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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 PETITION FOR RECONSIDERATION

Pursuant to Section 1.106(g) of the Commission's Rules, 47 C.F.R. § 1.106(g), AT&T Corp. ("AT&T") hereby opposes the petition for reconsideration filed by Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada (collectively, "Beehive").

Beehive argues that the Commission should reconsider its December 1, 1998 Order (1) prescribing rates for certain of Beehive's services based on NECA's rates for the services; (2) requiring Beehive to refund to its customers the difference between NECA's rates and the rates it filed in June 1998; and (3) directing the Common Carrier Bureau to institute an investigation to determine whether Beehive is in violation of any part of the Act based upon its Part 32 accounting methodologies and entries, Part 64 cost allocation methodologies, and separations

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methodologies.[1] Specifically, Beehive states that (i) the Commission did not provide reasonable notice, as the Commission did not identify the issues ultimately addressed in the December 1 Order; (ii) the Commission erred in finding that Beehive's supporting cost evidence failed to justify Beehive's rates; (iii) the Commission did not resolve the issues designated for investigation; (iv) the decision was not based on the evidence and therefore, was not the result of reasoned decision making; (v) the Commission's prescription of rates was invalid; and (vi) the Commission's refund order was unjustified, because the Commission did not consider all relevant factors.[2] There is no merit to any of Beehive's arguments.

As a preliminary matter, Beehive's petition is based primarily on the premise that the Commission has acted improperly because it did not make reasoned decisions

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[1] Beehive Telephone Company, Inc., Beehive Telephone, Inc. Nevada, Tariff F.C.C. No. 1, Transmittal No. 11, CC Docket No. 98-108, Memorandum Opinion and Order, released December 1, 1998 ("December 1 Order").

[2] Beehive also argues (at 3-5) that the Commission should have acted on Beehive's pending Application for Review (filed July 30, 1998) in the December 1 Order. As the Application for Review relates to an earlier Beehive transmittal (Transmittal No. 8), the Commission is under no obligation to address those issues in its order on the lawfulness of Transmittal No. 11. Clearly, this is no grounds for reconsideration of the December 1 Order.

based on the facts in the investigation. This is nothing more than an attempt by Beehive to redirect attention away from its failure to meet its burden of demonstrating that its proposed rates are just and reasonable, as required by Section 204(a)(1) of the Act. It is Beehive, and not the Commission, that controls the flow of information that can support Beehive's proposed rates. Thus it is Beehive's failure to provide clear and complete supporting documentation to the Commission that led to the Commission's prescription of rates and refund order.

As Beehive itself notes (at 1), this is the Commission's third order prescribing access rates that Beehive must charge. Therefore, despite any claims to the contrary by Beehive, Beehive was on notice, by virtue of its previous actions, that it must provide adequate supporting information to justify its proposed rates and if it does not, the Commission will prescribe rates. In the two previous prescription cases, Beehive petitioned for reconsideration and in each case reconsideration was denied.[3] The instant petition is merely an attempt by

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[3] See Beehive Telephone Company, Inc., Beehive Telephone, Inc. Nevada, CC Docket No. 97-237, Memorandum Opinion and Order, 13 FCC Rcd 2736 (1998), reconsid. denied 13 FCC Rcd 11795 (1998); Beehive Telephone Company, Inc., Beehive Telephone, Inc. Nevada, Tariff F.C.C. No. 1,

(footnote continued on following page)

Beehive to reargue many of the same points it raised in its prior petitions. To the extent Beehive introduces new arguments, those arguments are equally as meritless. For the same reasons the Commission denied those earlier petitions, it should deny this one.

BEEHIVE WAS GIVEN ADEQUATE NOTICE AND A FULL OPPORTUNITY TO PRESENT ITS DIRECT CASE.

Beehive argues that the Designation Order[4] was misleading, as it did not specify the issues the Commission actually addressed in the December 1 Order. Beehive contends (at 7) that the "Bureau did not explicitly designate any issue for resolution." In order to remove any confusion and to understand what issues had been designated for resolution, Beehive asked (at 7) the Bureau to clarify what it meant by the "inconsistencies and irregularities" referred to in the Designation Order. Although the Commission provided Beehive with guidance on this issue, Beehive claims surprise that the Commission

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(footnote continued from previous page)

Transmittal No. 8, Memorandum Opinion and Order, 13 FCC Fcd 12275 (1998) ("June 1 Order"), reconsid. denied 13 FCC Rcd 19396 (1998).

[4] Beehive Telephone Company, Inc., Beehive Telephone, Inc. Nevada, CC Docket No. 98-108, Order Designating Issues for Investigation (rel. Com. Car. Bur., October 7, 1998)("Designation Order").

found that Beehive failed to meet its burden of proof under Section 204(a)(1) of the Act.

Beehive's arguments fail in their entirety because it was given adequate notice of the issues under investigation and the Commission's investigation was clearly confined to the scope of the issues it had designated to discern the lawfulness of Beehive's rates.

As a cost schedule carrier, Beehive is required to submit detailed cost and demand data that allow the Commission to monitor a carrier's earnings.[5] This is consistent with Section 204 of the Act, which requires that once a tariff rate has been set for investigation, the carrier has the burden of showing that its proposed rates are just and reasonable. A carrier fails to meet its burden of proof under Section 204(a) if it does not provide the data that the Commission requests.

The Designation Order was very specific about the data Beehive was required to file to justify its rates. It stated clearly that the investigation addresses the reasonableness of Beehive's tandem switched transport facility, tandem switched transport termination, and transport interconnection charge rates and the reliability

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[5] Designation Order at para. 2.

of the data used to calculate these rates.[6] The Commission went on to provide specific instances where "Beehive [apparently] has not met the standard for cost support to qualify to file as a cost company under Part 61.39."[7]

The Commission also put Beehive on explicit notice that,

> Failure to provide convincing explanations and justifications of these expense levels may result in the prescription of rates that are just and reasonable, and these rates may reflect large disallowances of certain costs claimed by Beehive. If Beehive fails to justify its costs, the Commission may prescribe rates using a methodology similar to that used in the [June 1 Order].

Accordingly, Beehive was clearly advised of the issues in controversy, and its argument that it somehow failed to understand that it was required to respond to the Commission's designated issues, and thus to meet its burden

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[6] Id. at para. 3.

[7] Id. at para. 10. The Commission put Beehive on notice that a "[p]reliminary review of Beehive's cost support documents indicates that they suffer from problems very similar to those that caused [the Commission] to disregard the cost support filed in Transmittal No. 8."

Beehive's further claim (at 8) that the Bureau never mentioned Joy Enterprises, Inc. ("JEI") in its Designation Order and was, therefore, not on notice as to this issue is disingenuous. To the contrary, Beehive devoted more than two pages of argument in its Direct Case to the JEI issue. Direct Case, pp. 25-28.

under Section 204(a) of showing that its proposed rates were reasonable, is simply baseless.

THE COMMISSION DID NOT ERR IN FINDING THAT BEEHIVE'S PROPOSED TANDEM SWITCHED RATES ARE NOT JUST AND REASONABLE

Beehive argues (at 9-11) that the Commission improperly held that Beehive failed to justify its proposed transport rates under Section 204(a)(1) of the Act. Beehive claims that it did not have to cost "justify" its transport rates to prove that the rates were just and reasonable.

Specifically, Beehive contends (at 9) that the Commission held that Beehive "failed to meet its burden of proof under Section 204(a)(1) of the Act to 'justify' its rates." However, Beehive's conclusion neglects the Commission's ultimate determination -- that Beehive's filing of data without any explanation of how the rates were calculated does not permit the Commission to determine whether the proposed tandem switched rates are just and reasonable.[8]

Therefore, the Commission did not create a new "burden of proof," as Beehive claims (at 9). Beehive's burden is to show that its proposed rates were just and

[8] December 1 Order at para. 20.

reasonable. This burden was not, and could not be, met, because of Beehive's failure to provide any explanation of how it calculated its proposed rates.

THE COMMISSION RESOLVED ALL ISSUES DESIGNATED FOR INVESTIGATION

Beehive claims (at 11-12) that the Commission did not resolve the issues identified for investigation. How Beehive can reach this conclusion is puzzling in light of the fact that the Commission's December 1 Order (paras. 19-22) specifically addresses each item individually. The Commission addresses the issues of (1) Beehive's "merely moving" substantial expenses between states and expense accounts; (2) Beehive's 26% increase in interstate net plant; and (3) Beehive's transport rate calculations in paragraphs 20, 21, and 22, respectively, of the December 1 Order.

THE COMMISSION'S ORDER REFLECTS REASONED DECISION MAKING

Beehive also argues (at 16-24) that the Commission's decisions to prescribe rates and order a refund were not reasonable decisions in view of the facts. As shown above, the Commission acted reasonably when it considered the information presented (and omitted) by Beehive in reaching its decisions.

Contrary to Beehive's claim, there is a "rational connection between the facts found" and the Commission's "choice" to prescribe rates. The Commission's decisions were made on the record presented by Beehive. Beehive cannot now complain that because of the incomplete record it provided, that the Commission was unable to make reasoned decisions.[9]

When questioning the refund justification, Beehive claims (at 18) that the Commission did not consider all relevant factors before it exercised its discretion to order a refund. Beehive makes a vague reference to an alleged deal with AT&T involving access charge refunds, in the hope, apparently, of demonstrating bad intent on the part of the Commission. This unsubstantiated allegation, however, has no relevance to Beehive's obligation to propose just and reasonable rates. The crux of the matter is that Beehive did not propose such rates and, as a

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[9] Beehive asks (at 18) the Commission to take into consideration the fact that Beehive anticipates a 1999 loss that will exceed $1.294 million as a result of the Commission rate prescription and refund order. However, there is a real question as to the reliability of the projected loss as Beehive has been reluctant to provide the Commission with the complete information to determine accuracy of the loss.

result, must now refund those rates that were improperly earned.[10]

WHEREFORE, for the foregoing reasons, Beehive's petition for reconsideration should be denied in its entirety.

Respectfully submitted,

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[10] In a further effort to bootstrap its reconsideration petition, Beehive submits a declaration from its chief executive, Arthur W. Brothers, claiming that the December 1 Order somehow jeopardizes Beehive's availability to provide service. The declaration for the most part consists of conclusory allegations, and for the rest is apparently based on the same Beehive financial records that the Commission has already concluded are unreliable. In all events, moreover, the declaration cannot be credenced in light of the Commission's previous findings that Brothers is lacking in good character. Application of Beehive Telephone Co., Inc. for Construction Permits to Establish New Central Office and Rural Subscriber Stations, 79 F.C.C.2d 354, 355-56 (Rev. Bd. 1980).

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 13th day of January, 1999, a copy of the foregoing "AT&T Opposition to Petition for Reconsideration" was served by facsimile transmission and by U. S. first class mail, postage prepaid, to the parties listed below.

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