

the Petition itself was posted online in that same traffic-stimulation rulemaking docket, and the first page of the Petition had been marked with a handwritten notation stating “WC Docket No. 07-135,” presumably added by a member of the Commission’s Staff. Thus, contrary to the petitioners’ claims, Mot. at 1, their Petition has been assigned to Docket No. 07-135 – and was so assigned two days *before* they filed their Motion to Strike on the grounds that “the Commission has not assigned the Petition to [WC Docket No. 07-135]” (Mot. at 1). Consequently, there is no conceivable basis for striking AT&T’s Comments from the very Docket where the Petition has been filed.² Certainly, the stated rationale for the Motion – that AT&T’s filing in a docket in which all comments are available online through the Commission’s ECFS system will somehow “cause confusion” and “may make it impossible for interested parties to find the Petition” (Mot. at 2) – is so flimsy that it cannot be taken seriously.

Rather, the Motion is a small part of the petitioners’ rather transparent strategy to evade examination – by the Commission, the courts or state public utility commissions – of the facts of their sham arrangements and traffic-stimulation schemes. They seem to have fantasized a scenario where their Petition would have been separately docketed, and then quickly acted upon in their favor, thus saving them from having to reveal the details of their sham arrangements in response to discovery that will be conducted in a variety of fact-finding proceedings that are now investigating the petitioners’ arrangements and conduct. These proceedings include the

² Even if the Commission had decided to assign the Petition to a new docket rather than the traffic-stimulation docket, that would not mean that the caption on AT&T’s Comments would suddenly become “false,” and there still would be no grounds to strike them. AT&T’s Comments were timely filed pursuant to Rule 1.45, which provides that “[o]ppositions to any motion, petition, or request may be filed within 10 days after the original pleading is filed.” 47 C.F.R. § 1.45. The Commission had not taken any action on the Petition by the time AT&T was prepared to file its comments, and in those circumstances, AT&T properly opposed the petition in accordance with the Commission’s rules.

underlying court case pending in New York³ and the AT&T Informal Complaint case before this Commission,⁴ as well as the investigation into All American by the Public Service Commission of Utah, which recently issued an order i) finding that All American has never had authority to operate within the rural territories in Utah where it purports to “compete,” and ii) expanding the PSC investigation to determine whether, among other remedies, it is in the public interest to allow traffic-stimulation schemes and to rescind All American’s state operating authority entirely.⁵

CONCLUSION

For the foregoing reasons, petitioners’ Motion to Strike should be denied.

³ Order, *All American Tel. Co., et al. v. AT&T Corp.*, 2009 WL 691325 (S.D.N.Y. March 16, 2009).

⁴ Informal Complaint of AT&T Corp., *AT&T Corp. v. All American Tel. Co., et al.*, File No. EB-09-MDIC-0003 (filed Apr. 15, 2009).

⁵ Report and Order, *In the Matter of the Petition of All American Tel. Co., Inc. for a nunc pro tunc Amendment of Its Certificate of Authority*, Docket No. 08-2469-01, at 12, 19-20 (Pub. Serv. Comm’n of Utah, June 16, 2009) (attached hereto as Exh. A) (“The Commission did not make a mistake in not authorizing [All American] to serve in Beehive’s territory. In granting the [state certificate], it explicitly precluded [All American] from serving there”); *id.* at 18 (the PSC will “investigate any alleged violation of [All American’s] certificate and determine whether the granting or maintenance of [it] is still in the public interest (including what effect alleged traffic pumping may have, if any, on the public interest.”)).

June 22, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2009 I caused a true and correct copy of the foregoing AT&T's Opposition to Motion to Strike to be served on the following persons via electronic mail and, where indicated, by first class mail:

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