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June 23, 2008

**Filed Via ETFS**

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

Re: July 1, 2008 Annual Access Charge Tariff Filings, WCB/Pricing File No. 08-14

Dear Ms. Dortch:

Pursuant to the March 28, 2008 Order of the Pricing Policy Division, WCB/Pricing File No. 08-14, AT&T Corp. today filed via ETFS the attached Petition of AT&T Corp. seeking suspension and investigation of certain annual access tariffs filed on 15 days notice on June 16, 2008. All correspondence related to this filing should be sent to Safir Rammah, Director-Finance, AT&T, Room B-J16.21, 3033 Chain Bridge Road, Oakton, VA, 22185, (703) 691-6186 (tel.), (703) 222-5676 (fax).

Sincerely,

/s/ Christopher T. Shenk

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

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In the Matter of

July 1, 2008  
Annual Access Charge Tariff Filings

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WCB/Pricing File No. 08-14

**PETITION OF AT&T CORP.**

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June 23, 2008

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

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In the Matter of )

July 1, 2008 )

Annual Access Charge Tariff Filings )

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WCB/Pricing File No. 08-14

**PETITION OF AT&T CORP.**

Pursuant to section 204(a)(1) of the Communications Act, 47 U.S.C. § 204(a)(1), section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773, and the Commission's Order, DA 08-758, released March 28, 2008,<sup>1</sup> AT&T Corp. ("AT&T") respectfully requests that the Commission suspend for one day, investigate and issue an accounting order for the individual interstate access tariffs filed by the local exchange carriers ("LECs") listed in Attachment 1.<sup>2</sup>

**INTRODUCTION AND SUMMARY**

Prompt action by the Commission is necessary to address multiple serious errors underlying the 2008 Annual Access Charge Tariffs filed by the National Exchange Carrier Association ("NECA") and the Minnesota Independent Equal Access Corporation, Inc. ("MIEAC"). As detailed below, these LECs' access tariffs are, in numerous respects, flatly inconsistent with the Commission's rules, the relevant court decisions, and publicly available

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<sup>1</sup> Order, *July 1, 2008 Annual Access Charge Filings*, WCB/Pricing File No. 08-14, DA 08-758 (rel. March 28, 2008) (setting procedures and filing dates for the 2008 annual access charge filings).

<sup>2</sup> In particular, the Commission should suspend for one day and investigate the following Annual Access Tariffs: NECA, Transmittal No. 1214, Tariff No. 5 (filed June 16, 2008); MIEAC, Tariff No. 1 (transmittal filed June 16, 2008 with no Transmittal No. provided). *See* Attachment 1, hereto.

data, and AT&T's analysis indicates that, in aggregate, these LECs have inflated their access rates by more than \$17 million.

First, NECA has substantially understated the projected demand it used to compute rates for common transport elements, and because NECA's rates are inversely proportional to demand, this error substantially inflates rates by as much as \$15 million. Rather than estimating demand for common transport elements using the historical demand trends for those elements or other relevant data, NECA instead assumes that demand for the common transport elements will experience the same precipitous reductions as local switching demand. But historical data show that local switching demand is an especially poor predictor of changes in common transport demand – indeed, they appear to be largely *inversely* related. Thus, by assuming that demand for common transport elements will fall by the same percentage as demand for local transport, NECA has severely understated demand for common transport and thus substantially inflated rates.

Second, MIEAC, a rate-of-return carrier, grossly understates the access demand used in its tariffs, and because MIEAC's rates are inversely proportional to demand, this error significantly inflates MIEAC's access rates. MIEAC projects that its 2008/2009 demand for access services will increase by a meager 9.4 percent compared to 2007, when its actual demand for each of the past 5 or more years has, on average, increased by more than 47 percent. And MIEAC's billings to AT&T confirm that this trend has continued into 2008 – the demand in MIEAC's billings to AT&T for the first five months of 2008 increased by nearly 32% compared to the same period in 2007. Moreover, it appears that certain CLECs have initiated traffic pumping schemes using MIEAC's network that are likely to further and quite substantially increase MIEAC's access demand. AT&T estimates that the severely understated demand used

by MIEAC inflates its rates for just terminating transport and tandem switching access by nearly \$2.2 million.

## **ARGUMENT**

### **I. NECA SIGNIFICANTLY UNDERSTATES DEMAND FOR COMMON TRANSPORT RATE ELEMENTS THEREBY SUBSTANTIALLY INFLATING RATES.**

In its 2008 tariff filing, NECA chose not to make demand projections for the common transport elements using any actual historic trends or other information associated with those elements.<sup>3</sup> Instead, NECA has assumed that the demand for these elements will change by the same percentage amount as demand for local switching, which is an entirely different service. Thus, NECA first used an econometric model to project the percentage change in demand for local switching, and then it applied that same percentage change to the common transport elements.<sup>4</sup>

But this methodology is fundamentally flawed because historical data show that local switching demand is an especially poor predictor of changes in common transport demand. Indeed, as shown in Exhibit A,<sup>5</sup> while local switching demand has plummeted in recent years, demand for the common transport elements has remained constant or even *increased*.<sup>6</sup> As just

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<sup>3</sup> The common transport elements include Tandem Switched Minutes of Use, Tandem Switched Terminations, and Tandem Switched Facility Miles.

<sup>4</sup> See NECA Transmittal No. 1214 Volume 3, Exhibit 1, Workpaper 2 of 2. NECA has used a similar approach in prior tariff filings.

<sup>5</sup> All references to Exhibits refer to the Exhibits attached hereto.

<sup>6</sup> That there is no positive historical correlation in demand for local switching and common transport is hardly surprising. Local switching and common transport serve two entirely different purposes, and common transport is often used without local switching. For example, the tandem switching common transport element can be used to switch wireless traffic that does not rely on local switching, thus providing one reason why common transport demand may increase even though local switching demand is decreasing. Moreover, common transport generally is used only in limited situations, such as where the use of a direct transport trunk is

one example, between the 2005/2006 and 2006/2007 tariff years, local switching demand decreased by 11.5 percent, while tandem switched minutes demand (one of the common transport rate elements) *increased* by more than 12 percent. Thus, as shown in Exhibit B, NECA's assumption that the common transport elements will change by the same percentage as demand for local switching produces substantially understated demand estimates for the common transport elements. For example, actual demand for tandem switched facility miles (one of the common transport elements) has steadily increased from 296 billion in the 2004/2005 tariff year to more than 308 billion in the 2006/2007 tariff year, and there is no evidence at all that this trend will reverse. Yet, NECA assumes, with no explanation, that this upward trend will reverse and that demand for tandem switched facility miles will fall by *50 billion* to less than 253 billion – the lowest level since at least 1999 – based solely on the incorrect assumption that changes in demand for common transport elements will mirror that of demand for local switching.

The vastly understated demand projections produced by NECA's flawed methodology result in grossly overstated rates. Assuming, for example, that NECA's 2008/2009 tariff year demand for the common transport elements is closer to the five year average of the actual demand for those elements, the common transport rates in NECA's 2008 tariffs are inflated by nearly \$15 million. *See* Exhibit B, at 3.

## **II. MIEAC SIGNIFICANTLY UNDERSTATES ACCESS DEMAND THEREBY SUBSTANTIALLY INFLATING RATES.**

The completely undocumented and unexplained demand projections used by MIEAC to compute its access rates are clearly understated. MIEAC projects that its 2008/2009 demand for

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not economically justified or to provide additional capacity when there are temporary spikes in demand at end offices, thus largely insulating it from general market trends in traffic volumes that greatly affect local switching demand.

access services will increase by only 9.4 percent compared to 2007. But according to the data reported by MIEAC in its 2004, 2006, and 2008 filings, its actual demand from 2003 through 2007 grew on average by more than *47 percent* each year, and for the most recent period (2006 to 2007), its demand grew by nearly *55 percent*. *See Exhibit C.*<sup>7</sup> Moreover, MIEAC's bills to AT&T confirm that these growth trends have continued into 2008 – the number of access minutes billed by MIEAC to AT&T for the first five months of 2008 increased by nearly 32% compared to the same period in 2007. There is thus no conceivable legitimate basis for MIEAC's unexplained and undocumented projection that demand will increase by only 9.4 percent in 2008/2009.

That MIEAC's demand projections for access services are vastly understated is consistent with its history of significantly understating projected demand. In 2004, its projected demand was 67.67 percent below its reported actual demand, and in 2006 its projected demand was 22.05 percent below its reported actual demand. *See Exhibit C.*

Moreover, there is strong evidence that the amount of terminating traffic carried by MIEAC will increase by even more this year than historical trends would suggest. AT&T has been informed by certain CLECs that they intend to engage in traffic pumping activities and that they intend to carry that traffic in part on intermediate networks, including MIEAC's network. And, recent data indicates that these CLECs have initiated those traffic pumping activities. In April and May of this year, the terminating access volumes MIEAC billed to AT&T increased by about 60% compared to the terminating access volumes billed from January through March. As the Commission has recognized, where traffic pumping schemes are present, historical demand

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<sup>7</sup> The annual growth rates were as follows: 74.43% in 2004, by 16.41% in 2005, by 44.14% in 2006 and by 54.72% in 2007.



will likely substantially understate future volumes, and any rates that do not reflect the substantial traffic increases caused by traffic-pumping almost certainly will become unjust and unreasonable.<sup>8</sup> In such circumstances, the Commission has recognized that suspension and investigation is appropriate where traffic projections that rely on historical demand,<sup>9</sup> and suspension and investigation is especially appropriate here, where MEIAC's demand projections are far below even historical trends.

The severely understated demand projections used by MIEAC produce rates that are far above just and reasonable levels. MIEAC is a rate-of-return carrier that files rates pursuant to Section 61.38 of the Commission's rules, and its rates therefore are essentially computed as a function of its estimated revenue requirement (*i.e.*, cost plus return) divided by its total projected traffic volumes (*i.e.*, demand) for those services. MIEAC's use of understated demand projections therefore vastly inflates rates. Using the minutes contained in the bills that MIEAC sent to AT&T for the first five months of 2008, AT&T has estimated industry-wide annual demand based on those five months using reasonable market share assumptions. Those demand projections confirm that MIEAC's terminating transport rate should be no higher than \$0.0004, not \$0.0008, and its terminating tandem switching rate should be no higher than \$0.0015, not \$0.0024. *See* Exhibit D. AT&T thus estimates that MIEAC's understated demand projections and corresponding inflated rates result in industry-wide overcharges of nearly \$2.2 million for

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<sup>8</sup> *See e.g.*, Order, *July 2007 Annual Access Tariff Filings*, 22 FCC Rcd. 11619, ¶¶ 4, 7 (2007) ("2007 Suspension Order"); Order Designating Issues for Investigation, *Investigation of Certain 2007 Annual Access Tariffs*, 22 FCC Rcd. 16109, ¶ 15 (2007); Notice of Proposed Rulemaking, *Establishing Just And Reasonable Rates for Local Exchange Carriers*, 22 FCC Rcd. 17989, ¶ 14 (2007).

<sup>9</sup> *2007 Suspension Order*, ¶¶ 4, 7.

just terminating transport and terminating tandem switching – and that is before accounting for any traffic pumping schemes engaged in by CLECs using MIEAC's network. *See* Exhibit D.

### **CONCLUSION**

For the reasons stated above, the Commission should suspend for one day and investigate the tariff revisions filed by NECA and MIEAC, as detailed in Attachment 1, and impose an accounting order.

Respectfully submitted,

AT&T Corp.

By /s/ M. Robert Sutherland

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June 23, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of June, 2008, I caused true and correct copies of the foregoing Petition of AT&T Corp. to be served on all parties by as shown on the attached Service List.

Dated: June 23, 2008  
Washington, D.C.

/s/ Christopher T. Shenk

## **SERVICE LIST**

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**ATTACHMENT 1**

**TARIFFS THAT THE COMMISSION SHOULD  
SUSPEND AND INVESTIGATE**

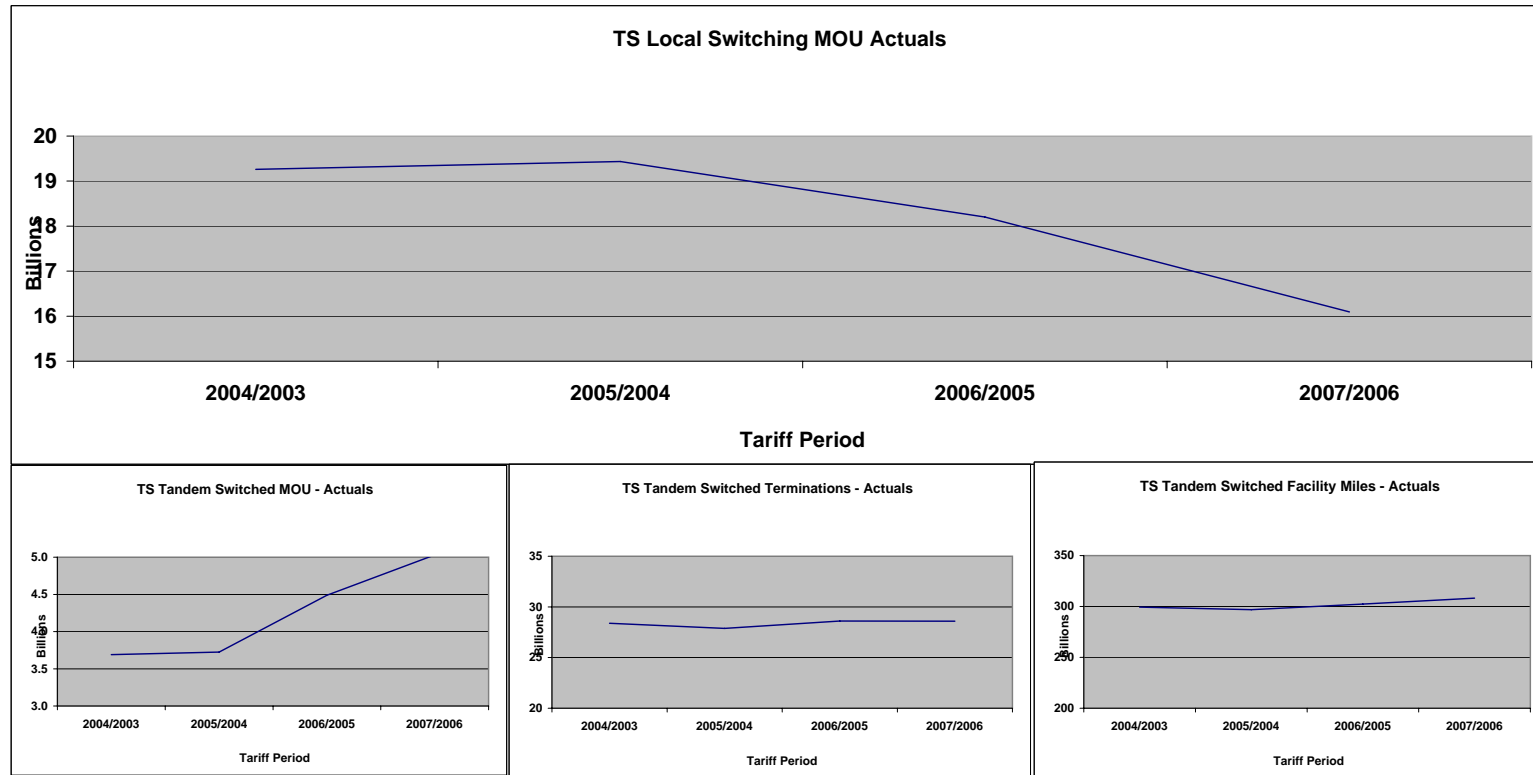
<b><u>COMPANY</u></b>	<b><u>FCC TARIFF NO.</u></b>	<b><u>TRANSMITTAL NO.</u></b>
Minnesota Independent Equal Access Corporation (MIEAC)	1	Transmittal Letter filed June 16, 2008 with no Transmittal Number Provided
National Exchange Carrier Association (NECA)	5	1214

**NOTE:** The above rate-of-return LEC tariffs should be suspended for one day.

## **EXHIBITS**

## Comparison of Historical Changes in NECA's Local Switching and Common Transport Demand

Exhibit A



# History of NECA's Actual and Projected Local Switching And Common Transport Demand \*

Exhibit B Page 1 of 3

## LOCAL SWITCHING

### TS LOCAL SWITCHING CHARGEABLE MOU

<u>By Year:</u>		<u>By Tariff Period:</u>		NECA
<u>Year</u>	<u>Reported Actuals</u>	<u>Tariff Period</u>	<u>Tariff Period Actual</u>	<u>Tariff Period Forecast</u>
2003	18,992,641,426	2002/2003		
2004	19,529,040,747	2003/2004	19,260,841,087	19,518,654,697
2005	19,340,458,718	2004/2005	19,434,749,733	18,908,763,453
2006	17,063,479,995	2005/2006	18,201,969,357	20,123,305,617
2007	15,125,497,727	2006/2007	16,094,488,861	18,923,940,166
2008	(not yet available)	2007/2008	(not yet available)	15,093,639,006
2009	(not yet available)	2008/2009	(not yet available)	12,504,298,580

## COMMON TRANSPORT RATE ELEMENTS

### TS TANDEM SWITCHED MOU

<u>By Year:</u>		<u>By Tariff Period:</u>		NECA
<u>Year</u>	<u>Reported Actuals</u>	<u>Tariff Period</u>	<u>Tariff Period Actual</u>	<u>Tariff Period Forecast</u>
2003	3,558,383,451	2002/2003		
2004	3,820,181,899	2003/2004	3,689,282,675	4,748,422,494
2005	3,631,360,090	2004/2005	3,725,770,995	3,541,753,711
2006	5,346,250,792	2005/2006	4,488,805,441	3,929,612,191
2007	4,714,541,815	2006/2007	5,030,396,304	3,553,638,161
2008	(not yet available)	2007/2008	(not yet available)	4,723,722,868
2009	(not yet available)	2008/2009	(not yet available)	3,901,921,273

### TS TANDEM SWITCHED TERMINATIONS

<u>By Year:</u>		<u>By Tariff Period:</u>		NECA
<u>Year</u>	<u>Reported Actuals</u>	<u>Tariff Period</u>	<u>Tariff Period Actual</u>	<u>Tariff Period Forecast</u>
2003	28,298,404,800	2002/2003		
2004	28,468,752,170	2003/2004	28,383,578,485	31,091,525,098
2005	27,290,110,087	2004/2005	27,879,431,129	28,166,155,105
2006	29,914,470,933	2005/2006	28,602,290,510	29,284,248,380
2007	27,259,550,312	2006/2007	28,587,010,623	26,706,020,397
2008	(not yet available)	2007/2008	(not yet available)	26,431,171,288
2009	(not yet available)	2008/2009	(not yet available)	22,562,261,347

### TS TANDEM SWITCHED FACILITY MILES

<u>By Year:</u>		<u>By Tariff Period:</u>		NECA
<u>Year</u>	<u>Reported Actuals</u>	<u>Tariff Period</u>	<u>Tariff Period Actual</u>	<u>Tariff Period Forecast</u>
2003	299,065,314,725	2002/2003		
2004	299,602,071,124	2003/2004	299,333,692,925	348,062,414,655
2005	294,052,270,679	2004/2005	296,827,170,902	297,667,663,628
2006	310,627,459,924	2005/2006	302,339,865,302	308,184,265,101
2007	305,753,282,195	2006/2007	308,190,371,060	287,758,675,712
2008	(not yet available)	2007/2008	(not yet available)	274,457,389,484
2009	(not yet available)	2008/2009	(not yet available)	252,994,910,155

\* Tariff References on Page 2



## **History of NECA's Actual and Projected Local Switching And Common Transport Demand \***

Tariff period actual is computed as one half each included year actual

### **Tariff References**

2002 actual data is per NECA Transmittal No. 1030 Volume 3, Exhibit 1. Workpaper 2 of 2.

2003 actual data is per NECA Transmittal 1030 No. Volume 3, Exhibit 1. Workpaper 2 of 2.

The 2002/2003 Tariff Period Forecast is per NECA Transmittal No. 939 Volume 3, Exhibit 1. Workpaper 2 of 2.

2004 actual data is per NECA Transmittal 1077 No. Volume 3, Exhibit 1. Workpaper 2 of 2.

The 2003/2004 Tariff Period Forecast is per NECA Transmittal No. 988 Volume 3, Exhibit 1. Workpaper 2 of 2.

2005 actual data is per NECA Transmittal 1129 No. Volume 3, Exhibit 1. Workpaper 2 of 2.

The 2004/2005 Tariff Period Forecast is per NECA Transmittal No. 1030 Volume 3, Exhibit 1. Workpaper 2 of 2.

2006 actual data is per NECA Transmittal 1172 No. Volume 3, Exhibit 1. Workpaper 2 of 2.

The 2005/2006 Tariff Period Forecast is per NECA Transmittal No. 1077 Volume 3, Exhibit 1. Workpaper 2 of 2.

2007 actual data is per NECA Transmittal 1214 No. Volume 3, Exhibit 1. Workpaper 2 of 2.

The 2006/2007 Tariff Period Forecast is per NECA Transmittal No. 1129 Volume 3, Exhibit 1. Workpaper 2 of 2.

The 2007/2008 Tariff Period Forecast is per NECA Transmittal No. 1172 Volume 3, Exhibit 1. Workpaper 2 of 2.

The 2008/2009 Tariff Period Forecast is per NECA Transmittal No. 1214 Volume 3, Exhibit 1. Workpaper 2 of 2.

## NECA POOL REVENUE RECOVERY OVERSTATEMENT.

Exhibit B Page 3 of 3

Description	NECA's Calculations (1)	Corrected Demand (2)	Over Recovery Col (2-1) * MOU
1. Proposed Tandem Revenue Recovery	\$9,033,905	\$9,033,905	
2. Tandem Minute Projection (MOU*)	3,901,921,273	4,214,143,609	
3. Calculated Rate (L2/L1)	\$0.002315	\$0.002144	
4. Tandem Switching Over Recovery			\$722,871
5. Proposed Tandem Switched Termination Revenue	\$21,343,899	\$21,343,899	
6. Tandem Switched Termination (MOU*)	22,562,261,347	28,246,257,660	
7. Calculated Rate (L5/L6)	\$0.000946	\$0.000756	
8. Tandem Switched Termination			\$5,377,061
9. Proposed Tandem Switched Termination Revenue	\$46,045,074	\$46,045,074	
10. Tandem Switched Facility Projection (MOU*)	252,994,910,155	301,820,079,729	
11. Calculated Rate	\$0.000182	\$0.000153	
12. Tandem Switched Facility Over Recovery			\$8,886,181
<b>13. Total Over Recovery (Col H, L 4 + L 8 + L 12)</b>			<b>\$14,986,113</b>

1. NECA Revenue and Data Per Transmittal No. 1214, Volume 5, Exhibits 12, Workpaper 7 of 10 and Workpaper 8 of 10.

2. Corrected Demand is the average of the 5 years of actuals 2003-2007.

**Minnesota Independent Equal Access Corporation  
Historical Forecasts and Actual Demand**

Exhibit C

A	B	C	D	E	F	G (Yt-Yt-1)/Yt-1	H	I (Yt+Yt-1)/2	J	K (J - I)	L (K / I)
Line	MIEAC Transmittal No.	Date Filed	Source	Year	Actuals as filed	Yr/Yr Growth	Tariff Period	Tariff Period Actuals	Forecast as filed	Forecast vs Actuals Difference	Percent Difference
1	T-18	6/24/04	DMD-1, P3 of 3, T-18, 6/24/04	2003	474,155,660		2004/2005	894,916,845	289,283,772	(605,633,073)	-67.67%
2			DMD-1, P3 of 3, Ltr, 6/16/06	2004	827,054,052	74.43%	2005/2006	1,175,277,106	n/a		
3	Letter	6/16/06	DMD-1, P3 of 3, Ltr, 6/16/06	2005	962,779,637	16.41%	2006/2007	1,767,472,313	1,377,784,340	(389,687,973)	-22.05%
4			DMD-1, P3 of 3, Ltr, 6/16/08	2006	1,387,774,575	44.14%	2007/2008	n/a	n/a		
5	Letter	6/16/08	DMD-1, P3 of 3, Ltr, 6/16/08	2007	2,147,170,050	54.72%	2008/2009	n/a	2,350,050,037		
6			Average Yr/Yr Growth			47.43%					
			MIEAC Projected Growth For 2008/2009			9.40%					

**Minnesota Independent Equal Access Corporation**  
**Corrected Rate and Revenue Over-Recovery**

Exhibit D

Line	Calculation	Source	Terminating Transport Rate	Terminating Tandem Switching Rate	Total
1		Trans. Ltr., 6/16/08, Rate Schedule	\$0.0008	\$0.0024	3,409,963,464
2		Trans. Ltr., 6/16/08, Rate Schedule Annual Industry Filed MOUs	899,597,080	1,022,269,415	
3		Annualized Industry MOUs based on 5 months of AT&T Billing	1,771,072,288	1,638,891,176	
4	L1*L2	Filed Revenue Requirement	\$719,678	\$2,453,447	
5	L4/L3	Corrected Rate	\$0.0004	\$0.0015	
6	(L1-L5)/L5	Percent Difference	96.9%	60.3%	
7	L1-L5	Rate Difference	\$0.0004	\$0.0009	
8	L7*L3	Revenue Difference	\$697,180	\$1,479,892	\$2,177,072