

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

_____)	
)	
In the Matter of)	
)	
Great Lakes Communications Corp. and Superior Telephone Cooperative Petition for Declaratory Ruling)	WC Docket No. 09-152
)	
_____)	
)	
In the Matter of)	
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
_____)	

AT&T's REPLY COMMENTS ON PETITION FOR DECLARATORY RULING

AT&T Inc. ("AT&T") hereby files these reply comments on the Petition for Declaratory Ruling to the Iowa Utilities Board ("IUB" or "Board") and Contingent Petition for Preemption ("Petition") filed by Great Lakes Communications Corp. and Superior Telephone Cooperative (collectively, "Petitioners").

INTRODUCTION AND SUMMARY

Even before the IUB released the text of its Final Order on September 21, 2009, it was clear that the arguments presented in the Petition misstated both the findings of fact and conclusions of law discussed by the IUB at its August 14 public decision meeting. But now that the IUB has released its Final Order, it is undeniable that the Petition's predictions about the IUB's actions were entirely unfounded, and that the Petition is both effectively moot and completely without merit. The IUB has *not* issued an order that is, as the Petitioners had insisted would be true, "flatly inconsistent with the rulings and policies of this Commission,"

“extraordinarily expansive in scope,” or that “usurp[s] this Commission’s exclusive authority to regulate interstate telecommunications.” Petition at 2, 10. Rather, as the Final Order itself makes clear, the IUB acted entirely within its jurisdiction in addressing specific challenges to the practices of Iowa-certificated LECs pursuant to Iowa tariffs: “the Board is aware of its jurisdictional limitations with respect to interstate and international traffic and as such has limited its findings to the intrastate issues raised in [Qwest’s] complaint.” Final Order, *In re Qwest Commc’ns Corp. v. Superior Tel. Coop., et al.*, Docket No. FCU-07-2, at 77 (Iowa Utils. Bd. Sept. 21, 2009) (“Final Order”). Because, as fully explained by the IUB in its comments to the Commission, “much of what the Petitioners suppose and assume is incorrect,” the Petition “is without basis and a waste of resources.” Comments of the Iowa Utilities Board, WC Docket No. 09-152, at 2 (filed Sept. 21, 2009) (“IUB Comments”).

Given that their overwrought predictions were in most respects flatly inaccurate, and that the Board’s Final Order as written is plainly well within its core jurisdiction over intrastate matters, the most honorable course of action for the Petitioners to follow would be to pack up their tents, abandon the relief they seek, and stop wasting the Commission’s time with such frivolous claims. But the Petitioners and their counsel have instead gathered a rogues’ gallery of some of the nation’s worst traffic-pumping offenders to support their Petition. These commenters also offer no valid basis to support the relief sought by the Petition, and instead they seek to raise a variety of claims that are meritless and outside the scope of this docket. The Petition should promptly be denied.

ARGUMENT

I. THE PETITION SHOULD BE DENIED BECAUSE THE PREDICTIONS OF THE PETITIONERS AND COMMENTERS THAT THE IUB'S WRITTEN ORDER WOULD EXCEED ITS JURISDICTION WERE WRONG.

Both the Petition and the commenters supporting it rely on claims that the IUB's written order, once issued, would exceed its jurisdiction and be inconsistent with federal law. But these predictions turned out to be flatly wrong. For instance, NVC and Sancom – two traffic pumping South Dakota LECs represented by the same counsel as Petitioners – point to the supposedly “telling omission” of the term “intrastate” from the IUB's announced decision, and on that basis state that “we can conclude only that the Board is interpreting interstate access tariffs along with intrastate tariffs.”¹ The IUB's Final Order, however, confirms that these commenters' “conclu[sions]” are entirely unjustified, for the Order explains that the Board was keenly aware that its “jurisdiction over access charges only pertains to intrastate switched access,” *id.* at 68, “and as such has limited its findings . . . to the intrastate issues raised in [Qwest's] complaint,” *id.* at 77.²

¹ Comments of Northern Valley Communications, LLC and Sancom, Inc., WC Docket No. 09-152, at 5 (filed Sept. 21, 2009) (“NVC-Sancom Comments”); *see id.* at 6, 8-9, 12. *See also* Comments of Aventure Communications Technology, LLC, WC Docket No. 09-152 at 4-5, 13-15 (filed Sept. 21, 2009) (“Aventure Comments”); Comments of Beehive Telephone Company, Inc., WC Docket No. 09-152, at 3 (filed Sept. 21, 2009) (“Beehive Comments”).

² *See also, e.g.*, Final Order at 34 (“the Board finds that the FCSCs are not end users of the Respondents for purposes of the **intrastate** access tariffs”); *id.* at 49 (finding certain charges “failed to meet the tariff requirements for billing **intrastate** switched access”); *id.* at 53 (“Great Lakes . . . improperly assessed terminating access charges for **intrastate** toll traffic”); *id.* (“Superior assessed **intrastate** switched access charges for FCSC traffic in an exchange where it does not have a certificate”); *id.* at 77 (finding that the conference calling companies did not subscribe to the LECs' “**intrastate** switched access or **local exchange** tariffs.”); *id.* at 78 (finding that the “**intrastate** toll traffic did not terminate at the end user's premise”); *id.* at 79 (“The Board has jurisdiction of the **intrastate** claims in this matter pursuant to Iowa Code chapter 476.”); *id.* (ordering refunds of charges associated with “the delivery of **intrastate** interexchange calls” at issue).

In particular, the IUB's core finding that the Free Calling Service Companies ("FCSCs") were not "end users" under the Iowa LECs' intrastate access tariffs turned on the IUB's interpretation of the Iowa LECs' *intrastate* local exchange tariffs and its factual determination that the FCSCs had not subscribed to the LECs' local exchange services pursuant to the terms of those intrastate tariffs. There can be no serious jurisdictional objection to the IUB's construction of these intrastate local exchange tariffs or its application of those tariffs to the extensive factual record developed in the IUB proceeding.

The Final Order as written also clearly explains that the Board was interpreting the Iowa LECs' *intrastate* access tariffs. As to those tariffs, the Board correctly observed that "all of the [Iowa LECs'] access tariffs have adopted the terms, conditions, and definitions in the NECA interstate access tariff with respect to their intrastate switched access service." Final Order at 17-18. It was thus necessary for the IUB to "review the language used for interstate purposes in conjunction with the Respondents' intrastate tariffs" and to "make reference to the NECA tariff," but in so doing, the IUB carefully explained that its "analysis . . . is limited to the *intrastate* application of that language." Final Order at 18 (emphasis added). There is, accordingly, no basis to preempt the IUB based on the clearly erroneous claims of the Petitioners and other commenters that the IUB's written order would improperly interpret interstate access tariffs.

The Petitioners and supporting commenters seek to support their request for preemption based on holdings that the IUB did not adopt and rulings that it did not make.³ For example, contrary to the assertions made by the Petitioners and other commenters, Petition at 3; NVC-Sancom Comments at 10-11, the IUB declined to decide whether certain LECs were qualified for

³ See IUB Comments at 2-3 ("Much of the Petition is based upon what might have happened if the Board had granted the relief that was allegedly requested by Qwest The Petitioners' arguments ignored the fact that in its decision meeting the Board rejected most, if not all, of those requests for relief").

the rural exemption under the Commission’s rules and orders. Final Order at 67-69. The IUB merely made factual findings based on the detailed record and its expertise about the areas in Iowa where these CLECs were operating, and – while those factual findings demonstrate that some Iowa LECs operated in non-rural Iowa territories – it will ultimately be up to the Commission or federal courts to apply those findings and determine whether these Iowa LECs violated the Commission’s rules and improperly billed for services at rural exemption rates.⁴ Consequently, there is no truth to the claim that the IUB has “persisted in announcing its conclusion that Great Lakes does not qualify for the rural exemption,” NVC-Sancom Comments at 10, or that the IUB should be preempted because of the factual findings it did make about the locations in Iowa where these Iowa-certificated LECs operate.⁵

Nor did the IUB “purport[] to assume jurisdiction over international calls.” NVC-Sancom Comments at 7-8; Aventure Comments at 14-15. To the contrary, the IUB’s Final Order expressly disclaims any jurisdiction “with respect to . . . international traffic,” Final Order at 77, and there are no conceivable grounds for preemption based on the notion that the IUB is improperly regulating international services.⁶

⁴ See Final Order at 68-69 (deciding that the “FCC will be informed of this situation by this Order and may take action, if appropriate”).

⁵ Similarly, even though the IUB has clear authority to determine that a carrier is eligible for universal service support, see 47 U.S.C. § 214(e)(2), the IUB declined to exercise that jurisdiction in this order, and also refused to find that other Iowa LECs had violated the Commission’s rules on USF by misreporting lines, finding that “the federal USF is not this Board’s responsibility or within its jurisdiction.” Final Order at 64.

⁶ These commenters assert that there is something wrong with the IUB’s findings that intrastate access charges do not apply to calls originated in Iowa that the LECs initially routed to FCSCs and that were then forwarded to foreign countries (*id.* at 42), but this is absurd. It was the Iowa LECs which asserted that they could assess intrastate access charges for such calls under their intrastate access tariffs. The IUB had clear authority to resolve these claims, and it properly rejected them on the grounds that the calls did not in fact “terminate in the [Iowa LECs’] exchanges,” and were therefore not intrastate in nature and “not subject to intrastate terminating switched access charges in Iowa.” *Id.* at 42. This holding – which properly applied the

Likewise, the IUB did not, as Petitioners and their supporting commenters erroneously claim, *e.g.*, NVC-Sancom Comments at 11, improperly reclaim telephone numbers from Great Lakes. Rather, the IUB, consistent with the Commission’s numbering rules and orders, reported to NANPA its finding that Great Lakes has not assigned numbers to end users, and left it to NANPA to take appropriate reclamation action. The Commission’s rules indisputably require carriers to begin assigning telephone numbers to “end users” within six months of receiving them,⁷ yet the record before the Board clearly showed that Great Lakes only served FCSCs, which were not end users. Final Order at 66-67. The claim that the IUB lacks authority to issue such an order is belied by the Commission’s own rules, which plainly state that

State commissions may investigate and determine whether service providers have activated their numbering resources and may request proof from all service providers that numbering resources have been activated and assignment of telephone numbers has commenced. . . . The NANPA and the Pooling Administrator shall abide by the state commission’s determination to reclaim numbering resources if the state commission is satisfied that the service provider has not activated and commenced assignment to end users of their numbering resources within six months of receipt.⁸

Commission’s end-to-end analysis – in no way seeks to “assume jurisdiction over” international calls, but merely finds that calls that are only routed *through* Iowa but ultimately terminated in foreign countries do not involve the provision of intrastate access services under the IUB’s interpretations of the intrastate access tariffs.

⁷ *In re Numbering Resource Optimization*, 15 FCC Rcd. 7574, ¶ 232 (2000) (“*First Numbering Order*”), *aff’d*, *Sprint Corp. v. FCC*, 331 F.3d 952, 961 (D.C. Cir. 2001) (“*Sprint*”).

⁸ 47 C.F.R. §§ 52.15(i)(2), (5). The language in the Commission order relied on by NVC-Sancom (at 11) relates to one of the penalties associated with audits of carriers’ compliance with the Commission’s rules, and does not apply to, or purport to limit, the language in Rule 52.15(i) granting “authority to the state commissions to investigate and determine whether code holders have ‘activated’ NXXs assigned to them within the [applicable] time frames.” *First Numbering Order* ¶ 237. Both the Commission order cited by NVC-Sancom and the appellate decision reviewing the Commission’s numbering orders specifically cite with approval to the authority delegated to state commissions. *See In re Numbering Resource Optim.*, 17 FCC Rcd. 252, ¶ 10 (2001) (“States, for example, have been delegated authority to . . . reclaim unused NXX codes”); *Sprint*, 331 F.3d at 961 (citing to *First Numbering Order* ¶ 237)). Of course, even if the IUB had exceeded its delegated authority, that would provide no basis to preempt the IUB’s core findings construing and applying the LECs’ intrastate local exchange and exchange access tariffs.

Even though the IUB’s actual core holdings indisputably concern intrastate tariffs and services in Iowa, it is nevertheless true that the Board’s detailed, well-reasoned analysis and its thorough factual findings will likely prove to be highly persuasive to – and may even in some instances be afforded preclusive effect by – other decisionmakers, such as federal courts, other state regulatory commissions, and the Commission, in resolving similar claims. In particular, the Board’s factual findings that the FCSCs were not subscribers to the LECs’ local exchange tariffs not only cannot be preempted by the Commission in these circumstances,⁹ but should be regarded as conclusive where necessary to resolve interstate access tariff controversies.¹⁰

This is really what the Petitioners and the supporting commenters are afraid of, and why they all but begged the Commission to muzzle the IUB’s Order before it was released. But the fact that the IUB’s Order on intrastate Iowa services might affect rulings on interstate services – because the Commission or federal courts might apply the Board’s factual findings or be persuaded by its tariff analysis – provides no basis for preemption on the facts presented here. Under the “dual regulatory system” contained in federal law, it is settled that “actions taken by federal and state regulators within their respective domains necessarily affect” carriers as a whole and services “in the other ‘hemisphere.’”¹¹ The view reflected in the Petition and

⁹ Section 2(b) of the Communications Act expressly reserves these and other matters “for or in connection with intrastate communication service” to the states. *See* 47 U.S.C. § 152(b); *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355 (1986) (“*Louisiana PSC*”) (“Section 152(b) constitutes . . . a congressional *denial* of power to the FCC to require state commissions to follow FCC . . . practices for intrastate . . . purposes”).

¹⁰ Thus, if the Commission or a federal court were to interpret the Iowa LECs’ interstate access tariffs in the same manner that the IUB interpreted the intrastate tariffs – specifically, to require that access services be charged only when, *inter alia*, calls are terminated to an “end user” that subscribes to the LECs’ local exchange services (*see* Final Order at 20) – then the Commission or court plainly could apply the Board’s findings of fact that the FCSCs did not subscribe to the Iowa LECs’ local exchange services to determine that interstate access services cannot be charged.

¹¹ *Louisiana PSC*, 476 U.S. at 360, 370 (discussing Section 2(b), 47 U.S.C. § 152(b)).

supporting comments that states may regulate only “purely local” services that are entirely “separable from and do not substantially affect interstate communication” was rejected by the Supreme Court in *Louisiana PSC*.¹² As another federal court has stated, *Louisiana PSC* “rejected the suggestion that the FCC’s jurisdiction preempted state action whenever the state action impacted assets used for both interstate and intrastate communication.”¹³ In fact, “nothing in the Act expressly preempts a state from exercising [its] authority to regulate carriers providing intrastate services . . . simply on the basis that” the state regulations also “affect some phone calls that originate and terminate in different states.”¹⁴

Further, the fact that the IUB’s actions on intrastate Iowa-based traffic-pumping schemes might have especially pronounced effects on the interstate “hemisphere” is not because of any overstepping by the IUB but instead can be largely traced to the choice, discussed above, of the Petitioners and other Iowa LECs to incorporate by reference in their intrastate access tariffs the terms and conditions in their interstate access tariffs.¹⁵ If federal decision-makers choose to follow the IUB’s interpretations as to the interstate tariffs, there is nothing improper about that – just as state regulators often choose, in regulating intrastate matters, to mirror or adopt the Commission’s interpretations of parallel interstate requirements.

¹² *Id.* at 373-74.

¹³ *WWC Holding Co., Inc. v. Sopkin*, 488 F.3d 1262, 1270 (10th Cir. 2007).

¹⁴ *Id.*

¹⁵ *See* Final Order at 18 (explaining that, in order to resolve the intrastate tariff issues properly within its jurisdiction, the Board had to interpret the terms and conditions in the interstate tariffs; however, the Board’s interpretations of those terms were “limited to the intrastate application of that language”).

II. THE COMMENTERS' OTHER CLAIMS ARE TOTALLY LACKING IN MERIT AND ARE OUTSIDE THE SCOPE OF THIS PROCEEDING.

The remaining arguments in the comments in support of the Petition concern issues that are outside the scope of this proceeding and, in any event, completely lack merit.

The IXCs Have Not Engaged In Unlawful "Self Help." Several commenters attempt to inject into this docket the question of whether IXCs, faced with access bills connected to LEC traffic pumping schemes that they have investigated and then disputed pursuant to the terms of the LECs' own tariffs, have acted unlawfully in withholding payment while these disputes are resolved.¹⁶ Although these issues are well outside the scope of this docket and have nothing to do with the jurisdictional basis of the IUB Final Order, the claims nonetheless are meritless.

First, the principle of "self-help" cited by these commenters, which is a corollary of the filed tariff doctrine, has no application to the claims here, where the IXCs have vigorously denied that access services were provided pursuant to tariffs and thus that any tariffed amounts are owed.¹⁷ As the cases cited by these commenters state, the "self-help" principle applies to "tariffed services *duly performed*,"¹⁸ but the LECs have never established that they in fact have

¹⁶ See, e.g., Comments of Futurephone.com LLC, WC Docket No. 09-152, at 5 (filed Sept. 21, 2009) ("Futurephone Comments"); Letter from Jonathan Canis to Marlene Dortch, WC Docket No. 09-152, at 2 (filed Sept. 21, 2009) ("20 Telecom CEOs Comments"); Aventure Comments at 9, 12-13; NVC-Sancom Comments at 17-21.

¹⁷ See Mem. Op. & Order, *AT&T Corp. v. Beehive Tel. Co., Inc.*, 17 FCC Rcd. 11641, ¶ 11 & n.37 (2002) (rejecting as "patently meritless" the claim that the filed tariff doctrine bars an access customer from raising claims that it was "billed . . . in violation of [the carrier's] tariff;" the filed rate doctrine "provides no shelter" to the carrier).

¹⁸ Aventure Comments at 12-13; NVC-Sancom Comments at 17-18 (citing *Business WATS, Inc. v. AT&T*, 7 FCC Rcd. 7942, ¶ 2 (1992) (emphasis added)). See also, e.g., *Iowa Network Servs., Inc. v. Qwest Corp.*, 385 F. Supp. 2d 850, 903-04 (S.D. Iowa 2005), *aff'd*, 466 F.3d 1091 (8th Cir. 2006) ("to prevail on its self-[help] claim," the carrier must show that the customer "unlawfully withheld payment due under the terms of [a] valid and applicable tariff" and that where a customer claims that the tariff is inapplicable to the services provided, a "self-help claim is likewise not applicable.").

duly performed according to the terms of their access tariffs – and the IUB’s Final Order (at 70) concludes that the Iowa LECs have failed to provide tariffed access services. Second, and even if in other cases a LEC’s tariffs were found to apply, there can be no improper “self-help” where a LEC’s tariffs permit an IXC customer to withhold payments. The tariffs of the traffic pumping LECs do just that,¹⁹ and the Commission has already authoritatively interpreted the NECA tariff language to provide that “a customer may withhold payment of disputed charges pending resolution of the dispute.”²⁰

Aventure’s “Inherent[] Bias[]” Claim. Alone among the commenters, Aventure contends that the IUB was “inherently biased” against the Iowa LECs and mounts an unfortunate attack on an individual member of the Board. Aventure Comments at ii, 15-19. The claims of bias, like the preemption claims, are based not on the IUB’s actual written order, but on Aventure’s prediction that it would be entirely “one-sided” and would “accept, nearly verbatim, findings of fact and conclusions of law proposed by Qwest.” *Id.* at 16. Like the claims in the Petition, these predictions have also proven to be flatly inaccurate. As confirmed by the IUB’s written Final Order and its comments in this docket (at 3-4), the IUB’s decision did not

¹⁹ See, e.g., Sancom Inc., Tariff F.C.C. No. 1, § 2.4.1(D)(6) (effective Feb. 1, 2005) (“in the event that a billing dispute concerning any charges billed to the customer by the Telephone Company is resolved in favor of the Telephone Company, any payments *withheld* pending settlement of the dispute shall be subject to late payment”) (emphasis added); Northern Valley Commc’ns L.L.C., F.C.C. Tariff No. 2, § 2.4.1(D)(4) (effective Nov. 16, 2004) (“In the event that a billing dispute concerning any charges billed to the customer by the Telephone Company is resolved in favor of the Telephone Company, any payments *withheld* shall be subject to the late payment penalty set forth above”) (emphasis added).

²⁰ See *AT&T v. Beehive*, 17 FCC Rcd. 11641, ¶ 26 & n.91 (interpreting NECA Tariff F.C.C. No. 5, § 2.4.1(D), which was incorporated by reference in Beehive Telephone Companies Tariff F.C.C. No. 1, § 2 (effective August 6, 1997)). Compare NECA Tariff F.C.C. No. 5, § 2.4.1(D) (effective March 9, 2000) (“Late payment charges will apply to amounts withheld pending settlement of the dispute.”) with NECA Tariff F.C.C. No. 5, § 2.4.1(D)(4) (effective August 20, 2003) (“payments withheld pending settlement of the dispute shall be subject to the late payment penalty”) with Northern Valley Commc’ns L.L.C., F.C.C. Tariff No. 2, § 2.4.1(D)(4) (effective Nov. 16, 2004) (“any payments withheld shall be subject to the late payment penalty”).

“uncritical[ly] adopt[.]” (*id.* at 17) Qwest’s position, but carefully evaluated the record evidence (which Aventure concedes is substantial, taking up “70 linear feet” (Aventure Comments at 4)), the arguments made by all parties, and then fully explained the basis for its decisions. In this regard, the notion that the IUB’s decision is adverse to Aventure because of “bias” rather than Aventure’s own egregious misconduct is, to put it mildly, myopic. For instance, the record before the IUB showed that Aventure’s activities in Iowa were to set up traffic pumping schemes to provide pornographic chat and other “services” – which it did exclusively for more than two years – without ever constructing a local exchange network and without ever serving a single real customer, even though it had previously (and falsely) represented to the IUB that it would provide competitive services in Iowa, that it had a network technically able to provide local exchange service, and that it intended to market those services aggressively to residents of rural Iowa exchanges.²¹

In a final show of desperation, Aventure not only attacks the credibility of the Board as a whole, but also accuses Commissioner Tanner of “treachery” in switching sides, possibly “jeopard[izing]” confidential information, and “professional impropriety.” Aventure Comments at 17-18 & n.17. Preliminarily, Aventure never presented *any* of these claims to either the IUB or Commissioner Tanner – indeed, Commissioner Tanner fully disclosed her prior affiliations on the record at the hearing, and Aventure failed to present any objections at that time.²² Because Aventure was plainly aware of the relevant facts, *i.e.*, that Commissioner Tanner had performed limited work on behalf of Aventure on unrelated matters, but decided not to request recusal, its

²¹ Despite operating for several years, and having received millions of dollars of USF support – based on its false representations to the IUB and on false and inflated line counts to the Commission that included test lines and lines used to serve FCSCs – the IUB found that Aventure now serves a mere 140 traditional customers. Final Order at 63-64.

²² IUB Hearing Transcript, Volume I, at 9-10 (Feb. 5, 2009).

current claims against Commissioner Tanner cannot be given any weight. In any event, Aventure provides no reason why the Commission should address these claims at all, let alone in the first instance, or how these claims, even if true, could provide valid grounds for the Commission to preempt the IUB's Final Order. If Aventure has valid claims of "bias" that it has not waived, then it can raise them on appeal in Iowa – although Aventure's failure to raise these claims before the IUB starkly confirms they have no merit.

Beehive, All American, and the "20 Telecom CEOs." The comments submitted by Beehive, All American, and the so-called "20 Telecom CEOs" entirely lack credibility. As to the latter, the entities represented are among the worst traffic-pumping offenders, and the statements that these entities are "20 different companies" that are all "bringing innovative services – including wireline and wireless broadband [and] triple play – to rural and non-rural communities across the country" is at best a gross exaggeration and at worst an outright fabrication.²³ As to the former, many of these companies are simply alter egos of one another, operating according to sham arrangements intent on exploiting the Commission's rules and improperly charging for access services that are not provided. For example, All American, Telemedia, and Joy Enterprises all operate out of the same address in Las Vegas, Nevada, and are or were involved in traffic pumping schemes with Beehive.²⁴ And the claim that these companies are offering new and valuable services is laughable: Joy, for example, appears to

²³ See 20 Telecom CEOs Comments at 1.

²⁴ David Goodale, described as the President of Telemedia Entertainment, also is currently or has served as an officer or director in All American, Audiocom, Joy Enterprises, and Global Conference Partners. Likewise, Donald Surratt, listed as the CFO of All American, also served as a Director in Joy Enterprises. And Ted Shpack, described as the Manager of Audiocom, was affiliated with Global Conference Partners. Further, Beehive and Joy Enterprises have a long history of collaborating on traffic pumping schemes. See Mem. Op. & Order, *AT&T Corp. v. Beehive Tel. Co., Inc.*, 17 FCC Rcd. 11641, ¶ 6 (2002); Mem. Op. and Order, *In re Beehive Tel. Co., Inc.*, 13 FCC Rcd. 12275, ¶ 15 (1998). The participation by All American, which is merely an alter ego of Joy, is merely the latest variation on these long running schemes.

offer primarily adult sex chat services, and All American, its traffic-pumping alter ego, purports to be a “competitive” LEC but it serves no legitimate customers, has no real facilities, and, other than routing chat line calls, appears to provide no local services whatsoever, let alone “triple play” broadband packages.

In this regard, All American’s claim that Commission action is also justified to interfere with ongoing proceedings before the Public Service Commission of Utah is as meritless as the relief sought by the Petition.²⁵ The real facts are that All American asked for authority to serve all areas in Utah, but actually obtained a more limited certificate to operate in non-rural territories of Utah – which it then proceeded immediately to violate and began “operating,” *i.e.*, routing chat line calls, solely in Beehive’s rural Utah territory.²⁶ The Utah PSC denied All American’s request to amend its certificate *nunc pro tunc*, and is now considering, on a prospective basis, whether to modify or to revoke All American’s certificate in Utah.²⁷ There is no basis whatsoever for the Commission to interfere with the Utah PSC’s licensing proceeding.

Similarly, the comments by filed by Beehive primarily raise issues far outside the scope of this docket, and stretch the truth so far that they must be ignored. For instance, while Beehive would have the Commission believe that it is little more than a humble, rural telephone company

²⁵ Comments of All American Telephone Co., Inc., WC Docket No. 09-152 (filed Sept. 21, 2009).

²⁶ Report and Order, *In the Matter of the Petition of All American Telephone Co., Inc. for a nunc pro tunc Amendment of its Certificate of Authority to Operate as a Competitive Local Exchange Carrier within the State of Utah*, Docket No. 08-2469-01, at 18 (Utah Pub. Serv. Comm’n June 16, 2009); Report and Order, *In the Matter of the Consideration of the Rescission, Alteration, or Amendment of the Certificate of Authority of All American to Operate as a Competitive Local Exchange Carrier within the State of Utah*, Docket No. 08-2469-01, at 3 (Utah Pub. Serv. Comm’n Aug. 24, 2009).

²⁷ *Id.*

whose “mission has always been to bring wireline telephone service to unserved areas,”²⁸ the reality is far different. Beehive is better known in the industry as a routine violator of the Commission’s rules,²⁹ and it in fact has continued to engage in traffic pumping schemes with Joy and Joy’s alter ego, All American.³⁰

²⁸ Beehive Comments at 2.

²⁹ See, e.g., Mem. Op. and Order, *In re Beehive Telephone Company, Inc.*, 13 FCC Rcd. 2736 (1998) (finding Beehive’s rates unlawful); Mem. Op. and Order, *In re Beehive Telephone Company, Inc.*, 13 FCC Rcd. 12275 (1998) (same); Mem. Op. and Order, *AT&T Corp. v. Beehive Telephone Company, Inc. and Beehive Telephone Inc. Nevada*, 17 FCC Rcd. 11641 (2002) (finding Beehive violated § 203(c) of the Act).

³⁰ Beehive’s argument that the IUB Final Order is improper because “termination of interstate traffic is a matter of federal law” that does not require termination to an end user, Beehive Comments at 3, both misses the point that the Final Order concerns the termination of only intrastate traffic, an issue well within the IUB’s jurisdiction, and also fails to recognize that the Commission’s rules, like the LECs’ tariffs, define termination to require an “end user.” Section 69.2(b) of the FCC’s rules, 47 C.F.R. § 69.2(b), states that “[a]ccess service includes services and facilities provided for the *origination* or *termination* of any interstate or foreign telecommunication,” and Section 69.2(a) explains how usage is determined for the purpose of billing for terminating access: “On the terminating end of an interstate or foreign call, usage is to be measured from the time the call is received by the *end user* in the terminating exchange.” *Id.* § 69.2(a) (emphasis added). Nothing in the Commission’s rules or orders suggest that these LECs can collect access anytime they route call, without regard for these regulations or the terms of these LECs’ tariffs, which plainly provide that access services, among other requirements, must be routed to an “end user” at an “end user’s premises.”

CONCLUSION

For the foregoing reasons, and those expressed in AT&T's September 21, 2009 Opposition, the Petition should be denied.

David L. Lawson
Michael J. Hunseder
Brendan J. McMurrer
Sidley Austin LLP
1501 K St., N.W.
Washington, D.C. 20005
Phone: (202) 736-8088
Fax: (202) 736-8711

/s/ M. Robert Sutherland

M. Robert Sutherland
Gary L. Phillips
Paul K. Mancini
AT&T Inc.
1120 20th Street, N.W.
Washington, D.C. 20036
Phone: (202) 457-2057

Attorneys for AT&T Inc.

October 6, 2009