that in the same stack that I
22 gave you under Rule 746-100-3, Subparagraph F,
23 there's a procedure for consumer complaints, and
24 I'm wondering if you didn't allude to this earlier
25 by referring to mediation of complaints. Do you

1 have that in front of you?

2 A. Give me the number again.

3 Q. 746-100-3, Subparagraph F, it's the
4 first sheet of the page I gave you and it's the
5 underlined parts at the bottom right hand. Do you
6 have that in view?

7 A. I do.

8 Q. Is the Division's attempt in processing
9 consumer complaints to follow this particular rule?

10 A. I would say yes.

11 Q. All right. Has the Commission
12 designated, in that regard, a mediator?

13 A. I would say that the mediator would be
14 our complaint analyst.

15 Q. Okay, who would that be?

16 A. It's Ms. Peterson, Mr. Miller.

17 Q. Okay, are those the two people who are
18 complaint analysts at the Division?

19 A. Yes.

20 Q. Are there any others?

21 A. Diana Steadman.

22 Q. And is it your testimony then that the
23 complaint analyst at the Division performs a
24 mediation service required under Rule 746-100-3
25 Subparagraph F-1?

1 A. By mediation, the way that I would
2 interpret that is they are the person that receives
3 the complaint and they take it to the companies and
4 try to get a resolution for the customer that has
5 called in, and so by that I would say they are a
6 mediator. They are trying to get the problem
7 corrected.

8 Q. All right. Tell me what personal
9 knowledge, if any, you have respecting the
10 mediation process, concerning the complaints
11 reflected in Exhibits 1.1b that's the Walker
12 complaint, 1.1c that's the Carter complaint, and
13 1.1d that's the Morse complaint. Do you have
14 personal knowledge of any mediation occurred
15 respecting any of these three complaints?

16 A. I think that the mediation was done by
17 myself and Ms. Petersen, and so by having
18 knowledge, I did speak with the customer and I did
19 speak with Ms. Petersen on what actions she had
20 taken. I knew what action I had taken on the
21 Walker and the Carter.

22 Q. Okay. By mediation, are you meaning --

23 A. I am meaning that --

24 Q. What?

25 A. I'm saying that I talked with the

1 customer, I talked with Beehive Telephone Company,
2 and I talked with Ms. Petersen, who had also been
3 working on those particular ones, and so I would
4 say that mediation is the middle point between the
5 two parties that are in the complaint.

6 Q. All right. Now, was Exhibit 1.1f
7 introduced through you, or were you deferring --

8 THE COURT: I think all of the rest of
9 them through K have been deferred, pending the
10 testimony of Ms. Petersen.

11 MS. NODA: That's correct.

12 Q. Where does Mr. Walker live, the
13 complainant in your Exhibit 1.1b?

14 MS. NODA: Excuse me, I think you mean
15 1.1c.

16 MR. SMITH: No, I'm talking about
17 Mr. Walker.

18 A. I don't have that information. I
19 mainly was concerned about talking with him. I
20 don't think I ever asked him where he lived.

21 Q. Okay. I don't think I asked you this,
22 Peggy, but as to those complaints and exhibits that
23 were introduced through you, where the exhibit
24 references a date, would it be your best knowledge
25 that the Division undertook to process or handle

1 us. I don't even know what we're talking about.

2 MS. NODA: We can just withdraw that
3 one, that's not a problem.

4 THE COURT: All right. 1.1j is
5 withdrawn then.

6 MS. NODA: And that concludes the
7 testimony from Ms. Petersen.

8 THE COURT: Cross.

9

10 CROSS EXAMINATION

11 BY MR. SMITH:

12 Q. Do you mind if I call you Rea?

13 A. No.

14 Q. Thanks. Rea, I'm going to ask you the
15 same set of questions about the form the Division
16 uses for these complaints as I asked Peggy. Do you
17 remember my questions to her about that?

18 A. By heart?

19 Q. Well, no, were you here what I was
20 asking them?

21 A. Yes.

22 Q. I just have to know the pledge of
23 allegiance by heart, that's all.

24 A. I can do that.

25 Q. And take me out to the ball game, so

1 you can sing it at the seventh inning of the Buzz
2 games.

3 Looking at the complaint form where it
4 says complaint info period and it says status,
5 where it says "closed" there, what does that mean?

6 A. When we close a complaint, it's either
7 with a resolution that we have worked out through
8 the customer, utility company, or if we do not get
9 a response or cannot resolve the complaint, it's
10 referred to -- the customer is referred to file for
11 a formal complaint, and at that time it would be
12 closed based on that.

13 Q. Closed to the Division staff; is that
14 right?

15 A. Right, closed as an informal complaint.

16 Q. All right. And how does one tell the
17 difference, from the form, which of those options
18 is involved when the status box is filled "closed"?

19 A. Only through the remarks.

20 Q. Okay. Would one understand which of
21 those two alternatives was followed by looking at
22 the "resolved on" category just below "status"? Do
23 you understand my question?

24 A. No, you mean results area? Restate
25 that maybe.

1 Q. All right. Sometimes I'm not too
2 clear, I understand that. The problem I'm trying
3 to address is how to interpret the form when it
4 says status closed. As I understand what you've
5 told me, you've said that the closed can mean
6 either we got a resolution or we washed our hands
7 of it, so to speak, and turned it over to the
8 customer to file a formal complaint if you wanted
9 to. I want to know if there's anything on the form
10 that tells me which of those two options was
11 followed or taken as to this particular complaint.
12 And you've referred me to the comments section.

13 My follow-up question was, looking at
14 the "resolved on" box where that's filled in, does
15 that mean that the first option, namely there was a
16 resolution rather than a washing of hands, was the
17 result?

18 A. Are you look at a particular complaint
19 or just generally?

20 Q. I'm looking at the Larsen Gordon, for
21 example, 1.1h. Do you see there it says "resolved
22 on." Any of the forms will do.

23 A. Normally, in the results area we would
24 type remarks indicating whether it was resolved,
25 that everyone came to an agreement, and that's why

1 it was closed or it was referred to a formal.

2 Q. Okay.

3 A. So looking at the status, closed or
4 open would not tell you which way that went. You
5 would have to go down in the results area or the
6 actions taken.

7 Q. All right. But my question is a little
8 more specific than that.

9 A. Okay.

10 Q. And I'm wondering whether I might get
11 an additional clue from what we see in the comment
12 box, by looking at the "resolved on" box. Do you
13 see that box?

14 A. Right.

15 Q. Where that's filled in, does that mean
16 that there was resolution as opposed to the
17 Division washing its hands?

18 A. No.

19 Q. It does not?

20 A. No.

21 Q. Would it ever have that meaning?

22 A. No, that is only the day that
23 corresponds with the status closed, that's the date
24 it would have been closed either to refer to formal
25 or closed based on resolution.

1 Q. So you're talking about resolution of a
2 problem and washing hands of a problem. What do
3 you mean by resolution of a problem then?

4 A. The complaint was resolved
5 satisfactorily to the complainant.

6 Q. Okay. What about if it was resolved
7 satisfactorily to the utility; is that something
8 that you would signify on this form?

9 A. In the remarks area we would.

10 Q. Is that something that you look at as a
11 complaint specialist when you get a complaint?

12 A. Yes.

13 Q. You look at both the consumer side and
14 the utility side?

15 A. Absolutely.

16 Q. Okay. Do you have a copy of the Public
17 Service Commission rules with you?

18 A. No.

19 Q. May I give you a copy of a couple of
20 rules?

21 A. Yes.

22 Q. If you'd look at Exhibit 1.1e, that's
23 the Merle Rawlings complaint. Do you have that
24 before you?

25 A. I do.

1 Q. All right. Now, I asked Peggy, and you
2 probably heard me, whether at the Division, when a
3 complaint specialist like yourself addresses a
4 consumer complaint, whether it is your practice to
5 attempt to achieve compliance with Rule 746-100-3,
6 Subparagraph F-1, and it's on the first page of
7 that paper that I gave you there. Do you see it?
8 It says consumer complaints.

9 A. Okay, I have it.

10 Q. Do you?

11 A. Yes.

12 Q. Do you want me to have the question
13 read back to you?

14 A. Please.

15 MR. SMITH: Can you read that question
16 back, please?.

17 (Record read.)

18 A. Yes.

19 Q. The answer is yes to my question?

20 A. Yes.

21 Q. All right. Does that mean that there's
22 an attempt to resolve the matter through referral
23 to the customer relations department of the
24 utility, if any? Do you do that as a practice?

25 A. Is Art Brothers in the customer

1 relations department?

2 Q. That's a good question. Some people
3 might say he's a little too prickly to serve in
4 that department, but I think I can see where your
5 answer might be headed.

6 Let me ask it a little more.
7 specifically. I think that's a good point that
8 you're making. I'm just interested in the practice
9 of the Division and if the Division, as a practice,
10 identifies the customer relations department at a
11 utility and a point person there in addressing
12 these consumer complaints. Is that your practice?

13 A. Yes, it is.

14 Q. All right. And when you focus that
15 practice on Beehive, have you identified the
16 customer relations department at Beehive for
17 purposes of implementing this practice?

18 A. Not a department, per se, a contact
19 person.

20 Q. Who is that?

21 A. Art Brothers.

22 Q. All right. Now, you're aware, I think,
23 that we're here today about the April 10th order,
24 April 10, 1997. Were you aware of that?

25 A. Sort of, but since I haven't been

1 involved in the proceedings, don't ask me questions
2 on it.

3 Q. All right. Do you have any knowledge
4 of what the April 10th order may say about
5 addressing complaints, and procedures at utilities
6 for addressing complaints?

7 A. Probably not.

8 Q. Have you ever had such knowledge?

9 A. Of the order?

10 Q. Of those specific items in the order
11 that I'm talking about.

12 A. No, not specifically.

13 Q. Okay. So I guess it would be fair to
14 say that when you processed, if I may use that
15 word, the various complaints that Laurie Noda had
16 you identify and introduce, that in the processing
17 of them and in the referral of them to customer
18 relations, you did not have in mind the April 10th
19 order and any provisions in that order for
20 addressing customer complaints. Is that a fair
21 statement?

22 A. No, I did not.

23 Q. This 746-100-3, Subparagraph F,
24 Subparagraph 1, also mentions investigation by the
25 Division and mediation by the Division. Could you

1 describe for me, in your work experience at the
2 Division as a complaint specialist, what the
3 practice and policy is as to investigation as it's
4 referenced here in Subparagraph F-1?

5 A. Once we receive a complaint -- and not
6 all complaints would fall under Commission rule or
7 tariff -- but the best that we can, any of those
8 complaints that would fall under a tariff or rule
9 would be kind of our guidance as to how we want to
10 resolve that complaint. If it's a basic person
11 cannot pay their bill, of course, that's not
12 addressed in any rule or tariff. But any time we
13 have a rule that guides us, we will contact the
14 utility company and try to get their side of it, to
15 see if there is a rule that guides that complaint,
16 and try to resolve it after that based on whatever
17 rule would apply.

18 Q. Okay. Any other steps you take or
19 things you do in the investigation component under
20 Subparagraph F-1?

21 A. That would probably cover it.

22 Q. Okay. Would you concur with Peggy's
23 testimony that you don't deploy at the Division a
24 technical staff of engineers to go out and actually
25 kick the tires or check the circuits to see whether

1 it's the plant problem or some other problem?

2 A. I would concur with that.

3 Q. Okay. So the Division as a practice
4 doesn't go out when there's a complaint, say,
5 about static on the line, to see if the static
6 grows out of the Wal-Mart special phone that the
7 consumer bought or a plant of the utility?

8 A. Right.

9 Q. Anything else you want to tell me about
10 investigation practices?

11 A. Do you want to just -- are you going to
12 move on to mediation?

13 Q. I am.

14 A. Okay.

15 Q. All right. So nothing further about
16 investigation?

17 A. No.

18 Q. All right. How about mediation, what
19 is your practice and policy there?

20 A. If it comes to where we hit a place
21 where the customer and the utility cannot come to
22 an agreement, we will offer to sit down with both
23 parties and try to resolve the issue before it goes
24 to a formal hearing or before the customer files a
25 complaint, files for a formal hearing.

1 Q. Okay.

2 A. If it gets to that point. Otherwise,
3 if we can do it on the phone, we will do that.

4 Q. All right. Is there someone at the
5 Division who is a trained mediator who performs
6 this office?

7 A. Trained?

8 Q. Trained or untrained. Tell me who, if
9 anybody.

10 A. I would say I'm an experienced
11 trainer. I'm trained by experience in some issues,
12 but I do have technical staff that I can go to that
13 would be involved in those issues too.

14 Q. So you are a person who mediates?

15 A. Sometimes.

16 Q. Is every complaint specialist a
17 mediator by definition?

18 A. I would say they probably would be.

19 Q. And the training that you have as a
20 mediator is on-the-job training; did I hear that
21 correctly?

22 A. Uh-huh.

23 Q. All right. Is the answer yes?

24 A. Yes, correct.

25 Q. Is it your understanding that no formal

1 complaint is to be allowed or filed by any consumer
2 unless and until the investigation and mediation
3 burden that this rule imposes on the Division is
4 accomplished?

5 A. Yes.

6 Q. All right. Now, drawing your attention
7 to the second page of the handout I gave you, you
8 have a copy of Rule 746-240-7, which somewhat
9 enlarges on this resolution process that we've been
10 discussing. First of all, tell me if you can, Rea,
11 is it a Division practice and policy when it
12 handles these consumer complaints, such as the ones
13 we're looking at today and these exhibits, to
14 attempt to achieve compliance with Commission Rule
15 746-240-7?

16 A. Yes.

17 Q. All right. Now, we've already talked
18 about investigation. I guess investigation under
19 the rule we just talked about is the same process
20 as the one we're looking at now; is that right?

21 A. Yes.

22 Q. And identifying regulations, so forth,
23 is that all the same process?

24 A. Yes.

25 Q. Making an attempt to resolve it, that's

1 the same process, is it?

2 A. Yes.

3 Q. Okay. What about findings within five
4 business days, is the practice of the Division and
5 the complaint specialists like yourself at the
6 Division, when it gets a complaint like the ones we
7 have before us today with these exhibits, to make
8 findings along this timetable?

9 A. We try to do that, yes.

10 Q. Okay. Do you succeed in every
11 instance?

12 A. Not every one.

13 Q. What's the percentage, roughly, in your
14 experience, where you've done findings and you
15 haven't done findings?

16 A. Probably 98 percent.

17 Q. 98 percent you do the findings?

18 A. Right.

19 Q. And proposing a solution to the
20 company, do you do that as a practice and policy?

21 A. We do.

22 Q. Okay. Now, looking at the complaints
23 that have been admitted over my vigorous objection
24 into evidence --

25 A. Mine too, because I have to testify.

1 A. Once I receive information that's
2 conflicting information, basically everyone is
3 saying, it's not my fault, it's not my fault, that
4 will be an indication that they will go formal,
5 where everybody can bring in their information and
6 let a judge decide whose fault it is.

7 Q. All right. Now, I'm not second
8 guessing what you did there by asking this
9 question, don't take me wrong. I'm just looking
10 for clarification and definition. Is that your
11 standard practice?

12 A. In a situation like that it would be.

13 Q. Okay. So you don't read the word
14 "mediation" in the rule to be an effort to resolve
15 conflicting positions?

16 A. In some cases we do. In this case I
17 did not.

18 Q. Okay. What made the difference for you
19 here?

20 A. Because there's no way I could
21 determine whose fault it was. And that's why he
22 was told to go formal before a judge to decide
23 that.

24 Q. Okay. Does mediation require a
25 determination of fault by the mediator, or does it

1 require, in your view, an effort to assist in
2 negotiating to get the people to work it out
3 between themselves?

4 A. The only tools I have to work with are
5 the Commission rules and the tariffs. If there's
6 nothing specific in there to help me, they will be
7 referred formal.

8 Q. Okay.

9 A. As far as the directory, as whose fault
10 was it, the guy was left out. There's nothing
11 there to help me in a mediation situation to
12 resolve that.

13 Q. All right. But in any event, you
14 didn't --

15 A. In a fault finding situation, I could
16 do that.

17 Q. All right. Okay. Now we're back on
18 Mr. Rawlings Exhibit 1.1e. Were you the intake
19 person on this complaint?

20 A. I was.

21 Q. And did you take this complaint on or
22 about August 10, 1998?

23 A. I did.

24 Q. Now, where the complaint says as it
25 does here, under the column utility analyst, Art

(231)

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Quality) Docket No. 98-051-04
of Telephone Service Within)

the Territory Served by) HEARING

BEEHIVE TELEPHONE COMPANY,)

Respondent.) DATE: February 22, 1999

VOLUME II

COPY

BEFORE: Administrative Law Judge

A. ROBERT THURMAN



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1 THE COURT: Thank you, Mr. Miller.

2 MS. NODA: Our next witness is Crystal
3 Fishlock.

4 MR. SMITH: Your Honor, in order to
5 expedite this, since I probably am the culprit here
6 in slowing things down, and in view of the fact
7 that I think Ms. Fishlock is on tap to be auditing
8 something out at Beehive for other purposes, we
9 would stipulate to the admission of her -- well,
10 not to admitting it, but to foregoing the usual
11 examination by way of getting into evidence, if I
12 can just voice my objections as I have in the past
13 at the outset on the record, and just leave it at
14 that. My objections would be that it's hearsay
15 based testimony, and that there's no foundation,
16 and that except as to the toll charges respecting
17 the prefixes that are noted in the April 10th
18 order, that it's otherwise irrelevant. And with
19 that objection on the record, I think we could
20 leave it at that.

21 THE COURT: All right. Well, your
22 objections are overruled. And let's see, what --

23 MS. NODA: This is Exhibit No. 4.

24 THE COURT: Okay. With that, No. 4 is
25 received.

1 (Exhibit 4 was received
2 into evidence.)

3 MS. NODA: And she has attached
4 Exhibits 4.1 through 4.2, and we have some
5 revisions as well that we'll have to make.
6

7 DIRECT EXAMINATION

8 BY MS. NODA:

9 Q. Could you please state your full name
10 for the record?

11 A. Crystal Sue Fishlock.

12 Q. And by whom are you employed and in
13 what capacity?

14 A. I'm employed by the State of Utah
15 Department of Commerce, Division of Public
16 Utilities, and my title is regulatory analyst.

17 Q. And did you cause to be filed on
18 January 15, 1999 direct testimony in this case
19 which has been marked as DPU Exhibit 4 with
20 attached Exhibits 4.1 and 4.2?

21 A. Yes, I did.

22 Q. And do you have any corrections to that
23 testimony?

24 A. Yes, I do.

25 Q. Could you please provide those?

1 A. Yes. Upon a conversation with Art
2 Brothers, we identified some phone calls that I had
3 erroneously included in my Exhibit 4.2, so I have
4 listed these out as a new Exhibit DPU 4.2 (a).
5 These are the phone calls which I have subsequently
6 excluded from 4.2 summary page, which I now have a
7 revised summary page called Revised DPU 4.2.

8 MS. NODA: I've handed them out, and
9 there's a new 4.2.

10 A. May I state two other -- well, not
11 changes, but one is that I had excluded prefix 850
12 from two different lines of my testimony, those are
13 No. 1 in my summary, and I also noticed when I went
14 back to review the Exhibit 4.2, that there was a
15 phone call that was not included in the cell
16 references to get to the summary, and I have thus
17 included that. And so the revised schedule summary
18 Page 4.2 is now up to date.

19 Q. And were there any other changes?

20 A. Only in explanation of a paragraph,
21 couple paragraphs I had written in my direct
22 testimony. Do I need to explain those at this
23 time?

24 Q. Yes.

25 A. Okay. Subsequently to me filing my

1 report, my testimony, I had a discussion with Bob
2 Gnapp of NARUC, where he told me that the charge of
3 \$5 on a second line was improper for small
4 telephone companies, that US West was the only one
5 impacted by the FCC's change, and therefore,
6 additionally assessing \$5 on the second line was
7 also incorrect, versus whereas before I thought
8 just charging \$5 on the first line was incorrect.

9 MR. SMITH: Well, object to that on the
10 grounds of hearsay.

11 THE COURT: Overruled.

12 Q. And do you have a written summary of
13 your testimony?

14 A. Yes, I do.

15 Q. And could you please provide that now?

16 A. You gave me that, right?

17 Q. Yes just read that into the record.

18 A. Sorry, I need some water, but that's
19 okay. On November 16th and 17th of 1998, Bart
20 Croxford and I conducted a review of Beehive's
21 billing system at the Wendover, Utah office. This
22 initial review included scanning of all billing
23 transactions for the months of September and
24 October, 1998. Several pages of billing data were
25 printed for further review at that time.

1 Also at that time I was able to confirm
2 that Beehive was still charging for phone calls
3 within the Dugway, Tooele, Rush Valley and Vernon
4 extended local calling area, which Beehive was
5 ordered to cease and desist imposing in the April
6 10, 1997 Commission Order.

7 Subsequent to this initial review, I
8 requested monthly billing data for all months from
9 April 1996 through December 1998, in which I
10 subsequently took each individual month of data --
11 oh, by January 1999, I had received 21 of the
12 individual months of data for the period which I
13 requested, I reviewed each data tape for apparent
14 completeness, and then I searched for phone calls
15 between the phone numbers within the Dugway,
16 Tooele, Rush Valley and Vernon extended calling
17 area. I summarized these phone calls that I
18 identified in Exhibit DPU 4.2.

19 Since there were months within the
20 review period that could not be reviewed, I
21 calculated an average from all other months and
22 applied this average for the missing months. Based
23 on the calling trends as seen on the summary page
24 of my exhibit, it is highly probable that these
25 missing months also contained numerous improperly

1 charged calls and should be afforded some weight in
2 determining the extent of improper toll charges.

3 In the Public Service Commission's
4 Order dated April 10, 1997, the improper billing of
5 toll within the extended calling area was limited
6 to calls to cellular phone numbers within prefixes
7 830 and 841. Subsequently, prefixes 840 and 850
8 have been assigned to the Tooele extended calling
9 area, and used by cellular phone companies
10 servicing the Tooele area. Since I did not
11 identify any calls to prefix 841, I did not include
12 this prefix in my testimony.

13 In addition, based on the data I
14 compiled from the data tapes shown in Exhibit 4.2,
15 I saw that Beehive subscribers extensively dial
16 long distance to other prefixes in the extended
17 calling area, prefixes 833, 822, and 844, which are
18 for land line services based in Tooele.

19 Beehive has an allowance in its tariff,
20 which states that during heavy EAS calling times,
21 circuits may not be available, customers may use 1
22 plus dialing when encountering a short-term EAS
23 busy condition by paying the toll rate for those
24 calls. With this in mind, I would expect to see
25 such periodic problems indicated by only periodic

1 toll calls to the main Tooele prefixes on the
2 subscriber's phone bills. However, I do not
3 believe that the extent of calling as shown in my
4 exhibit constitutes a short-time EAS busy
5 condition.

6 Since Beehive is in direct control over
7 the ability of direct dial EAS circuits to its
8 customers, and there has been no allowance or
9 reduction of EAS charges given to customers during
10 periods in which they were forced to dial tolls,
11 these calls should also be reimbursed. Therefore,
12 I have included these in Exhibit DPU 4.2.

13 With the assistance of Bart Croxford, I
14 identified other billing discrepancies that were
15 found during the Wendover trip, and I located
16 later, during a review of other selected months, in
17 which I located later during a review of selected
18 months. These discrepancies are also included in
19 my testimony beginning on Page 4, Line 20, in which
20 I explain that Beehive is inconsistently applying
21 tariff rates, surcharges, and taxes, overcharging
22 for reconnection fees, as well as overcharging FCC
23 subscriber line charges discussed previously.
24 These billing practices are also in violation of
25 Section 54, Chapter 3 of the Utah Public Utilities

1 Laws on billing, as well as Beehive's own tariff.
2 And in addition, these are billing discrepancies
3 which were alluded to in the Commission's order
4 dated April 10, 1997.

5 Q. Does this conclude your testimony?

6 A. Yes, this concludes my summary.

7 Q. Okay. I believe you mentioned it was a
8 Bob Gnapp, and I believe you said NARUC, but I
9 believe it should be NECCA; is that correct, that
10 Bob Gnapp?

11 A. Oh, yes, he's with NECCA.

12 Q. And then as far as DPU 4.2 (a), and
13 revised Exhibit DPU 4.2, we would move for their
14 admission.

15 MR. SMITH: Just the same objections as
16 I voiced at the outset, Your Honor.

17 THE COURT: Overruled. They are
18 received.

19 (Exhibits 4.2(a) and Rev. 4.2
20 received into evidence.)

21 MS. NODA: And I would tender the
22 witness for cross examination.

23 (End of page.)
24
25

1 CROSS EXAMINATION

2 BY MR. SMITH:

3 Q. The only question I have, if I may call
4 you Crystal?

5 A. Yes, that's fine.

6 Q. How do you spell Bob Gnapp's name?

7 A. G N A P P.

8 Q. Have you seen it spelled that way?

9 A. No, I have not.

10 Q. Okay.

11 A. I obtained that spelling from Larry
12 Fuller in my office.

13 MR. SMITH: That's the only question I
14 have.

15 THE COURT: Thank you, Ms. Fishlock.

16 MS. NODA: That concludes the
17 Division's case. And I am assuming then that we
18 would close for today.

19 THE COURT: All right. I have checked
20 the Commission's calendar, and the date of the 2nd
21 of March is open. So we will continue this matter
22 to 9:00 a.m. on March 2nd.

23 MS. NODA: And could I request that I
24 get an outline from counsel of the witnesses and a
25 brief outline of what they're going to be

1 testifying to?

2 MR. SMITH: I'm happy to give her that,
3 Your Honor.

4 THE COURT: All right. We are in
5 recess then.

6 (Recessed at 11:40 a.m.)

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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Quality of Telephone)
 Service Within the Territory Served by)
 BEEHIVE TELEPHONE COMPANY,)
 Respondent

DOCKET NO. 98-051-04

REPORT AND ORDER

ISSUED: November 3, 1999

SYNOPSIS

Respondent having violated a previous Commission Order by continuing to violate its published tariffs, the Commission vacated the previous fine suspension and ordered Respondent to pay the same.

Appearances:

Laurie L. Noda, Assistant Attorney General	For	Division of Public Utilities, Utah Department of Commerce
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Alan L. Smith	“	Beehive Telephone Company
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By the Commission:

PROCEDURAL HISTORY

Pursuant to notice duly served, the above-captioned matter came on regularly for hearing the third day of February, 1999, before A. Robert Thurman, Administrative Law Judge, at the Commission Offices, Heber Wells Office Building, Salt Lake City Utah. Evidence was offered and received, and additional evidentiary hearings were conducted February 22, 1999, March 2, 1999, March 9, 1999, and March 24, 1999. Briefing was completed June 16, 1999. The Administrative Law Judge, having been fully advised in the matter, now enters the following Report, containing proposed findings of fact, conclusions of law, and the Order based thereon.

FINDINGS OF FACT

1. Beehive Telephone Company (BTC), Respondent herein, is a telephone corporation certificated by this Commission. The Division of Public Utilities, Utah Department of Commerce (DPU), an agency of Utah State Government is complainant herein.

2. By Order dated April 10, 1997, in Docket No. 96-051-04, this Commission required BTC to desist from toll charging its subscribers in the Rush Valley, Vernon, and Skull Valley districts of Tooele County, Utah, for completion of calls to wireless carriers in violation of its tariffs and further to remedy serious service problems in the same area. The Commission suspended a fine in the amount of \$182,500 conditional upon BTC's ceasing the tariff violations, refunding the illegal charges and taking steps to alleviate the service problems. BTC appealed the Order, which appeal was still pending at the time these proceedings began. Alleging violations of that Order, DPU petitioned for an Order to Show Cause October 13, 1998, which initiated these proceedings.

3. In substance, our April 10, 1997 Order (the Order) mandated that BTC cease charging its subscribers toll for completing calls to numbers served by wireless carriers and to refund such charges previously paid by BTC customers. It is undisputed that BTC did not comply with the Order until after the institution of the instant proceedings, despite previous demands from DPU that BTC do so.

4. BTC committed 3,784 billing violations between the time the Order issued and the time BTC finally complied with the billing provisions of the Order. In dollar amounts, the total, for a period extending both before and after the issuance of the Order, was somewhat less than \$5,000.

5. DPU offered evidence of continued service standard violations in the form of two customer satisfaction surveys, the testimony of two current customers in the area and an exhibit summarizing complaints taken by DPU personnel.

6. The surveys, conducted pursuant to a provision in the Order, suffer from one serious defect: the questions asked do not sufficiently differentiate between the period before the issuance of the Order and the period after. This may be the Commission's fault. We were perhaps not sufficiently explicit in delineating our intent. Or, perhaps we should have allowed more time before taking the survey. In any event, while we appreciate the efforts of DPU, the results are too vague and ambiguous for us to base a finding on them.

7. Likewise the evidence of the complaining witnesses, while highly suggestive, does not, in our opinion, meet the "clear and convincing" standard which must be met to justify the imposition of sanctions. Moreover, it appears that BTC has been making efforts to improve its service in the affected area.¹ It has installed a new switch and is replacing underground cable which was damaged by gophers. We do commend BTC for these efforts. Whether they will be entirely sufficient to remedy the service problems remains to be seen.

DISCUSSION

The first issue raised by BTC relates to the Commission's jurisdiction. BTC argues that the Commission must file an action in the courts and have the court determine whether there has been a violation of a Commission order, rule, or applicable statute. This position is so preposterous and contrary to long-established procedure that we shall not deal with it at length.

Suffice it to say that while § 54-7-29, UCA 1953, as amended, does require that the Commission collect fines through the courts, to accept BTC's reading would stand the statute on its head. The Utah Supreme Court has long countenanced the Commission's imposing fines on utilities

¹This is not to say, however, that where there is so much smoke there is no fire. We are only saying that at this point DPU has not met its burden of proof on these issues. It would obviously behoove BTC to mend its fences with its subscribers in the area and improve its service. Otherwise, we will doubtless see new cases brought based on BTC's service deficiencies.

in proceedings such as this and thereafter collecting the same through the courts. BTC's due process concerns are adequately addressed through the availability of review by the Utah Supreme Court, which has also countenanced the Commission's long-standing practice of suspending sanctions on condition a utility corrects its malfeasance or misfeasance and vacating the same if the conditions are not met. See, for example, *Anderson v. PSC*, 839 P.2d 822 (Utah 1992).

The sole remaining issue is whether we should vacate the suspension of the fine ordered in our April 10, 1997, order predicated on the continuing tariff violations. BTC characterizes its ongoing violations as a mistake predicated on its belief that the filing of the appeal to the Utah Supreme Court tolled the Order's effectiveness. It did not.

BTC's claim is akin to ignorance of the law, and that, of course, is no excuse. We might be more amenable to viewing it as a factor in mitigation except for the fact that there is no indication in this record that BTC made the slightest effort to ascertain the true legal status of the Order before it was forced to by the filing of the OSC.

Likewise, the dollar amount cannot be viewed as a mitigating factor. BTC's customers in the Rush Valley and Vernon areas are entitled to correct charges.

We are unhappily aware that the fine involved is significant and could adversely impact BTC's financial fitness. We would much prefer to see the money invested to upgrade the facilities serving BTC's customers. But we see no indication that even if we were once more to forebear, the funds would be so used.

BTC surely was aware of the potential consequences of its obstinacy at the time of the Order and chose to ignore them. A threat without the will to follow through is no threat at all.

Through the course of the proceedings we have seen no indication from BTC's CEO and principal owner that he is willing to acknowledge or accept responsibility in any way for the

billing errors or any other problems in the Rush Valley and Vernon areas. Our only option appears to be to attempt to get his attention by vacating the fine suspension.

DPU also seeks the establishment of an extended oversight mechanism to ensure that BTC's Rush Valley customers enjoy adequate service. We attempted to set up such a mechanism in our previous Order. Clearly it failed, and unfortunately, BTC's management appears to be uninterested in any kind of cooperative scheme to ensure service adequacy. We see no alternative but simply to stand ready to use the club of sanctions if it transpires that service problems continue.

CONCLUSIONS OF LAW

The Commission has party and subject matter jurisdiction. BTC stands in violation of our April 10, 1997, Order and there appear to be no mitigating factors. The suspension of fine should be vacated and BTC ordered to pay the same

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

- The suspension of fine ordered in our Order of April 10, 1997, in Docket No. 96-051-04, be, and it is, vacated effective the date of this Order, and the same in the amount of ONE HUNDRED EIGHTY-TWO THOUSAND AND FIVE HUNDRED (\$182,500) DOLLARS is payable forthwith.

- This Order is effective the date of its issuance.
- Any person aggrieved by this Order may petition the Commission for review within 20 days of the date of this Order. Failure so to do will forfeit the right to appeal to the Utah Supreme Court.

Dated at Salt Lake City, Utah, this 3rd day of November, 1999

/s/ A. Robert Thurman, Administrative Law Judge

Approved and Confirmed this 3rd day of November, 1999, as the Report and Order of the
Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard, Commission Secretary

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DOCKET NO. 98-051-04

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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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

ISSUED: February 5, 2002

By the Commission:

PROCEDURAL HISTORY

On November 23, 1999 Beehive Telephone Company (BTC) petitioned the Commission to review the November 3, 1999 order disposing of this matter. BTC had filed a notice of appeal at the Utah Supreme Court after its petition to the Commission was deemed denied. By stipulation, the Court held the case in abeyance after the Commission agreed that it should reconsider it. The Court returned the matter to the Commission and the Commission granted BTC's petition to review December 20, 1999.

FINDINGS OF FACT

1. This case stems from an order the Commission issued April 10, 1997 in Docket No. 96-051-04 in which we fined BTC \$182,500 for poor service and billing violations contrary to BTC's tariff. The Commission suspended the entire fine subject to BTC conforming with the *terms of the April 10, 1997 order*. *One of the provisions of that order required that BTC cease billing its customers toll charges for completing calls to wireless subscribers within BTC's local calling area.* BTC appealed the April 10, 1997 order to the Utah Supreme Court.

2. During a BTC customer service survey ordered by the Commission, the Division of Public Utilities (DPU) discovered that BTC had continued charging its customers toll charges for calls made to wireless subscribers in BTC's local calling area.

3. On October 13, 1998, the DPU petitioned the Commission for an Order to Show claimed it had mistakenly made those charges because it believed appealing the April 10th order stayed the order's effects. The April 10th order was not stayed.

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4. The Commission, after hearing, concluded there were no mitigating factors that would suggest continuing the suspension of the \$182,500 imposed by the April 10, 1997 order and, therefore, the Commission vacated the suspension by order dated November 3, 1999.

DISCUSSION

The only question raised by the facts of this case is whether a \$182,500 fine is excessive for a company the size of BTC. We struggled with that issue in our November 3, 1999 order. We do not sanction BTC's behavior and believe BTC should be fined for illegally charging toll charges and thereafter failing to comply with a Commission order. Nevertheless, we also believe the amount of the fine is excessive under the circumstances presented here.

In our April 10, 1997 order we fined BTC for poor service quality and for imposing illegal charges. We calculated the \$182,500 fine by assessing BTC \$500 for each of the 365 days from March 1996 to April 1997 when BTC was imposing illegal charges. There was no explicit fine for poor service quality, but that was a consideration in establishing the total sum. We could not justify increasing a fine that was already extraordinary. Based on information the Commission has today, it appears BTC has addressed many of the service quality issues. The Commission imposed no fine for BTC's violations that continued from April 1997 to October 1998. Those violations triggered our November 3, 1999 order that vacated the suspension of the fine.

In applying U.C.A. 54-7-25, rather than treating each day between March 1996 and April 1997 as a separate violation of our April 10, 1997 order, we will consider each monthly billing to be a single violation. Stated explicitly, there were 12 monthly billings periods during that time, all 12 of which we consider to be separate violations. That is when the harm to customers occurred. We will therefore impose a fine of \$1,250 for each of 12 monthly billings. That reduces the total fine from \$182,500 to \$15,000, three times the amount BTC refunded to its customers for illegal charges.

CONCLUSIONS OF LAW

1. The Commission has party and subject matter jurisdiction.
2. BTC violated our April 10, 1997 order by continuing to bill illegal toll charges to customers completing calls to wireless subscribers in BTC's local calling area.
3. U.C.A. 54-7-25 authorizes the Commission to impose penalties on public utilities regulated by the Commission for violation of statutes, Commission orders, and Commission rules.
4. A \$15,000 fine is just and reasonable under the circumstances of this case.

ORDER

250

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DOCKET NO. 98-051-04

-3-

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. BTC's fine be reduced to \$15,000 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 5th day of February, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

FILED

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CLERK SUPREME COURT
UTAH

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ADDENDUM

be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President, but in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Historical Note

This amendment was proposed to the legislatures of the several States by the Eighth Congress, on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article, and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States.

Amendment XIII [1865] *

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly

convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Historical Note

This amendment was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 1st of February, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States, viz.: Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia.

Amendment XIV [1868] *

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion,

* See note 1, supra.

Article I, Section 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

No History for Constitution

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Sections in this Chapter	Chapters in this Title	All Titles	Legislative Home Page
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Last revised: Thursday, November 30, 2000

Article V, Section 1. [Three departments of government.]

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

No History for Constitution

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Sections in this Chapter	Chapters in this Title	All Titles	Legislative Home Page
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Last revised: Thursday, November 30, 2000

(3) procures, aids, or abets any motor carrier in the failure to obey, observe, and comply with any order, decision, rule, direction, demand, or requirement, or any part or provision, in a case in which a penalty is not otherwise provided. 1995

54-6a-7. Actions to recover penalties.

An action to recover a penalty or penalties under this act shall be brought in the name of the state of Utah. In any such action penalties incurred up to the time of commencing the same may be sued for and recovered. All fines and penalties recovered by the state in any such action, together with costs thereof, shall be paid into the state treasury to credit of the transportation fund. Any such action may be compromised or discontinued on application of the department upon such terms as the court approves and orders. 1983

54-6a-8. Rules and regulations.

In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the Department of Transportation may make rules necessary to implement and aid in the enforcement of Sections 54-6a-1 through 54-6a-7. 1994

**54-6a-9. Assignment of administrative law judge
- Review by Public Service Commission.**

(1) The Department of Transportation and the Public Service Commission shall cooperate in assigning an administrative law judge to hear contested matters.

(2) The administrative law judge's orders shall be reviewed by the Public Service Commission. 1987

**54-6a-10. Motor carrier registration fees -
Implementing federal provisions.**

(1) The Public Service Commission and the Department of Commerce may carry out the provisions of 49 U.S.C. Sec. 11506, related to registration of motor carriers by a state, collect the revenues authorized under it, and expend revenues derived from it in the enforcement of 49 U.S.C. Sec. 11506.

(2) Revenues collected under this section shall be deposited into the Commerce Service Fund in accordance with the provisions of Subsection 13-1-2 (3). 1991

**Chapter 7. Hearings, Practice and
Procedure.**

54-7-1. Settlement - Limitation of issues.

**54-7-1.5. Communications between commission
personnel and parties restricted.**

54-7-2. Process - Service - Fees.

54-7-3. Subpoena - Witness fees - Depositions.

54-7-4. Copies, competent evidence.

**54-7-5. Orders and certificates to be in writing and
entered on records of commission - Recordation.**

54-7-6. Fees.

**54-7-7. Books and records of utilities subject to
inspection.**

**54-7-8. Offices for utility's books and records -
Production for examination.**

54-7-9. Complaints against utilities - Scope.

54-7-10. Orders on hearings - Time effective.

54-7-11. Complaints by utilities - Procedure.

**54-7-12. Rate increase or decrease - Procedure -
Effective dates - Electrical or telephone cooperative.**

54-7-12.1. Depreciation expense.

**54-7-12.2. Property tax decrease - Rate decrease -
Procedure.**

54-7-13. Rescission or amendment of orders or decisions.

**54-7-14. Orders and decisions conclusive on collateral
attack.**

**54-7-15. Review or rehearing by commission -
Application - Procedure - Prerequisite to court**

action.

**54-7-17. Stay of commission's order or decision pending
appeal.**

**54-7-18. Preference of actions and proceedings on
courts' calendars.**

**54-7-19. Valuation of utilities - Procedure -
Findings conclusive evidence.**

**54-7-20. Reparations - Courts to enforce
commission's orders - Limitation of action.**

**54-7-21. Commission charged with enforcing laws -
Attorney general to aid.**

54-7-23. Penalties.

**54-7-24. Injunction to stop violations or threatened
violations.**

54-7-25. Violations by utilities - Penalty.

**54-7-26. Violations by officers or agents of utility -
Penalty.**

**54-7-27. Violations by corporations other than utilities -
- Penalty.**

54-7-28. Violations by individuals - Penalty.

54-7-29. Actions to recover fines and penalties.

54-7-30. Interstate commerce - Title does not apply.

54-7-1. Settlement - Limitation of issues.

(1) Informal resolution, by agreement of the parties, of matters before the commission is encouraged.

(2) The commission may approve any agreement after considering the interests of the public and other affected persons.

(3) (a) At any time before or during a hearing or proceeding before the commission, the parties, between themselves or with the commission or a commissioner, may engage in settlement conferences and negotiations.

(b) The commission may adopt any settlement proposal of the parties and may enter an order based upon the proposal.

(4) In cases or procedures involving rate increases as defined in Section 54-7-12, the commission may limit the factors and issues to be considered in its determination of just and reasonable rates. 1987

**54-7-1.5. Communications between commission
personnel and parties restricted.**

No member of the Public Service Commission, administrative law judge, or commission employee who is or may reasonably be expected to be involved in the decision making process, shall make or knowingly cause to be made to any party any communication relevant to the merits of any matter under adjudication unless notice and an opportunity to be heard are afforded to all parties. No party shall make or knowingly cause to be made to any member of the commission, administrative law judge, or commission employee who is or may reasonably be expected to be involved in the decision making process, an ex parte communication relevant to the merits of any matter under adjudication. Any member of the commission, administrative law judge or commission employee who receives an ex parte communication shall place the communication into the public record of the proceedings and afford all parties an opportunity to comment on the information. 1983

54-7-2. Process - Service - Fees.

The process issued by the commission or any commissioner shall extend to all parts of the state, and may be served by any person authorized to serve process of courts of record, or by any person designated for that purpose by the commission or a commissioner. The person executing any such process shall receive such compensation as may be allowed by the commission, not to exceed the fees prescribed by law for similar services in civil actions

and such fees shall be paid in the same manner as provided herein for payment of the fees of witnesses. 1953

54-7-3. Subpoena - Witness fees - Depositions.

(1) (a) The commission and each commissioner may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and other evidence in any inquiry, investigation, hearing, or proceeding in any part of the state.

(b) (i) Each witness who appears by order of the commission or a commissioner shall receive the same fees and mileage for his attendance that are allowed by law to a witness in the district court.

(ii) The party at whose request the witness is subpoenaed shall pay the witness and mileage fee.

(iii) When any witness who has not been required to attend at the request of any party is subpoenaed by the commission, his fees and mileage shall be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid.

(iv) Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the commission, may at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear and one day's attendance.

(v) If the witness demands the fees at the time of service and they are not paid at that time, he is not required to attend the hearing.

(vi) All fees or mileage to which any witness is entitled under the provisions of this section may be collected by action instituted by the person to whom the fees are payable.

(vii) No witness furnished with free transportation receives mileage for the distance he may have traveled.

(2) The commission or any commissioner or any party may in any investigation before the commission cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for depositions in civil actions in the district courts of this state, and may compel the attendance of witnesses and the production of books, waybills, documents, papers, and accounts. 1987

54-7-4. Copies, competent evidence.

Copies of any official documents or orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary or the assistant secretary under the official seal of the commission to be true copies of the originals, shall be evidence in the same manner as the originals. 1953

54-7-5. Orders and certificates to be in writing and entered on records of commission - Recordation.

Every order, authorization or certificate issued or approved by the commission under any provision of this title shall be in writing and entered on the records of the commission. Any such order, authorization or certificate, or a copy thereof or a copy of the record of any such order, authorization or certificate certified by a commissioner or by the secretary or the assistant secretary under the official seal of the commission to be a true copy of the original, may be recorded in the office of the recorder of any county in which is located the principal

place of business of any public utility affected thereby or in which is situated any property of any such public utility, and such record shall impart notice of its provisions to all persons. A certificate under the seal of the commission that any such order, authorization or certificate has not been modified, stayed, suspended or revoked may also be recorded in the same manner and with like effect. 1953

54-7-6. Fees.

(1) The commission shall charge and collect the following fees: for filing applications for certificates of convenience and necessity, \$100 each; for copies of papers and records not required to be certified or otherwise authenticated by the commission, 15 cents for each folio; for certified copies of official documents and orders filed in its office, 20 cents for each folio, and \$2 for every certificate under seal affixed thereto; for certifying a copy of any report made by a public utility, \$2; for each certified copy of the annual report of the commission, \$3; for certified copies of evidence and proceedings before the commission, 50 cents for each folio in the original copy and 25 cents for each folio in the carbon copies.

(2) Fees may not be charged or collected for copies of papers, records, or official documents, except certified copies of evidence and proceedings referred to in this chapter, furnished to public officers for use in their official capacity, or for the annual reports of the commission in the ordinary course of distributions. However, the commission may fix reasonable charges for publications issued under its authority.

(3) All fees charged and collected under this section shall be paid into the treasury of the state to the credit of the funds appropriated for the use of the commission, but fees for certified copies of evidence and proceedings before the commission which are reported by a shorthand reporter may be collected and retained by the official shorthand reporter of the commission pursuant to rules prescribed by the commission. 1983

54-7-7. Books and records of utilities subject to inspection.

The commission, each commissioner and each officer and person employed by the commission shall have the right at any and all times to inspect the accounts, books, papers and documents of any public utility, and the commission, each commissioner and any officer of the commission or any employee authorized to administer oaths shall have power to examine under oath any officer, agent or employee of any public utility in relation to the business and affairs of said public utility; provided, that any person other than a commissioner or an officer of the commission demanding such inspection shall produce under the hand and seal of the commission his authority to make such inspection; and provided further, that written record of the testimony or statement so given under oath shall be made and filed with the commission. 1953

54-7-8. Offices for utility's books and records -

- Production for examination.

(1) Each public utility shall have an office in a county of this state in which its property or some portion thereof is located, and shall keep in said office all such books, accounts, papers and records as shall be required by the commission to be kept within this state. No books, accounts, papers or records required by the commission to be kept within this state shall be at any time removed from

the state except upon such conditions as may be prescribed by the commission.

(2) The commission may require, by order served on any public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate of any books, accounts, papers or records kept by said public utility in any office or place without this state, or at its option verified copies in lieu thereof, so that an examination thereof may be made by the commission or under its direction. 1953

54-7-9. Complaints against utilities – Scope.

(1) When any public utility violates any provision of law or any order or rule of the commission:

(a) the commission may file a notice of agency action; or

(b) any person, corporation, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing organization or association, or any body politic or municipal corporation may file a request for agency action.

(2) The notice or request shall specify the act committed or omitted by the public utility that is claimed to be in violation of the law or a rule or order of the commission.

(3) No request for agency action shall be entertained by the commission concerning the reasonableness of any rates or charges of any gas, electrical, water, sewerage, or telephone corporation, unless the request is signed by:

(a) the mayor, the president or chairman of the board of trustees, or the commissioners, or a majority of the council, commission, or other legislative body of the city, county, or town within which the alleged violation occurred; or

(b) by not less than 25 consumers or purchasers, or prospective consumers or purchasers, of the gas, electricity, water, sewerage, or telephone service.

(4) The commission need not dismiss any complaint because of the absence of direct damage to the complainant. 1987

54-7-10. Orders on hearings – Time effective.

(1) Orders of the commission shall take effect and become operative on the date issued, except as otherwise provided in the order.

(2) They shall continue in force for the period designated in the order, or until changed or abrogated by the commission. 1987

54-7-11. Complaints by utilities – Procedure.

Any public utility may request agency action by the commission on any of the grounds upon which requests for agency action are allowed to be filed by other parties. The commission shall follow the same procedure as in other cases. 1987

54-7-12. Rate increase or decrease –

Procedure – Effective dates – Electrical or telephone cooperative.

(1) As used in this section:

(a) "Rate increase" means any direct increase in a rate, fare, toll, rental, or other charge of a public utility or any modification of a classification, contract, practice, or rule that increases a rate, fare, toll, rental, or other charge of a public utility.

(b) "Rate decrease" means any direct decrease in a rate, fare, toll, rental, or other charge of a public utility or any modification of a classification, contract, practice, or rule that decreases a rate, fare, toll, rental, or other charge of a public utility.

(2) (a) Any public utility or other party that pro-

priate schedules with the commission setting forth the proposed rate increase or decrease.

(b) The commission shall, after reasonable notice, hold a hearing to determine whether the proposed rate increase or decrease, or some other rate increase or decrease, is just and reasonable. If a rate decrease is proposed by a public utility, the commission may waive a hearing unless it seeks to suspend, alter, or modify the rate decrease.

(c) Except as otherwise provided in Subsections (3) and (4), no proposed rate increase or decrease is effective until after completion of the hearing and issuance of a final order by the commission concerning the proposed increase or decrease.

(3) The following rules apply to the implementation of any proposed rate increase or decrease filed by a utility or proposed by any other party and to the implementation of any other increase or decrease in lieu of that proposed by a utility or other party that is determined to be just and reasonable by the commission:

(a) On its own initiative or in response to an application by a public utility or other party, the commission, after a hearing, may allow any proposed rate increase or decrease, or a reasonable part of the rate increase or decrease, to take effect, subject to the commission's right to order a refund or surcharge, upon the filing of the utility's schedules or at any time during the pendency of its hearing proceedings. The evidence presented in the hearing held pursuant to this subsection need not encompass all issues that may be considered in a rate case hearing held pursuant to Subsection (2) (b), but shall establish an adequate prima facie showing that the interim rate increase or decrease is justified.

(b) (i) If the commission completes a hearing concerning a utility's revenue requirement before the expiration of 240 days from the date the rate increase or decrease proposal is filed, it may issue a final order within that period establishing the utility's revenue requirement and fixing its interim allowable rates before it determines the allocation of the increase or decrease among categories of customers and classes of service.

(ii) If the commission in its final order on a utility's revenue requirement finds that the interim increase order under Subsection (3) (a) exceeds the increase finally ordered, it shall order the utility to refund the excess to customers. If the commission in its final order on a utility's revenue requirement finds that the interim decrease order under Subsection (3) (a) exceeds the decrease finally ordered, it shall order a surcharge to customers to recover the excess decrease.

(c) If the commission fails to enter its order granting or revising a revenue increase within 240 days after the utility's schedules are filed, the rate increase proposed by the utility is final and the commission may not order a refund of any amount already collected by the utility under its filed rate increase.

(d) (i) When a public utility files a proposed rate increase based upon an increased cost to the utility for fuel or energy purchased or obtained from independent contractors, other independent suppliers, or any supplier whose prices are regulated by a governmental agency, the commission shall issue a tentative order with respect to the proposed increase within ten days after the proposal is filed, unless it issues a final order with respect to the rate increase

(ii) The commission shall hold a public hearing within 30 days after it issues the tentative order to determine if the proposed rate increase is just and reasonable.

(4) (a) Notwithstanding any other provisions of this title, any schedule, classification, practice, or rule filed by a public utility with the commission that does not result in any rate increase shall take effect 30 days after the date of filing or within any lesser time the commission may grant, subject to its authority after a hearing to suspend, alter, or modify that schedule, classification, practice, or rule.

(b) When the commission suspends a schedule, classification, practice, or rule, it shall hold a hearing on the schedule, classification, practice, or rule before issuing its final order.

(c) For purposes of this Subsection (4), any schedule, classification, practice, or rule that introduces a service or product not previously offered may not result in a rate increase.

(5) (a) Notwithstanding any other provision of this title, whenever a common carrier files with the commission any schedule, classification, practice, or rule that does not result in an increase in any rate, fare, toll, rental, or charge, the schedule, classification, practice, or rule shall take effect 30 days after the date of filing or at any earlier time the commission may grant, subject to the authority of the commission, after a hearing, to suspend, alter, or modify the schedule, classification, practice, or rule.

(b) (i) Notwithstanding any other provision of this title, whenever a common carrier files with the commission a request for an increase in rates, fares, tolls, rentals, or charges based solely upon cost increases to the common carrier of fuel supplied by an independent contractor or independent source of supply, the requested increase shall take effect ten days after the filing of the request with the commission or at any earlier time after the filing of the request as the commission may by order permit.

(ii) The commission shall order the increase to take effect only after a showing has been made by the common carrier to the commission that the increase is justified.

(iii) The commission may, after a hearing, suspend, alter, or modify the increase.

(6) This section does not apply to any rate changes of an electrical or telephone cooperative that meets all of the following requirements:

(a) The cooperative is organized for the purpose of either distributing electricity or providing telecommunication services to its members and the public at cost. "At cost" includes interest costs and a reasonable rate of return as determined by the cooperative's board of directors.

(b) The cooperative's board of directors and any appropriate agency of the federal government have approved the rate increase or other rate change and all necessary tariff revisions reflecting the increased rate or rate change.

(c) Before implementing any rate increases, the cooperative has held a public meeting for all its customers and members. The cooperative shall mail a notice of the meeting to all of the cooperative's customers and members not less than ten days prior to the date that the meeting is held.

(d) The cooperative has filed its tariff revisions reflecting the rate increase or other rate change with the commission, who shall make the tariffs available for public inspection.

(7) Procedures for the implementation of a pro-

posed rate increase by a telephone corporation having less than 5,000 subscriber access lines are as follows:

(a) (i) The proposed rate increase may become effective upon the filing of the proposed tariff revisions and necessary information to support a determination by the commission that the proposed rate increase is just and reasonable.

(ii) The telephone corporation shall provide 30 days' notice to the commission and all potentially affected access line subscribers of the proposed rate increase.

(b) (i) The commission may investigate whether the proposed rate increase is just and reasonable.

(ii) If the commission determines, after notice and hearing, that the rate increase is unjust or unreasonable in whole or in part, the commission may establish the rates, charges, or classifications that it finds to be just and reasonable.

(c) The commission shall investigate and hold a hearing to determine whether any proposed rate increase is just and reasonable if 10% or more of the telephone corporation's potentially affected access line subscribers file a request for agency action requesting an investigation and hearing. 1989

54-7-12.1. Depreciation expense.

In determining the depreciation expense of a telephone corporation in any proceeding under Section 54-7-12, the commission shall consider all relevant factors, including the alteration of asset lives to better reflect changes in the economic life of plant and equipment used to provide telecommunications services. A relevant factor to consider shall be the asset lives of existing and emerging competitive telecommunications providers. Nevertheless, the commission shall retain the authority to determine the depreciation expense of telecommunications corporations for ratemaking purposes. 1995

54-7-12.2. Property tax decrease - Rate decrease - Procedure.

(1) A public utility whose property tax liability decreases as a result of the property tax reductions authorized by the Legislature during the 1995 Annual General Session shall:

(a) file new tariffs with the commission on or before May 1, 1995, spreading the amount of the decrease among all classes of its customers on the same basis that property taxes were allocated to each class under the currently effective rates; and

(b) within ten days from the day on which the public utility files new tariffs with the commission under Subsection (1)(a), file with the commission a complete report of the calculation of the amount of the tax decrease and the decrease to each class of the public utility's customers.

(2) The tariffs required to be filed with the commission under Subsection (1)(a) take effect as provided in Subsection 54-7-12(4)(a).

(3) A public utility that is subject to the gross receipts tax under Title 59, Chapter 8a, Gross Receipts Tax on Electrical Corporations Act, is not subject to the requirements of this section. 1995

54-7-13. Rescission or amendment of orders or decisions.

(1) The commission may at any time, upon notice to the public utility affected and after opportunity to be heard, rescind, alter, or amend any order or decision made by it.

(2) When served upon the public utility affected, any order rescinding, altering, or amending a prior order or decision shall have the same effect as the

original order or decision

1987

54-7-14 Orders and decisions conclusive on collateral attack.

In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive

1953

54-7-15. Review or rehearing by commission -- Application -- Procedure -- Prerequisite to court action.

(1) Before seeking judicial review of the commission's action, any party, stockholder, bondholder, or other person pecuniarily interested in the public utility who is dissatisfied with an order of the commission shall meet the requirements of this section

(2) (a) After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected may apply for rehearing of any matters determined in the action or proceeding

(b) No applicant may urge or rely on any ground not set forth in the application in an appeal to any court

(c) Any application for rehearing not granted by the commission within 20 days is denied

(d) (i) If the commission grants any application for rehearing without suspending the order involved, the commission shall issue its decision on rehearing within 20 days after final submission

(ii) If the commission fails to render its decision on rehearing within 20 days, the order involved is affirmed

(e) Unless an order of the commission directs that an order is stayed or postponed, an application for review or rehearing does not excuse any corporation or person from complying with and obeying any order or decision of the commission

(3) Any order or decision on rehearing that abrogates, changes, or modifies an original order or decision has the same force and effect as an original order or decision, but does not affect any right, or the enforcement of any right, arising from the original order or decision unless so ordered by the commission

1987

54-7-17 Stay of commission's order or decision pending appeal

(1) A petition for judicial review does not stay or suspend the operation of the order or decision of the commission

(2) (a) The court may stay or suspend, in whole or in part, the operation of the commission's order or decision after at least three days' notice and after a hearing

(b) If the court stays or suspends the order or decision of the commission, the order shall contain a specific finding, based upon evidence submitted to the court and identified by reference, that

(i) great or irreparable damage will result to the petitioner absent suspension or a stay of the order, and

(ii) specifies the nature of the damage

(3) (a) The court's order staying or suspending the decision of the commission is not effective until a supersedeas bond is executed, filed with, and approved by the commission (or approved, on review, by the court)

(b) The bond shall be payable to the state of Utah, and shall be sufficient in amount and security to insure the prompt payment by the party petitioning for the review of

(i) all damages caused by the delay in the enforcement of the order or decision of the commission, and

(ii) all moneys that any person or corporation is compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the order or decision of the commission

(c) Whenever necessary to insure the prompt payment of damages and any overcharges, the court may order the party petitioning for a review to give additional security or to increase the supersedeas bond

(4) (a) When the court stays or suspends the order or decision of the commission in any matter affecting rates, fares, tolls, rentals, charges, or classifications, it shall order the public utility affected to pay into court, or into some bank or trust company paying interest on deposits, all sums of money collected by the public utility that are greater than the sum a person would have paid if the order or decision of the commission had not been stayed or suspended

(b) (i) Upon the final decision by the court, the public utility shall refund all moneys collected by it that are greater than those authorized by the court's final decision, together with interest if the moneys were deposited in a bank or trust company, to the persons entitled to the refund

(ii) The commission shall prescribe the methods for distributing the refund

(c) (i) If any of the refund money has not been claimed within one year from the final decision of the court the commission shall publish notice of the refund once per week for two successive weeks in a newspaper of general circulation printed and published in the city and county of Salt Lake, and in any other newspapers that the commission designates

(ii) The notice shall state the names of the persons entitled to the moneys and the amount due each person

(iii) All moneys not claimed within three months after the publication of the notice shall be paid by the public utility into the General Fund

(5) When the court stays or suspends any order or decision lowering any rate, fare, toll, rental, charge, or classification after the execution and approval of the supersedeas bond, the commission shall order the public utility affected to keep accounts, verified by oath, that show

(a) the amounts being charged or received by the public utility, and

(b) the names and addresses of the persons to whom overcharges will be refundable

1987

54-7-18. Preference of actions and proceedings on courts' calendars

(1) The courts of this state shall consider, hear, and determine all actions and proceedings under this chapter, and all actions and proceedings to which the commission or the state of Utah is a party, in which any question arises under this title or under or concerning any order or decision of the commission before considering, hearing, or determining all other civil causes except election causes

(2) If the commission requests it, the courts shall grant the same preference to the commission in any action or proceeding in which the commission is allowed to intervene

1987

54-7-19 Valuation of utilities -- Procedure -- Findings conclusive evidence.

(1) (a) In determining the value, or revaluing the property of a public utility as required by Section 54-

21, the commission may hold hearings

(b) The commission may make a preliminary amination or investigation into the matters designated in this section and in Section 54-4-21 and may inquire into those matters in any other investigation or hearing

(c) The commission may seek any available sources of information

(d) (i) The evidence introduced at the hearing shall be reduced to writing and certified under the seal of the commission

(u) The findings of the commission, when properly certified under the seal of the commission, are admissible in evidence in any action, proceeding, or hearing before the commission, and before any court as conclusive evidence of the facts as stated

(e) The commission's findings of facts can be controverted in a subsequent proceeding only by showing a subsequent change in conditions bearing upon the facts

(2) (a) The commission may hold further hearings and investigations to make revaluations or to determine the value of any betterments, improvements, additions, or extensions made by any public utility

(b) The commission may examine all matters that may change, modify, or affect any finding of fact previously made, and may make additional findings of fact to supplement findings of fact previously made

1987

54-7-20 Reparations -- Courts to enforce

commission's orders -- Limitation of action.

(1) When complaint has been made to the commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the commission has found after investigation, that the public utility has charged an amount for such product, commodity or service in excess of the schedules, rates and tariffs on file with the commission, or has charged an unjust, unreasonable or discriminatory amount against the complainant, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection

(2) If the public utility does not comply with the order for the payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning unjust, unreasonable or discriminatory charges shall be filed with the commission within one year and those concerning charges in excess of the schedules, rates and tariffs on file with the commission shall be filed with the commission within two years, from the time such charge was made, and all complaints for the enforcement of any order of the commission shall be filed in court within one year from the date of such order. The remedy in this section provided shall be cumulative and in addition to any other remedy or remedies under this title in case of failure of a public utility to obey an order or decision of the commission

1953

54-7-21. Commission charged with enforcing laws

-- Attorney general to aid.

The commission shall see that the provisions of the Constitution and statutes of this state affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected, and to this end it

may sue in the name of the state of Utah. Upon request of the commission, it shall be the duty of the attorney general to aid in any investigation, hearing or trial under the provisions of this title and to institute and prosecute actions or proceedings for the enforcement of the provisions of the Constitution and statutes of this state affecting public utilities and for the punishment of all violations thereof

1971

54-7-23 Penalties

(1) This title shall not have the effect to release or waive any right of action by the state, the commission or any person for any right, penalty or forfeiture, which may have arisen or accrued or may hereafter arise or accrue under any law of this state

(2) All penalties accruing under this title shall be cumulative and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture, or be a bar to any criminal prosecution against any public utility, or any officer, director, agent or employee thereof, or any other corporation or person, or be a bar to the exercise by the commission of its power to punish for contempt

1953

54-7-24 Injunction to stop violations or threatened violations.

Whenever the commission, or the Department of Transportation where the safety of public carriers is involved, shall be of the opinion that any public utility is failing or omitting, or is about to fail or omit, to do anything required of it by law, or by any order, decision, rule, direction or requirement of the commission, or where applicable, the department, or is doing anything or is about to do anything, or is permitting anything or is about to permit anything, to be done, contrary to or in violation of law or of any order, decision, rule, direction or requirement of the commission or department, it shall direct the commencement of an action or proceeding in the name of the state, for the purpose of having such violations or threatened violations stopped or prevented

1975

54-7-25 Violations by utilities -- Penalty

(1) Any public utility that violates or fails to comply with this title or any rule or order issued under this title, in a case in which a penalty is not otherwise provided for that public utility is subject to a penalty of not less than \$500 nor more than \$2,000 for each offense

(2) Any violation of this title or any rule or order of the commission by any corporation or person is a separate and distinct offense. In the case of a continuing violation, each day's continuance of the violation shall be a separate and distinct offense

(3) In construing and enforcing the provisions of this title relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility acting within the scope of his official duties or employment shall in each case be deemed to be the act, omission, or failure of that public utility

1989

54-7-26. Violations by officers or agents of utility -- Penalty.

Every officer, agent, or employee of any public utility who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the Constitution of this state or of this title, or who fails to obey, observe, or comply with any order, decision, rule, direction, demand, or requirement, or any part or provision thereof, of the commission, or who procures, aids, or abets any public utility in its failure to obey,

observe, and comply with any order, decision, rule, direction, demand, or requirement, or any part or provision thereof, in a case in which a penalty has not been provided for, the officer, agent, or employee is guilty of a class A misdemeanor. 1986

54-7-27. Violations by corporations other than utilities -- Penalty.

Every corporation, other than a public utility, which violates any provision of this title, or which fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement, or any part or provision thereof, of the commission, in a case in which a penalty has not hereinbefore been provided for such corporation, is subject to a penalty of not less than \$500 nor more than \$2,000 for each and every offense. 1953

54-7-28. Violations by individuals -- Penalty.

Every person who, either individually, or acting as an officer, agent, or employee of a corporation other than a public utility, violates any provision of this title or fails to observe, obey, or comply with any order, decision, rule, direction, demand, or requirement, or any part or provision thereof, of the commission, or who procures, aids, or abets any public utility in its violation of this title or in its failure to obey, observe, or comply with any order, decision, rule, direction, demand, or requirement, or any part or portion thereof, in a case in which a penalty has not been provided for the person, is guilty of a class A misdemeanor. 1986

54-7-29. Actions to recover fines and penalties.

Actions to recover penalties under this title shall be brought in the name of the state of Utah. In any such action all penalties incurred up to the time of commencing the same may be sued for and recovered. All fines and penalties recovered by the state in any such action, together with cost thereof, shall be paid into the state treasury to the credit of the General Fund. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order. 1953

54-7-30. Interstate commerce -- Title does not apply.

Neither this title nor any provisions thereof, except when specifically so stated, shall apply to or be construed to apply to commerce with foreign nations or commerce among the several states of this Union, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress. 1953

Chapter 8. Underground Conversion of Utilities.

54-8-1. Short title.

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54-8-4. Creation of local improvement districts authorized.

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54-8-27. Bill for conversion costs -- Not to exceed estimate -- Payment within thirty days -- Accounting procedures.

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54-8-29. Jurisdiction over public utilities.

54-8-30. Commencement of conversion -- When required

54-8-1. Short title.

This act shall be known and cited as the "Utah Underground Conversion of Utilities Law." 1969

54-8-2. Legislative purpose.

The Legislature finds that in many areas of the state, it is in the public interest to convert existing overhead electric and communication facilities to underground locations through the creation of an improvement district. The Legislature hereby declares that a public purpose will be served by providing a procedure to accomplish such conversion and that it is in the public interest to provide for such conversion by proceedings taken pursuant to this chapter whether such areas be within the limits of a city or town or within a county. 1969

54-8-3. Definitions.

As used in this chapter the following words and phrases and any variations thereof shall have the following meaning:

"Communication service" means the transmission of intelligence by electrical means, including, but not limited to telephone, telegraph, messenger-call, clock, police, fire alarm and traffic control circuits or the transmission of standard television or radio signals.

"Electric service" means the distribution of electricity by an electrical corporation for heat, cooling, light or power.

"Convert" or "conversion" means the removal of all or any part of any existing overhead electric or communications facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations.

"Electric or communication facilities" means any

ately upon the filing and service of an initiatory pleading if protestants and intervenors have filed and served the requisite notices of intervention or protest before they commence discovery. If a responsive pleading is required, discovery shall not commence until ten days following the time limit for filing the responsive pleading.

2. The provisions of Rule 26(b)(4) restricting discovery shall not apply, and the opinions, conclusions, and data developed by experts engaged by parties shall be freely discoverable.

3. At any stage of a proceeding, the Commission may, on its own motion or that of a party, convene a conference of the parties to establish times for completion of discovery, the scope thereof, necessity for, and terms of, protective orders, and other matters related to discovery.

4. Formal discovery shall be initiated by an appropriate notice filed with the Commission and served on the party or person from whom discovery is sought. These notices shall provide a reasonable time for the affected party or person to comply or appear, as the case may be. Discovery requests, regardless of how denominated, responses thereto, and transcripts of depositions shall not be filed with the Commission unless the Commission orders otherwise.

5. In the applicable Rules of Civil Procedure, reference to "the court" shall be deemed reference to the Commission.

R746-100-9. Prehearing Conference and Prehearing Briefs.

A. Prehearing Conferences – Upon the Commission's motion or that of a party, the presiding officer may, upon written notice to parties of record, hold prehearing conferences for the following purposes:

1. formulating or simplifying the issues, including each party's position on each issue;
2. obtaining stipulations, admissions of fact, and documents which will avoid unnecessary proof;
3. arranging for the exchange of proposed exhibits or prepared expert or other testimony, including a brief description of the evidence to be presented and issues addressed by each witness;
4. determining procedure to be followed at the hearing;
5. encouraging joint pleadings, exhibits, testimony and cross-examination where parties have common interests, including designation of lead counsel where appropriate;
6. agreeing to other matters that may expedite the orderly conduct of the proceedings or the settlement thereof. Agreements reached during the prehearing conference shall be recorded in an appropriate order unless the participants enter into a written stipulation or agree to a statement thereof made on the record.

B. Prehearing Briefs – The Commission may require the filing of prehearing briefs which shall conform to the format described in R746-100-3(C) and may include:

1. the issues, and positions on those issues, being raised and asserted by the parties;
2. brief summaries of evidence to be offered, including the names of witnesses, exhibit references and issues addressed by the testimony;
3. brief descriptions of lines of cross-examination to be pursued.

C. Final prehearing conferences – After all testimony has been filed, the Commission may at

any time before the hearing hold a final prehearing conference for the following purposes:

1. determine the order of witnesses and set a schedule for witnesses' appearances, including times certain for appearances of out-of-town witnesses;
2. delineate scope of cross-examination and set limits thereon if necessary;
3. identify and prenumber exhibits.

R746-100-10. Hearing Procedure.

A. Time and Place – When a matter is at issue, the Commission shall set a time and place for hearing. Notice thereof shall be served in conformance with Sections 63-46b-3(2)(b) and (3)(e) at least five days before the date of the hearing.

B. Continuance -- Continuances may be granted upon good cause shown. The Commission may impose the costs in connection with the continuance as it deems appropriate.

C. Failure to Appear – A party's default shall be entered and disposed of in accordance with Section 63-46b-11.

D. Subpoenas and Attendance of Witnesses – Commissioners, the secretary to the Commission, and administrative law judges employed by the Commission are hereby delegated the authority to sign and issue subpoenas. Parties desiring the issuance of subpoenas shall submit the same to the Commission. The parties at whose behest the subpoena is issued shall be responsible for service and paying the person summoned the statutory mileage and witness fees. Failure to obey the Commission's subpoena shall be treated as contempt.

E. Conduct of the Hearing --

1. Generally – Hearings may be held before the full Commission, one or more commissioners, or administrative law judges employed by the Commission as provided by law and as the Commission shall direct. Hearings shall be open to the public, except where the Commission closes a hearing for the presentation of proprietary or trade secret material. Failure to obey the rulings and orders of the presiding officer may be treated as a contempt.

2. Before commissioner or administrative law judge – When a hearing is conducted before less than the full Commission or before an administrative law judge, the presiding officer shall ensure that the taking of evidence and subsequent matters proceed as expeditiously as practicable. The presiding officer shall prepare and certify a recommended decision to the Commission as provided below. Except as otherwise ordered by the Commission or provided by law, the presiding officer may schedule and otherwise regulate the course of the hearing; recess, reconvene, postpone, or adjourn the hearing; administer oaths; rule on and receive evidence; cause discovery to be conducted; issue subpoenas; hold conferences of the participants; rule on, and dispose of, procedural matters, including oral or written motions; summarily dispose of a proceeding or part of a proceeding; certify a question to the Commission; permit or deny appeal to the Commission of an interlocutory ruling; and separate an issue or group of issues from other issues in a proceeding and treat the issue or group of issues as a separate phase of the proceeding. The presiding officer may maintain order as follows:

- a. ensure that disregard by a person of rulings on matters of order and procedure is noted on the record or, if appropriate, is made the subject of a special written report to the Commission;
- b. if a person engages in disrespectful, disorderly,

or contumacious language or conduct in connection with the hearing, recess the hearing for the time necessary to regain order;

c. request that the Commission take appropriate action, including removal from the proceeding, against a participant or counsel, if necessary to maintain order.

3. Before full Commission -- In hearings before the full Commission, the Commission shall exercise the above powers and any others available to it and convenient or necessary to an orderly, just, and expeditious hearing.

F. Evidence --

1. Generally -- The Commission is not bound by the technical rules of evidence and may receive any oral or documentary evidence; except that no finding may be predicated solely on hearsay or otherwise incompetent evidence. Further, the Commission may, exclude non-probative, irrelevant, or unduly repetitious evidence. Testimony shall be under oath and subject to cross-examination except that of public witnesses.

2. Exhibits --

a. Except as to oral testimony and items administratively noticed, material offered into evidence shall be in the form of an exhibit. Exhibits shall be premarked and parties offering exhibits shall, not later than at the time of the hearing, provide copies thereof to the presiding officer, other participants or their representatives, and the original to the reporter, if there is one, otherwise to the presiding officer. If documents contain information the offering participant does not wish to include, the offering party shall mark out, excise, or otherwise exclude the extraneous portion on the original. Additions to exhibits shall be dealt with in the same manner.

b. Exhibits shall be premarked, by the offering party, in the upper right corner of each page by identifying the party, the witness, docket number, and a number reflecting the order in which the offering party will introduce the exhibit.

c. Exhibits, if over five pages, shall conform to the format described in R746-100-3(C) and be double sided and three-hole punched, with the holes being 5/16" or larger. They shall also be adequately footnoted and if appropriate, accompanied by either narrative or testimony which adequately explains the following: Explicit and detailed sources of the information contained in the exhibit; methods used in statistical compilations, including explanations and justifications; assumptions, estimates and judgments, together with the bases, justifications and consequences thereof; formulas or algorithms used for calculations, together with explanations of inputs or variables used in the calculations.

3. Administrative notice -- The presiding officer may take administrative or official notice of a matter in conformance with Section 63-46b-3(1)(b)(iv).

4. Stipulations -- Participants in a proceeding may stipulate to relevant matters of fact or the authenticity of relevant documents. Stipulations may be received in evidence, and if received, are binding on the participants with respect to any matter stipulated. Stipulations may be written or made orally at the hearing.

5. Settlements --

a. Cases may be resolved by a settlement of the parties if approved by the Commission. Issues so resolved are not binding precedent in future cases

involving similar issues.

b. Before accepting an offer of settlement, the Commission may require the parties offering the settlement to show that all parties have been notified of, and allowed to participate in, settlement negotiations. Parties not adhering to settlement agreements shall be entitled to oppose the agreements in a manner directed by the Commission.

G. Prefiled Testimony -- If a witness's testimony has been reduced to writing and filed with the Commission before the hearing, in conformance with R746-100-3(C), at the discretion of the Commission, the testimony may be placed on the record without being read into the record; if adverse parties shall have been served with, or otherwise have had access to, the prefiled, written testimony for a reasonable time before it is presented. Except upon a finding of good cause, a reasonable amount of time shall be a minimum of ten days. The testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness. If admitted, the testimony shall be marked and incorporated into the record as an exhibit. Parties shall have full opportunity to cross-examine the witness on the testimony. Unless the Commission orders otherwise, parties shall have witnesses present summaries of prefiled testimony orally at the hearing. Witnesses shall reduce their summaries to writing and either file them with their prefiled testimony or serve them on parties of record not less than 48 hours prior to the hearing. At the hearing, witnesses shall read their summaries into the record. Opposing parties may cross-examine both on the original prefiled testimony and the summaries.

H. Rate Case Joint Exhibits -- Both narrative and numerical joint exhibits, detailing each party's position on each issue, shall be filed with the Commission prior to the hearing. These joint exhibits shall:

a. be updated throughout the hearing;

b. depict the final positions of each party on each issue at the end of the hearing; and

c. be in conformance with R746-100-3(C).

I. Recording of Hearing and Transcript -- Hearings shall be duly recorded by a shorthand reporter licensed in Utah; except that in non-contested matters, or by agreement of the parties, hearings may be recorded electronically.

J. Order of Presentation of Evidence -- Unless the presiding officer orders otherwise, applicants or petitioners, including petitioners for an order to show cause, shall first present their case in chief, followed by opponents, intervenors, and the Division, in the order designated by the presiding officer, followed by the proposing party's rebuttal.

K. Cross-Examination -- The Commission may require written cross-examination and may limit the time afforded parties to present evidence and cross-examine witnesses. The presiding officer may exclude friendly cross-examination. The Commission discourages and may prohibit parties from making their cases through cross-examination.

L. Procedure at Conclusion of Hearing -- At the conclusion of proceedings, the presiding officer may direct a party to submit written proposed findings of fact and conclusions of law. The presiding officer may order proposed findings and conclusions in other matters as deemed appropriate. The presiding officer may also order parties to present further matter in the form of oral argument or