

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

In the Matter of)

Beehive Telephone Company, Inc.)
Beehive Telephone Co., Inc. Nevada)

Transmittal No. 29

PETITION OF AT&T CORP.

Pursuant to Section 1.773 of the Commission's rules, 47 C.F.R. § 1.773, AT&T Corp. ("AT&T") submits this petition requesting the Commission to reject or, in the alternative, suspend and investigate Transmittal No. 29, filed September 30, 2005 by Beehive Telephone Company, Inc. and Beehive Telephone Co., Inc. Nevada (collectively, "Beehive").¹ Beehive proposes to add a new rate for 800 database access service queries. Beehive currently purchases its query service from Qwest, the adjacent price cap carrier, at the rate of \$0.004053 per query and proposes to charge its access customers \$0.0054 per query. Beehive provides insufficient cost support to merit the inexplicable 33 percent mark-up from the Qwest rate. In addition, Beehive has failed to adjust its rates accordingly for the additional revenues obtained from this service. Close

¹ A tariff is subject to rejection when it is *prima facie* unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. *See, e.g., American Broadcasting Companies, Inc. v. AT&T*, 663 F.2d 133, 138 (D.C. Cir. 1980); *MCI v. AT&T*, 94 F.C.C.2d 332, 340-41 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. *See AT&T* (Transmittal No. 148), Memorandum Opinion and Order, 56 RR2d 1503 (1984); *ITT* (Transmittal No. 2191), 73 F.C.C.2d 709, 716 n.5 (1979) (citing *AT&T*, 46 F.C.C.2d 81, 86 (1974)).

scrutiny by the Commission of the proposed rates in the pre-effectiveness tariff review process is especially critical here in light of Beehive's well-documented history of implementing excessive rates which have then been applied to large volumes of traffic, generated through various schemes, to mulct its access customers for substantial billings.²

ARGUMENT

I. BEEHIVE IS NOT PERMITTED TO ADD AN 800 DATABASE QUERY CHARGE SIGNIFICANTLY ABOVE THE PRICE OF THE QUERY CHARGE THAT IT PURCHASES FROM ITS ADJACENT PRICE CAP CARRIER

Beehive is a local exchange carrier that serves less than 50,000 access lines and is a Part 61.39 carrier.³ Beehive is proposing to add a new service for 800 database queries. While the 800 database query charge established by its adjacent price cap carrier, Qwest, is \$0.004053, Beehive is instead proposing to mirror its new 800 database query rate to the NECA established rate of \$0.0054.

Beehive's proposed rate thus fails to comply with Section 61.39(d), which provides that "[r]ates for a new service that is the same as that offered by a price cap regulated local exchange carrier providing service in an adjacent serving area are deemed presumptively lawful, if the proposed rates, in the aggregate, are no greater than the rates established by the price cap local exchange carrier." Beehive's filing of a rate higher

² See, e.g., *Beehive Telephone Company, Inc., Transmittal No. 6*, 13 FCC Rcd. 2736 (1998) ("*First Beehive Tariff Investigation Order*"), *recon.* 13 FCC Rcd. 11,795 (1998); *Beehive Telephone Company, Inc., Transmittal No. 11*, CC Docket No. 98-108, Memorandum Opinion and Order, FCC 98-320 (rel. December 1, 1998) ("*Second Beehive Tariff Investigation Order*"), *recon.*, FCC 99-65 (rel. March 31, 1999), *further recon.*, 14 FCC Rcd. 8077 (1999).

³ See Beehive Transmittal No. 29, Justification, page 1, filed September 30, 2005.

than the Qwest rate therefore is not entitled to presumptive validity under the Commission's rule.

Absent the application of that presumption, Beehive's proposed tariff cannot be sustained. The tariff support provides insufficient -- indeed, effectively no -- justification for establishing an 800 query rate that is *33 per cent higher* than the rate established by its adjacent price cap carrier, Qwest⁴. Furthermore, the NECA rate which Beehive is proposing to mirror is the result of an aggregation of 800 query costs established by adjacent price cap carriers for those carriers that are members of the NECA pool, and thus provides no basis for the rate Beehive now proposes to create for the service in its own tariff. At a minimum, Beehive must establish an 800 database rate that is more reflective of the Qwest 800 database query rate of \$0.004053.

II. BEEHIVE HAS NOT APPROPRIATELY ADJUSTED ITS EXISTING ACCESS RATES FOR THESE ADDITIONAL 800 DATABASE REVENUES

Beehive has not made any offsetting adjustments to its existing access revenue streams to reflect the additional revenues it will receive from its proposed 800 query charge. By failing to offset these new revenues with reductions to its other access rates, Beehive will collect revenues in excess of its traffic sensitive access revenue requirement.

On June 28, 2005 Beehive filed revised interstate access rates based on its 2003 and 2004 cost studies.⁵ Because these 800 database query costs purchased from Qwest

⁴ Following its receipt of Beehive Transmittal No. 29, AT&T contacted Beehive several times for additional cost support, i.e., cost studies, demand and rate development workpapers, but the requested information was not provided by the carrier.

⁵ See Beehive Transmittal No. 28, filed June 28, 2005, Description and Justification, p. 4.

should have been included in Beehive's historic costs, these 800 database costs are currently being recovered from Beehive's existing rates. Other rate of return LECs recognize the fact that 800 query charges are part of the access revenue requirement and these revenues have been treated as offsets to the carriers' access revenue requirement subject to rate development. For example, NECA uses its 800 query charge revenues to offset its local switching revenue requirement prior to rate development.⁶ Beehive should be required to recognize these additional revenues by reducing its existing traffic sensitive access rates accordingly.

⁶ See National Exchange Carrier Association, Transmittal No. 1077, Filed June 16, 2005, Volume 5, Exhibit 2, Workpaper 1 of 9.

CONCLUSION

For the reasons stated above, the Commission should reject or, in the alternative, suspend and investigate for the full five months Beehive's tariff filing and impose an accounting order.

Respectfully submitted,

AT&T CORP.

By /s/ Peter H. Jacoby
Lawrence A. Lafaro
Peter H. Jacoby

One AT&T Way
Room 3A251
Bedminster, New Jersey 07921
(Voice) (908) 532-1830
(Fax) (908) 532-1219

October 7, 2005

Its Attorneys

CERTIFICATE OF SERVICE

I, Tracy Paulsen, do hereby certify that on this 7th day of October, 2005, a copy of the foregoing "Petition of AT&T Corp." was served by facsimile and U.S. first class mail, postage prepaid, on the party named below.

B. Lynn F. Ratnavale
Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Boulevard, Suite 1500
McLean, VA 22102
(Fax) (703) 584-8695
Counsel for Beehive Telephone Companies

/s/ Tracy Paulsen