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

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| In the Matter of | ) | |
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| Beehive Telephone Co., Inc. | ) | WC Docket No. 10-36 |
| and Beehive Telephone Co. Inc. Nevada | ) | |
| Petition for Declaratory Ruling | ) | |

## REPLY COMMENTS OF VERIZON[1] AND VERIZON WIRELESS

The Commission should decline Beehive's request for declaratory ruling.[2] Beehive is engaged in a dispute with Sprint over access charges levied by Beehive on traffic allegedly generated as part of a (now common) traffic pumping scheme. *Beehive Petition* at 2-3.[3] Beehive initially filed an informal complaint at the Commission against Sprint, but declined the Commission's invitation to escalate the matter to a formal complaint and, instead, pursued a case in federal district court. Sprint Opposition at 3-5. In the court proceeding, Beehive lost a motion to dismiss on election of remedy grounds and now asks the Commission to reverse the court's legal analysis so that Beehive might continue with its case. *Beehive Petition* at 1. Verizon agrees with other commenters[4] in this matter: No such declaratory ruling is warranted.

Beehive finds itself in a mess of its own making. Having elected to pursue separate actions against Sprint before both the Commission and in court, Beehive took the risk that it

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[1] In addition to Verizon Wireless, the Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

[2] Petition for Declaratory Ruling, *Beehive Telephone Co., Inc. and Beehive Telephone Co. Inc. Nevada*, WC Docket No. 10-36 (Feb. 4, 2010) ("*Beehive Petition*").

[3] *See also* Opposition of Sprint Communications Company L.P., WC Docket No. 10-36, at 3 (March 1, 2010) ("Sprint Opposition").

[4] Sprint Opposition at 1; *see also* Comments of AT&T Inc., WC Docket No. 10-36 (March 1, 2010).

would run afoul of the election of remedies provision in Section 207 of the Act. 47 U.S.C. § 207. Applying Section 207, the court dismissed Beehive's claims against Sprint because Beehive chose to seek an administrative remedy before the Commission. *Beehive Petition* at 5. Beehive now asks the Commission to step in and fix Beehive's dilemma by issuing a broad declaratory ruling that the Commission would not have jurisdiction over a formal complaint that Beehive *might* bring on the same facts. This does not make sense. The Commission may issue a declaratory ruling to terminate a controversy or remove uncertainty. 47 C.F.R. § 1.2. There is no controversy or uncertainty here because – despite the Commission's invitation to do so – Beehive has not brought a formal complaint against Sprint. Beehive's options are to appeal the adverse district court decision and/or actually to bring a formal complaint. Instead, Beehive chose to invite the Commission to help Beehive convince the district court that its decision granting Sprint's motion to dismiss was wrong. The Commission should decline Beehive's invitation.

Moreover, as a policy matter Beehive presents a poor case for a declaratory ruling. Traffic pumping remains a serious problem, requiring IXCs, wireless carriers, and other providers to expend considerable resources fighting these illegal arbitrage schemes that have no redeeming public benefits. In a related context, the Commission held just a few weeks ago that similar revenue-generating scams designed only to stimulate billable minutes reimbursed by the Telecommunications Relay Service (TRS) fund were not compensable. *See Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, CG Docket No. 10-51, ¶ 6 (Feb. 25, 2010) ("Using VRS as a means to generate compensation from the TRS Fund is antithetical to that statutory purpose. We therefore emphasize that VRS calls made or arranged, in whole or in part, for the purpose of generating compensable minutes of use as a source of

revenue for the providers. . .are not and have never been compensable from the TRS Fund. . . . But for the availability of per-minute compensation from the Fund, such calls likely would not have been made."). The situation is no different with traffic pumping. Traffic pumping LECs designed these arbitrage only to generate compensable access minutes for them and their access-revenue-sharing business partners. Consumers – *e.g.*, customers of IXCs and wireless carriers – ultimately must pay for these scams just as consumers ultimately pay for the TRS fund. If anything, the Commission should expend its resources on a declaratory ruling making clear that charging access on traffic that is subject to a revenue-sharing agreement is *per se* unreasonable.

For these reasons, the Commission should deny Beehive's request.

Respectfully submitted,

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