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VIA ELECTRONIC FILING

June 26, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

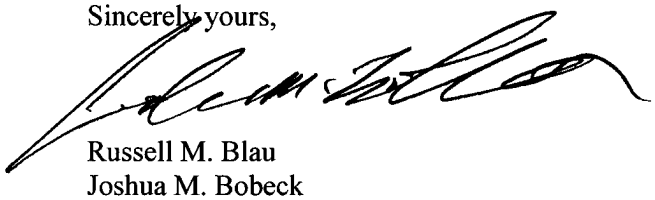
Re: Opposition of Minnesota Independent Equal Access Corporation to Petition of AT&T Corp.
WCB/Pricing File No. 08-14

Dear Ms. Dortch:

Minnesota Independent Equal Access Corporation ("MIEAC"), through its undersigned counsel, hereby electronically files its Opposition to Petition of AT&T Corp. For the purpose of this proceeding, please note that Russell Blau of Bingham McCutchen LLP will be representing MIEAC in place of Glenn Richards at Pillsbury Winthrop Shaw Pittman LLP. Therefore, all correspondence relating to this proceeding should be sent to Russell Blau, Bingham McCutchen LLP, 2020 K Street, N.W., Washington, DC 20006, (202)373-6035 (Tel), (202)373-6001 (Fax), russell.blau@bingham.com or joshua.bobeck@bingham.com (Email).

Please contact the undersigned should you have any questions concerning this submission.

Sincerely yours,



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

In the Matter of	)	
	)	WCB/Pricing File No. 08-14
July 1, 2008	)	
Annual Access Charge Tariff Filings	)	

OPPOSITION OF MINNESOTA INDEPENDENT EQUAL ACCESS CORPORATION TO PETITION OF AT&T CORP.

Minnesota Independent Equal Access Corporation ("MIEAC"), through its undersigned attorneys, respectfully requests that the Commission deny the petition of AT&T. On June 23, 2008, AT&T requested that the Commission suspend for one day, investigate, and issue an accounting order for "the individual interstate access tariff" filed by MIEAC. AT&T Petition p. 1. In fact, however, MIEAC did not file any interstate access tariff. MIEAC is proposing no increase in its rates, so there is no "new or revised charge, classification, regulation, or practice" for the Commission to consider suspending, and AT&T's Petition is a procedural nullity. Even apart from that defect, AT&T has shown no reason for the Commission to investigate MIEAC's interstate access rates. MIEAC's rate of return is well below the prescribed threshold of 11.25% and MIEAC has provided ample support for its demand projections.

I. AT&T's Petition to Suspend is Procedurally Deficient Because There is No Revised Tariff or Rate for the Commission to Suspend

AT&T's Petition requests relief that the Commission lacks authority to grant. While the Commission may suspend a "*new or revised* charge, classification, regulation, or practice" filed pursuant to Section 204(a)(3), 47 U.S.C. § 204(a)(3) (emphasis added),

it has no power to suspend existing rates or practices. It may only prescribe new rates prospectively, after "full opportunity for hearing." 47 U.S.C. § 205. Because AT&T's petition was filed long after MIEAC's last revised tariff filing became effective on February 26, 2004,[1] AT&T's petition for suspension is untimely.

MIEAC's June 16, 2008 filing clearly states that it "proposes no changes to its existing rates or rate structure."[2] MIEAC did not submit any revised tariff pages. Although it filed the Tariff Review Plan ("TRP") required by the Commission,[3] "[t]he data filed with the TRP do not constitute rates within the meaning of the Act."[4]

The Commission cannot now suspend MIEAC's tariff, which was filed pursuant to Section 204(a)(3) of the Communications Act. This section provides that:

> A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission *unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period*, as is appropriate.

(emphasis supplied). Section 204(a)(1), in turn, authorizes the Commission to "suspend" new tariffed rates or terms pending a hearing on the lawfulness of the new rates or terms.[5] Thus, under the plain language of section 204(a)(3) the Commission may only "suspend"

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[1] MIEAC FCC No. 1, Transmittal 17, March 17, 2004.

[2] MIEAC FCC No. 1 Tariff Review Plan filing, WCB/Pricing File No. 08-14 at p. 1.

[3] *Material to be Filed in Support of 2008 Annual Access Tariff Filings*, Tariff Review Plans, DA 08-759 (WCB Pricing Div. released March 28, 2008).

[4] *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Order on Reconsideration, 17 FCC Rcd 17040, 17045 (2002).

[5] 47 U.S.C. § 204(a)(1).

revised rates or terms filed pursuant to § 204(a)(3) "before the end of that 7-day or 15-day period." And the Commission has also determined that that it may not apply its general section 203(b)(2) power to defer tariffs by 120 days to tariffs filed under section 204(a)(3).[6]

While the Commission has the authority to investigate tariffs pursuant to Section 205, that section requires a "full opportunity for hearing" before the Commission prescribes new rates or terms.[7] Any challenge to the existing rates would have to be prospective only, because the rates in the 2004 filing are "deemed lawful" pursuant to Section 204(a)(3) . Under that provision, a revised "tariff that takes effect without prior suspension or investigation is conclusively presumed to be reasonable and, thus, a lawful tariff."[8] A party may challenge a tariff that has taken effect under this provision only through a section 205 or section 208 proceeding.[9] Because the rates in MIEAC's February 2004 tariff filing are the lawful rates, any refunds would be "impermissible as a form of retroactive ratemaking."[10] Suspending the current tariff, even if it were permissible (which it is not), would be pointless as MIEAC would not be obligated to provide any refunds in the unlikely event the Commission were to prescribe new rates.

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[6] *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, 12 FCC Rcd 2170, 2175 ¶ 6 (1997) ("*Streamlined Tariff Order*").

[7] 47 U.S.C. § 205.

[8] *Streamlined Tariff Order*, 12 FCC Rcd at 2182 ¶ 19.

[9] *See id.* at 2183 ¶ 21.

[10] *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 411 (D.C. Cir. 2002), *citing Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Railway Co.*, 284 U.S. 370, 387-89 (1932); *see also Streamlined Tariff Order*, 12 FCC Rcd at 2182-83, ¶¶ 20-21.

II. MIEAC's Current Tariffed Rates are Just and Reasonable and Competitive

Apart from the procedural defects of AT&T's petition, AT&T has not shown cause for an investigation of MIEAC's rates. Not only are those rates just and reasonable, they are considerably lower than the level permitted by Commission rules, because MIEAC is currently under earning. AT&T ignores one of the most critical pieces of evidence the Commission considers in determining whether rates are just and reasonable—whether MIEAC's rates would lead to a rate of return higher than the 11.25% ceiling set by the Commission.

AT&T's concerns about MIEAC's rates are largely based on the false premise that "MIEAC's rates are inversely proportional to demand." AT&T Petition at 2. AT&T asserts that these "rates are essentially computed as a function of its estimated revenues requirement (*i.e.*, cost plus return) divided by its total projected traffic volumes (*i.e.*, demand) for those services." AT&T Petition at 6. This equation would be correct only if MIEAC's rates were designed to produce the maximum allowable return of 11.25%. As MIEAC clearly explained in its TRP transmittal, however, this is not the case; its forecast rate of return is only 2.44%.[11]

MIEAC has proposed no increase in its interstate switched access rates, despite its low rate of return, because market forces make rate increases untenable. MIEAC has a different role than ILECs in the marketplace because it provides centralized equal access service to interexchange carriers in Minnesota.[12] MIEAC does not serve end users; rather, it provides tandem switching and transport to enable efficient interconnection between

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[11] *See* Declaration of Fritz Hendricks, President of Onvoy Voice Services on behalf of MIEAC (attached to this reply) at ¶ 8 ("Hendricks Decl.").

[12] *See id.* ¶ 4.

IXCs and rural LECs throughout Minnesota. MIEAC's terminating services are subject to competition from incumbent LECs (such as Qwest, the dominant ILEC in Minnesota), which offer transport and switching services that enable termination of interstate access traffic. Moreover, at any time, an IXC can utilize alternatives to terminate interstate access traffic to the LEC, thereby bypassing MIEAC.[13] IXCs also can reduce their use of MIEAC transport services by rerouting their traffic, as AT&T itself recently has done, which resulted in a reduction in the demand that MIEAC otherwise would have forecast.

Because of these competitive pressures, MIEAC has elected to maintain its current rates, last revised in 2004, despite the fact that its rates are below the levels that would be permissible under the Commission's cost rules.[14] MIEAC's aggregate terminating rate is currently $0.0032. That aggregate rate is lower than incumbent Qwest's aggregate rate of $0.003669.[15] If MIEAC were to raise its rates to allow a theoretical 11.25% rate of return, it most likely would never achieve that level because its services would no longer be competitively attractive, and many of its customers would stop using its services as result of the hypothetical rate increase.

Alternatively, for MIEAC to earn a rate of return of 11.25% at its *current* rates, it would need to receive an increase of 849,309,375 terminating minutes over the projections in its 2008 TRP. That is, even if MIEAC were to receive a 44% increase *over* its forecast for terminating minutes, which in turn includes a projected increase over

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[13] *See id.* ¶ 5.

[14] *See id.* ¶ 7.

[15] *See id* ¶ 6. Qwest's rate calculated using 50 miles of transport. MIEAC's transport rates are not mileage sensitive, and the average distance from switch to LEC interface is roughly 50 miles. In addition, IXC costs to use Qwest and other tandems are higher than MIEAC because the IXC must bring traffic to the Qwest tandem, rather than to one of several transfer points throughout the state available from MIEAC. *Id.*

historical levels, it would still not be overearning.[16] In short, MIEAC's interstate access rates not only are just and reasonable, they are designed to be attractive to customers such as AT&T in a competitive market, not to maximize the company's rate of return.

III. MIEAC's Demand Projections Are Reasonable and Supported

A. MIEAC's Projections Reasonably Reflect Disparate Trends in Originating and Terminating Traffic

AT&T alleges that MIEAC's demand projections are understated and lack sufficient document and explanation. AT&T Petition at 4. However, as explained in the attached Declaration of Fritz Hendricks, MIEAC's demand projections are reasonable and are based on sound business judgment, in light of a variety of trends affecting the company's operations.

MIEAC's traffic forecast is premised on two factors: (1) the number of originating minutes of use will continue to decline, consistent with historical trends; and (2) the number of terminating minutes of use will increase, but the level of increase is mitigated by a number of factors. Although AT&T focuses on the overall increase of 9.4% in projected interstate demand, Petition at 5, this is the net result of declining originating and increasing terminating usage.[17] The TRP forecasts an increase of 14.67%

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[16] *See id.* ¶ 8.

[17] AT&T mistakenly suggests that MIEAC's data is skewed because it ignores 2007 and partial 2008 data. Petition at 6. The projections provided in MIEAC's TRP are consistent with the FCC's rules and the requirements of the Pricing Division guidelines for the July 1, 2008 TRP filings. *See Material to be filed in Support of 2008 Annual Access Tariff Filings*, WCB/Pricing File No. 08-15, Order, DA-08-759 (March 28, 2008). MIEAC included historical year 2007 minute of use data for terminating tandem switching and transport in Schedules DMD-1, page 3 and DMD-4. These are actual amounts, not projections. Further, as explained in this Opposition, MIEAC's forecasts result from the application of its reasonable business judgment to a variety of factors, not a simple extrapolation of historical data. *See* Hendricks Decl. ¶ 14.

in terminating usage from 2007 through the test year, composed of a 20.89% increase in terminating tandem switching and 8.34% increase in terminating transport.

MIEAC anticipates a continuation of the recent trend of declining originating minutes. MIEAC has been experiencing declining originating minutes of use from the 90 Minnesota LECs connected to its tandem. No activity in the market indicates that originating minutes will do anything other than decline over the foreseeable future, consistent with the nationwide trend among incumbent LECs as well as MIEAC's own experience in Minnesota.

Multiple factors affected MIEAC's projected increase in terminating minutes. First, MIEAC historically has experienced increased terminating traffic as additional LECs and CLECs have chosen MIEAC as their tandem of choice in the Local Exchange Routing Guide ("LERG"), which in turn is due in part to MIEAC's competitive rate levels. MIEAC anticipates that this factor will have less impact in 2008-09 than in the past, however, because most of the LECs in Minnesota that are able to use MIEAC as their terminating tandem already do so. The number of LECs using MIEAC as their terminating provider has grown from 8 LECs in 2003 to 79 LECs today.[18] When additional LECs choose MIEAC to be the terminating tandem, this causes an increase in terminating minutes. Today, however, the number of LECs that use MIEAC as a terminating tandem is only slightly lower than the number that use MIEAC as an originating tandem. It is therefore unlikely that this source of growth will continue at the historical rate.

[18] MIEAC serves as an originating tandem for 90 LECs (including CLECs).

Second, and offsetting the first factor, MIEAC anticipates that the number of terminating minutes delivered to most of the LECs that are already connected to its tandem will decline. As the Commission is aware, local exchange carriers are experiencing a decrease in access lines. According to the most recent Commission report available, local telephone carriers lost approximately 37 million access lines in the five year period from 2001 to 2006 with a seven percent loss in 2006 alone.[19] The Commission concluded that customer substitution of wireless for wireline service was a "significant reason" for this decrease.[20] MIEAC projects that these trends will affect its terminating traffic volumes in roughly the same manner as originating volumes.

Third, MIEAC's terminating traffic can fluctuate due to the competitive nature of this service. IXCs themselves can choose alternative tandem options, thus bypassing MIEAC as the tandem switching provider. MIEAC has received notice that one interexchange carrier with significant minutes of terminating traffic intends to move its traffic to alternative tandem options and away from MIEAC during 2008.[21] AT&T itself recently has redirected its traffic to reduce the number of MIEAC originating and terminating transport minutes.[22] MIEAC has taken into account in its forecast both the reduction of AT&T usage and the anticipated reduction of usage by the other IXC.

For these reasons, MIEAC's forecast of an increase over historical year 2007 in terminating minutes of 14.67% (composed of a 20.89% increase in terminating tandem

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[19] *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 12th Report, 23 FCC Rcd 2241, 2340 (2008).

[20] *Id.*

[21] *See* Hendricks Decl. ¶ 13.

[22] *See id.* ¶ 13.

switching and 8.34% increase in terminating transport) is reasonable.[23] However, in the unlikely event that MIEAC did underestimate the increase in terminating minutes, the difference between the revenue MIEAC projects, and the revenue requirement that it is entitled to earn, means that MIEAC could sustain an additional 44% increase in terminating minutes, or 849 million more terminating minutes, above and beyond the forecasted increase, before it approached the overearning threshold.[24]

B. AT&T's Allegations of Widespread Traffic Pumping Are Unsupported

AT&T seeks to spice up its argument that MIEAC has understated demand by claiming that certain CLECs intend to "engage in traffic pumping activities" and carry that traffic through MIEAC's tandem. Petition at 5. But it offers no evidence in support of this claim.[25]

AT&T's claims of traffic stimulation on MIEAC's network are exaggerated. Based on MIEAC's review, terminating minutes have increased significantly to only one CLEC. Of the more than 90 LECs and CLECs served, only one CLEC shows a significant increase that could be related to traffic stimulation.[26] MIEAC has taken this CLEC's traffic into account in its projections. MIEAC, as a common carrier, must terminate all traffic that is routed through it. MIEAC does not control and cannot

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[23] *See id.* ¶ 15. Compared against 2006, the projected increase in terminating minutes is 31.1% (47.18% increase in terminating tandem switching and 16.64% increase in terminating transport).

[24] *See id.* ¶ 8.

[25] According to the Petition, "AT&T has been informed by certain CLECs that they intend to engage in traffic pumping activities ...." It is hard to comprehend why, if a CLEC were planning to engage in conduct that was likely to result in billing disputes with AT&T, it would give AT&T advance notice of its intent. Even so, however, this is no more than hearsay from unnamed source(s).

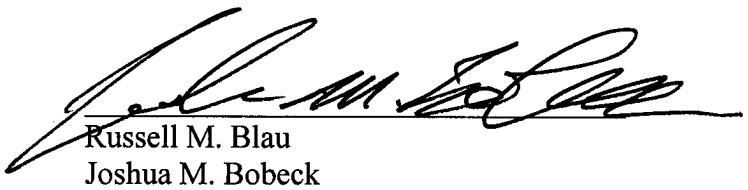
[26] *See* Hendricks Decl. ¶ 6.

influence what the LECs and CLECs are doing and what methods they employ to drive traffic to their networks. MIEAC can only serve and account for the minutes in its forecast based upon data about the minutes that pass through its tandem. MIEAC has received no notice of additional LECs indicating they will engage in traffic stimulation or that MIEAC will be the designated tandem provider.

CONCLUSION

For the reasons stated above, the Commission should deny the petition of AT&T as it applies to MIEAC.

Respectfully submitted,



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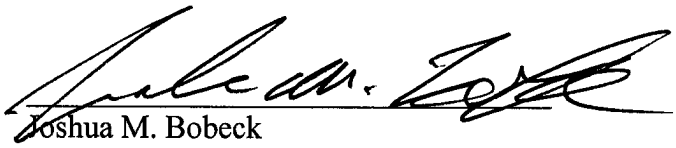
Counsel for Minnesota Independent Equal Access Corporation

June 26, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 2008, I caused true and correct copies of the foregoing Opposition of Minnesota Independent Equal Access Corporation to be served on all parties as shown on the Service List below.



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

In the Matter of	)	
July 1, 2008 Annual Access Charge Tariff Filings	)	WCB/Pricing File No. 08-14

DECLARATION OF FRITZ HENDRICKS
PRESIDENT, ONVOY VOICE SERVICES ON BEHALF OF
MINNESOTA INDEPENDENT EQUAL ACCESS CORPORATION

1. I am Fritz Hendricks, President of Onvoy Voice Services, a division of Onvoy, Inc. which in turn is wholly owned by Zayo Group LLC. Minnesota Independent Equal Access Corporation ("MIEAC") is a wholly owned subsidiary of Onvoy, Inc.

2. It is my responsibility as President of Onvoy Voice Services to oversee the MIEAC FCC No. 1 Tariff, the filing of the 2008 Tariff Review Plan ("TRP") and to account for the accuracy of the forecasts contained therein.

3. The purpose of my declaration is to support the MIEAC 2008 TRP filing and reply to the claims in AT&T's Petition filed June 23, 2008. I have personal knowledge of all facts stated herein.

4. MIEAC is a Centralized Equal Access Provider. MIEAC does not have end users, and does not offer any access service other than tandem switching and transport services to Interexchange Carriers ("IXCs").

5. MIEAC's terminating rates are offered on a competitive basis. That is, unlike the originating service, IXCs are not obligated to use MIEAC for tandem services.

Therefore, at any time, IXCs may choose alternative tandem options thus bypassing MIEAC.

6. Because the terminating services it offers are subject to competitive pressure, MIEAC's current rates for terminating tandem and transport services are lower than those of the dominant incumbent local exchange carrier in the market, Qwest. MIEAC charges $0.0024/minute for tandem switching, and $0.0008/minute for transport on a non distance sensitive basis, while Qwest charges .002545/minute for tandem switching and $0.001124/minute for common transport, assuming a distance of 50 miles, which is the average distance between the MIEAC switch and the points at which MIEAC interconnects with the LECs. MIEAC's transport rates are not mileage sensitive. MIEAC's aggregate terminating rate is currently $0.0032. That aggregate rate is lower than incumbent Qwest's aggregate rate of $0.003669. In addition, IXC costs to use Qwest and other tandems are higher because the IXC must bring traffic to the Qwest tandem in each tandem area within the state, rather than to one MIEAC transfer point for the whole state.

7. Because it operates in a competitive market for terminating services, MIEAC has maintained its terminating rates at their current level since 2004. While its termination rates are below the levels that would be permissible under the Commission's cost rules, it has been MIEAC's business judgment that a rate increase would make its termination services no longer competitively attractive, and many of its customers would stop using these services.

8. As a result of maintaining its rates at competitive levels, MIEAC's forecasted rate of return for the test year is 2.44%. This rate of return is based on our

projection of increased terminating access minutes over the previous year. However, even if MIEAC experienced an *additional* increase of 849,309,375 terminating minutes over and above the increased traffic volumes it has already forecast, it still would not exceed the Commission's prescribed rate of return of 11.25%. See Attachment A to this Declaration. This would require a further 44% increase in terminating traffic above the 14.67% increase in our forecast.

9. Because, as explained above, our terminating service is subject to competitive pressures, terminating traffic volumes are more volatile than originating volumes, and a simple extrapolation of historical trends is less useful. In projecting terminating usage, MIEAC took into account both historical trends and known market conditions that may affect future volumes.

10. In calculating originating minutes, MIEAC relied upon historical activity which indicates a decline in originating minutes across all 90 LECs that MIEAC serves. Nothing in the market currently indicates that originating minutes will do anything other than decline over the foreseeable future, consistent with the nationwide trend among incumbent LECs as well as MIEAC's own experience in Minnesota.

11. While the historical growth in LECs choosing MIEAC to be the terminating tandem, from 8 LECs in 2003 to 79 LECs today, has contributed to the growth in MIEAC's total number of terminating minutes, that movement has slowed. Today, the number of LECs that use MIEAC as a terminating tandem (79) is slightly lower than the number of LECs that use MIEAC as an originating tandem (90). Therefore, it is likely that the number of LECs designating MIEAC as their terminating tandem has reached a plateau, and MIEAC does not anticipate a continuation of the

historical rate of growth in the number of LECs receiving terminating traffic, nor in the minutes of use resulting from connection to additional LECs.

12. MIEAC has observed that the terminating minutes of use to most of the LECs it serves are in decline, due to the overall decrease in the number of total access lines served by LECs generally. This trend is likely to mitigate the terminating traffic increases MIEAC has experienced historically.

13. Most importantly, MIEAC's terminating traffic volumes are potentially subject to large fluctuations as the result of movement by some Interexchange Carriers ("IXCs") to choose alternative tandem options, thus bypassing MIEAC as the tandem switching provider. For example, MIEAC has received notice that one interexchange carrier that sends significant minutes of terminating traffic to MIEAC intends to move its traffic to alternative tandem options and away from MIEAC during 2008. MIEAC took this significant reduction in minutes into account in its forecast. AT&T itself has significantly reduced the volume of originating and terminating transport minutes it sends to MIEAC by redirecting its traffic. This reduction of AT&T traffic is accounted for in the 2008 TRP.

14. MIEAC has made its best estimate of future minutes based on known factors in the market place, not simply on historic activity. In addition, MIEAC included historical year 2007 minute of use data for terminating tandem switching and transport in Schedules DMD-1, page 3 and DMD-4. These are actual amounts, not projections.

15. Spikes in terminating traffic to specific CLECs that may or may not be due to traffic stimulation are difficult to forecast. MIEAC has experienced such spikes, and accounted for them in its forecast that terminating minutes will increase 14.67% from

2007 through the test year (20.89% increase in terminating tandem switching and 8.34% increase in terminating transport). This forecast also reflects the AT&T transport reductions and the anticipated reduction of another IXC's traffic volumes I described above.

16. In response to AT&T's claims of widespread traffic stimulation on MIEAC's network, we see no evidence of such stimulation. Based on MIEAC's review, of the more than 90 LECs and CLECs served, only one CLEC shows a significant increase that could be related to traffic stimulation. MIEAC, as a common carrier, does not control and cannot influence what the LECs and CLECs are doing and what methods they employ to drive traffic to their networks. MIEAC can only serve and account for the minutes in its forecast based upon data about the minutes that pass through its tandem. MIEAC has received no notice of additional LECs indicating they will engage in traffic stimulation or that MIEAC will be the designated tandem provider for such activities.

17. Declarant sayeth no more.

I declare under penalty of perjury that the foregoing is true and correct.

Fritz Hendricks
President, Onvoy Voice Services

Executed on: June 26, 2008
___, Minnesota

Attachment A

Terminating MOU Rate Elements	MIEAC TRP Forecast	Allowable MOU*	Delta	% Over Forecast
Terminating Tandem Switching MOU	1,022,269,415	1,446,924,103	424,654,688	41.54%
Terminating Transport MOU	899,597,080	1,324,251,768	424,654,688	47.20%
Total Terminating MOU	1,921,866,495	2,771,175,871	849,309,376	44.19%

* Terminating minutes needed to produce 11.25% rate of return, along with projected originating minutes.