0254

Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

In the Matter of Pay-Per-Call Review	)	FTC File No. R611016

FURTHER COMMENTS OF AT&T CORP.

Pursuant to statements by the Commission's staff at the May 20-21, 1999 Public Workshop that the record in the above-captioned proceeding would remain open until June 4, 1999 in order to permit parties to submit additional information for the rulemaking record, AT&T Corp. ("AT&T") submits these further comments on the Commission's proposal to amend its 900-Number Rule, 16 C.F.R. Part 308.

The NPRM proposes to exempt from the definition of "pay-per-call" any service for which an information provider receives remuneration that, on average, does not exceed $0.05 per minute or $.50 per call. AT&T showed in its initial comments[1] and in its testimony at the Public Workshop that such a "*de minimis* exception" would, among other things, permit a wide variety of services to flourish outside the purview of the Commission's pay-per-call rules, exposing minors to adult content via unregulated "chat lines" and denying consumers the ability

1 See AT&T Corp. Comments, filed March 10, 1999 in Pay-Per-Call Rule Review, FTC File No. R611016, pp. 5-9.

to control access to pay-per-call services by imposing 900-number blocking on their telephone lines.

One of the key questions raised at the Public Workshop was whether a *de minimis* revenue sharing standard could be set at a sufficiently low level to eliminate information providers incentives to engage in activities that would effectively skirt the protections Congress sought to provide by enacting TDDRA. In these Further Comments, AT&T provides additional evidence that this goal is simply unattainable. In short, the Commission should abandon any effort to set a threshold level at which revenue sharing would be deemed permissible.

As AT&T stated in its initial comments, an information provider's incentive to engage in unfair and deceptive practices is not a function of its <u>per-call</u> remuneration, but rather its <u>total</u> remuneration from audiotext calls. For example, one of the most common services that relies on revenue sharing is the establishment of "chat lines." These services essentially require an IP to do nothing more than advertise an access number and establish a teleconference bridge at that number, and thus require only minimal expenditures to create and maintain.[2] If a local exchange carrier ("LEC") or competitive access provider ("CAP") shares even a fraction of a cent per minute with an information provider, then that IP can earn an attractive return if it can attract sufficient minutes of use to its services.

It is not uncommon for a single IP to attract millions of minutes of use per month to chat lines and other services that derive their income from revenue sharing arrangements with terminating carriers. For example, Total Telecommunications Services ("TTS") stated in an

---

[2] It is also important to note that because chat lines involve live conversation between parties that are not in any way controlled by the IP, it is virtually impossible to regulate their content. Thus, minors calling these services may be exposed to inappropriate material, or may even be targeted by pedophiles or others intent on criminal acts.

October 1996 filing with the Federal Communications Commission that during the less than four-month period between August 1, 1995 and November 22, 1995 it terminated "approximately 15 million minutes of use of billable telephone calls."[3]

TTS is an entity located in Big Cabin, Oklahoma that purports to be a "competitive access provider," and is under common ownership and control with Atlas Telephone Company ("Atlas"), Big Cabin's incumbent LEC. So far as AT&T is aware, TTS provides no service of any kind other than operating a nationally advertised chat line. When AT&T or another IXC routes a call to Atlas, that LEC delivers the call to TTS, which leases a small portion of Atlas's facilities. TTS then connects the call to its chat line. For this "service," TTS imposes an "access charge" on AT&T that is in addition to the access charge levied by Atlas, for a net charge that is approximately ten times the rate Atlas alone had previously charged AT&T for terminating calls (and which in many cases exceeds the total amount an end user pays for the call).[4]

Similarly, the FCC observed in a 1995 order that Beehive Telephone Company, an incumbent LEC operating in rural areas of Utah and Nevada, increased its monthly minutes of use ("MOU") from an average of 76,000 MOUs from July through September 1994 to 1,069,016

---

3 Total Telecommunications Services, Inc., Complaint, ¶ 63, filed October 18, 1996 in Total Telecommunications Services, Inc. v. AT&T Corp., File No. E-97-03 (emphasis added). (excerpts attached as Exhibit 1 to this document).

4 In its complaint, TTS argues that AT&T may not refuse to pay TTS's purported "access" charges. (AT&T does pay access charges to Atlas, the incumbent LEC, for calls that AT&T terminates to Big Cabin, Oklahoma.) TTS v. AT&T is currently pending before the FCC.

MOUs in October 1994.[5] Beehive's monthly usage then soared to over two million MOUs in November 1994.[6] This surge in traffic volume was attributable to Beehive's entry into a revenue sharing arrangement with Joy Communications, a provider of audio entertainment services.[7]

Because entities such as TTS and Beehive can attract millions of minutes of use per month to their services, they can make millions of dollars a year by diverting even a fraction of a cent per minute of purported "access charges" or other charges to fund chat lines and other services. AT&T's experience suggests that there is nothing unique about TTS's and Beehive's ability to attract callers, and nothing that would prevent other IPs from engaging in similar efforts to divert access charges to pay for other services. To prevent the potential harms to minors and to the competitive market for long distance telecommunications caused by revenue sharing arrangements between carriers and information providers, the Commission should delete the *de minimis* exception contained in proposed 16 C.F.R. § 308.2(g)(3)(ii).

---

5 Memorandum Opinion and Order, Annual Access Tariff Filings of Non-Price Cap Carriers, 10 FCC Rcd. 12231, 12241 ¶ 61 (excerpts attached as Exhibit 2 to this document).

6 Id.

7 Id., pp. 12241-42 ¶¶ 61, 63.

CONCLUSION

AT&T respectfully urges the Commission to adopt its proposed rules consistent with the recommendations described above, and in AT&T's initial comments and testimony at the Public Workshop in this proceeding.

Respectfully submitted,

AT&T CORP.

By /s/ James H. Bolin, Jr.
Mark C. Rosenblum
Peter H. Jacoby
James H. Bolin, Jr.

Its Attorneys

Room 3245H1
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4617

June 3, 1999

AT&T Exhibit 1

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

TOTAL TELECOMMUNICATIONS SERVICES, INC.,	)	
and	)	
ATLAS TELEPHONE COMPANY, INC.,	)	File No.
Complainants,	)	
v.	)	
AT&T CORP.	)	
Defendant.	)	

COMPLAINT

To: The Commission

Pursuant to Section 208 of the Communications Act and Section 1.720 of the Commission's Rules. *et seq.*, the complainants. Total Telecommunications Services. Inc. ("TTS") and Atlas Telephone Company, Inc. ("Atlas"), show that:

The Parties

1. TTS is a corporation organized and existing under the laws of Oklahoma. Its principal place of business is located at 220 West Wilshire, Suite F-1, Oklahoma City, Oklahoma 73116. Its telephone number is 405-842-1764.

57. By letter dated August 4, 1995, TTS notified AT&T that it had commenced service pursuant to its Tariff. Id.

58. On or about August 7, 1995, AT&T re-issued its earlier order to add additional engineering information in recognition of the volume of traffic that would be terminated by TTS.

59. On or about September 6, 1995, AT&T issued an order for 72 additional trunks with a due date of September 22, 1995 in recognition of the amount of traffic actually being terminated (which was apparently more than anticipated).

60. Subsequently, on September 13, 1995, AT&T issued yet another order for an additional 96 trunks to be installed on October 20, 1995.

61. Telephone traffic from the IXCs was routed through Atlas's access tandem and delivered through a combined trunk group between Atlas and TTS.

62. Thereafter, TTS provided access terminating service to AT&T through its meet point service arrangement with Atlas to AT&T's customers for a period of approximately four months.

63. Between the period of August 1, 1995 and November 22, 1995, TTS terminated approximately 15 million minutes of use of billable telephone calls, of which approximately 10 million were from AT&T customers--calls that AT&T has apparently billed to its customers, but for which it has not paid TTS.

64. This method of ordering access service is consistent with TTS's tariff and standard industry practices, as illustrated by Section 5.3 of the National Exchange Carrier Association, Inc. ("NECA") Tariff F.C.C. No. 5, the tariff which governs ordering access service for the majority of independent local exchange carriers, such as Atlas.

By their counsel

William J. Byrnes

David A. Irwin
William J. Byrnes
IRWIN, CAMPBELL & TANNENWALD, P.C.
Suite 200
1730 Rhode Island Avenue, NW
Washington, DC 20036
(202) 728-0400

Dated: October 18 , 1996

AT&T Exhibit 2

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

In the Matter of

1995 Annual Access
Tariff Filings of
Non-Price Cap Carriers

National Exchange Carrier Association Universal Service Fund and Lifeline Assistance Rates — Transmittal No. 670

MEMORANDUM OPINION AND ORDER

Adopted: June 29, 1995; Released: June 29, 1995

By the Chief, Common Carrier Bureau:

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY

1. In this Order, the Common Carrier Bureau (Bureau) presents the results of its review of the 1995 annual access tariffs filed by local exchange carriers (LECs) not subject to price cap regulation and by the National Exchange Carrier Association, Inc. (NECA). These entities are required by Section 69.3(a) of the Commission's rules, 47 C.F.R. § 69.3(a), to file access tariffs by March 31, to become effec-

Moultrie's projected 1995-96 growth in local switching revenue requirement is almost 30 percent higher than its actual revenues for 1994. Its 1995/96 local transport revenue requirement, argues Ameritech, is 130 percent higher than the 1994 amount.[106] With regard to increases in certain of Moultrie's expenses, Ameritech questions Moultrie's reliance on an inflation factor of 6.5 percent when compared to a Gross National Product Price Index increase of 2.92 percent for 1993-94.[107]

55. Ameritech notes that Madison's projected local transport revenue requirement for the 1995-96 tariff year is 29 percent higher that in 1994.[108] Ameritech questions Madison's increases in plant specific and non-plant specific expenses attributed to cable and wire facilities and engineering and testing.[109] Ameritech also argues that Madison's forecasted MOU growth of 2 percent is well below the actual growth of nearly 22 percent that Madison experienced between 1993 and 1994.[110]

56. With respect to Woodhull, Ameritech notes that Woodhull forecasts its local switching revenue requirement to be 40 percent higher than in 1994, and its local transport revenue requirement to be 23 percent higher than in 1994.[111] Furthermore, Ameritech notes that Woodhull projects an annual growth rate of 2.7 percent for 1995/96 MOUs when actual MOUs grew by 28 percent from 1993 to 1994. Finally, Ameritech seeks a justification for Woodhull's increases in operating expenses.[112]

57. In reply, GVNW argues that the projected expense increases of each LEC are neither unreasonable nor unusual.[113] Moreover, GVNW asserts that subsequent to the filing of this transmittal, representatives of the LECs met with a large interstate access customer of each of the LECs to discuss the IXC's demand forecasts. Based on those discussions, GVNW has filed revised rates for Madison and Woodhull that reflect revised demand growth rates of 9.7 percent and 14.5 percent, respectively for these companies.[114] GVNW also explains that its 6.5 percent inflation factor is related to a study of company-specific costs.

c. Discussion

58. We have reviewed the cost and demand forecasts submitted by GVNW on behalf of Moultrie, Madison, and Woodhull and all associated pleadings and submissions. All of these companies are basing their rates on projected high levels of infrastructure investment in rural areas. For example, Madison projects a growth of almost $1 million or 2.5 percent in telephone plant in service during the test year, which is due, in part, to configuring a SONET ring. Moultrie states that it will increase significantly the local transport rate as a result of deploying fiber cable in theamount of $450,000, a 55 percent increase in transport cable facilities. Moultrie states that the new cable will create redundant routing that will enhance service. Woodhull states that General Support investment will increase by $172,000 over the test year, primarily due to building remodeling.

59. While the percentage of growth in certain investments and rates by these companies are substantial, we recognize that, for small companies, a single investment decision or maintenance expense may have a large impact in percentage terms on the investment base. Each of these companies has less that 1,500 Category 1.3 loops and an investment base similar to companies of their own size. These companies have provided supporting information detailing future investments. In addition, the companies have addressed adequately demand issues by revising their demand forecasts in their annual filings. We have reviewed this information and find no compelling reason to find that the cost and demand forecasts for Moultrie, Madison, and Woodhull are patently unlawful or warrant investigate at this time.

E. Beehive Telephone Companies Tariff

a. Background

60. Companies that qualify as small telephone companies and elect to file under the small telephone company rules are subject to Section 61.39 of the rules.[115] This rule provides an option for smaller LECs to file traffic sensitive access rates based on the carriers' cost of service for the most recent twelve month period with related demand for the same period.

b. Contentions of the Parties

61. AT&T argues that the tariff filed by Beehive Telephone Companies (Beehive) fails to resolve whether Beehive has abandoned its past practice of "gaming" the Commission's ratesetting process for small LECs.[116] AT&T point out that Beehive's 1994 filing established a rate for traffic sensitive switched access of $.47 per MOU, which become effective on July 1, 1994.[117] AT&T indicates that Beehive's monthly traffic sensitive demand increased from an average of 76,000 MOUs from July through September 1994 to 1,069,016 MOUs in October 1994 to 2,088,218 MOUs in November 1994.[118] AT&T claims that this surge in traffic volumes is related to Beehive's relationship with Joy Communications (Joy), a "provider of "audio entertainment" in Beehive's service area whose service is available without charge other than the standard charge for interstate toll service.[119] AT&T alleges that Beehive entered into an agreement under which it compensates Joy for each minute of traffic terminated to Joy in Beehive's service area. AT&T further alleges that Joy appears to be affiliated with Art Brothers, Sr., Beehive's former chief executive.[120]

106 *Id.* at 8.
107 *Id.* at 8.
108 *Id.* at 9.
109 *Id.*
110 *Id.*
111 *Id.*
112 *Id.*
113 GVNW Reply at 6.
114 GVNW Inc./Management Tariff F.C.C. No. 2, Transmitta No. 121 - Errata, filed May 9, 1995.
115 47 C.F.R. § 61.39.
116 AT&T Petition at 1.
117 AT&T Petition at 2.
118 *Id.* at 2-3.
119 *Id.*
120 *Id.* at 3.

62. While AT&T acknowledges that Beehive's management has changed and that Beehive proposes to reduce its access rates by 70 percent overall from current levels, it is concerned that Beehive's proposed rates are still based on historic demand figures developed by the consulting firm used by Beehive's previous management. In addition, AT&T refers to newspaper accounts of pending litigation between Mr. Brothers, Sr. and the current Beehive management. These accounts also report that the Utah Division of Public Utilities has commenced an investigation of Beehive. AT&T concludes that these issues should be addressed before concluding that Beehive's current tariff filing is lawful.

63. In reply, Beehive asserts that its proposed switched access rates for the 1995/96 tariff year, which are 70 percent lower than its current access rates, are lawful.[121] Beehive explains that as a small telephone company in rural areas of Utah and Nevada with approximately 600 access lines, it is not unusual for it to experience significant growth with the addition of one new customer.[122] Beehive indicates that its traffic volume increased significantly after the 1994 tariff became effective due to the dramatic increase in interstate terminating MOUs generated by Joy. Beehive further maintains that the proposed reduction to its interstate switched access charges for the upcoming tariff year reflect, and are consistent with, the increased demand experienced by Beehive during the historic period.[123] In addition, Beehive contends that AT&T's allegations that Beehive has engaged in fraudulent activities with Joy are unsubstantiated. Finally, Beehive concludes that AT&T has failed to demonstrate that any harm will occur if its tariff is not suspended and investigated.

c. Discussion

64. Based on our review of Beehive's transmittal and all related pleadings, we find that Beehive's proposal to reduce its interstate access rate by 70 percent is supported by the demand and cost data that Beehive submitted in its filing. We note that the interstate access rates assessed by LECs filing under Section 61.39 of the Commission's rules are based on actual historic demand during the most recent 12-month period. Beehive has submitted a report of its interstate switched access demand for the 12 months ending December 31, 1994 and has certified the accuracy of that report. This report stands unaffected on this record. We therefore conclude that AT&T has failed to make a compelling argument that Beehive's tariff proposing to reduce its rate is unlawful or warrants investigation at this time.

III. PAPERWORK REDUCTION ACT

65. We are not initiating any investigations in this Order. We have analyzed this Order with respect to the Paperwork Reduction Act of 1980 and found it to contain no new or modified form, information collection, or recordkeeping, labelling, disclosure or other record retention requirements as contemplated under the statute.[124]

IV. ORDERING CLAUSES

66. Accordingly, IT IS ORDERED that the petitions filed by AT&T Corp., MCI Telecommunications Corporation, and Ameritech Operating Companies to reject or suspend and investigate the annual 1995 access tariffs filed by non-price cap LECs ARE DENIED.

67. IT IS FURTHER ORDERED that pursuant to Section 204(a), of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the tariff revisions filed by the National Exchange Carrier Association, Inc., Transmittal No. 670, as specified in Section B.3, *supra,* ARE SUSPENDED for one day, and are subject to the investigation in Universal Service Fund and Lifeline Assistance rates instituted in CC Docket No. 93-123.

68. IT IS FURTHER ORDERED that The National Exchange Carrier Association (NECA) shall file a supplement no later than June 30, 1995, reflecting the one day suspension, or MAY FILE no later than June 30, 1995 a supplement advancing the currently scheduled effective date to June 30, 1995, and at the same time file a supplement reflecting the one day's suspension. For these purposes, we waive Sections 61.56, 61.58, and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, and 61.59. NECA should cite the "DA" number of this Order as its authority for this filing.

69. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the National Exchange Carrier Association, Inc., as specified in Section B.3, *supra,* SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the tariff filings that are subject to the investigation in CC Docket No. 93-123.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

---

[121] Beehive Reply at 3.
[122] *Id.* at 3-4.
[123] *Id.*
[124] 44 U.S.C. § 3502(4)(a).