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Federal Communications Commission
Office of Secretary

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

In the Matter of)
Database Service Management, Inc.)
v.)
Beehive Telephone Co., Inc.)

File No. CC DOCKET 95-155

**PETITION OF DATABASE SERVICE MANAGEMENT INC.
FOR EXPEDITED DECLARATORY RULING
AND
RESPONSE TO PETITION OF BEEHIVE TELEPHONE CO., INC.**

Pursuant to 47 C.F.R. § 1.2, Petitioner, Database Service Management, Inc.¹ ("DSMI") hereby petitions the Federal Communications Commission ("Commission") for an expedited ruling declaring that (1) Beehive Telephone Company, Inc. ("Beehive")² has no proprietary interest in approximately 10,000 "629" toll free numbers (the "Numbers"),³ (2) Beehive's claims against DSMI are meritless, (3) Beehive's access to the Numbers, including reservation thereof in the SMS/800 System, is subject to and limited by Commission regulations and the SMS/800 Tariff ("Tariff") and (4) the Numbers should be returned immediately to the nationwide SMS/800 database.

¹ DSMI is a wholly owned subsidiary of Bell Communications Research, Inc. (Bellcore) which, since November 1997, has been a wholly owned subsidiary of Science Applications International Corporation. DSMI was incorporated in April, 1993 for the purpose of administering the SMS/800 Tariff and the SMS/800 system as managing business agent on behalf of the Regional Bell Operating Companies ("RBOCs"), which filed the Tariff.

² Beehive Telephone Company, Inc. ("Beehive") is a Utah corporation that provides local exchange and other telephone service, including toll free service, to customers in several rural areas of Utah.

³ The numbers at issue are 800-629-0000 through 800-629-9999. DSMI believes that the vast majority of the Numbers were never actually assigned to end users.

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As demonstrated below, Beehive's multiple legal claims merely serve to obfuscate its dominant purpose in this case, which is to hoard, warehouse, and likely sell, approximately 10,000 "800" toll free numbers, in blatant disregard of Commission policy and regulations. A declaration that Beehive has no proprietary interest in or control over the Numbers will terminate this controversy and return almost 10,000 "800" numbers to the SMS/800 database. The public interest will be best served if the Commission expedites its ruling, so that the Numbers can be immediately returned to the database to be available to any Resp Org for reservation on a first-come, first-served basis.

I. Introduction and Summary

1. The claims before the Commission in this case have been referred by the District Court for the District of Utah ("District Court"), under the doctrine of primary jurisdiction. A more comprehensive factual and procedural history of the case is set forth in the Addendum attached hereto.

2. Although this case arose in the context of a simple collection action, Beehive's Amended Counterclaim before the District Court raised the fundamental question whether Beehive has the right to control 10,000 specific "800" toll free numbers. The Numbers were originally assigned to Beehive under the Interim NXX Plan and later transferred to the SMS/800 database when it was established. When Beehive failed to pay the charges under the Tariff to maintain the Numbers in the SMS/800 database, DSMI, the manager of the database, revoked Beehive's Responsible Organization ("Resp Org") status, denied Beehive access to the SMS/800 system, and filed suit to collect the unpaid charges. Because Beehive failed to advise its customers to select another Resp Org, as required by the Tariff, DSMI began disconnecting the Numbers during the pendency of the District Court action. In response to the disconnection of the Numbers, Beehive paid the principal amount owing plus interest to the date the complaint was filed, then sought restoral of the Numbers through the District Court.

3. Beehive's claims are based on the untenable premise that Beehive has a proprietary interest in the Numbers. Beehive alleges that by refusing to restore the disconnected Numbers to Beehive's control, DSMI violated the 1934 Communications Act, the 1996 Telecommunications Act, the SMS/800 Tariff, and Beehive's constitutional due process rights.⁴

4. In the following discussion of each count raised by Beehive, DSMI shows that, based on the applicable communications law and the Commission's rules, the Commission should declare that each count raises meritless issues and should be dismissed with prejudice. The Numbers should immediately be put into the nationwide database to be made available to all Resp Orgs on a first-come, first-served basis.⁵

II. Discussion

Communications Law and Policy on Toll Free Service

5. The Commission has held telephone numbers to be a public resource.⁶ At least as early as 1986, and on a continuing basis, the Commission has stated that carriers "do not 'own' codes or numbers, but rather administer their distribution for the efficient operation of the public switched telephone network."⁷

⁴ In addition, Beehive challenges DSMI's standing to administer the SMS/800 system, as well as the validity of the SMS/800 Tariff itself.

⁵ Exhibit A to the Addendum shows the status of the Numbers. Eighty (80) of the Numbers are assigned to Resp Orgs other than Beehive. DSMI is not seeking to disturb the relatively few Numbers that are currently assigned to end user customers.

⁶ See In the Matter of Toll Free Service Access Codes, 13 F.C.C.R. 9058 (FCC, CC Docket No. 95-155, Mar. 31, 1998); In the Matter of Toll Free Service Access Codes, 12 F.C.C.R. 11162 (FCC, CC Docket No. 95-155, Apr. 11, 1997); In the Matter of Toll Free Service Access Codes, 10 F.C.C.R. 13692 (FCC, CC Docket No. 95-155, Oct. 5, 1995)

⁷ In the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 F.C.C.R. 2910, 2913 (1987) (quoting 59 Rad. Reg. 2d (P&F) 1275, 1284 (1986)). See also, In the Matter of Toll Free Service Access Codes, 13 F.C.C.R. 9058 (FCC, CC Docket No. 95-155, Mar. 31, 1998); In the Matter of Toll Free Service Access Codes, 12 F.C.C.R. 11162 (FCC, CC Docket No. 95-155, Apr. 11, 1997); In the Matter of Toll Free Service Access Codes, 10 F.C.C.R. 13692 (FCC, CC Docket No. 95-155, Oct. 5, 1995).

6. In 1991, the Commission established a policy that toll free numbers are portable.⁸ This policy is consistent with the Telecommunications Act of 1996, 47 U.S.C. § 251(b)(2), and reinforces the conclusion that a Resp Org does not have a right to control a toll free number in perpetuity. Commission rules on toll-free service implement this policy. For example, toll free numbers are required to be made available to qualified Resp Orgs on a non-preferential, first-come, first-served basis.⁹ Commission regulations restrict the quantity of toll free numbers that a Resp Org may reserve at any one time to 2,000 numbers or 7.5% of the Resp Org's numbers in working status, whichever is greater.¹⁰ Commission rules also provide that toll free numbers may be reserved for no longer than 45 days.¹¹ Further, warehousing of toll free numbers is prohibited.¹² And, both the SMS/800 Tariff and Commission regulations

⁸ See, e.g., In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff, 1996 WL 635667 n. 1 (CC Dockets 93-129 and 86-10, October 28, 1996); In the Matter of 800 Presubscription Rules for 800 Providers and Responsible Organizations, 8 F.C.C.R. 7315 (CC Docket No. 86-10, October 13, 1993)

⁹ See 47 U.S.C. § 251(e); In the Matter of Toll Free Service Access Codes, 11 F.C.C.R. 2496 (CC Docket No. 95-155, Jan. 25, 1996); SMS/800 Tariff §§ 2.1.2(B), 2.3.1(A)(2).

¹⁰ See 47 C.F.R. § 52.109(a). Beehive does not now have, nor, on information and belief, has it ever had, more than 2,000 toll free numbers in working status.

¹¹ 47 C.F.R. § 52.103(b) provides: "*Reserved Status*. Toll free numbers may remain in reserved status for up to 45 days. There shall be no extension of the reservation period after expiration of the initial 45-day interval."

¹² Warehousing is "the practice whereby Responsible Organizations, either directly or indirectly through an affiliate, reserve toll free numbers from the Service Management System database without having an actual toll free subscriber for whom those numbers are being reserved." 47 C.F.R. § 52.105(a).

Commission regulations prohibit warehousing of toll free numbers as follows:

Responsible Organizations shall not warehouse toll free numbers. There shall be a rebuttable presumption that a Responsible Organization is warehousing toll free numbers if:

(1) the Responsible Organization does not have an identified toll free subscriber agreeing to be billed for service associated with each toll free number reserved from the Service Management System database; or

(2) the Responsible Organization does not have an identified toll free subscriber agreeing to be billed for service associated with a toll free number before switching that toll free number from reserved or assigned to working status.

47 C.F.R. § 52.105(b). Similarly, 47 C.F.R. § 52.105(c) provides: "Responsible Organizations shall not maintain a toll free number in reserved status if there is not a prospective toll free subscriber requesting that toll free number." Finally, 47 C.F.R. § 52.105(e) requires a provision to be included in the SMS/800 Tariff, as well as in the local exchange carriers' access tariffs, which makes the warehousing of toll free numbers a violation of the Communications Act, for which a Resp Org may be subject to penalties. The required tariff provision states:

Continued on next page

prohibit the sale of toll free numbers.¹³

Count I

7. Analyzed against this backdrop of the Commission's regulations and policies for toll-free service, each of Beehive's issues raised before the District Court must fail. Count I¹⁴ alleges that access to the SMS/800 system must be provided by intercarrier agreements pursuant to 47 U.S.C. §§ 251(c)(3) and 252(a), which DSMI is obligated to negotiate with Beehive in good faith. Contrary to Beehive's assertions, the SMS/800 Tariff alone sets forth the terms and conditions pursuant to which access to the toll free database is provided. The Commission has already held the Tariff to be valid, and that ruling has not been stayed. Although the issue of the Tariff's validity is presently on appeal,¹⁵ the Tariff is binding unless and until the D.C. Circuit Court rules otherwise.

Count II

8. Count II alleges that DSMI is not an impartial administrator of the SMS/800 system,

Continued from previous page

The FCC has concluded that "warehousing . . . is an unreasonable practice under Sec. 201(b) of the Communications Act and is inconsistent with the Commission's obligation under Sec. 251(e) of the Communications Act to ensure that numbers are made available on an equitable basis; and if a Responsible Organization does not have an identified toll free subscriber agreeing to be billed for service associated with each toll free number reserved from the database, or if a Responsible Organization does not have an identified, billed toll free subscriber before switching a number from reserved or assigned to working status, then there is a rebuttable presumption that the Responsible Organization is warehousing numbers. Responsible Organizations that warehouse numbers will be subject to penalties."

¹³ 47 C.F.R. § 52.1079(a)(2) provides: "No person or entity shall acquire a toll free number for the purpose of selling the toll free number to another entity or to a person for a fee." The Tariff provides: "All entities (e.g., Resp Orgs, subscribers, service providers), are prohibited from selling, brokering, bartering, and releasing for a fee (or otherwise) any 800 number." SMS/800 Tariff § 2.3.1(A)(7).

¹⁴ As used herein, a "Count" refers to one of the causes of action in Beehive's Amended Counterclaim in the District Court action. See Exhibit C attached to the Addendum.

¹⁵ See, Beehive Telephone Company, Inc. and Beehive Telephone Nevada, Inc. v. FCC, C.A. No. 97-1662, D. C. Circuit.

under Section 251(e)(1) of the 1996 Telecommunications Act, and that DSMI is not eligible to serve as administrator. Thus, Beehive asserts that all actions taken while DSMI purported to act as administrator of the SMS/800 system are illegal. Beehive is wrong. As noted by the Commission in CC Docket 96-254, and again in its brief in Civil Action No. 97-1662, “the sale of Bellcore eliminates any arguable violation of Section 251(e)(1)....” FCC Respondent Brief, at fn. 69. The North American Numbering Council (NANC), the Commission’s federal advisory committee on numbering matters, has also weighed in on this issue, and declared that “Bellcore, however, was recently sold to SAIC [Science Applications International Corporation], which is not identified with a particular segment of the telecommunications industry. Based on that development, it is the opinion of the NANC that DSMI is an impartial and neutral administrator.” *Letter dated March 25, 1998, from Alan C. Hasselwander, Chairman, North American Numbering Council to Mr. A. Richard Metzger, Chief, Common Carrier Bureau, Federal Communications Commission.*

Count III

9. Count III alleges that under 47 U.S.C. § 251(e)(2), the cost of administering the SMS/800 system must be borne by all telecommunications carriers on a competitively neutral basis. Beehive contends that because some Resp Orgs are not telecommunications carriers, and because the costs are also recovered from Service Control Point (“SCP”) owners, some of which are not carriers, the SMS/800 Tariff does not meet the statutory mandate in Section 251(e)(2) and it is therefore unlawful and invalid.

10. Whether the SMS/800 Tariff does or should meet the statutory mandate of Section 251(e)(2) of the 1996 Telecommunications Act is an issue pending before the Commission in

CC Docket 95-155. DSMI believes that Section 251 addresses number administration. DSMI is not engaged in number administration. That role is performed by the North American Number Administrator, and various industry bodies including the Industry Numbering Committee (“INC”) and the SMS Number Administration Committee (“SNAC”). As DSMI explained to the Commission in its pleadings in CC Docket 95-155, it does not reserve, allocate, or disseminate specific toll free numbers from the SMS/800 database. The Resp Orgs themselves perform that task since, by selecting a number from the pool of unreserved numbers, the Resp Org is able automatically to reserve a number for its customer. DSMI simply maintains the SMS/800 system. Moreover, Beehive’s two points, that (i) the costs for maintaining the SMS/800 database and tariff administration should be spread among all telecommunications carriers, not just among the Resp Org users of the service, and (ii) the costs for the service should not be recovered from non-carriers (as some Resp Orgs are), have already been addressed and resolved by the Commission in *Beehive Telephone, Inc. and Beehive Telephone Nevada, Inc.*, 121 FCC Rcd 17950 (1997), *appeal pending*, see fn.15, where in a formal complaint proceeding brought by Beehive, the Commission approved the lawfulness of the SMS/800 Tariff and its underlying costs.

11. The Commission noted that the tariff vehicle properly places costs on industry members based on their respective use of the SMS/800 system, and thus provides industry members with proper economic incentives in the use of that system. Absent a contradictory ruling from the D.C. Circuit, this issue is moot.

Count IV

12. Count IV alleges that DSMI has an obligation under the SMS/800 Tariff to provide

service to Beehive upon Beehive's request, and that DSMI's refusal to do so constitutes violations of 47 U.S.C. §§ 151, 201, 202, and 251(e). Here Beehive totally misconstrues the tariff terms and conditions and suggests that the Title II statutes obligate DSMI to provide service to Beehive, whether Beehive pays its bills or not. Clearly, Beehive is wrong.

13. DSMI originally certified Beehive as a Resp Org in 1993, then disconnected it from the database in April, 1994 for non-payment of tariff charges. DSMI re-instated Beehive as a Resp Org on January 9, 1997, when it re-qualified as a Resp Org. Hence Count IV is moot to the extent that it seeks to have Beehive's Resp Org status restored.

14. More importantly, however, DSMI does not have an obligation under the SMS/800 Tariff to restore to Beehive's exclusive control any of the original Numbers which Beehive forfeited when it was denied access to the SMS/800 System for non-payment of the applicable tariff charges. Rather, when a Resp Org loses its status as a Resp Org, the numbers it once held must be returned to the database for reservation by any other Resp Org.

Count V

15. Count V alleges that because DSMI has admitted that it is not a common carrier, it may not administer the SMS/800 Tariff, and that the SMS/800 Tariff is illegal, unlawful, invalid, and unenforceable. This assertion is preposterous. DSMI is not precluded from administering the SMS/800 Tariff because it is not a common carrier. It manages the tariff at the direction of the carriers who were required to file the tariff. Moreover, Beehive has challenged the validity of the tariff vehicle and its appropriateness for SMS/800 service in Civil Action No. 1662 before the D.C. Circuit. Under the doctrine of collateral estoppel, Beehive was estopped from raising another challenge to the validity of the tariff in a different

federal court. In any event, as mentioned above, the Commission's prior decision that the tariff is valid is effective until and unless the D.C. Circuit rules otherwise.

Count VI

16. Count VI alleges that DSMI violated the Tariff by failing to give proper notice of the disconnection of the Numbers, by failing to negotiate with Beehive in good faith, and by disconnecting the Numbers without justification. DSMI's actions did not violate the Tariff. DSMI merely disconnected Beehive from the database, upon nonpayment of Tariff charges, pursuant to Section 2.1.8(A) of the SMS/800 Tariff. Disconnection for nonpayment is a common tariff provision. Moreover, Beehive was and is still free to seek toll free service numbers from another Resp Org so that it could continue to offer its end user customers toll free service. Disconnecting Beehive as a Resp Org did not prevent Beehive or its end user customers from obtaining a toll free service number, or actual toll free service.

Count VII

17. Count VII alleges that Beehive has a constitutionally protected property interest in the Numbers, that DSMI engaged in state action by disconnecting the Numbers without proper notice and hearing, and that therefore, Beehive's constitutional due process rights have been violated. Beehive's constitutional arguments are absurd. Beehive does not have a property interest in the Numbers, and the Commission should so declare.¹⁶ DSMI, a private corporation that is not a federal agency, did not engage in state action when it disconnected

¹⁶ See, e.g., Bullaro & Carton v. Griswold, 958 F.2d 374 (7th Cir. 1992); Shehi v. Southwestern Bell Tel. Co., 382 F.2d 627 (10th Cir. 1967); Atkin, Wright & Miles v. Mountain States Tel & Tel. Co., 709 P.2d 330 (Utah 1985); First Central Service Corp. v. Mountain Bell Tel. Co., 95 N.M. 509, 623 P.2d 1023 (1981)

the Numbers. It merely enforced a term and condition in a carrier tariff. DSMI did not violate Beehive's constitutional due process rights.

18. Obviously, Beehive's access to and use of the numbers is subject to and limited by Commission regulations and the Tariff. As the Commission's rules provide, a Resp Org, like Beehive, has the limited right to reserve toll free numbers on a first come, first served basis, consistent with the Tariff. Neither Beehive, nor any other Resp Org, has any right to reserve or use any toll free number except in accordance with Commission regulations and the Tariff.

19. In fact, any result that gave Beehive a paramount or superior right, vis-à-vis other Resp Orgs, to reserve and use the original Numbers previously assigned to it would constitute discriminatory, unreasonable, and unlawful action in violation of 47 U.S.C. §§ 201(b), 202, and 251(e)(1), Commission regulations, and the Tariff.

III. Expedition Is Critical

20. The court orders related to this matter provide that "Beehive shall be allowed to obtain a '629' number from the 'unavailable' block *when necessary* to provide service to a new Beehive customer or additional service to an existing Beehive customer." (emphasis added). Shortly after issuance of the court orders referring this matter to the Commission, Beehive commenced submitting requests to DSMI for release and assignment of various of the Numbers. At this time, Beehive has not submitted any information to establish whether a request for one of the Numbers is necessary to provide service to a Beehive customer. DSMI anticipates that Beehive and DSMI may disagree on whether one of the Numbers is necessary to provide service to a Beehive customer, as contemplated by the court orders.

21. To the extent that Beehive is permitted to obtain one or more of the Numbers

pursuant to the court orders, it may moot the case as to the number or numbers thus obtained, even though Beehive would not be exclusively entitled to obtain such number or numbers if the Commission sustains DSMI's position. Such a result would be unjust and unfair, both to DSMI and to other Resp Orgs, which are absolutely precluded from obtaining any of the Numbers during the pendency of this matter. During the pendency of this matter before the Commission or during the pendency of any dispute concerning necessity for release and assignment of one or more of the Numbers, the Numbers will not be available to the public or to any other Resp Org. This result will be harmful to the public interest. Expeditious resolution of this matter will benefit the public and the parties.

IV. Conclusion

WHEREFORE, DSMI requests that the Commission issue a declaration that

(a) Beehive does not have a proprietary or property interest in the Numbers, nor any right to assignment of the Numbers that is superior to the rights of all Resp Orgs to reserve toll free numbers on a first come, first served basis in accordance with Commission regulations and the SMS/800 Tariff.

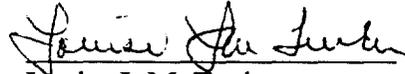
(b) Beehive's access to and use of the Numbers, including reservation thereof in the SMS/800 System, is subject to and limited by the regulations of the Commission and the SMS/800 Tariff;

(c) the Numbers at issue should be immediately returned to the SMS/800 database; and

(d) each of the Counts of Beehive's Amended Counterclaim is without merit; and should be dismissed with prejudice.

Respectfully submitted.

Database Service Management, Inc.



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Dated: Feb. 17, 1999

Certificate of Service

I hereby certify that on this 17 day of February, 1999, I caused a copy of the foregoing PETITION FOR EXPEDITED DECLARATORY RULING to be mailed by United States mail, postage prepaid, to:

Alan L. Smith
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**ADDENDUM TO PETITION OF DATABASE SERVICE MANAGEMENT, INC. FOR
EXPEDITED DECLARATORY RULING**

Factual Background

1. In 1989, Beehive requested and received assignment from Bellcore of the 10,000 "800" numbers starting with the prefix "629," under the Interim 800 NXX Plan. Beehive's purpose in obtaining and maintaining control of the 800-629-xxxx series of numbers was not merely to be able to provide toll free service to its customers (which it could do through other toll free numbers). Rather, Beehive sought to control the subject numbers because of the perceived commercial advantage of the 629 prefix, which corresponds to the letters "MAX" on the telephone dial.
2. At the time of conversion from the Interim 800 NXX Plan to the SMS/800 system in 1993, the 10,000 Numbers assigned to Beehive were loaded into the SMS/800 database, and Beehive was granted Resp Org status to manage those Numbers, as well as others that might be reserved from the common pool of unassigned toll free numbers.¹ As a Resp Org, Beehive was permitted to reserve toll free numbers, to create and modify customer records in the SMS/800 main database, and to obtain various reports from the SMS/800 database, all under the terms and at the rates specified in the SMS/800 Tariff. Beehive was also responsible for entering into the SMS/800 database the required information concerning the Numbers, and for maintaining the accuracy of such information.

¹ In March, 1993, the Commission determined that SMS/800 access is a common carrier service and ordered the Bell Operating Companies to tariff the service. *See*, CompTel Declaratory Ruling, Provision of Access for 800 Service, 8 FCC Rcd. 1423 (1993). In CC Docket No. 86-10, the Commission ordered the establishment and tariffing of the Service Management System (SMS/800) to support providing 800 Service. *See*, 102 FCC 2d 1387 (1986); 3 FCC Rcd 721 (1988); 4 FCC Rcd 2824 (1989); 6 FCC Rcd 5421 (1991); 7 FCC Rcd 8616 (1992); 8 FCC Rcd 721 (1993); 8 FCC Rcd 1038 (1993); 8 FCC Rcd 1423 (1993). On March 5, 1993, in response to the Commission's Order, the BOCs filed the SMS/800 Tariff, which became effective May 1, 1993.

3. DSMI, as agent for the Bell Operating Companies, billed Beehive the tariffed charges for the services provided to Beehive under the SMS/800 Tariff. In late 1995 and early 1996, DSMI noted that Beehive was falling behind in its tariff payments. In fact, for more than five months Beehive failed to pay when due the service charges and late payment/interest charges for services provided under the SMS/800 Tariff. Thus, SMS/800 service to Beehive was suspended on April 26, 1994. As a result of Beehive's failure to comply with the SMS/800 Tariff, Beehive also lost its status as a Resp Org, along with its ability to access the SMS/800 database.

Procedural History

4. On March 1, 1996, DSMI filed an action in the United States District Court for the District of Utah, Civil No. 2-96-CV-0188J, to collect the unpaid charges for service provided under the SMS/800 Tariff, in the principal amount of \$42,533.31, together with accrued interest and costs of court. A copy of the complaint is attached hereto as Exhibit B. Beehive was served with summons and a copy of the complaint on March 6, 1996, and filed a motion to dismiss on March 26, 1996.

5. The SMS/800 Tariff requires a qualified Resp Org to be assigned to every working toll free number, and requires a Resp Org to notify its customers to select a qualified Resp Org if and when it loses its Resp Org status.² The SMS/800 Tariff also provides that in the event a subscriber to toll free service fails to designate a Resp Org, the affected toll free number may be reassigned to another Resp Org.³

² See SMS/800 Tariff §§ 2.3.1, 2.1.8.

³ (1) If a Resp Org is denied SMS/800 access, or of its own volition ceases providing Resp Org services, the Resp Org is responsible for notifying its 800 subscribers that it will no longer provide those services and that the 800 subscribers must choose a new Resp Org within fifteen (15) business days. The Resp Org must provide written proof to the Company of such notification.

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6. Pursuant to the Tariff, DSMI requested that Beehive notify its customers that they must select another Resp Org in consequence of Beehive's loss of Resp Org status. Beehive failed and refused to do so. On or about May 29, 1996, DSMI began disconnecting the Numbers, because Beehive was not a qualified Resp Org and had failed to notify its subscribers to such numbers to obtain a qualified Resp Org for maintenance of the Numbers in the nationwide database, as required by tariff.

7. On or about June 6, 1996, Beehive filed its answer and a counterclaim in the civil action.. The counterclaim alleged that by disconnecting the Numbers, DSMI had violated 47 U.S.C. §§ 201(a), 201(b), 202, and 251(c).

8. In response to the ongoing disconnection of the Numbers, Beehive paid the principal amount sought by DSMI's complaint, together with accrued interest to the date the complaint was filed, and on or about June 7, 1996, filed a motion for a temporary restraining order and preliminary injunction seeking the restoration of the Numbers to Beehive's control, and reinstatement of Beehive as a Resp Org. On or about June 10, 1996, the District Court, from the bench, ordered DSMI to cease disconnecting the Numbers pending a hearing on the motion for preliminary injunction. On or about June 12, 1996, the court, from the bench, ordered DSMI to restore 56 of the Numbers pending a hearing on Beehive's motion for preliminary injunction.

9. On June 13, 1996, the court held an evidentiary hearing on Beehive's motion for preliminary injunction, following which the court, from the bench, ordered DSMI to restore a total of 186 of

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(3) If a subscriber is required to choose a new Resp Org, as set forth in (1) or (2) preceding, and fails to do so within fifteen (15) business days, the subscriber's account will be reassigned, to another Resp Org as set forth in (C) following. Tariff § 2.1.8(B)

the Numbers to Beehive's use, and that DSMI was "to do nothing further with the remaining portion of the 10,000 numbers until further order of the court, other than in the regular course where some ultimate user asks for a change in the regular course."

10. On January 9, 1997, Beehive re-qualified as a Resp Org.

11. On February 7, 1997, Beehive filed an amended counterclaim, alleging the claims set forth in Exhibit C attached hereto, including claims that DSMI violated 47 U.S.C. §§ 201, 202, and 251, as well as the SMS/800 Tariff and Beehive's constitutional due process rights.

12. On February 21, 1997, DSMI moved to dismiss the amended counterclaim, or in the alternative to refer the claims involving interpretation or enforcement of the Tariff or the 1934 or 1996 Communications Acts to the Commission, under the doctrine of primary jurisdiction. Copies of the motion and memoranda in support thereof and in opposition thereto are attached hereto as Exhibit D.

13. On March 2, 1998, the lower court held a status conference, at which it ruled from the bench that (1) DSMI's complaint was dismissed with prejudice, (2) Counts I through V of Beehive's amended counterclaim should be referred to the Commission and hence were dismissed without prejudice, and (3) with respect to Counts VI and VII of the amended counterclaim, DSMI was ordered to restore all of the 10,000 Numbers to Beehive forthwith. The March 2, 1998 bench ruling was confirmed by the lower court's written Order entered July 13, 1998, a copy of which is attached hereto as Exhibit E.

14. DSMI appealed the July 13, 1998 order to the Tenth Circuit Court of Appeals. On November 24, 1998, the Tenth Circuit issued an order, which was later revised by an order issued January 6, 1999. A copy of the Tenth Circuit's order of January 6, 1999 is attached hereto as Exhibit F. The order required that all seven counts of the Claim be referred to the

Commission, and that the Numbers that were not currently in use be placed in “unavailable” status pending the Commission’s resolution of the issues presented by the Claim. However, the Circuit Court also held that Beehive was allowed to obtain a number from the unavailable block of Numbers “when necessary to provide service to a new Beehive customer or additional service to an existing Beehive customer.”⁴

15. On January 21, 1999, the District Court, on remand from the Tenth Circuit, issued an order referring the amended counterclaim to the Commission and staying further action pending the Commission’s disposition thereof. A copy of the order of referral is attached hereto as Exhibit G.

⁴ See Exhibit F at 16.

EXHIBIT A

Attached is a listing of Toll Free numbers in the 800-629 code. The list contains entries for every 800-629 number that is not marked as UNAVAILABLE based on the Order from the United States District Court in Utah. Of the 10,000 numbers within the 800-629 code,

- 9,738 are listed as UNAVAILABLE,
- 182 are assigned to Beehive Telephone Company (ID Code "BVE01"), and
- 80 are assigned to Responsible Organizations (Resp Org) other than Beehive Telephone Company based on Resp Org change requests.

The attached listing was extracted from the SMS/800 system on or about February 1, 1999.

DIAL#	STATUS	RO	COMMENTS
800-629-0000	WORKING	BVE01	
800-629-0345	WORKING	BVE01	
800-629-0700	WORKING	LGT01	THE SMS/800 HD MADE EMRG. RO CHANGE BRD01 TO LGT01 ON 2/13/97
800-629-0822	WORKING	MCI01	
800-629-1000	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97
800-629-1099	WORKING	ATX01	
800-629-1111	WORKING	PIT01	
800-629-1140	WORKING	ATX01	
800-629-1240	WORKING	BVE01	
800-629-1260	WORKING	CXT01	
800-629-1348	WORKING	BVE01	
800-629-1970	WORKING	BNT01	THE SMS/800 HD MADE A RO CHANGE BRD01 TO BNT01.
800-629-2000	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-2005	WORKING	MCI01	SMS/800 HD HAS CHANGED BRD01 TO MCI01 ON 9/12/97.
800-629-2020	WORKING	TNT01	
800-629-2076	WORKING	SPCG1	
800-629-2222	WORKING	TNT01	
800-629-2255	WORKING	BVE01	
800-629-2274	WORKING	BVE01	
800-629-2329	WORKING	LGT01	THE SMS/800- HD HAS CHANGED RO BRD01 TO LGT01 ON 6/6/97
800-629-2333	WORKING	BVE01	
800-629-2337	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/11/97.
800-629-2354	WORKING	PIT01	THE SMS/800 HD CHG'D THE RO FROM BRD01 TO PIT01 ON 6/23/97.
800-629-2355	WORKING	PIT01	THE SMS/800 HD CHG'D THE RO FROM BRD01 TO PIT01 ON 6/23/97.
800-629-2368	WORKING	BVE01	
800-629-2395	WORKING	BVE01	
800-629-2428	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/9/97.
800-629-2453	WORKING	BVE01	
800-629-2455	WORKING	BVE01	
800-629-2501	WORKING	BVE01	
800-629-2625	WORKING	PIT01	
800-629-2628	WORKING	BVE01	
800-629-2665	WORKING	MCI01	SMS/800 HD HAS DONE AN EM RO CHNGE FR BRD01 TO MCI01 1/17/97

800-629-2697	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/9/97.
800-629-2733	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/7/97.
800-629-2825	WORKING	BVE01	
800-629-2868	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/9/97.
800-629-2882	WORKING	ATX99	
800-629-2925	WORKING	ATX01	
800-629-2992	WORKING	BVE01	
800-629-3000	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-3127	WORKING	BVE01	
800-629-3143	WORKING	BVE01	
800-629-3171	WORKING	BVE01	
800-629-3206	WORKING	ATX01	
800-629-3228	WORKING	MCI01	
800-629-3247	WORKING	PIT01	THE SMS/800 HD HAS DONE AN EROC FROM BRD01 TO PIT01 6/19/97
800-629-3325	WORKING	LGT01	THE SMS/800 HD MADE AN EMG RO CHNG BRD01 TO LGT01 ON 2/28/97
800-629-3333	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-3354	WORKING	BVE01	
800-629-3411	WORKING	BVE01	
800-629-3425	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/9/97.
800-629-3435	WORKING	ATX01	
800-629-3474	WORKING	BVE01	
800-629-3569	WORKING	TSH01	
800-629-3663	WORKING	BVE01	
800-629-3673	WORKING	BVE01	
800-629-3724	WORKING	PIT01	SMS/800 HD HAS DONE AN EMERG. R.O. FROM BRD01 TO PIT01 ON 6/13/97
800-629-3733	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/9/97.
800-629-3825	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/9/97.
800-629-3863	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/9/97.
800-629-4000	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-4227	WORKING	CWC01	
800-629-4263	WORKING	BVE01	

800-629-4329	WORKING	LGT01	THE SMS800- HELPDESK HAS CHANGED RO BRD01 TO LGT01 ON 6/6/97
800-629-4357	WORKING	BVE01	
800-629-4444	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-4475	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/9/97.
800-629-4627	WORKING	ATX01	
800-629-4636	WORKING	BVE01	
800-629-4637	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/10/97.
800-629-4638	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/10/97.
800-629-4645	WORKING	BVE01	
800-629-4663	WORKING	BVE01	
800-629-4686	WORKING	LGT01	
800-629-4687	WORKING	CWC01	THE SMS/800 HELPDESK HAS CHANGED RO BRD01 TO CWC01 ON 3/26/97.
800-629-4732	WORKING	BVE01	
800-629-4917	WORKING	BVE01	
800-629-5000	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-5026	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/9/97.
800-629-5231	WORKING	BVE01	
800-629-5276	WORKING	BVE01	
800-629-5327	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/7/97.
800-629-5336	WORKING	BVE01	
800-629-5463	WORKING	BVE01	
800-629-5555	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-5588	WORKING	BVE01	
800-629-5626	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/9/97.
800-629-5627	WORKING	BVE01	
800-629-5689	WORKING	ATX01	
800-629-5825	WORKING	BVE01	
800-629-6000	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-6070	WORKING	SPBG1	
800-629-6245	WORKING	MCI01	BIG SKY TECHNOLOGIES
800-629-6273	WORKING	LMI01	SMS/800 HD MADE EMER. R.O. CHANGE FROM BRD01 TO WIL01 ON 3/10/97
800-629-6397	WORKING	BVE01	
800-629-6650	WORKING	BVE01	

800-629-6666	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-6673	WORKING	CWC01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO CWC01 ON 7/10/97.
800-629-6683	WORKING	ATX01	
800-629-6808	WORKING	UWMS1	BYRD CHERYL
800-629-7000	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/11/97.
800-629-7278	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-7283	WORKING	WIL01	
800-629-7385	WORKING	BVE01	
800-629-7466	WORKING	BVE01	
800-629-7529	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/9/97.
800-629-7575	WORKING	BTM01	
800-629-7623	WORKING	BVE01	
800-629-7663	WORKING	BVE01	
800-629-7669	WORKING	BVE01	
800-629-7673	WORKING	BVE01	
800-629-7777	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-7867	WORKING	BVE01	
800-629-800-0	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-8241	WORKING	ALN01	
800-629-8255	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/9/97.
800-629-8281	WORKING	BVE01	
800-629-8282	WORKING	BVE01	
800-629-8324	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-8326	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-8824	WORKING	BVE01	
800-629-8888	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-9000	WORKING	PIT01	SMS/800 HD HAS CHANGED BRD01 TO PIT01 ON 9/12/97.
800-629-9125	WORKING	BVE01	
800-629-9141	WORKING	BVE01	
800-629-9196	WORKING	BVE01	
800-629-9223	WORKING	MCI01	THE SMS/800 HD MADE AN EM RO CHNGE BRD01 TO MCI01 ON 1/22/97
800-629-9330	WORKING	TOT01	
800-629-9355	WORKING	DLP01	
800-629-9388	WORKING	PIT01	THE SMS/800 HD CHGD THE RO FROM BRD01 TO PIT01 ON 7/9/97.
800-629-9467	WORKING	MCI01	THE SMS/800 HD CHNGD THE RO FROM BRD01 TO MCI01 ON 4/21/97.
800-629-9780	WORKING	BVE01	

800-629-9871	WORKING	BVE01
800-629-9872	WORKING	BVE01
800-629-9873	WORKING	BVE01
800-629-9874	WORKING	BVE01
800-629-9875	WORKING	BVE01
800-629-9876	WORKING	BVE01
800-629-9877	WORKING	BVE01
800-629-9878	WORKING	BVE01
800-629-9879	WORKING	BVE01
800-629-9880	WORKING	BVE01
800-629-9881	WORKING	BVE01
800-629-9882	WORKING	BVE01
800-629-9883	WORKING	BVE01
800-629-9884	WORKING	BVE01
800-629-9885	WORKING	BVE01
800-629-9886	WORKING	BVE01
800-629-9887	WORKING	BVE01
800-629-9888	WORKING	BVE01
800-629-9889	WORKING	BVE01
800-629-9890	WORKING	BVE01
800-629-9891	WORKING	BVE01
800-629-9892	WORKING	BVE01
800-629-9893	WORKING	BVE01
800-629-9894	WORKING	BVE01
800-629-9895	WORKING	BVE01
800-629-9896	WORKING	BVE01
800-629-9897	WORKING	BVE01
800-629-9898	WORKING	BVE01
800-629-9899	WORKING	BVE01
800-629-9900	WORKING	BVE01
800-629-9901	WORKING	BVE01
800-629-9902	WORKING	BVE01
800-629-9903	WORKING	BVE01
800-629-9904	WORKING	BVE01
800-629-9905	WORKING	BVE01
800-629-9906	WORKING	BVE01
800-629-9907	WORKING	BVE01
800-629-9908	WORKING	BVE01
800-629-9909	WORKING	BVE01
800-629-9911	WORKING	BVE01
800-629-9912	WORKING	BVE01
800-629-9913	WORKING	BVE01