

RECEIVED

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

SEP 11 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Toll Free Access Codes	)	CC Docket No. <u>95-155</u>
	)	
Database Services Management, Inc.	)	NSD File Nos. L-99-87
and Beehive Telephone Company, Inc.	)	and L-99-88
Petitions for Declaratory Rulings	)	

To: The Commission

**REPLY TO DSMI'S OPPOSITION TO  
TO RECONSIDERATION PETITIONS**

Beehive Telephone Company, Inc. ("Beehive"), by its attorney, hereby replies to the opposition filed by Database Services Management, Inc. ("DSMI") to Beehive's petition for reconsideration in this proceeding. *See* DSMI's Opposition to Reconsideration Petitions (Aug. 14, 2000) ("Opp.").<sup>1/</sup>

I. The Commission Improperly Applied Two Of The Neutrality Criteria

We begin with DSMI's entirely correct statement that it does not "actually 'administer' any numbers." Opp. at 4. However, toll free numbers must be administered by some non-governmental entity. *See* 47 C.F.R. § 52.12(a)(1). Since the North American Numbering Plan Administrator does

<sup>1/</sup> Beehive filed a petition for reconsideration (under protest) of the Commission's decision in *Toll Free Access Codes*, 15 FCC Rcd 11939 (2000) ("Order") on August 4, 2000. Five days later, Beehive submitted a final version of its petition for reconsideration. On August 11, 2000, the Commission provided public notice of the filing of both petitions. *See* FCC Filings, 2000 WL 1133574 (Aug. 11, 2000). However, the time for filing an opposition to Beehive's petition for reconsideration (either version) runs from the date when public notice of the filing of the petition is published in the Federal Register. *See* 47 C.F.R. § 1.429(e). In turn, the deadline for filing a reply to such an opposition is "10 days after the time for filing oppositions has expired." *Id.* § 1.429(g). Because public notice of the filing of Beehive's petition for reconsideration has not been published in the Federal Register, the time for filing oppositions to Beehive's petition has not expired. Accordingly, this reply is timely (albeit prematurely) filed. *See id.*

No. of Copies rec'd: 076  
List A :

not administer toll free numbers, *see* 47 C.F.R. § 52.13(d), we are left with the Bell Operating Companies (“BOCs”), who claim to administer the SMS/800 system. *See* Petition for Reconsideration at 3 (Aug. 9, 2000) (“Pet.”). But they are prohibited from serving as a numbering administrator. *See* 47 C.F.R. § 52.12(a)(1); *Toll Free Service Access Codes*, 12 FCC Rcd 11162, 11224 (1997).

Beehive made a detailed factual showing (based on new evidence) that the RBOCs control DSMI. *See* Pet. 3-9. Accordingly, DSMI must be deemed an affiliate of the RBOCs under “criterion one” of the Commission’s neutrality rule. *See* 47 C.F.R. § 52.12(a)(1); *Order*, 15 FCC Rcd at 11947.

Obviously confident that it will continue to receive favorable treatment by the Commission, DSMI does not bother to contest any of Beehive’s allegations of fact nor dispute that its management and policies are controlled by the RBOCs. Rather it calls Beehive’s argument “nonsense” and belittles the evidence as merely illustrative of the “contract oversight” exercised by the RBOC-controlled SMS/800 Management Team (“SMT”). *Opp.* at 2. In effect, DSMI concedes that it is an affiliate of the RBOCs. DSMI failed to rebut evidence showing that the contract oversight exercised by the SMT under its management contract with DSMI amounts to de facto control, which is enough to give rise to an affiliation by contract under § 52.12(b)(1)(i)(C) of the Rules.

With respect to neutrality criterion two, DSMI contends that the fact that it obtains its revenues from the BOCs “is an outgrowth of history, but is not a conclusive indicator of partiality.” *Id.* at 3.<sup>2/</sup> Beehive is not sure what DSMI is saying, but the fact of the matter is that DSMI’s

---

<sup>2/</sup> DSMI becomes a revisionist when attempting to dodge the Commission’s adverse finding as to neutrality criterion two. It now claims to have been established “as a separate legal entity to

revenues have come from the BOCs since May 1993 as compensation for handling day-to-day business activities associated with the SMS/800 under the direction of the SMT.<sup>3/</sup> That DSMI obtains all its revenues from the BOCs, under its management contract with the SMT, is a clear indicator that the BOCs “could exert control over the decisions and activities” of DSMI. *Request of Lockheed Martin Corp. and Warburg, Pincus & Co. for Review of the Transfer of Control of the Lockheed Martin Communications Indus. Servs. Bus.*, 14 FCC Rcd 19792, 19808 (1999) (“*Lockheed Order*”). That is exactly what criterion two is intended to prevent. *See id.*

As to criterion three, DSMI hides behind the Commission’s patently erroneous conclusion that “the terms in the SMS/800 Tariff require the impartial administration of toll free numbers.” *Opp.* at 3 (quoting *Order*, 15 FCC Rcd at 11949). The SMS/800 Tariff was developed by the SMT on behalf of the RBOCs.<sup>4/</sup> Therefore, the terms of the tariff are those set by the RBOCs. Obviously, if it acts in accordance with terms of the SMS/800 Tariff, DSMI is acting subject to the “influence” of the RBOCs. And the RBOCs constitute both a “particular telecommunications segment,” 47 C.F.R. § 52.12(a)(1), and “parties with a vested interest in the outcome of numbering administration and activities.” *Id.* § 52.12(a)(1)(iii). Hence, the SMS/800 Tariff does not insulate DSMI from the

---

assure that all the SMS/800 revenues were segregated, and to enable the BOCs to discretely record the revenues from the toll free service on [its] books of account.” *Opp.* at 2. In fact, DSMI was incorporated in April 1993. However, the BOCs were not authorized to record SMS/800 revenues on DSMI’s books until February 1997. *See BOC Petition for Waiver to Allow DSMI to Account for Toll Free Database Services*, 12 FCC Rcd 1979 (Com. Car. Bur. 1997).

<sup>3/</sup> *See Defendants’ Answer to Complainants’ First Set of Interrogatories*, File No. E-94-57, at 2, 6 (Attach. 1 hereto); Letter of Paul Walters to Russell D. Lukas, at 1-2 (Dec. 8, 1994) (Attach. 2 hereto).

<sup>4/</sup> *See Defendants’ Answer to Complainants’ First Set of Interrogatories*, *supra* note 3, at 2.

influence of the RBOCs. It places DSMI under the legal control of the RBOCs. *See* Pet. at 3-4.

The issue here is whether the administration of toll free *numbers* comports with the requirements of § 251(e) of the Telecommunications Act of 1996 (“1996 Act”). Hence, DSMI’s contention that “industry bodies . . . actually administer the toll free service access *codes*” is really besides the point. Opp. at 4 (emphasis added). In any event, DSMI’s Michael Wade disclosed that the SMT decides whether or not it will implement the policies and guidelines adopted by such industry groups as the Alliance for Telecommunications Industry Solutions and its SMS/800 Number Administration Committee. *See* Wade Dep. Tr. at 285-89. Consequently, industry groups lack the power to loosen the BOCs’ stranglehold on the administration of toll free numbers.

Demonstrating the Alice-in-Wonderland nature of this “rulemaking,” DSMI actually claims that it is “premature” to discuss whether the ownership and operation of the SMS/800 system by the BOCs complies with the 1996 Act until the North American Numbering Council makes its latest recommendation on that subject. Opp. at 5. In the real world, that issue should have been resolved on or before August 8, 1996. *See* 47 U.S.C. § 251(d)(1). It was the subject of a further notice of proposed rulemaking in this proceeding more than three years ago. *See Toll Free Service Access Codes*, 12 FCC Rcd at 11223-25. The fact that the Commission is still considering the question is a testament to the staff’s refusal to disturb the monopoly it handed the BOCs in 1993, and to the unwillingness of an appeals court to enforce the law.

## II. The SMS/800 Tariff Affords DSMI The Discretion To Discriminate

The counterclaims referred to the Commission by the District Court in Utah involved questions of fact as well as issues of law. For example, the issue of whether the BOCs and DSMI are impartial within the meaning of § 251(e)(1) of the 1996 Act (Count II) clearly called for an

examination of the facts. Yet, without addressing Beehive's allegation that it was subjected to discriminatory treatment by DSMI,<sup>5/</sup> the Commission jumped to the conclusion that the terms of the SMS/800 Tariff and the Rules suffice to prevent DSMI from administering toll free numbers in a discriminatory manner. *See Order*, 15 FCC Rcd at 11948. It specifically concluded, "Under the tariff, DSMI exercises no discretion or judgment in permitting or prohibiting particular RespOrgs from obtaining numbers." *Id.* at 11949. Beehive appropriately challenged that conclusion for it knew from bitter experience that DSMI has the "discretion" under the SMS/800 Tariff to prohibit a RespOrg from obtaining numbers.

Beehive proffered evidence establishing that DSMI had the leeway under the tariff to block Beehive's access to the 800-629 numbers placed in "unavailable" status for its benefit upon the order of the Tenth Circuit. *See Pet.* 13-19. Rather than rebutting the evidence, DSMI complains that Beehive is attempting to "delay the finality" of the *Order*. *Opp.* at 5. DSMI also claims that it was merely complying with the District Court's injunction when it required Beehive to make a showing of "necessity" as a prerequisite to removing a 800-629 number from "unavailable" status. *See id.* at 7. DSMI's complaint as to delay is baseless<sup>6/</sup> and its claim on the merits is futile.

The injunction called on DSMI to "cooperate" with Beehive so that the 800-629 numbers

---

<sup>5/</sup> *See Motion to Strike and Response to Request for Expedited Action* at 3-4 (Mar. 1, 1999).

<sup>6/</sup> Delay is the last thing Beehive wants. However, Beehive was concerned that it would be challenged on exhaustion of remedies grounds if it went directly to an appeals court without having "flagged" the discrimination issue for the Commission. *See Time Warner Entertainment Co., L.P. v. FCC*, 144 F.3d 75, 81 (D.C. Cir. 1998). Because of the tension among the cases dealing with exhaustion under § 405(a) of the Communications Act of 1934, Beehive felt that it would be "prudent" to present new evidence to the Commission. *See id.* at 81 n.7. But it did so reluctantly in view of the potential for delay.

could be used by Beehive “as quickly as possible.” *See* Pet. at 13. The injunction did not authorize DSMI to employ any classifications, regulations, or practices not specified in the SMS/800 Tariff. Yet, DSMI used the injunction as its excuse to discriminate against Beehive by subjecting it to the non-tariffed requirement that it make a certified showing that its customers need an 800-629 number rather than a toll free number outside the 800-629 series.<sup>7/</sup> That requirement is not specified in the SMS/800 Tariff nor authorized in the Rules.

Toll free numbers are placed in unavailable status (upon written request by the RespOrg managing the number) when “special circumstances” require that they be designated for a particular subscriber “far in advance of their actual usage.” 47 C.F.R. § 52.103(c); *Toll Free Serv. Access Codes*, 12 FCC Rcd at 11241. Neither the tariff nor the Rules sets out the procedure to be followed when a RespOrg requests that the unavailable status be “removed” from a toll free number. *See* 47 C.F.R. § 52.103(f)(1). Neither authorizes DSMI to enforce a regulation requiring a RespOrg to make a certified showing that its customer needs a number in unavailable status. If the SMT really believed that a “showing of ‘necessity’ had to be established” to demonstrate compliance with the injunction, *see* Opp. at 7, the SMS/800 Tariff could have been amended to impose the requirement that a “necessity” showing be made.

The SMT knew since shortly after November 24, 1998 (the date the Tenth Circuit entered its order) that the 800-629 numbers were to be placed in unavailable status and that Beehive had the right to retrieve such numbers when necessary to serve a customer. Yet, the SMS/800 tariff was not amended to specify how the 800-629 numbers in unavailable status would be handled in the event

---

<sup>7/</sup> *See* Request for Determinations Regarding Requests for Release of Certain Numbers, at 4, *DSMI v. Beehive Tel. Co., Inc.*, Civil No. 2:96 CV 0188K (C.D. Utah filed Aug. 14, 2000).

Beehive exercised its right to obtain all or some of those numbers. Indeed, the tariff includes no regulations specifying how numbers in unavailable status are administered and how that status is removed. Consequently, DSMI departed from the terms of the SMS/800 Tariff when it required Beehive to submit a satisfactory “Request for Toll Free Number from the 800-629 Series” form before the unavailable status would be removed from an 800-629 number.

Section 203(c) of the Act makes it unlawful for a carrier to “employ or enforce any classifications, regulations, or practices” affecting tariffed charges, except as “specified” in the tariff. *See* 47 U.S.C. § 203(c)(3). The BOCs ran afoul of § 203(c) when DSMI employed and enforced a requirement that Beehive show that it was necessary to provide service its toll free subscriber through a number from the 800-629 series. That requirement is nowhere specified in the SMS/800 Tariff. And the imposition of the unlawful requirement resulted in an “unjust and unreasonable discrimination” in classifications, regulations, or practices in violation of § 202(a) of the Act. *See* 47 U.S.C. § 202(a).

DSMI claims that its demand for the information can “hardly be viewed as discriminatory” under § 202(a) when the District Court’s injunction imposed a “necessity showing.” *Opp.* at 7. Assuming the injunction required some sort of a showing, it was unreasonable for DSMI to require Beehive (and Beehive alone) to provide a certified, detailed showing not required by the tariff, when DSMI had no idea what Beehive had to show or what it was going to do with the information it obtained. *See Pet.* at 15-19. A discriminatory demand for detailed information is unreasonable, and unlawful under § 202(a), when the information is demanded for no good reason.

Finally, even if it concludes that the DSMI’s demand entailed no violation of law, the Commission must at least set aside its prior finding that DSMI exercises no discretion with regard

to permitting or prohibiting a RespOrg from obtaining toll free numbers. Because the SMS/800 Tariff does not include regulations specifying how numbers in unavailable status are administered, DSMI had unbridled discretion to formulate and impose its own regulations to Beehive's disadvantage.

Respectfully submitted,

BEEHIVE TELEPHONE COMPANY, INC.

By:   
\_\_\_\_\_  
Russell D. Lukas  
Its Attorney

Lukas, Nace, Gutierrez & Sachs, Chtd.  
1111 Nineteenth Street, N.W., Suite 1200  
Washington, D.C. 20036  
(202) 828-9467

August 11, 2000

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )  
BEEHIVE TELEPHONE INC. and )  
BEEHIVE TELEPHONE NEVADA, INC. )  
Complainants, )  
v. ) File No. E-94-57  
THE BELL OPERATING COMPANIES, )  
Defendants. )

DEFENDANTS' ANSWER TO COMPLAINANTS'  
FIRST SET OF INTERROGATORIES

Defendants hereby respond to Complainants' First Set of Interrogatories. Pursuant to Commission Rules, these Answers are being served directly upon counsel for Complainants, and are not being filed with the Commission.

Interrogatory 1. Identify all Ex Parte Presentations made to, by, or on behalf of any Affiliate since March 10, 1994.

Answer: None.

Interrogatory 2. Identify the Affiliate who determines and carries out policy decisions with respect to the SMS/800, the Supervisory Official designated to preserve the SMS Account, all members of the SMT, the Official who exercises day-to-day control over the operations of the SMS/800, the Official who was in charge of preparing and filing the 1993 study, the Official who was in charge of preparing the 1994 Study, the Official who is in charge of the employment, supervision and dismissal of personnel involved in the SMS/800, the Official who is in charge of the payment of expenses arising out of operation of the SMS/800, and the Affiliate that receives the monies and profits derived from the operation of the SMS/800.

Answer: SMS/800 is owned and operated jointly by the seven Regional Bell Operating Companies (RBOCs) through a team of subject matter experts. This team, referred to as the SMS/800 Management

Team (SMT), consists of one representative from each of the RBOCs. SMT responsibilities include the development and ongoing administration of the interstate tariff and supporting cost and revenue tracking; the management, operation, and administration of the service; and coordination with all vendors and suppliers involved in the service. To accomplish these goals, the SMT contracted with a subsidiary of Bellcore to handle the day-to-day business management activities associated with SMS/800. The Bellcore subsidiary is called Database Service Management Incorporated (DSMI). DSMI handles all ongoing processes and contracts, while the SMT provides guidance and oversight.

The RBOCs as a team, through the SMT, set the policy decisions associated with SMS/800, not any one Affiliate or Company Official. Regarding the SMS/800 Account, assuming this refers to expense and revenue records, DSMI maintains all records and monies. In fact, the RBOCs filed a request with the FCC to clarify the accounting process to be used for SMS/800. Regarding employment and supervision for SMS/800 employees, these responsibilities are distributed. DSMI handles these functions for the personnel within DSMI, while each RBOC determines who will act as that RBOC's SMT member.

Interrogatory 2, while possibly appropriate in a single company environment, has no direct or easy answer for a service that is jointly offered by the seven RBOCs. The above information is intended to address how the RBOCs have responded to the FCC order that they jointly offer this service.

Interrogatory 3: Identify all SMS/800 Contracts and, for each such contract, state the total cost actually incurred to provide the service under the contract, the total amount actually charged for the service, and the total amount actually paid for the service.

Answer: i) DSMI has a contract with Southwestern Bell Telephone Company (Southwestern Bell) for the provision of SMS/800 computer services.

The name of the contract is: "Service Agreement for the Provision and Support of the SMS/800 Database at the Kansas City Data Center. The contract was signed by Van H. Taylor, Vice President of Southwestern Bell Telephone Company and Michael J. Wade, President of DSMI. The date of execution and the effective date are the same: March 23, 1994. The term of the Agreement is for two (2) years, three (3) months, ending June 30, 1996. Southwestern Bell provides the SMS/800 computer system and all of the administrative and operational functions required to provide SMS/800 users access to the SMS/800 database. The contract specifies that Southwestern Bell shall be compensated for its total

costs of providing the SMS/800 computer system, including a contribution which is based on the authorized rate of return for interstate operations.

The charges for those services from May 1, 1993 through September 31, 1994 were as follows:

May 1, 1993 - December 31, 1993	\$13,562,559
January 1, 1994 - September 30, 1994	\$15,745,498

The total costs incurred, actually charged, and actually paid are identical. Payments are made monthly upon receipt of valid invoices.

Prior to May 1, 1993, SMS/800 computer services were provided by Southwestern Bell under a contract with Bellcore dated April 6, 1989.

The name of the contract is: "Service Agreement for the Provision and Support of the SMS/800 Service During The Trial and Transition Period." The contract was signed on July 1, 1988 by K. Bender, Vice President of Southwestern Bell Telephone Company and on April 6, 1989 by Donald Baker, Senior Vice President of Bellcore. The contract is dated April 6, 1989.

ii) DSMI has a contract with Lockheed IMS Company for the provision of 800 Number Administration and Service Center (800 NASC) services.

The name of the contract is: "Agreement for Services to Administer the 800 Number Administration and Service Center (NASC)." The contract was signed by John Brophy, President of Lockheed IMS Company and Michael J. Wade, President of DSMI. The date of execution and the effective date are the same:

November 30, 1993. The term of the Agreement is for five (5) years, ending May 31, 1998. The 800 NASC provides administrative and operational support services which are required by SMS/800 users in support of their use of the SMS/800 database. The contract has a fixed price per year as follows:

	<u>Fixed Fee</u>
Option Year 1 (beginning 6-1-94)	\$2,112,551
Option Year 2 (beginning 6-1-95)	\$2,213,565
Option Year 3 (beginning 6-1-96)	\$2,319,631
Option Year 4 (beginning 6-1-97)	\$2,431,000

The charges for those services from May 1, 1993 through September 30, 1994 were as follows:

May 1, 1993 - December 31, 1993	\$1,762,947
January 1, 1994 - September 30, 1994	\$1,737,807

The total costs incurred, actually charged and actually paid are identical. Payments are made monthly upon receipt of valid invoices.

iii) Bellcore, under the Bellcore/RBOC Service Agreement, provides SMS/800 maintenance, field support, and new feature development support to DSMI.

The charges for those services from May 1, 1993 through September 30, 1994 were as follows:

May 1, 1993 - December 31, 1993	\$7,318,434
January 1, 1994 - September 30, 1994	\$7,547,659

The total costs incurred, actually charged, and actually paid are identical.

Bellcore also provides BILL/800 maintenance and operations support to DSMI.

The charges for those services from May 1, 1993 through September 30, 1994 were as follows:

May 1, 1993 - December 31, 1993	\$494,209
January 1, 1994 - September 30, 1994	\$373,690

The total costs incurred, actually charged, and actually paid are identical.

iv) Under a Memorandum of Understanding (MOU) effective 12/31/93 between DSMI and six RBOCs, DSMI provides the BOCs with administrative support and management oversight for their joint SMS/800 Functions Tariff.

The name of the MOU is - Deferred Billing - SMS/800. There are six MOUs executed to date.

The charges for those services from May 1, 1993 through September 30, 1994 were as follows:

May 1, 1993 - December 31, 1993	\$615,660
January 1, 1994 - September 30, 1994	\$755,788

Interrogatory 4: State (a) the net earnings and total costs in the SMS Account for the year ended December 31, 1993 and for the period between January 1, 1994 and June 30, 1994; and (b) the rates of return based on the SMS Account for the year ended December 31, 1993 and for the period between January 1, 1994 and June 30, 1994.

Answer: 4(a) The net earnings and total costs in the SMS Account for the year ended December 31, 1993 and for the period between January 1, 1994 and June 30, 1994 are as follows:

	<u>12/31/93</u>	<u>6/30/94</u>
Net Earnings	\$0.00	\$0.00
Resp Org Costs	\$37,882,489	\$14,879,977

4(b) The rates of return based on the SMS Account for the year ended December 31, 1993 and for the period between January 1, 1994 and June 30, 1994 are as follows:

	<u>12/31/93</u>	<u>6/30/94</u>
Rate of Return	0.00%	0.00%

Interrogatory 5: With respect to Bellcore and DSMI, state (a) the date of its incorporation; (b) the Identity all of its officers, directors and shareholders, and the percentage of each class of stock held by each shareholder; (c) the nature of each business that it has conducted since January 1, 1992; (d) the date on which it paid dividends to its shareholders, the amount of dividend per share in each case, and the source from which that dividend came (earned surplus, paid-in surplus, etc.); (e) the gross income and the net income shown on any federal income tax return it filed for the years 1992 or 1993; (f) the net profit or loss shown on any profit and loss statement it prepared for the years 1992 or 1993, or for any period between January 1, 1994 and June 30, 1994; and (g) the net profit, gross income, and total expenses derived or incurred by it in connection with the operation of the SMS/800 during each of the time periods set forth in part (f) of this interrogatory.

Answer: 5(a) The date of DSMI's incorporation was April 29, 1993 in the State of Delaware.

5(b) The officers of DSMI are:  
Michael J. Wade, President  
Katherine C. Gaines, Vice President  
Anil G. Patel, Treasurer  
Joseph P. Casey, Secretary

The members of the Board of Directors are:  
Edward G. Grogan, Senior Vice President and Chief  
Financial Officer, Bellcore  
N. Michael Grove, General Counsel, Bellcore  
George C. Via, Corporate Vice President and Chief  
Operating Officer, Bellcore

DSMI is a wholly owned subsidiary of Bellcore.

5(c) Since its incorporation on April 29, 1993, DSMI provides the BOCs with administrative support and management oversight for their joint SMS/800 Functions Tariff that the FCC ordered them to file.

5(d) DSMI did not pay dividends to its shareholders.

Interrogatory 6. With respect to the operation of the SMS/800 prior to May 1, 1993, (a) state the date on which the SMS/800 was first used to provide SMS/800 Services; (b) state the date on which charges were first rendered for SMS/800 Services; (c) Identify the contract or tariff under which such charges were rendered; (d) state the total revenues generated by the operation of the SMS/800 prior to May 1, 1993; (e) state the date on which a Logon ID was first assigned; (f) state the total number of Logon IDs assigned to Resp Orgs prior to May 1, 1993; (g) state the number of Logon IDs assigned to SCP Owners prior to May 1, 1993; and (h) state the total charges rendered for Logon IDs assigned prior to May 1, 1993.

Answer: 6(a) This entire Interrogatory seeks information outside the scope of Complainants' allegations and irrelevant to a resolution of those allegations. Nevertheless, to the extent the information exists and can be retrieved, Defendants will provide Answers. The SMS/800 was first used to provide service sometime in November 1988. Information on the specific date on which the SMS/800 was first used to provide service is not readily available.

6(b) Charges for SMS/800 services were first rendered in January, 1991. Prior to this, the RBOCs provided funding through the Bellcore funding process for SMS/800 related activities.

6(c) Contract under which such charges were rendered is:

AGREEMENT FOR SERVICES PROVIDED FROM THE 800 NUMBER  
ADMINISTRATION AND SERVICE CENTER

6(d) The information necessary to Answer Interrogatories 6(d), 6(e), 6(f), 6(g) and 6(h) cannot be retrieved. If the information were retrievable, it would be proprietary and confidential. Bellcore did not have a reporting system to track the revenues generated specifically by the operation of SMS/800 prior to May 1, 1993.

6(e) Accurate information on when the first Logon ID was assigned is not available.

6(f) This information cannot be retrieved. Bellcore did not have a reporting system to specifically track the total number of Logon ID assigned to Resp Orgs prior to May 1, 1993.

6(g) This information cannot be retrieved. Bellcore did not have a reporting system to specifically track the total number of Logon ID assigned to SCP Owners prior to May 1, 1993.

6(h) This information cannot be retrieved. Bellcore did not have a reporting system to specifically track the total charges rendered for Logon Ids assigned prior to May 1, 1993.

Interrogatory 7: For the period between May 1, 1993 and April 30, 1994, state (a) the total costs actually incurred each of the ten Cost Items; (b) the actual costs allocable to each of the twelve Service/Rate Elements using the cost allocation methodology employed in the 1993 Study; (c) the actual costs allocable to each of the twelve Service/Rate Elements using the cost allocation methodology employed in the 1994 Study; (d) the total actual demand units for each of the twelve Service/Rate Elements; and (e) the total actual costs incurred by SWBT for Data Center Operations.

Answer: For the period of May 1, 1993 through April 30, 1994:

7(a) total actual cost of ten cost items -- costs are shown in attached "Table 14" which corresponds to Table 14 filed with tariff Transmittal No. 7. However, interest for Holding Account is also displayed (as eleventh item).

7(b) actual costs allocable to each of twelve Service/Rate Elements using 1993 study methodology -- cost allocations to rate elements are displayed in attached "Exhibit 8" which corresponds to Exhibit 8 filed with tariff Transmittal No. 1 in 1993.

7(c) actual costs allocable to each of twelve Service/Rate Elements using 1994 study methodology -- cost allocations to rate elements are displayed in attached "Table 16" which corresponds to Table 16 filed with the tariff Transmittal No. 7 filed in 1994.

7(d) total actual demand units for each of twelve Service/Rate Elements -- actual demand for each of twelve Service/Rate Elements is displayed in attached "Table 15" which corresponds to Table No. 15 filed with tariff Transmittal No. 7 in 1994.

7(e) Actual costs incurred by SWBT for Data Center Operation:

\$20,279,624. Note: This reflects the amount billed by SWBT to DSMI. We do not know how much SWBT spent in providing these services.

Interrogatory 8: State SWBT's projections of the total actual costs for Data Center Operations that were used for each year in the 1993 Study, and for each year in the 1994 Study.

Answer: SWBT's projections of the total actual costs for Data Center Operations:

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
1993 Study	\$13,501,734	\$21,265,362	\$22,328,630	\$23,445,062	\$24,617,315
1994 Study		\$18,637,867	\$32,330,334	\$34,339,258	\$36,000,000

Note: These reflect the cost projections as filed in the Tariff.

Interrogatory 9: State (a) all facts that support the Company's contention that it owns and operates the SMS/800; (b) whether any of the costs that are recovered under the SMS Tariff have been reported in any ARMIS USOA Report (FCC Report 43-02) filed by the Company or any BOC for the year ended December 31, 1993; and, if so, (c) the name of the carrier that reported such costs and the Part 32 account numbers which included such costs.

Answer: 9(a) In support of the "Company's contention that it owns and operates the SMS/800": The SMS/800 was developed by Bellcore with funding provided by the seven RBOCs. The BOCs own Bellcore, and therefore the SMS/800 was created by Bellcore with BOC monies. Further, on February 10, 1993, the Commission, in its Order in CC Docket No. 86-10, determined that access to the "Service Management System (SMS) by Responsible Organizations (RESPORGs) is a Title II common carrier service and shall be provided pursuant to tariff" (pg. 1, para 1) In para 25, the Commission stated: "We conclude further, based on how SMS access will be provided, that the BOCs should file the necessary tariff." In para. 30, the Commission

stated that: "The BOCs, through Bellcore, have designed and developed the SMS for the use of the industry and will provide the SMS software, software maintenance and enhancement services, and billing and collection services. Southwestern Bell has provided the computer that will run the SMS software and the facilities in which the SMS will be housed. Bellcore, as the NASC, will initially administer the SMS on a day-to-day basis. Subsequently, however, the BOCs will subcontract NASC responsibilities to an independent third party because of the industry's desire to divorce the BOCs and Bellcore from the daily administration of the SMS. This independent third party will receive a set fee for its administrative services, which will be largely ministerial in nature. This fee will represent its only payment for its services: it will receive no share in the overall revenues from the SMS operation. The BOCs and Bellcore will retain general control over this operation, including the establishment of rates and SMS software development."

In para. 31 the Commission went on to say: "Under these circumstances, we believe that the BOCs should file the SMS tariff. Through Bellcore, the BOCs control all fundamental aspects of SMS 800. The third-party administrator, on the other hand, is merely a sub contractor with ministerial caretaking responsibilities performed on behalf of the BOCs and Bellcore. We further direct that the BOCs file a single joint tariff, or that one BOC file a tariff in which the others concur, for this service."

These and other similar statements throughout the February 10, 1993 Order, would appear to indicate that the

Commission supports the fact (not contention) that the BOCs own the SMS.

9 (b) None of the costs that are recovered under the SMS Tariff have been reported in any ARMIS USOA Report (FCC Report 43-02) filed by the Company or any BOC for the year ended December 31, 1993.

9 (c) None.

Respectfully submitted,

THE AMERITECH OPERATING COMPANIES  
THE BELL ATLANTIC TELEPHONE COMPANIES  
BELLSOUTH TELECOMMUNICATIONS, INC.  
THE NYNEX TELEPHONE COMPANIES  
PACIFIC BELL AND NEVADA BELL  
SOUTHWESTERN BELL TELEPHONE COMPANY  
U S WEST COMMUNICATIONS, INC.

By

Thomas E. Grace / PW

Thomas E. Grace  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196-1025  
(708) 248-6040

Attorney for the Ameritech  
Operating Companies

 Southwestern Bell Telephone

December 8, 1994

Paul Walters  
Attorney

Mr. Russell D. Lukas  
Lukas, McGowan, Nace &  
Gutierrez  
1111 Nineteenth St., N.W.  
12th Floor  
Washington, D.C. 20036

Re: Supplement to Defendants' Answers to  
Interrogatories; File No. E-94-57; Beehive  
Telephone v. the Bell Operating Companies

Dear Mr. Lukas:

This letter will constitute a Supplement to  
Defendants' Answers to Interrogatories.

Interrogatory 2. No single person is designated "to  
preserve the SMS account." DSMI administers the  
account for the SMS/800 team. The team jointly is  
responsible for the account. No one person or  
official "exercises day-to-day control over the  
operations of the SMS/800." The SMS/800 team is  
jointly responsible for those operations. The  
SMS/800 team was "in charge of preparing and filing  
the 1993 study." The SMS/800 team "was in charge of  
preparing the 1994 study." The SMS/800 team is "in  
charge of the employment, supervision and dismissal  
of personnel involved in the SMS/800." Anil Patel,  
an employee of DSMI, is responsible for SMS/800  
billing and collections. The SMS/800 team is "in  
charge of the payment of expenses arising out of the  
operation of the SMS/800."

One Bell Center  
Room 3530  
St. Louis, Missouri 63101

Phone 314 235-2516

You also requested a copy of the pleading in which the RBOCs requested the FCC to clarify the accounting process to be used for SMS/800. I have not yet been able to locate a copy of that pleading. Currently, Bellcore is searching its files. If Bellcore cannot find the pleading, we will have a copy made from the Commission's files and forward it to you under separate cover.

Interrogatory No. 3(iii). Signatories to the Bellcore/RBOC service agreement were Bruce R. DeMaeyer for Ameritech Services, Inc.; Phillip A. Campbell for Bell Atlantic Network Services, Inc.; Hugh B. Jacks for BellSouth Services Inc.; P.D. Covill for NYNEX Service Company; M.A. Caplan for Pacific Bell; C.E. Foster for Southwestern Bell Telephone Company; W.J. Wade for U S West Advanced Technologies, Inc.; and R.J. Marano for Bell Communications Research, Inc. This contract took effect January 1, 1988. The contract under which Bellcore provided Bill/800 maintenance and operations support to DSMI was the same contract as the one described immediately above.

Interrogatory No. 3(iv). The signatories to the MOUs were as follows:

- a) Southwestern Bell Telephone Co.  
Beverly J. Adkins  
District Manager -- Bellcore & Technology Services
- b) Pacific Bell  
Kathy A. Mendenhall  
Director-Bellcore Products & Programs
- c) NYNEX  
Richard B. Russell  
Managing Director-Finance/Administration
- d) Bell Atlantic Network Services, Inc.  
Robert D. Cameron  
Manager-Bellcore Administration

Mr. Russell D. Lukas  
Page 3  
December 8, 1994

e) U S West Communications  
Nellie T. Robinson  
Director-Bellcore Planning &  
Administration

We have not yet determined the Ameritech signatory. When we have that information, I will forward it by separate correspondence.

Interrogatory No. 4. Resp Org costs are the same as the total costs of the tariffed service.

Interrogatory No. 5. Defendants object, on the grounds of relevancy, as to the information requested for Bellcore.

Interrogatory No. 6(c). There was no single contract under which such services were provided or charges rendered. Such services were provided prior to 800 number portability and prior to the filing of the SMS/800 tariff. During that time, SMS/800 service was provided under a separate contract to each company accessing the SMS/800. There were approximately 20 contracts. Defendants object to producing information about each of the contracts on the grounds that such information is irrelevant to Complainants' cause of action, and that such production would be unnecessarily burdensome.

Sincerely,

  
Paul Walters

**CERTIFICATE OF SERVICE**

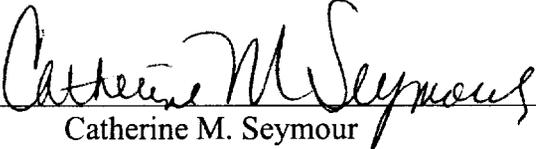
I, Catherine M. Seymour, a secretary in the law firm of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 11th day of September, 2000, sent by first class U.S. mail copies of the foregoing "Reply to DSMI's Opposition to Reconsideration Petitions" to the following:

John M. Goodman, Esquire  
Verizon  
1300 Eye Street, N.W., Suite 400 West  
Washington, D.C. 20005-3314

Leon M. Kestenbaum, Esquire  
Sprint Communications  
401 9th Street, N.W., 4th Floor  
Washington, D.C. 20004

Henry G. Hultquist, Esquire  
WorldCom, Inc.  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Louise L. M. Tucker, Esquire  
Telcordia Technologies, Inc.  
2020 K Street, N.W., Suite 400  
Washington, D.C. 20006

  
Catherine M. Seymour