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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 98-108
Beehive Telephone Company, Inc.	)	
Beehive Telephone, Inc. Nevada	)	
	)	Transmittal No. 11
Tariff F.C.C. No. 1	)	

ORDER

Adopted: June 30, 1998; Released: June 30, 1998

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On June 16, 1998, Beehive Telephone Company, Inc. and Beehive Telephone, Inc. of Nevada (collectively "Beehive") filed Transmittal No. 11, which proposes to modify rates for local switching, establish tandem switched transport facility, tandem switched transport termination, transport interconnection charges, and discontinue the local transport facility and termination charges. We reject Transmittal No. 11 to the extent that it proposes to increase the premium and non-premium local switching rates in violation of the Commission's prescription in the *1998 Beehive Tariff Investigation Order*. We suspend and initiate an investigation into tandem switched transport facility, tandem switched transport termination, and transport interconnection charges because we find that these rates raise substantial questions of lawfulness.

II. BACKGROUND

2. On June 1, 1998, the Commission issued a Memorandum Opinion and Order prescribing rates for Beehive's premium and non-premium local switching, local transport facility, and local transport termination charges.[1] In that Order, the Commission determined that the cost and investment information Beehive submitted in Transmittal No. 8 in support of its proposed rates contained many inconsistent, questionable, and unexplained entries that rendered the data useless for the purpose of approving the rates proposed by Beehive or for prescribing altogether different rates.[2] These data included cost data for 1994, 1995, and 1996 in the format specified for Table 1 of FCC ARMIS Report 43-01, and Beehive's general ledgers for calendar years 1994, 1995, and 1996.[3] Beehive's proposed premium and non-premium local switching rates were $0.028252 per minute of

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[1] *In the Matter of Beehive Telephone Company, Inc., Transmittal No. 8*, CC Docket No. 97-249, Memorandum Opinion and Order, FCC 98-105 (released, June 1, 1998) (*1998 Beehive Tariff Investigation Order*).

[2] *1988 Beehive Tariff Investigation Order* at paras. 21, 22.

[3] Beehive Direct Case, Transmittal No. 8, filed April 6, 1998.

use and $0.01815 per minute of use, respectively.

3. Beehive had stated in its direct case for Transmittal No. 8 that its cost accounts and records had not been maintained in accordance with Part 32 of the Commission's rules.[4] After examining Beehive's submissions, the Commission found that Beehive had failed to provide any explanation of its accounting procedures that would assure that its costs were presented and identified in a way that would permit the Commission to rely on them either to justify Beehive's proposed rates or to prescribe lawful interstate access charges. Thus, the Commission concluded it was necessary to prescribe rates based on another methodology.[5]

4. The Commission prescribed Beehive's rates by using a methodology that computed the total interstate revenue requirement based on the average total plant in service and net investment of similar companies using a sample of comparable telephone companies in the National Exchange Carrier Association (NECA) pool.[6] The Commission prescribed a premium local switching rate of $0.009607 per minute of use, a non-premium local switching rate of $0.004323 per minute of use, a premium local transport facility rate of $0.000181 per mile per minute of use, and a non-premium local transport facility rate of $0.000082 per mile per minute of use. On June 8, 1998, Beehive filed Transmittal No. 10, implementing the Commission's rate prescription.

5. On June 16, 1998, Beehive filed Transmittal No. 11 pursuant to Section 61.39 of the Commission's rules[7] proposing to increase its premium and non-premium local switching rates to $0.024780 and $0.0111151 per minute of use, respectively.[8] Beehive also proposes to establish rates for tandem switched transport facility, tandem switched transport termination and transport interconnection charge pursuant to the *Access Charge Reform Order,*[9] as set out in Section

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[4] Part 32 of the Commission's rules contains the Uniform System of Accounts (USOA) for telecommunications companies, which is a historical financial accounting system that companies use to book costs in their various accounts. The USOA is comprised of different accounts, to which companies book associated costs. 47 C.F.R. Part 32.

[5] *1998 Beehive Tariff Investigation Order* at para. 21.

[6] *See 1998 Beehive Tariff Investigation Order* at paras. 22-25. The Commission used the same sample of companies that it had used to prescribe local switching rates in the 1997 access tariff investigation of Beehive's Transmittal No. 6. *In the Matter of Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada, Transmittal No. 6*, CC Docket No. 97-237, Memorandum Opinion and Order, FCC 98-1 (released January 6, 1998) (*1997 Beehive Tariff Investigation Order).*

[7] 47 C.F.R. § 61.39.

[8] Beehive Telephone Company, Inc., Tariff F.C.C. No. 1, Transmittal No. 11 (filed June 16, 1998) (*Transmittal No. 11*).

[9] *In the Matter of Access Charge Reform,* CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997) (*Access Charge Reform Order).*

69.111(e)(2) of the Commission's rules.[10] Beehive included cost and investment data for calendar years 1996 and 1997 in support of its filing.

III. DISCUSSION

6. We reject as patently unlawful Beehive's proposal to revise its premium and non-premium local switching rates because these proposed rate revisions contained in Transmittal No. 11 violate the Commission's rate prescription in the *1998 Beehive Tariff Investigation Order*. It is well established that agencies are empowered to reject tariff filings that do not adhere to prescriptions of rates or practices affecting rates.[11] In *United Air Lines v. CAB*, the U.S. Court of Appeals for the Seventh Circuit upheld a decision of the Civil Aeronautics Board (CAB) to reject a tariff that proposed higher rates than had been previously prescribed by the CAB.[12] In this case, following a tariff investigation, the CAB prescribed certain fare levels for airline routes between Hawaii and the mainland.[13] Five days after filing conforming tariffs, United Airlines filed new tariffs reflecting higher fares than those prescribed by the CAB.[14] The CAB rejected the tariff filing, concluding that it has the power to issue an order fixing rates for the future and to reject tariffs which are inconsistent with any rate prescriptions.[15] The Seventh Circuit affirmed the CAB and stated, "[w]e believe that Congress no more intended in the Federal Aviation Act than in the other three similar acts [the Interstate Commerce Act, the Packers and Stockyards Act, and the Natural Gas Act] to authorize the Board to establish a lawful rate only to be followed immediately by the necessity of passing upon other and different rates filed by the carriers."[16]

7. Similarly, we reject Beehive's proposal to revise its premium and non-premium local switching rates because they are substantially higher than the local switching rates the Commission prescribed 15 days before Beehive filed Transmittal No. 11. If we were not permitted to reject tariffs that are inconsistent with rates prescribed by the Commission, we "would be unable to prevent a

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[10] 47 C.F.R. § 69.111(e)(2).

[11] *United Airlines, Inc. v. CAB*, 518 F2d 256 (7th Cir. 1975); (affirming the CAB's decision to reject a tariff filed by United Airlines which proposed higher rates than those previously prescribed by the CAB); *AT&T v. FCC*, 487 F.2d 865, 874 (2d Cir. 1973) (stating that following a tariff investigation, a carrier must adhere to a fixed rate which can only be revised with prior Commission permission); AT&T v. FCC, 51 FCC2d 619 (1975) (rejecting AT&T's tariff which proposed a higher rate of return than the Commission previously prescribed). *See also*, ABC v. FCC, 663 F.2d 133 (1980).

[12] United Airlines v. CAB, 518 F.2d at 261.

[13] *Id.* at 257.

[14] *Id.*

[15] *Id.*

[16] *Id.* It is well established that Title II of the Communications Act of 1934 is similar to the Interstate Commerce Act.

continual merry-go-round of investigations all dealing with the same subject."[17]

8. In the Commission's investigation of Transmittal No. 8, the Commission prescribed Beehive's premium and non-premium local switching rates by: (1) computing a total interstate revenue requirement based on the average total plant in service and net investment among telephone companies with a comparable number of access lines; (2) calculating an 11.25 percent rate of return on that investment; and (3) computing Beehive's operating expenses by using a 25 percent ratio of total operating expenses to total plant in service. The Commission adopted this approach because it found that Beehive had failed to justify its historic costs. The Commission concluded that Beehive had failed to maintain its cost accounts and records in accordance with Part 32 of the Commission's rules and had not explained the accounting procedures that were used to maintain its books to allow reliance on them. Moreover, the Commission found that Beehive's cost data supporting its operating expenses revealed many inconsistent, questionable, and unexplained entries.

9. Fifteen days after the Commission made this prescription, Beehive filed the transmittal at issue here proposing to increase premium local switching rates by approximately 300% and non-premium local switching rates by approximately 250%. Notwithstanding the gross deficiencies the Commission found in Beehive's accounting procedures and historic cost support in the *1998 Beehive Tariff Investigation Order*, Beehive does not even attempt to explain how it has corrected these deficiencies in Transmittal No. 11, which similarly is based on historic cost support. For example, Beehive's cost support for Transmittal Nos. 8 and 11 are both based in part on 1996 data.[18] We found Beehive's 1996 cost data to be seriously deficient in the *1998 Beehive Tariff Investigation Order*. We have no reason to believe that the 1996 cost data that Beehive filed with Transmittal No. 11 are more reliable than the 1996 cost data filed with Transmittal No. 8: for instance, Beehive's cost support for Transmittal No. 11 fails to identify the accounting procedures it used to maintain its books and fails to document and explain the data, assumptions, and the methodologies on which it based its premium and non-premium local switching rates. Accordingly, we reject Beehive Transmittal No. 11 to the extent that it proposes to increase its premium and non-premium local switching rates.

10. We do not reject the rates Beehive has filed for tandem switched transport facility, tandem switched transport termination, and transport interconnection charge because Beehive was required to file new rates for these elements pursuant to the *Access Charge Reform Order*. We do, however, find that these rates are based, in part, on 1996 cost and investment data that the Commission has previously rejected. We therefore find that Beehive's tandem switched transport facility, tandem switched transport termination, and transport interconnection charge rates raise substantial questions of lawfulness warranting suspension and an investigation.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to Sections 201(b) and 205(a) of the Communications Act of 1934, 47 U.S.C. §§ 201(b), 205(a), and authority delegated pursuant to

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[17] United Airlines v. CAB, 518 F.2d at 259, *quoting* CAB Order No. 74-12-109 at 34.

[18] Beehive filed 1995 and 1996 cost data to support Transmittal No. 8, and 1996 and 1997 cost data to support Transmittal No. 11.

Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the revisions pertaining to premium and non-premium local switching services filed by Beehive Telephone Company, Inc. and Beehive Telephone, Inc. of Nevada in Transmittal No. 11 ARE REJECTED.

12. IT IS FURTHER ORDERED that Beehive Telephone Company, Inc. and Beehive Telephone, Inc. of Nevada SHALL FILE tariff revisions removing the rejected material no later than five business days from the release date of this Order. For this purpose, Sections 61.58 and 61.59 of the Commission's rules, 47 C.F.R. §§ 61.58, 61.59, are waived. Beehive Telephone Company, Inc. and Beehive Telephone, Inc. of Nevada should cite the "DA" number of the instant Order as the authority for this filing.

13. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and authority delegated pursuant to Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the revisions to Beehive Tariff F.C.C. No. 1, Transmittal No. 11 regarding transport facility, transport termination, and transport interconnect charge rates, ARE SUSPENDED for one day and an investigation of these rates IS INSTITUTED.

14. IT IS FURTHER ORDERED that Beehive Telephone Company SHALL FILE, within five business days from the release date of this Order, a supplement advancing the effective date for the transport facility, transport termination, and transport interconnection charge from July 1, 1998 to June 30, 1998, and in the same supplement suspend these charges until July 1, 1998. Beehive Telephone Company, Inc. and Beehive Telephone, Inc. of Nevada should cite the "DA" number of the instant Order as the authority for this filing.

15. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), Beehive Telephone Company, Inc. and Beehive Telephone, Inc. of Nevada shall keep accurate account of all amounts received by reason of the rates that are the subject of this investigation.

FEDERAL COMMUNICATIONS COMMISSION

Jane E Jackson / for J.D. Schlichting

James D. Schlichting
Deputy Chief
Common Carrier Bureau