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

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

AT&T OPPOSITION TO DIRECT CASE

Pursuant to the Common Carrier Bureau's Designation Order in this proceeding,[1] AT&T Corp. ("AT&T") hereby files its Opposition to the direct case of Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada (collectively, "Beehive").

On June 16, 1998, Beehive filed Transmittal No. 11, which proposed to revise its interstate access service rates in accordance with the Commission's Access Charge Reform Order, by establishing rates for the tandem switched transport facility, tandem switched transport termination, and transport interconnection.[2] On June 30, 1998, the Competitive Pricing Division of the Common Carrier Bureau

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[1] Beehive Telephone Company, Inc., Beehive Telephone, Inc. Nevada, CC Docket No. 98-108, DA 98-2030 (Com.Car. Bur. (1998) ("Designation Order").

[2] Access Charge Reform Order, 12 FCC Rcd 15982 (1997).

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suspended Beehive's Transmittal No. 11 for one day, initiated an investigation into the lawfulness of Beehive's tariff filing for these rate elements, and imposed an accounting order.[3] The Bureau also rejected as patently unlawful Beehive's attempt in that transmittal to revise its premium and non-premium local switching rates, because they increased the local switching rates the Commission had prescribed just weeks before in the Beehive Tariff Investigation Order.[4]

In the Designation Order, the Bureau preliminarily determined that Beehive's cost support for Transmittal No. 11 reflects deficiencies similar to those that caused the Commission to discount the cost support previously filed with Beehive's Transmittal No. 8.

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[3] Beehive Telephone Company, Inc. Beehive Telephone Inc. Nevada, Transmittal No. 11, Order, 13 FCC Rcd 12647 (1998) ("Suspension Order").

[4] Suspension Order at 12649. See Beehive Telephone Company, Inc., Transmittal No. 8, Memorandum Opinion and Order, 13 FCC Rcd 12275 (1998) ("Beehive Tariff Investigation Order"). In the Suspension Order, the Commission determined that Beehive proposed to increase premium local switching rates by approximately 300% and non-premium local switching rates by approximately 250%, without addressing or explaining how Beehive corrected "the gross deficiencies the Commission found in Beehive's accounting procedures and historic cost support in the 1998 Beehive Tariff Investigation Order." Suspension Order at 12650.

Consequently, the Bureau found that Beehive apparently has not met the standard for cost support to qualify to file as a cost company under Part 61.39.[5] The Bureau, therefore, designated three issues for investigation, requiring that Beehive explain:

> (1) why the Bureau's tentative conclusion that Beehive has merely moved substantial amounts of its expenses from Utah to Nevada and from corporate operations and plant specific accounting categories to customer operations expense accounts is incorrect;
>
> (2) why Beehive reports a 26 percent increase in interstate net plant in Transmittal No. 11 as compared with the interstate net plant reported in Beehive's Direct Case in Transmittal No. 8; and
>
> (3) how Beehive calculated its proposed premium and non-premium tandem switched transport facility rates, tandem switched transport termination rates, and transport interconnection charge rates.[6]

Beehive's direct case fails to address in any meaningful way certain of the issues designated by the Bureau for investigation.[7] Rather, Beehive uses its direct

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[5] Designation Order, para. 10.

[6] Id.; see also Letter to Russell Lukas, Attorney representing Beehive, from Jane Jackson, Chief, Competitive Pricing Division, Federal Communications Commission, dated October 19, 1998 at 2.

[7] The Designation Order required Beehive to file its direct case no later than October 21, 1998. The Bureau also directed that pleadings responding to the direct case were to be filed no later than October 28, 1998. Designation Order, paras. 13-14. On October 21, 1998, Beehive filed an untimely motion for extension of time

(footnote continued on following page)

case as a soap box to rehash meritless claims that the Commission has previously considered and correctly rejected. For example, Beehive devotes nearly half of its direct case to presenting the history of Beehive's interstate access tariff filings beginning in 1994. Beehive's goal apparently is to reargue, among other things, the Commission's previous rejection of Beehive's local switching rates proposed as rate revisions in Transmittal No. 11. These frivolous arguments are irrelevant to the instant investigation.

Although Beehive thus submitted a direct case in excess of 40 pages, it has ignored the Bureau's requirement to provide explanations of the expense items identified by the Bureau. Thus, instead of justifying its evident shifting of expenses from Utah to Nevada, Beehive attempts

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(footnote continued from previous page)

for filing its direct case. The Bureau denied Beehive's motion. See Public Notice, CC Docket No. 98-108, DA 98-2128, released October 21, 1998. Beehive did not file its direct case until on October 23, 1998 (and even then filed an "addendum" on October 29 to "correct" part of its prior filing). In accordance with the Bureau's initial seven day interval between the time the direct case was due and responses to the direct case were due, AT&T files this Opposition on October 30, 1998, seven days after Beehive filed its direct case.

to evade the question by redefining the inquiry. Rather than explaining the movement of expenses, Beehive cavils over semantics. Thus, Beehive claims (at 20) that the Bureau erred in tentatively concluding that Beehive moved "substantial" expenses between the states, arguing, instead, that the movement of expenses was not substantial. Beehive's explanation, a single sentence, merely states (at 21) that "Beehive Utah's reported 1996 operating expenses decreased by $173,409, while Beehive Nevada's expenses only increased $40,969." This statement is neither an explanation nor justification for the accuracy of the apparent movement of expenses reported by Beehive.

As to the movement of Beehive's expenses from corporate operations and plant specific accounting categories to customer operations expense accounts, Beehive argues (at 21-24) that the expenses moved between the accounts is the result of the "reclassification" of $1,008,000 that Beehive paid Joy Enterprises, Inc. ("JEI") in 1996 under a switching equipment lease. However, Beehive's argument ignores the Commission's finding that the "lease agreement" between JEI and Beehive had "few of the normal terms and conditions of an operating lease," and Beehive had "not provided any explanation for its relationship with JEI that would rebut concerns raised by

its accounting treatment of JEI-related costs."[8] Therefore, it is irrelevant how Beehive classifies or reclassifies these JEI expenses, because Beehive has failed to justify the inclusion of these expenses in any account.[9]

Beehive also fails to explain the 26 percent increase in interstate net plant in Transmittal No. 11 as compared with the interstate net plant reported in Beehive's Direct Case in Transmittal No. 8. Beehive acknowledges (at 24) that the increase includes a doubling of its previously reported interstate net plant for Nevada in 1996. The total increase is, Beehive claims (at 24), the result of including the weighted DEM allocator, rather than the unweighted DEM allocator, in the development of the switching revenue requirement. Assuming that Beehive is claiming that the entire 26 percent increase in

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[8] Beehive Telephone Company, Inc. Beehive Telephone, Inc. Nevada, Memorandum Opinion and Order, 13 FCC Rcd 12275 (1998), paras 15-16 ("1998 Beehive Tariff Termination Order"). The lawfulness of Beehive's relationship with JEI is currently subject to a formal complaint proceeding before the Commission.

[9] Beehive's reliance (at 22) on its auditor's conclusion that the equipment supplied by JEI was utilized by Beehive to implement its 1994 "strategic decision to stimulate traffic" is similarly unavailing. The Commission has previously found that a similar record in Transmittal No. 8 "show[ed] substantial, inadequately explained payments to JEI." 1998 Beehive Tariff Termination Order, para. 15.

interstate net plant is due to its incorrect use of the weighted DEM allocator, Beehive's revised cost support does not support such a conclusion. Comparison of the revised Transmittal No. 11 cost support with the original Transmittal No. 11 cost support shows less than a 3 percent difference in net plant, not the 26 percent difference Beehive claims the use of the incorrect DEM allocator would explain. Therefore, Beehive has not adequately explained the increase.

Beehive's tandem switching rate development is also faulty, because the ratios are based on unreasonably high historical costs, the support for which the Commission has previously found to be "seriously deficient".[10] Consequently, Beehive has provided no adequate explanation why the proposed rates based on Beehive's own unit prices are 68% higher than NECA's unit prices for the same elements.[11]

In sum, Beehive has again failed to meet its burden of proof under Section 204(a)(1) of the Communications Act to show that its proposed rates are just

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[10] Suspension Order at 12650.

[11] See Beehive's Revised Transmittal No. 11 Cost Support, First Revised Page 00000002.

and reasonable. Beehive's failure to provide convincing explanations and justifications of the expense levels identified by the Commission leaves the Commission no choice but to exercise its authority to either prescribe a rate that is just and reasonable, as it found necessary to do with Transmittal Nos. 6 and 8 and as it warned it would do again in the Designation Order,[12] or, alternatively, allow a partial authorization of the proposed rates pursuant to Section 204(b) of the Act.

Respectfully submitted,

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October 30, 1998

[12] Designation Order, para. 11.

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 30th day of October, 1998, a copy of the foregoing "AT&T Opposition to Direct Case" was served by facsimile transmission and by U. S. first class mail, postage prepaid, to the parties listed below.

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