

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
BEEHIVE TELEPHONE COMPANY, INC.	)	CC Docket No. 97-249
BEEHIVE TELEPHONE, INC. NEVADA	)	
	)	
Tariff F.C.C. No. 1	)	Transmittal No. 8

OPPOSITION TO MOTION FOR EXTENSION OF TIME

Pursuant to Section 1.45(a) of the Commission's Rules, 47 C.F.R. § 1.45(a), AT&T Corp. ("AT&T") hereby responds to the motion for extension of time filed by Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada (collectively, "Beehive") on April 3, 1998.<sup>1</sup> By waiting until the end of the day on which its direct case was due to file its motion, Beehive has granted itself an unauthorized extension of time and has failed to allow the Commission to evaluate whether or not such an extension was warranted. In fact, as shown below, such an extension was not warranted, and Beehive's action has undermined the Commission's schedule in this proceeding.

On March 13, 1998, the Commission issued an order designating issues for investigation into the lawfulness of Beehive's Transmittal No. 8, which proposed to revise

<sup>1</sup> The motion for extension was never faxed or mailed to AT&T insofar as the undersigned counsel have been able to determine, but AT&T has obtained a copy of Beehive's filing (which does not contain a certificate of service) from the Commission staff.

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Beehive's access rates pursuant to the Commission's Access Charge Reform Order.<sup>2</sup> The Commission required Beehive to file its direct case on April 3, 1998, interested parties to file comments or oppositions to the direct case on April 10, 1998 and Beehive to file its rebuttal on April 14, 1998.<sup>3</sup> On April 3, Beehive filed a motion for extension of time to file its direct case claiming (1) that its counsel's "long standing travel plans" prevented it from compiling the legal expenses which Beehive seeks to recover in its access rates, and (2) the Commission's requirement for Beehive to produce its subsidiary expense records resulted in such a severe burden that Beehive did not have the necessary records to support its direct case on April 3, and therefore could not file its case. Motion at 1-2. Beehive's motion is without merit.

First, Beehive's FCC counsel has been aware of his long standing travel plans since at least March 16, when he cited them to the staff of the Enforcement Division as a reason to extend the briefing deadlines set in a formal complaint proceeding between AT&T and Beehive.<sup>4</sup> The claimed lack of "detailed knowledge" on the part of

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<sup>2</sup> Beehive Telephone Company, Inc., Beehive Telephone, Inc. Nevada, Tariff F.C.C. No. 1, Tr. No. 8, CC Docket No. 97-249, DA 98-502, Order Designating Issues for Investigation (rel. Mar. 13, 1998).

<sup>3</sup> *Id.* at paras. 17-20.

<sup>4</sup> Letter to Deena M. Shetler from Russell D. Lukas, File No. E-97-14, dated March 16, 1998.

Beehive's alternate counsel in this proceeding is not supported or demonstrated by the motion, nor does Beehive show how the lack of such "detailed knowledge" impacted Beehive's ability to timely complete the preparation of the direct case (which Beehive's lead counsel presumably had begun before he left the country). This claim thus should not serve to delay the investigation. Similarly, Beehive does not explain how the absence of its other lead counsel, David Irvine, for eight days during the 21 day period prior to the April 3 date for the filing of Beehive's direct case prevented Beehive from compiling the required information.

Second, Beehive should have had its subsidiary information available in such a manner that it could be prepared for submission to the Commission within the three week filing period for Beehive's direct case. Section 32.12 of the Commission's Rules is clear that companies must maintain financial and subsidiary records so that they are "readily accessible" for examination by the Commission. See Designation Order at para. 10(c). Yet, Beehive's motion indicates, without identifying any specific data, that the records were still being prepared on April 3. Indeed, Beehive states in its direct case filed on April 6 that it still has not completed preparation of the records. Direct Case at 14.

At bottom, Beehive should have filed the records it had ready for submission on April 3, and then supplemented its direct case, especially in light of the

fact that it is now clear that it will be necessary for Beehive to supplement its case in any event. Instead, Beehive filed nothing on the required due date.

In all events, Beehive has seriously delayed the investigation. Not only did it wait until the end of the day on April 3 to notify AT&T that it would file a motion for extension of time, Beehive apparently failed to serve the motion on AT&T as it indicated it would. The result of Beehive's motion is that it has granted itself an unauthorized extension of time. AT&T's subject matter experts responsible for evaluating the direct case had planned to receive it on Saturday, April 4 and to begin reviewing it over the weekend. They will now not receive the filing and accompanying diskettes until Tuesday, April 7, and will have lost three of the seven calendar days they had to review it. In addition, AT&T's counsel has long-standing vacation plans beginning during the Passover/Easter weekend and lasting through April 17, which will further complicate AT&T's ability to thoroughly review the filing.

Moreover, Beehive has still not filed its complete direct case, which will impede a full review by the Commission and AT&T for an unknown period of time.<sup>5</sup>

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<sup>5</sup> This is not an isolated omission, but rather a continuation of the pattern of conduct Beehive displayed in the investigation of Transmittal No. 6, where its periodic "supplementation" of the record with material it had been required to file earlier

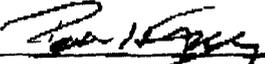
(footnote continued on following page)

Accordingly, AT&T requests that the Commission allow it until April 20 to file its response to Beehive's direct case. Beehive could then file its rebuttal four days later on April 24, thereby allowing the Commission to close the record approximately five weeks prior to its statutory objective for completing the investigation.<sup>6</sup>

Respectfully submitted,

AT&T CORP.

By

  
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April 7, 1998

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substantially interfered with AT&T's ability to evaluate the direct case there.

<sup>6</sup> Contrary to Beehive's claim (Motion, p. 2 n.1) that this proceeding must be concluded by June 1, the Commission has full authority to act even after that date. 800 Database Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services, CC Docket Nos. 93-129, 86-10, FCC 970135, Order on Reconsideration (rel. Apr. 14, 1997), ¶ 15 (finding that the Commission has authority to order refunds notwithstanding that it did not conclude the proceeding in accordance with Section 204(a)(2)(A)).

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 7th day of April, 1998, a copy of the foregoing "Opposition to Motion for Extension of Time" of AT&T Corp. was served by facsimile transmission and by U.S. first class mail, postage prepaid, to the parties listed below.

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