

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

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In the Matter of )

July 1, 2010 )

Annual Access Charge Tariff Filings )

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WCB/Pricing File No. 10-03

**PETITION FOR RECONSIDERATION  
OF AT&T CORP.**

Pursuant to section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, AT&T Corp. ("AT&T") respectfully seeks reconsideration of the Action taken by the Pricing Policy Division of the Wireline Competition Bureau ("Bureau") rejecting<sup>1</sup> AT&T's Petition<sup>2</sup> to suspend for one day, investigate and issue an accounting order for the July 1, 2010 interstate access tariff filing by Minnesota Independent Equal Access Corporation ("MIEAC").<sup>3</sup>

**INTRODUCTION & SUMMARY**

MIEAC's July 1, 2010 tariff filing included unexplained increases in its uncollectible expenses (\$1.3 million) and corporate operations expenses (\$2.1 million) that together increased MIEAC's revenue requirement – *i.e.*, the amount it collects from ratepayers through rates – by \$3.4 million. After AT&T challenged these rate increases and had no further opportunity to

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<sup>1</sup> Public Notice, *Protested Tariff Transmittals, Action Taken*, WCB/Pricing File No. 10-03, DA-1252 (rel. July 1, 2010) ("Public Notice"). The Public Notice states that "[a]pplications for review and petitions for reconsideration of this decision may be filed within 30 days from the date of this Public Notice in accordance with sections 1.115 and 1.106 of the Commission's rules, 47 C.F.R. § 1.115, 1.106."

<sup>2</sup> Petition of AT&T Corp., *July 1, 2010 Annual Access Charge Tariff Filings*, WCB/Pricing File No. 10-03 (filed June 28, 2010) ("AT&T Suspension Petition"), attached hereto as Attachment 1.

<sup>3</sup> Minnesota Independent Equal Access Corporation, Transmittal No. 23, F.C.C. Tariff No. 1 (filed June 24, 2010).

respond under the Commission's rules, MIEAC finally explained the source of those increases, and its explanation confirms that they are invalid and produce patently unjust and unreasonable rates.

According to MIEAC, the \$1.3 million increase in uncollectibles reflects a portion of the amount that it believes it is owed by a single interexchange carrier (public data indicates that this carrier is Sprint) and that is the subject of a lawsuit filed by MIEAC against Sprint in federal court. But that means that this amount is *not* an "uncollectible." It may still be collected by MIEAC, and cannot therefore lawfully be collected from ratepayers. Indeed, if MIEAC prevails in its litigation with Sprint, it will end up *double recovering* the \$1.3 million, once from Sprint and again from ratepayers. If the federal court determines that MIEAC is not entitled to the \$1.3 million from Sprint, then there is no basis whatsoever for MIEAC to collect those amounts from anyone, including ratepayers.

Likewise, MIEAC admits that a "large portion" of its \$2.1 million increase in corporate operations expenses are the legal fees that MIEAC has incurred and expects to incur from its litigation with Sprint. But MIEAC has already asked the federal court to require Sprint to pay those legal fees. If MIEAC is allowed to also collect those amounts from ratepayers, it will double recover those amounts as well. In addition, MIEAC has not provided any documentation to justify these supposed legal fees. And, MIEAC still has not provided any documentation to justify the remaining increases in its corporate operations expenses that are not related to those legal fees.

By inflating rates with these illegitimate uncollectible and corporate operations expenses in its revenue requirement, MIEAC has inflated its July 1, 2010 tariffed rates far above just and reasonable levels. These errors inflate MIEAC's revenue requirement by between \$1.3 million

and \$3.4 million (depending on the portion of corporate operations expenses that are invalid), which produces returns that are well above the Commission-prescribed levels.

Accordingly, the Bureau should reconsider its July 1, 2010 Action and suspend for one day, investigate and order an accounting of MIEAC's July 1, 2010 tariff filing. In addition, as described below, the Bureau should prescribe just and reasonable rates pursuant to Section 205 of the Act, 47 U.S.C. § 205. In particular, the Bureau should (1) require MIEAC to remove the entire \$1.3 million related to its dispute with Sprint from uncollectibles; (2) require MIEAC to identify the portion of the \$2.1 million increase in corporate operations expenses related to the litigation costs that it is already seeking from Sprint and to remove that amount from corporate operations expenses; and (3) require MIEAC to explain and justify any remaining increase in its corporate operations expenses, and to remove any invalid amounts. The Bureau should then prescribe rates based on these adjustments to MIEAC's revenue requirement.

### **ARGUMENT**

There is no dispute that MIEAC's July 1, 2010 tariff filing contains very significant unexplained increases to its uncollectible expenses (\$1.3 million) and corporate operations expenses (\$2.1 million).<sup>4</sup> As AT&T demonstrated in its June 28, 2010 Suspension Petition, the Commission has historically found similar unexplained increases (indeed, even smaller ones) sufficient to suspend and investigate a tariff filing.<sup>5</sup> The subsequent explanation of these increases provided by MIEAC in its June 29, 2010 Opposition to AT&T's Suspension Petition

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<sup>4</sup> AT&T Suspension Petition, at 2-10, attached hereto as Attachment 1; Opposition of Minnesota Equal Access Corporation To Petition Of AT&T Corp., *July 1, 2010 Annual Access Charge Filings*, WCB/Pricing File No. 10-03, at 4-6 (filed June 29, 2010) ("MIEAC Opposition"), attached hereto as Attachment 2.

<sup>5</sup> AT&T Suspension Petition, at 2-10. *See also, e.g.,* Order, *Madison River Telephone Company, LLC, Tariff No. 1, Transmittal No. 9*, 17 FCC Rcd. 23939 (2003); Order, *National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal No. 952*, 17 FCC Rcd. 22595 (2002).

(to which AT&T had no opportunity to respond under the Commission's rules) confirms that the increased uncollectibles and corporation operations expenses in MIEAC's July 1, 2010 tariff filing are improper and inflate MIEAC's rates far above just and reasonable levels.

1. *MIEAC's \$1.3 Million In Uncollectibles.* MIEAC's Opposition confirms that the \$1.3 million increase MIEAC made to its uncollectibles expenses does not reflect any actual uncollectibles. As the Commission has previously explained, "uncollectibles" are "revenues that the [carrier] anticipates *will not be collected* from end-user customers."<sup>6</sup> MIEAC admits, however, that the \$1.3 million included in its revenue requirement as "uncollectibles" are actually disputed amounts with a single MIEAC customer (public records indicate that this carrier is Sprint)<sup>7</sup> that MIEAC *does* anticipate collecting. As explained by MIEAC, it has "filed an action in federal court to recover this revenue."<sup>8</sup>

Nothing in the Commission's rules permits a carrier to include such amounts in its revenue requirement as uncollectible expenses, and for a good reason. It creates significant potential for double recovery of those amounts. Indeed, it is precisely for this reason that the Commission has in similar contexts rejected proposals that would allow carriers to recover "costs" associated with ongoing disputes through rates. As the Commission explained, doing so would result in "double-recovery: once from the debtor and once from the consumer, *i.e.*,

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<sup>6</sup> Order And Notice Of Proposed Rulemaking, *Universal Service Contribution Methodology*, 21 FCC Rcd. 7518, 2006 FCC LEXIS 3668, \*298 (2006).

<sup>7</sup> On June 21, 2010, MIEAC filed an action against Sprint in federal Court seeking to recover unpaid charges. See Complaint, *Minnesota Equal Access Corporation v. Sprint Communications Company*, Court File No. 10-cv-2550 (RHC/FLN) (D.Minn. June 21, 2010), attached hereto as Attachment 3. Sprint has denied that it owes these amounts to MIEAC and that the billed amounts are related to unlawful traffic pumping schemes. See Answer and Counterclaim, *Minnesota Equal Access Corporation v. Sprint Communications Company*, Court File No. 10-cv-2550 (RHC/FLN) (D.Minn. July 19, 2010).

<sup>8</sup> MIEAC Opposition, at 5.

through the cost element included in the compensation amount.”<sup>9</sup> Likewise, in this case, if MIEAC prevails in its litigation with Sprint, it will recover the disputed amount twice, once from Sprint and again from all other ratepayers, none of whom have anything to do with the MIEAC/Sprint dispute. The result would be a pure windfall for MIEAC in the amount of \$1.3 million.

In addition, if the federal court determines that MIEAC’s bills to Sprint were inflated and that MIEAC is therefore not entitled to recover the disputed amounts from Sprint, then those amounts are not “uncollectibles,” they are amounts that were unlawfully billed by MIEAC and that MIEAC is not entitled to recover from anyone, including all ratepayers.<sup>10</sup>

In short, if MIEAC is entitled to the disputed amounts, it will recover them from Sprint, and it should not also recover those amounts from ratepayers. If MIEAC is not entitled to the disputed amounts from Sprint, then MIEAC certainly is not entitled to collect those amounts from ratepayers. Accordingly, the Commission should require MIEAC to remove the \$1.3 million increase in uncollectibles from its revenue requirement.

2. *MIEAC’s \$2.1 Million In Corporate Operations Expenses.* MIEAC’s Opposition also confirms that large portions of the \$2.1 million increase to corporate operations expenses are inappropriate and that the remaining amounts require investigation. According to MIEAC, “AT&T’s figures are correct” and “[o]ne significant [contributor to the] increase [in corporate operations expenses] is legal expenses, due largely to litigation with the major IXC that has

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<sup>9</sup> Third Report and Order, and Order on Reconsideration of the Second Report and Order, *Implementation Of The Pay Telephone Reclassification And Compensation Provisions Of The Tele-Communications Act Of 1996*, 14 FCC Rcd. 2545, ¶ 162 (1999).

<sup>10</sup> MIEAC states that it included the demand associated with the disputed amounts in its rate calculations, which produced lower rates. If MIEAC ultimately loses its case against Sprint, then MIEAC will have the opportunity to prospectively reduce its demand estimates accordingly.

refused to pay its bills.”<sup>11</sup> In other words, a large portion of the corporate operations expenses reflects legal costs incurred by MIEAC related to its billing dispute with Sprint. But MIEAC has already sought to recover those legal costs in its federal court complaint against Sprint, *see* MIEAC Complaint, at 19 (seeking “reasonable attorneys fees and the costs of this action pursuant to 47 U.S.C. § 206”).<sup>12</sup> In other words, MIEAC is again improperly seeking to double-recover amounts related to its ongoing dispute with Sprint – once from Sprint and again from all ratepayers.

MIEAC has also failed to justify or document these supposed legal expenses. In particular, it has not identified the portion of the \$2.1 million that is supposedly attributable to the legal expenses it has incurred due to its dispute with Sprint. Rather, MIEAC states only that such legal expenses are a “significant” contributor to the \$2.1 million increase in corporate operations expenses. In this regard, it is hard to believe that MIEAC has or expects to incur such high legal fees to prosecute a dispute that, according to the legal documents filed by MIEAC, is worth, at most, \$2.8 million.<sup>13</sup>

MIEAC has also failed to justify or document the portion of its corporate operations expenses increases that are not attributable to its legal fees associated with its dispute with Sprint. MIEAC states only that these remaining increases are due to other legal fees and supposed incentive based compensation and reclassification of some departmental expenses to

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<sup>11</sup> MIEAC Opposition, at 6.

<sup>12</sup> MIEAC states in its opposition that it “[t]hese legal expenses . . . will not likely be recoverable even if MIEAC prevails fully in litigation.” MIEAC Opposition, at 6. But MIEAC cannot have it both ways – both asking the federal court for legal costs, and then justifying its increase in rates before the Commission on the grounds that its own request to the federal court may be denied.

<sup>13</sup> *See* MIEAC Complaint, at 2, ¶ 7, attached hereto as Attachment 3.

corporation operations.<sup>14</sup> But MIEAC provides no documentation or further explanation as how these amounts were computed or why they are appropriately included in its corporate operations expenses. Given MIEAC's attempts to double recover from ratepayers amounts related to its ongoing dispute with Sprint, there is no basis to take MIEAC's word that the remaining undocumented increases in corporate operation expenses are valid.

For all of these reasons, the Commission should investigate MIEAC's tariff to determine what portion of its corporate operations expenses is attributable to legal expenses it is seeking to recover elsewhere, require MIEAC to remove those amounts, and then determine the extent to which any remaining amounts can legitimately be included as corporate operations expenses.<sup>15</sup>

3. *The Impact Of MIEAC's Errors.* The erroneous uncollectibles and corporate operations expenses in MIEAC's tariffs clearly produce unjust and unreasonable rates in violation of Section 201(b) of the Act, 47 U.S.C. § 201(b). AT&T has demonstrated that improperly including the disputed amounts subject to federal court litigation between MIEAC and Sprint in MIEAC's revenue requirement as "uncollectible expenses" inflates MIEAC's revenue requirement by \$1.3 million and produces returns that are well above Commission-prescribed levels.<sup>16</sup> In addition, MIEAC further inflates its revenue requirement by as much as another \$2.1 million by improperly including in its revenue requirement the legal expenses

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<sup>14</sup> MIEAC Opposition, at 6-7.

<sup>15</sup> MIEAC's argument (MIEAC Opposition at 6) that the Commission should ignore the inappropriate increases in its corporate operations expenses because MIEAC followed the Commission's rules and reduced other elements within its corporate operations expenses is a non-starter. The inappropriate increases in its corporation operations expenses substantially inflate MIEAC's rates above just and reasonable levels (as documented further below). That MIEAC did not further inflate its rates by failing to reduce other rate elements where appropriate is not a valid defense.

<sup>16</sup> See AT&T Suspension Petition, Exhibit C, attached hereto as Attachment 1.

associated with its dispute with Sprint and other potentially bogus amounts, further raising its returns above authorized levels.<sup>17</sup>

In this regard, there is no merit to MIEAC's claim that it has "historically earned below the allowable rate of return," that "[i]ts rate of return in the last calendar year was 7.75%, and that its forecasted rate of return is only 6.22%,<sup>18</sup> These assertions are based on the false assumption that the improper uncollectible and corporate operations expenses are properly included in its revenue requirement.

In its July 1, 2010 filing, MIEAC claims to have unexpectedly experienced uncollectibles for the last calendar year (2009) equal to \$1.45 million, and claims that as a result of these uncollectibles, its 2009 return was actually only 7.75%. But as MIEAC's Opposition makes clear, these 2009 uncollectibles reflect amounts related to MIEAC's dispute with Sprint that MIEAC is currently seeking to recover in federal court. Accordingly, these amounts should not be included when computing MIEAC's 2009 returns, and if those amounts are removed, it is clear that MIEAC's 2009 returns were actually 19.68%.

Similarly, MIEAC's projected underearnings for 2010 (6.22%) includes the uncollectibles and corporate operations expenses that, as discussed above, should not be included in MIEAC's revenue requirement. When these amounts are removed, MIEAC's actual projected returns for 2010 are somewhere between 20% and 40%, depending on the amount of corporate operations expenses that should be removed.<sup>19</sup>

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<sup>17</sup> *See id.*

<sup>18</sup> MIEAC Opposition, at 5.

<sup>19</sup> *See* AT&T Suspension Petition, Exhibit C, attached hereto as Attachment 1.



## CONCLUSION

For the reasons stated above, AT&T respectfully requests that the Bureau reconsider its rejection of AT&T's Suspension Petition and suspend for one day, investigate and order an accounting of MIEAC's July 1, 2010 tariffs, and prescribe just and reasonable rates pursuant to Section 205 of the Act in the manner described above.

Respectfully submitted,

AT&T Corp.

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Dated: July 30, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of July, 2010, I caused true and correct copies of the foregoing Petition of AT&T Corp. to be served on all parties as shown on the attached Service List.

Dated: July 30, 2010  
Washington, D.C.

/s/ Christopher T. Shenk

### **SERVICE LIST**

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## **ATTACHMENT 1**

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

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In the Matter of

July 1, 2010

Annual Access Charge Tariff Filings

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WCB/Pricing File No. 10-03

**PETITION OF AT&T CORP.**

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June 28, 2010

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WCB/Pricing File No. 10-03

**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 10-505, released March 31, 2010,<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 July 1, 2010 interstate access tariff filed by the Minnesota Independent Equal Access Corporation ("MIEAC").<sup>2</sup>

**INTRODUCTION AND SUMMARY**

The MIEAC July 1, 2010 tariff presents a classic case for suspension, investigation, and an accounting. It contains completely unexplained and very large increases in both uncollectible expenses (\$1.3 million) and corporate operations expenses (\$2.1 million) hidden in line items at the back of MIEAC's submission that inflate its rates by at least \$3.4 million, and result in returns far in excess of the Commission-prescribed 11.25%. The Commission has repeatedly suspended and investigated tariffs where carriers failed to explain and document such increases –

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<sup>1</sup> Order, *July 1, 2010 Annual Access Charge Filings*, WCB/Pricing File No. 10-03, DA 10-505 (rel. March 31, 2010) (setting procedures and dates for the 2010 annual access charge filings).

<sup>2</sup> Minnesota Independent Equal Access Corporation, Transmittal No. 23, F.C.C. Tariff No. 1 (filed June 24, 2010). See Attachment 1, hereto. Suspension and investigation are appropriate where a tariff raises "substantial questions of lawfulness . . . that warrant further investigation." Order, *July 2007 Annual Access Tariff Filings*, 22 FCC Rcd. 11619, ¶ 3 (2007).

including with respect to much smaller increases in uncollectible expenses – and it should do so again here.<sup>3</sup>

The rates in MIEAC's July 1, 2010 tariff are also based on vastly understated demand projections, resulting in additional rate inflation. As shown below, MIEAC projects (again with no documentation or explanation) that its demand for 2010/2011 will grow by only a small fraction of its historical growth. But it is quite clear that MIEAC's 2010/2011 demand will meet or exceed its historic growth. Indeed, more than 90% of the traffic on MIEAC's network appears to come from traffic stimulation schemes that use MIEAC's network and that have produced consistently large year-over-year increases in traffic volumes that have continued into 2010. To protect ratepayers against substantial overcharges from MIEAC's understated demand projections, the Bureau should require MIEAC to modify its tariff to include terms (provided below) that will require MIEAC to make rate adjustments if its actual demand turns out to be substantially higher than its projections, just as the Commission did in 2007 in very similar circumstances.

The Bureau has ample authority to suspend and investigate the MIEAC tariff, and to adopt the proposed remedies. Section 204 of the Communications Act, 47 U.S.C. § 204, grants the Commission broad authority, on its own initiative or upon request, to suspend and investigate tariff filings that propose rates that are of questionable lawfulness. As the Commission has recognized, suspension and investigation of tariffs is an essential element of the core mandate to ensure just and reasonable rates where highly suspect tariffs that raise substantial questions of

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<sup>3</sup> See, e.g., Order, *Madison River Telephone Company, LLC, Tariff No. 1, Transmittal No. 9*, 17 FCC Rcd. 23939 (2003) (“*MRTC Designation Order*”); Order, *National Exchange Carrier Association, Inc., Tariff FCC No. 5, Transmittal No. 952*, 17 FCC Rcd. 22595 (2002) (“*NECA Designation Order*”).



lawfulness are filed on a streamlined basis.<sup>4</sup> As such, the Bureau (*see* §§ 0.91, 0.291), acting on delegated authority, clearly has independent authority pursuant 47 U.S.C. § 204 to suspend and investigate tariffs on its own motion where, as here, there are significant questions concerning the lawfulness of the tariffs.<sup>5</sup>

The Bureau also has authority to suspend and investigate tariffs under Rule 1.773(a)(1)(iii), 47 C.F.R. § 1.773(a)(1)(iii), if it determines (1) “there is a high probability that the tariff would be found unlawful after investigation”; (2) “any unreasonable rate would not be corrected in a subsequent filing”; (3) “irreparable injury will result if the tariff is not suspended”; and (4) “the suspension would not otherwise be contrary to the public interest.” These elements are clearly satisfied here. First, as demonstrated below, there is an exceedingly high probability that MIEAC’s tariff will be found to be unlawful. Second, MIEAC’s prior practices show that these unreasonable rates are not likely to be corrected in a subsequent filing. Third, irreparable injury will result if the tariffs are not suspended because the excessive rates will be “deemed lawful,” which may foreclose refunds for excessive charges.<sup>6</sup> Fourth, suspension is clearly in the public interest because it will help to prevent millions of dollars in overcharges that are ultimately borne by consumers.

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<sup>4</sup> *See, e.g.*, Memorandum Opinion and Order, *July 1, 2004, Annual Access Charge Tariff Filings*, 19 FCC Rcd. 23877, ¶ 7 (2004) (“*2004 NECA Tariff Investigation Order*”) (“When tariffs . . . are filed pursuant to the ‘deemed lawful’ provisions of the statute . . . it is incumbent upon us to suspend and investigate the tariff filing if it may reflect unjust and unreasonable rates”).

<sup>5</sup> *See* Memorandum Opinion and Order, *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, FCC 84-70, 1983 FCC LEXIS 396, ¶ 8 n.6 (1983) (rejecting argument that a “request for suspension should be denied as premature and not in compliance with Section 1.773” and finding that the Commission “need not reach these arguments, since the Commission has the authority on its own motion to suspend and investigate tariffs, 47 U.S.C. § 204(a), and we [the Commission] have concluded that the circumstances of this case warrant such suspension”).

<sup>6</sup> *2004 NECA Tariff Investigation Order*, ¶ 7 (“Rates that are ‘deemed lawful’ are not subject to refund”).

**I. THE BUREAU SHOULD SUSPEND MIEAC'S TARIFF AND INVESTIGATE THE UNEXPLAINED INCREASES IN "UNCOLLECTIBLES" AND "CORPORATE OPERATIONS" EXPENSES THAT INFLATE MIEAC'S RATES AND PRODUCE RETURNS THAT FAR EXCEED 11.25%.**

MIEAC's July 1, 2010 annual tariff contains a \$1.3 million increase in expenses for "uncollectibles," up from *zero* dollars in reported actual uncollectibles in prior years as far back as at least 2003.<sup>7</sup> MIEAC has provided no explanation or documentation as to why it believes its uncollectible expenses will increase by such a large amount. Nor does it explain why its current tariff provisions that permit it to collect security deposits from customers that pose a significant risk of non-payment are suddenly insufficient to address any potential for future uncollectibles.<sup>8</sup> MIEAC also fails to explain whether its asserted increase in uncollectible expense is caused by the unique circumstances of one or two customers or whether it is a systemic problem, and, if it is not a systemic problem, why MIEAC should be allowed to recover these uncollectibles from *all* customers (by including it as an expense used to determine rates), rather than from only those that pose a risk of non-payment.

The Bureau has (quite properly) suspended and investigated tariffs seeking to set rates based on increases in uncollectibles in far less extreme circumstances. For example, in 2003,

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<sup>7</sup> MIEAC has reported its actual historic uncollectible amounts for odd numbered years from 2003 through 2007, and in each of those years, MIEAC reported \$0 in uncollectibles. *See* Exhibit A, attached hereto. For the 2006/2007 tariff period, MIEAC *projected* about \$781,000 in uncollectibles, but MIEAC has not reported its *actual* 2006 uncollectible amounts, and, for 2007, MIEAC reported actual uncollectibles of \$0. *See id.* In addition, in its July 1, 2010 tariff filing, MIEAC included a retroactive, unexplained, and undocumented \$1.4 million increase in its 2009 uncollectible expenses, apparently to disguise the fact that its return in 2009 would otherwise have been nearly 19%, far above the prescribed 11.25%. *See id.* All of this further confirms MIEAC's failure to explain and document its uncollectible projections, and the need for the Bureau to suspend and investigate its July 1, 2010 tariff to ascertain the legitimacy of its uncollectible projections.

<sup>8</sup> MIEAC, Tariff F.C.C. No. 1, § 2.4.1(A) (stating that "to safeguard its interests," MIEAC may require a deposit from "a customer which has a proven history of late payments to MIEAC or [that] does not have established credit").

Madison River Telephone Company (“MRTC”) submitted a tariff seeking to increase uncollectible expenses by about \$424,000, and, unlike MIEAC, MRTC at least attempted to explain this increase by asserting that its risk of future uncollectibles was likely generally higher due to the then-recent bankruptcies of MCI-Worldcom and others.<sup>9</sup> Still, the Bureau suspended and investigated MRTC’s tariff to assess “whether the increased allowance for uncollectibles and the resulting increase in access rates are just and reasonable within the meaning of Section 201(b) of the Act.”<sup>10</sup>

The Bureau explained that “[t]he revisions raise the question whether circumstances have changed so as to warrant increasing the allowance for uncollectibles in establishing [MRTC’s] interstate access charges.”<sup>11</sup> The Bureau therefore required MRTC to provide, among other things “a detailed description of the method it used to estimate the level of uncollectibles,” an explanation of “whether the variation in uncollectible levels . . . is merely a normal fluctuation in uncollectibles, which would be covered by the business risks anticipated in the 11.25 percent authorized rate of return, or whether it reflects some long term trend that warrants increasing the allowance for uncollectibles in the calculation of [MRTC’s] interstate revenue requirement,” and “whether the increase is expected to cover the default of several smaller customers or one or two bigger ones.”<sup>12</sup> The Bureau also suspended a NECA tariff in 2002 and designated a similar set of issues for investigation, because that tariff contained insufficiently documented large increases in uncollectible expenses.<sup>13</sup>

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<sup>9</sup> *MRTC Designation Order*, ¶ 4.

<sup>10</sup> *Id.* ¶ 6.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *NECA Designation Order*, ¶ 1.

This precedent compels the same result here: (1) MIEAC is proposing an increase in uncollectibles that is *three times larger* than the one sought by MRTC; (2) it has not established that “circumstances have changed so as to warrant increasing the allowance for uncollectibles in establishing [its] interstate access charges”; (3) it has not provided a “a detailed description of the method it used to estimate” this new level of uncollectibles; (4) it has not established that the asserted increase is not “merely a normal fluctuation in uncollectibles, which would be covered by the business risks anticipated in the 11.25 percent authorized rate of return”; (5) it has not explained whether its increase in uncollectibles reflect “some long term trend that warrants increasing the allowance for uncollectibles in . . . [its] interstate revenue requirement”; and (6) it has not explained “whether the increase is expected to cover the default of several smaller customers or one or two bigger ones.”<sup>14</sup> Instead, MIEAC has attempted to hide this increase in a line item at the back of its submission, with no explanation or discussion whatsoever.

MIEAC has also inflated its revenue requirement with an extremely large and unexplained 143% increase (about \$2.1 million) in Corporate Operations expenses for the 2010/2011 tariff period compared to 2009.<sup>15</sup> To put this increase in perspective, MIEAC’s projected 2010/2011 Corporate Operations expenses would comprise nearly one third of MIEAC’s total operating expenses plus taxes, up from less than 15% last year.<sup>16</sup> Moreover, MIEAC’s proposed 143% increase in Corporate Operations expenses far exceeds that historically made by other similarly sized carriers in Minnesota, which typically report modest year-over-year increases and often even *decreases*, and that, overall, have historically reported

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<sup>14</sup> *MRTC Designation Order*, ¶¶ 4, 6; *see also NECA Designation Order*, ¶¶ 4-6.

<sup>15</sup> *See* Exhibit B, page 1, attached hereto.

<sup>16</sup> *See id.*

average changes near 0%.<sup>17</sup> MIEAC's extraordinary asserted increase in Corporate Operations expenses thus requires substantial explanation and documentation, which it has not provided. Accordingly, the same logic that compelled the Bureau to suspend and investigate the MRTC and NECA unexplained increases in uncollectible expenses compels suspension and investigation of MIEAC's completely unexplained large increases in Corporate Operations expenses.

Absent these unexplained increases in expenses, MIEAC's rates clearly would be unjust and unreasonable in violation of Section 201(b) of the Act, 47 U.S.C. § 201(b). Assuming that MIEAC's uncollectible expenses should be zero (as they have been in the past) and that its Corporate Operations expenses remain flat – as they have, on average, for other similarly sized Minnesota carriers – MIEAC's current tariff will produce overcharges of about \$3.4 million and a corresponding excessive rate of return of more than 40% for the 2010/2011 tariff period.<sup>18</sup> There can thus be no serious dispute that MIEAC's rates far exceed just and reasonable levels and warrant suspension and investigation.

## **II. THE COMMISSION SHOULD REQUIRE MIEAC TO MODIFY ITS TARIFF TO PROTECT RATEPAYERS AGAINST EXCESSIVE CHARGES FROM TRAFFIC STIMULATION ACTIVITIES.**

The rates in MIEAC's July 1, 2010 tariff also appear to be inflated by understated demand projections. MIEAC is a centralized equal access provider that operates facilities that connect to local exchange carriers located throughout Minnesota. MIEAC uses these facilities to provide interexchange carriers ("IXCs") with a centralized location where they can deliver and receive calls to and from LECs throughout Minnesota. MIEAC provides this centralized equal access service pursuant to tariff, and it bills IXCs a per minute transport, tandem switching, and

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<sup>17</sup> See *id.*, page 2.

<sup>18</sup> See Exhibits, C & E, attached, hereto.

centralized equal access switching rates to deliver calls to and from Minnesota LECs. These per minute rates are computed by dividing MIEAC's revenue requirement by the total number of minutes of traffic delivered to and from Minnesota LECs. In other words, MIEAC's per minute rates are driven in large part by the amount of traffic generated by the LECs that use MIEAC's network ("demand"), with higher demand producing lower rates and lower demand producing higher rates.

MIEAC has a long history of setting rates based on demand projections that turn out to vastly understate its actual demand. For example, for tandem switching, its 2002/2003 projections understated actual demand by 71.9%, its 2004/2005 projections understated actual demand by 470.4%, its 2006/2007 projections understated actual demand by 33.9%, and its 2008/2009 projections understated actual demand by 64%.<sup>19</sup>

It is quite clear that the per minute rates in MIEAC's July 1, 2010 tariff are again based on substantially understated demand projections that will result in significant overearnings. The rates in MIEAC's tariff are based on 2010/2011 demand projections for tandem switching that assume demand will increase by only 16.23% compared to 2009.<sup>20</sup> But MIEAC's actual tandem switching demand from 2002 through 2009 grew on average by 28.55% each year, and for the most recent period (2008 to 2009), its demand grew by 35.74%.<sup>21</sup> Likewise, for tandem switching transport, the rates in MIEAC's tariff are based on 2010/2011 demand projections that assume demand will increase by only 8.31% compared to 2009.<sup>22</sup> But MIEAC's actual tandem

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<sup>19</sup> See Exhibit D, page 1, attached hereto. MIEAC's projections for tandem switching transport demand likewise vastly understate its actual demand. See *id.*, page 2.

<sup>20</sup> See Exhibit D, page 1, attached hereto.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*, page 2.

switching transport demand from 2002 through 2009 grew on average by 42.28% each year, and for the most recent period (2008 to 2009), its demand grew by 49.3%.<sup>23</sup> It is thus quite clear that MIEAC systematically understates demand and that its 2010/2011 demand projections are far too low.

Moreover, there is every reason to believe that the amount of traffic carried by MIEAC will increase even more this year than it has in previous years. As noted, MIEAC's demand is driven by the amount of traffic generated by the Minnesota LECs that use MIEAC's network. More than 90% of the traffic on MIEAC's network is derived from traffic stimulation schemes. As the Bureau is well aware, LECs that engage in traffic stimulation schemes typically partner with calling service providers that offer free (or low cost) conferencing, chat, and other services to customers that call telephone numbers associated with the LECs' exchanges. These traffic stimulation schemes typically result in enormous increases in interstate calls to those telephone numbers, thus producing extraordinary spikes in demand for the centralized equal access providers (like MIEAC) that they use to transport such traffic.

Overall, MIEAC's tandem switching traffic volumes (based on bills to AT&T) increased by 86.6% in first five months of 2010 compared to the same period last year. And, the amount of tandem switching traffic on MIEAC's network is increasing rapidly this year – it has already increased by 39.8% in the first five months of 2010. Similarly, MIEAC's transport switching traffic volumes (based on bills to AT&T) increased by 100% in first five months of 2010 compared to the same period last year, and those minutes have increased by 42.2% since the beginning of 2010.

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<sup>23</sup> *See id.*

To address the very high likelihood that MIEAC's actual demand will far exceed its projections (as it has in the past and as it appears on track to do again this period), the Commission should require MIEAC to modify its tariff in the same way that it has required LECs engaged in traffic stimulation to modify their tariffs in order to protect ratepayers from significant overcharges.<sup>24</sup> In particular, the Commission should require MIEAC to include the following language in its tariff:

If the monthly interstate local switching minutes of the issuing carrier exceeds 100% of the interstate local switching demand in the same month of the previous year (refile trigger), the issuing carrier will file revised local switching and transport tariff rates within 60 days of the end of the month in which the issuing carrier met the refile trigger.<sup>25</sup>

The Bureau has ample authority to adopt this remedy. As noted, the Bureau has independent authority pursuant 47 U.S.C. § 204 to suspend and investigate tariffs on its own motion where, as here, there are significant questions concerning the lawfulness of the tariffs.<sup>26</sup> The Bureau also has authority to suspend and investigate MIEAC's tariffs under Rule 1.773(a)(1)(iii), 47 C.F.R. § 1.773(a)(1)(iii). Indeed, the Bureau exercised this authority in 2007 when it suspended and investigated the tariffs of more than 30 LECs when it appeared that their

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<sup>24</sup> As the Commission recognized, LECs compute rates by essentially dividing their projected revenue requirement (costs plus the Commission prescribed 11.25% rate-of-return) by their projected demand (*i.e.*, traffic volumes). Order Designating Issues For Investigation, *Investigating of Certain 2007 Access Tariffs*, 22 FCC Rcd. 16109 (2007) ("*2007 Traffic Stimulation Order*"). The projected demand figures are typically based on the LEC's historical demand, because for ordinary LECs demand tends to be steady over time. *Id.* But for a LEC that is engaged in traffic stimulation, its actual prospective demand will be substantially higher than any projections based on historical demand. As a result, the LEC's rates will be set too high, and the LEC will earn returns that far exceed the permissible 11.25%. As the Commission has explained, LECs that engage in traffic stimulation activities "can generate increased revenues that likely would result in rates that are unjust and unreasonable." *Id.*

<sup>25</sup> *2007 Traffic Stimulation Order*, ¶ 20. This language would, of course, be modified to reflect the per minute rate elements in the MIEAC tariff.

<sup>26</sup> See Memorandum Opinion and Order, *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, 1983 FCC LEXIS 396, ¶ 8 n.6 (1983).



predicted traffic volumes would increase substantially above their projected levels due to traffic stimulation activities.<sup>27</sup>

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<sup>27</sup> See Order, *July 1, 2007, Annual Access Charge Tariff Filings*, 22 FCC Rcd. 11619 (2007); *2007 Traffic Stimulation Order*, ¶ 20.

## CONCLUSION

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

Respectfully submitted,

AT&T Corp.

By /s/ M. Robert Sutherland

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***Please Direct Questions Related To This Filing To:***

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Bedminster, NJ 07921  
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Dated: June 28, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of June, 2010, I caused true and correct copies of the foregoing Petition of AT&T Corp. to be served on all parties as shown on the attached Service List.

Dated: June 28, 2010  
Washington, D.C.

/s/ Christopher T. Shenk

### **SERVICE LIST**

<p>Raj Kannan Pricing Policy Division Wireline Competition Bureau Federal Communications Commission 445 12<sup>th</sup> Street, S.W., Room 5-A221 Washington, D.C. 20554 Email: raj.kannan@fcc.gov (3 paper copies by hand delivery and 1 electronic copy by email)</p>	<p>Russell M. Blau Counsel for MIEAC 2020 K Street, N.W., 11<sup>th</sup> Floor Washington, D.C. Tel. (202) 373-6035 Fax: (202) 373-6001 (by facsimile and first class mail)</p>
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<p>Best Copy and Printing, Inc. Portals II 445 12<sup>th</sup> St., S.W., Room CY-B402 Washington, D.C. 20554 Email: FCC@BCPIWEB.COM (by email)</p>	

**ATTACHMENT 1**

**TARIFFS THAT THE COMMISSION SHOULD  
SUSPEND FOR ONE DAY 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	23

## **EXHIBITS**

# Minnesota Independent Equal Access Corporation

## History of Uncollectibles

Source: Annual Filing COS-1(H) & COS-1(P) TRPs, Equal Access, Column (N)

## EXHIBIT A

	Transmittal No. 18 June 16, 2004	Transmittal No. 19 June 16, 2006	Transmittal No. June 16, 2008	Transmittal No. 23 June 24, 2010	
	COS-1(H)	COS-1(H)	COS-1(H)	COS-1(H)	COS-1(P)
	2003	2005	2007	2009*	2010-2011**
<b>Revenues</b>					
100 Network Access	\$7,561,866	\$7,509,799	\$9,207,014	\$12,024,079	\$12,102,793
<b>110 Uncollectibles</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>-\$1,450,253</b>	<b>-\$1,297,147</b>
150 Miscellaneous	\$1,564,441	\$1,721,952	\$1,143,883	\$1,134,967	\$1,279,160
160 Net Revenues	\$9,126,307	\$9,231,751	\$10,350,897	\$11,708,793	\$12,084,806

\* MIEAC projected zero uncollectibles for the 08-09 Tariff Period. In its July 1, 2010 tariff filing it asserts for the first time that it incurred 2009 uncollectibles. But MIEAC has provided no explanation or documentation to support that assertion.

\*\* MIEAC has continued to project high levels of uncollectibles without explanation or supporting documentation.

**Minnesota Independent Equal Access Corporation**

History of Corporate Operations Expense

Source: Annual Filing COS-1(H) &amp; COS-1(P) TRPs, Equal Access, Column (N)

**EXHIBIT B****Page 1 of 2**

	Transmittal No. 18 June 16, 2004	Transmittal No. 19 June 16, 2006	Transmittal No. June 16, 2008	Transmittal No. 23 June 24, 2010		Difference	Percent Difference
	COS-1(H)	COS-1(H)	COS-1(H)	COS-1(H)	COS-1(P)		
	2003	2005	2007	2009	2010-2011		
<b>Expenses</b>							
220 Corporate Operations	\$277,476	\$400,114	\$1,279,984	\$1,497,577	\$3,635,430	\$2,137,853	143%
300 Total Expenses & Taxes	\$7,315,759	\$7,808,473	\$8,833,270	\$10,766,537	\$11,469,746		
% of Total Exp and Other Taxes	3.8%	5.1%	14.5%	13.9%	31.7%		



										Year over Year Growth				
SAC	SANAME	ST	Rural	TIER	2004	2005	2006	2007	2008	2005 vs 2004	2006 vs 2005	2007 vs 2006	2008 vs 2007	Av Annual Growth
361346	ACE TEL ASSN-MN	MN	Y	2	\$1,480,056	\$1,234,901	\$1,366,062	\$1,625,762	\$1,719,758	-16.6%	10.6%	19.0%	5.8%	4.7%
361350	ARVIG TEL CO	MN	Y	2	\$1,763,755	\$1,759,779	\$1,812,534	\$1,792,961	\$1,602,298	-0.2%	3.0%	-1.1%	-10.6%	-2.2%
361357	BLACKDUCK TEL CO	MN	Y	2	\$525,089	\$595,866	\$604,288	\$826,938	\$633,816	13.5%	1.4%	36.8%	-23.4%	7.1%
361370	CLARA CITY TEL EXCH	MN	Y	2	\$307,564	\$290,614	\$330,668	\$364,798	\$264,690	-5.5%	13.8%	10.3%	-27.4%	-2.2%
361374	ARROWHEAD COMM CORP	MN	Y	2	\$149,051	\$160,387	\$137,821	\$95,680	\$94,401	7.6%	-14.1%	-30.6%	-1.3%	-9.6%
361383	EAGLE VALLEY TEL CO	MN	Y	2	\$143,761	\$155,326	\$139,398	\$98,054	\$113,121	8.0%	-10.3%	-29.7%	15.4%	-4.1%
361385	EAST OTTER TAIL TEL	MN	Y	2	\$4,161,851	\$3,204,070	\$3,520,127	\$3,308,122	\$3,190,189	-23.0%	9.9%	-6.0%	-3.6%	-5.7%
361386	ECKLES TEL CO	MN	Y	2	\$516,859	\$663,928	\$834,871	\$799,371	\$1,066,115	28.5%	25.7%	-4.3%	33.4%	20.8%
361387	EMILY COOP TEL CO	MN	Y	2	\$382,082	\$398,579	\$397,455	\$457,149	\$494,311	4.3%	-0.3%	15.0%	8.1%	6.8%
361391	FELTON TEL CO. INC.	MN	Y	2	\$252,697	\$250,897	\$153,634	\$124,069	\$150,377	-0.7%	-38.8%	-19.2%	21.2%	-9.4%
361395	GARDEN VALLEY TEL CO	MN	Y	2	\$1,829,255	\$1,948,497	\$2,054,773	\$2,017,220	\$1,776,100	6.5%	5.5%	-1.8%	-12.0%	-0.5%
361399	GRANADA TEL CO	MN	Y	2	\$120,238	\$121,122	\$94,330	\$78,705	\$104,055	0.7%	-22.1%	-16.6%	32.2%	-1.4%
361410	JOHNSON TEL CO	MN	Y	2	\$1,188,001	\$659,888	\$689,434	\$736,652	\$771,229	-44.5%	4.5%	6.8%	4.7%	-7.1%
361414	LAKEDALE TEL CO	MN	Y	2	\$2,452,623	\$2,502,331	\$2,298,323	\$2,237,685	\$2,617,295	2.0%	-8.2%	-2.6%	17.0%	2.1%
361433	MID STATE TEL CO	MN	Y	2	\$1,015,468	\$1,205,414	\$1,133,768	\$1,038,522	\$936,912	18.7%	-5.9%	-8.4%	-9.8%	-1.4%
361437	MINNESOTA LAKE TEL	MN	Y	2	\$84,987	\$111,272	\$148,751	\$155,928	\$272,488	30.9%	33.7%	4.8%	74.8%	36.0%
361442	NEW ULM TELECOM, INC	MN	Y	2	\$1,648,639	\$1,839,928	\$1,932,780	\$2,115,682	\$2,772,598	11.6%	5.0%	9.5%	31.0%	14.3%
361451	PAUL BUNYAN RURAL	MN	Y	2	\$2,061,357	\$2,051,872	\$2,062,530	\$2,187,869	\$1,153,287	-0.5%	0.5%	6.1%	-47.3%	-10.3%
361453	PEOPLES TEL CO - MN	MN	Y	2	\$203,481	\$336,606	\$434,020	\$411,198	\$389,224	65.4%	28.9%	-5.3%	-5.3%	20.9%
361454	PINE ISLAND TEL CO	MN	Y	2	\$475,582	\$412,904	\$368,179	\$256,458	\$247,248	-13.2%	-10.8%	-30.3%	-3.6%	-14.5%
361482	LAKEDALE CONNECTIONS	MN	Y	2	\$1,842,005	\$2,081,169	\$2,119,325	\$2,035,607	\$2,605,706	13.0%	1.8%	-4.0%	28.0%	9.7%
361483	SLEEPY EYE TEL CO	MN	Y	2	\$680,345	\$722,406	\$535,338	\$427,333	\$373,789	6.2%	-25.9%	-20.2%	-12.5%	-13.1%
361491	TWIN VALLEY-ULEN TEL	MN	Y	2	\$808,853	\$731,443	\$863,357	\$645,299	\$651,928	-9.6%	18.0%	-25.3%	1.0%	-3.9%
361501	WEST CENTRAL TEL	MN	Y	2	\$696,999	\$733,942	\$797,643	\$802,379	\$831,720	5.3%	8.7%	0.6%	3.7%	4.6%
Total					\$24,790,598	\$24,173,141	\$24,829,409	\$24,639,441	\$24,832,655	-2.5%	2.7%	-0.8%	0.8%	0.1%

## Minnesota Independent Equal Access Corporation

## EXHIBIT C

Earnings as reported on COS-1(H) & COS-1(P) TRPs, Equal Access, Column (N)

	<b>T-23 COS-1(H) 2009</b>	<b>T-23 COS-1(P) 2010-2011</b>
<b>As Filed</b>		
110 Uncollectibles	\$1,450,253	\$1,297,147
160 Net Revenues	\$11,708,793	\$12,084,806
220 Corporate Ops	\$1,497,577	\$3,635,430
300 Total Expenses & Ot Taxes	\$10,766,537	\$11,469,746
410 Av Rate Base	\$12,158,279	\$9,882,675
420 Return	\$942,256	\$615,060
<b>430 ROR</b>	<b>7.75%</b>	<b>6.22%</b>
 <b>As Revised for Uncollectibles Adjustment</b>		
160 Net Revenues (with Uncollectibles Adj)	\$13,159,046	\$13,381,953
300 Total Expenses & Ot Taxes	\$10,766,537	\$11,469,746
410 Av Rate Base	\$12,158,279	\$9,882,675
420 Return	\$2,392,509	\$1,912,207
<b>430 ROR</b>	<b>19.68%</b>	<b>19.35%</b>
 <b>As Revised for Uncollectibles Adjustment &amp; Corporate Operations Exp</b>		
160 Net Revenues (with Uncollectibles Adj)		\$13,381,953
220 Reduce Corporate Ops		\$1,497,577
300 Total Expenses & Ot Taxes		\$9,331,893
410 Av Rate Base		\$9,882,675
420 Return		\$4,050,060
<b>430 ROR</b>		<b>40.98%</b>

# Minnesota Independent Equal Access Corporation

Actual Demand Compared to Forecasted Demand

Total Tandem Switching Demand\*

EXHIBIT D

Page 1 of 2

Transmittal No.	Date Filed	Actual Demand Year	DMD-1, P3 of 3 Tandem Switching	Yr/Yr Growth	Tariff Period	Actual Demand	DMD-1, P3 of 3 Forecasted Demand	Actual & Forecast Difference	Percent Difference
19	6/16/2006	2002	489,632,393						
		2003	482,139,620	-1.53%	2002-2003	485,886,007	28,2583,327^	203,302,680	71.9%
Note A	6/16/2008	2004	518,211,487	7.48%	2003-2004	500,175,554			
		2005	596,329,501	15.07%	2004-2005	557,270,494	97,697,728	459,572,766	470.4%
23	6/24/2010	2006	774,993,383	29.96%	2005-2006	685,661,442			
		2007	1,220,544,257	57.49%	2006-2007	997,768,820	745,242,347	252,526,473	33.9%
		2008	1,899,840,613	55.66%	2007-2008	1,560,192,435			
		2009	2,578,829,118	35.74%	2008-2009	2,239,334,866	1,365,585,500	873,749,366	64.0%
		Ave Annual Growth		28.55%					
		2010-2011	3,206,591,405	16.23% Annualized Growth					

Explanation as provided by MIEAC:

\* Refers to the MOU switched at a company tandem, as discussed in Part 69. 11(f-g).

Note A: MIEAC did not provide Transmittal No. in 2006 Annual Filing

^ Bundled Tandem Swtg & Transport Minutes apportioned on the basis of actual minutes reported for 2002 & 2003

# Minnesota Independent Equal Access Corporation

Actual Demand Compared to Forecasted Demand

Tandem Switching Transport Demand\*\*

EXHIBIT D

Page 2 of 2

Transmittal No.	Date Filed	Year	DMD-1, P3 of 3 Tandem Switching Transport	Yr/Yr Growth	Tariff Period	Actual Demand	DMD-1, P3 of 3 Forecasted Demand	Actual & Forecast Difference	% Difference
19	6/16/2006	2002	274,176,652						
		2003	311,326,113	13.55%	2002-2003	292,751,383	170,259,399^	122,491,983	71.9%
Note A	6/16/2008	2004	324,904,348	4.36%	2003-2004	318,115,231			
		2005	385,894,113	18.77%	2004-2005	355,399,231	186,795,668	168,603,563	90.3%
23	6/24/2010	2006	612,781,192	58.80%	2005-2006	499,337,653			
		2007	984,042,241	60.59%	2006-2007	798,411,717	632,541,993	165,869,724	26.2%
		2008	1,875,765,754	90.62%	2007-2008	1,429,903,998			
		2009	2,800,465,423	49.30%	2008-2009	2,338,115,589	984,464,537	1,353,651,052	137.5%
			Ave Annual Growth	42.28%					
		2010-2011	3,149,614,915	8.31% Annualized Growth					

Explanation as provided by MIEAC:

\*\* Refers to the MOU carried over non-dedicated trunks; i.e., tandem switched transport or common trunks.

Note A: MIEAC did not provide Transmittal No. in 2006 Annual Filing

^ Bundled Tandem Swtg & Transport Minutes apportioned on the basis of actual minutes reported for 2002 & 2003

# Minnesota Independent Equal Access Corporation

# EXHIBIT E

Rates corrected to reflect removal of uncollectibles adjustment & overstated corporate operations expense

	Column N					
	COS-1(H) 2009	COS-1(P) 2010-2011	Corrected 2010-2011	Difference		
110 Uncollectibles	-\$1,450,253	-\$1,297,147	\$0	\$1,297,147		
220 Corporate Ops	\$1,497,577	\$3,635,430	\$1,497,577	\$2,137,853		
300 Total Expenses & Taxes	\$10,766,537	\$11,469,746	\$9,331,893			
Percent of Corporate Ops to Total Exp & Taxes	13.9%	31.7%	16.0%			

	Orig CEA Swtg	Orig Tandem Swtg	Term Tandem Swtg	Orig Transport	Term Transport	Total Revenues
Proposed Rate per Minute of Use*	0.0169	0.0037	0.0022	0.0099	0.0008	
MOU for Test Year: July 2010 - June 2011^	61,076,313	173,148,561	2,972,366,531	150,665,370	2,998,949,545	
Proposed Revenues	\$1,032,190	\$640,650	\$6,539,206	\$1,491,587	\$2,399,160	\$12,102,793
% of Revenues	8.5%	5.3%	54.0%	12.3%	19.8%	100.0%
Uncollectibles	\$110,628	\$68,663	\$700,856	\$159,865	\$257,136	\$1,297,147
Overstated Corporate Operations Expense	\$182,327	\$113,165	\$1,155,094	\$263,476	\$423,791	\$2,137,853
Adjusted Revenues	\$739,235	\$458,821	\$4,683,257	\$1,068,247	\$1,718,233	\$8,667,793
Revised Rates w/o Uncollectibles & Corporate Ops	0.0121	0.0026	0.0016	0.0071	0.0006	
Revenue Difference	(\$292,955)	(\$181,828)	(\$1,855,950)	(\$423,340)	(\$680,927)	(\$3,435,000)

\* T-23, D&J, Page 8

^ T-23, D&J, Page 7

## **ATTACHMENT 2**

# BINGHAM

Russell M. Blau  
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Direct Fax: 202.373.6001  
russell.blau@bingham.com

June 29, 2010

**Via ETFS**

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

Attention: Wireline Competition Bureau

**Re: WCB/Pricing File No. 10-03  
Opposition of Minnesota Independent Equal Access Corporation to  
Petition of AT&T Corp.**

Dear Secretary Dortch:

Enclosed please find Minnesota Independent Equal Access Corporation's ("MIEAC") Opposition to Petition of AT&T Corp. ("AT&T") seeking suspension, investigation of MIEAC's Transmittal No. 23, as filed with the Commission on June 24, 2010. Currently, the ETFS database does not offer the option to make a filing in conjunction with MIEAC's Transmittal No. 23. Therefore, MIEAC has checked the box in the ETFS database that is applicable to Transmittal No. 22.

MIEAC has served its Opposition on AT&T's counsel by facsimile and electronic mail, and in accordance with the procedures outlined in the Pricing Policy Division's Order<sup>1</sup>.

Any questions concerning this filing should be directed to the undersigned.

Respectfully submitted,



Russell M. Blau  
Counsel for Minnesota Independent Equal Access  
Corporation

Enclosures

cc: Scott Sawyer, Esq.

<sup>1</sup> *In the Matter of July 1, 2010 Annual Access Charge Filings*, WCB/Pricing File No. 10-03 (DA 10-505), released March 31, 2010.

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

\_\_\_\_\_  
In the Matter of )

July 1, 2010 )

Annual Access Charge Tariff Filings )  
\_\_\_\_\_

WCB/Pricing File No. 10-03

**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 Corp. ("Petition") filed on June 28, 2010. AT&T requested that the Commission suspend for one day, investigate, and issue an accounting order for the reduction in the interstate terminating tandem switching rate filed by MIEAC in Transmittal No. 23 on June 24, 2010.<sup>1</sup> Petition at 1.

As shown herein, AT&T raises no substantial questions of lawfulness with respect to MIEAC's proposed tariff.<sup>2</sup> Contrary to AT&T's speculation, the changes in MIEAC's expenses

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<sup>1</sup> The Commission's authority to suspend rates, or to impose an accounting order, is limited to a "*new or revised* charge, classification, regulation, or practice" filed pursuant to Section 204(a)(1), 47 U.S.C. § 204(a)(1) (emphasis added). It has no power to suspend existing rates. Therefore, even if the Commission were to grant AT&T's Petition, it could only suspend and/or impose an accounting order with respect to the terminating tandem switching rate element, which is the only revised charge proposed in Transmittal No. 23 (there are no "new" charges).

<sup>2</sup> Section 1.773(a) of the FCC's rules, 47 C.F.R. §1.773(a), requires a party protesting a tariff filing to identify "the items against which protest is made, and the specific reasons why the protested tariff filing warrants investigation, suspension, or rejection under the Communications Act." It has long been the FCC's policy that it will suspend and investigate a tariff filing only when it finds significant questions of unlawfulness exist. *AT&T Co. (Long Lines Department) - WATS Tariff F.C.C. No. 259*, Docket No. 19989, Memorandum Opinion & Order, 46 FCC 2d 81 (1974). This continues to be the rule. *See, e.g., Bell Atlantic Tel. Cos., Transmittal Nos. 741, 786, Revisions to Tariff FCC No. 10 Rates, Terms, and Regulations*, Order, 10 FCC Rcd 10831 (1995). The petitioner must provide specific showings that the tariff revisions raise significant questions of unlawfulness and also demonstrate that immediate and serious harm is likely to



projected in the Tariff Review Plan are based on reasonable and prudent business judgment, and do not raise substantial questions of lawfulness or pose any risk of immediate and serious harm to AT&T or other customers.<sup>3</sup> MIEAC is proposing to reduce its rates even though its rate of return is well below the prescribed threshold of 11.25%, and MIEAC has provided ample support for its demand projections.

## I. INTRODUCTION AND SUMMARY

MIEAC is a Minnesota corporation, formed on October 6, 1988, with its headquarters in Minneapolis, Minnesota. It is a wholly owned subsidiary of Onvoy, Inc. ("Onvoy"), f/k/a MEANS, which offers wholesale interstate and intrastate telecommunication services primarily for IXC's, ILEC's and CLEC's. Onvoy in turn is a subsidiary of Zayo Group Holdings, Inc. (www.zayo.com) of Louisville, Colorado.

By *Memorandum Opinion, Order and Certificate*, File No. W-P-C-6400, released August 22, 1990, the Commission's Common Carrier Bureau (Domestic Facilities Division) granted MIEAC's Section 214 Application, as amended, to lease and operate transmission facilities in order to provide centralized equal access service to inter-exchange carriers through a centralized switching facility in the State of Minnesota. The Division found that the public interest would be served by MIEAC's proposed network for the aggregation of equal access traffic in Minnesota. By *Order Granting Certificate of Authority to Provide Equal Access Service*, Docket No. P3007/NA-89-76, issued January 10, 1991, the Minnesota PUC granted MIEAC Certificates of Public Convenience and Authority to provide centralized equal access services within the State of Minnesota.

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occur if the tariff is not suspended. *Communications Satellite Revisions to Tariff FCC No. 103, Trans. 680*, Memorandum Opinion & Order, 4 FCC Rcd 7865 (1989) at ¶ 21. *Accord, BellSouth Telephone Companies Tariff F.C.C. No. 4, Trans. No. 377*, Order, 6 FCC Rcd 3686 (1991).

<sup>3</sup> AT&T has not claimed it would suffer immediate and serious harm by being required to pay *lower* rates than it is currently charged.

MIEAC operates a robust statewide network of centralized tandem switches, fiber optic SONET systems and digital access cross-connect systems. It operates three (3) tandem switches that are fully utilized to provide capacity as well as physical and network redundancy. MIEAC does not serve any end users, and does not operate any end offices. It provides service exclusively to interexchange carriers (“IXCs”) for access to and from the end offices operated by “routing exchange carriers,” which include numerous small LECs operating in rural areas throughout Minnesota. MIEAC offers IXCs the opportunity to interconnect with its system at defined points of interconnection. MIEAC’s tandem switching and transport services enable IXCs to aggregate their long distance traffic at a single point for the completion of that traffic to and from the local exchanges of many independent telephone companies.

AT&T’s Petition challenges three aspects of MIEAC’s filing. First, AT&T claims that MIEAC’s allowance for uncollectibles is unexplained. This allowance is based on MIEAC’s recent experience, which unfortunately is consistent with an industry-wide trend towards increasing litigation of inter-carrier compensation disputes. MIEAC has been unable to collect its bills from one major IXC and has been forced to bring legal action to collect; but this process is both costly and uncertain.

Second, AT&T claims that MIEAC’s proposed increases in corporate operations expense are excessive. In reality, though, this is a single line item in the MIEAC TRP, which, if taken out of context of the entire filing, masks the fact that overall expenses are projected to increase by less than seven (7) percent. The increase in this one line item is caused by several independent factors, each of which is reasonable and justified.

Third, AT&T suggests that MIEAC’s demand projections may be understated based on past growth rates. However, it would be unrealistic to project a continuation of historic growth rates due to a variety of conditions, including continued declines in LEC access lines and competitive pressures on MIEAC’s services. MIEAC’s projections are based on reasonable business judgment and experience. AT&T also requests that MIEAC be treated like LECs engaged in

access stimulation and subjected to a “refile trigger,” although MIEAC is not in fact engaged in any such activity.

## **II. MIEAC’S PROPOSED RATE REDUCTIONS ARE JUST AND REASONABLE AND COMPETITIVE**

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. MIEAC filed a tariff update on June 10, 2010, that reduced its interstate revenue by more than \$500,000 per year, and the 2010 TRP filing reduces revenue approximately an additional \$900,000, for a total of \$1.4 million.

AT&T speculates that, because two elements of MIEAC’s cost structure show projected increases, namely uncollectible revenues and corporate operations expenses, MIEAC must have “inflated” its revenue requirement to yield rates that “far exceed just and reasonable levels[.]” Petition at 6-7. As shown below, however, AT&T has highlighted two select line items from the MIEAC TRP filing that are not reflective of overall cost trends. The overall change in MIEAC’s costs is considerably smaller than AT&T’s Petition makes it appear, and the individual cost increases are reasonable and justified. Indeed, AT&T does not factually dispute the accuracy of either item, but merely asks the FCC to investigate to see if *it* can find some inaccuracy.

MIEAC’s rates are subject to market pressures, and the market provides the most substantial evidence that these rates actually are just and reasonable. MIEAC provides tandem switching and transport to enable efficient interconnection between IXCs and rural LECs throughout Minnesota. Its 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. MIEAC’s terminating rates are below those of Qwest.<sup>4</sup> Thus, if MIEAC’s terminating rates actually were unjust and unreasonable, it would be

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<sup>4</sup> See Declaration of Fritz Hendricks, President of Onvoy Voice Services on behalf of MIEAC (attached to this reply), ¶ 6 (“Hendricks Decl.”).

unable to realize the traffic volumes it has projected, which would correct any hypothetical overearnings.

In fact, even though MIEAC has historically earned below the allowable rate of return, it has not increased rates in many years and currently is proposing to reduce them, because market forces make rate increases untenable. Its rate of return in the last calendar year was 7.75%, and its forecast rate of return is only 6.22%.<sup>5</sup>

**A. MIEAC's Allowance for Uncollectible Revenue is Reasonable Based on Recent Trends**

AT&T complains that MIEAC's cost support filing "contains a \$1.3 million increase in expenses for 'uncollectibles,' up from zero dollars in prior years ...." (Petition at 4.) The simple explanation for this increase is that MIEAC's actual collection experience has changed during the most recent study period. Although MIEAC historically had few collection issues, it began to experience an increase in its uncollectible revenues during 2009 as the result of one major IXC's refusal to pay for services that the IXC ordered from MIEAC and used to complete the IXC's long distance calls.<sup>6</sup> For 2009, MIEAC recorded a provision for uncollectibles relating to the interstate billing for this traffic in the amount of \$1.45 million. For the test year 2010-2011, MIEAC projected an allowance for uncollectibles of \$1.3 million, based on this one IXC customer's ongoing refusal to pay current bills.<sup>7</sup> MIEAC has filed an action in federal court to recover this revenue. MIEAC intends to prosecute this action vigorously, but until the court rules, it cannot be certain of collecting the delinquent amounts (nor can it be certain how long it will take to obtain a ruling). MIEAC continues to bill the IXC for all traffic terminated over its network and has included this disputed traffic in its minutes of use and revenue projections for the 12 month period ending June 30, 2011.<sup>8</sup>

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<sup>5</sup> *Id.* at ¶ 7.

<sup>6</sup> *Id.* at ¶ 18.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

**B. MIEAC's Overall Expense Levels Demonstrate Strong Cost Controls and Individual Line Item Increases are Reasonable**

AT&T also complains of an increase in MIEAC's corporate operations expenses of \$2.1 million for the 2010-11 test year as against the historical results for 2009. (Petition at 6.) Although AT&T's figures are correct in isolation, if taken out of context they could be misleading because they ignore reductions in many other areas of expense. In fact, MIEAC's overall test year expenses are only about \$700,000 greater than for 2009, as shown by the chart below:

<b>MIEAC Expense Comparison (rows with zeros omitted)</b>			
	Test Year (COS-1(P), col.H)	2009 Actual (COS-1(H), col.H)	\$ Change
<b>Expenses</b>			
170 Plant Specific	4,365,551	5,790,367	(1,424,816)
180 Plant Non-Sp. Less Dep/Amor	355,816	655,603	(299,787)
190 Depreciation / Amortization	1,979,651	1,758,354	221,297
200 Customer Operations	715,199	424,119	291,080
220 Corporate Operations	3,635,430	1,497,577	2,137,853
250 Taxes Other than FIT	101,250	155,112	(53,862)
260 Total Exp and Other Taxes	11,152,897	10,281,132	871,765
290 Federal Income Taxes	316,849	485,405	(168,556)
300 Total Expenses & Taxes	11,469,746	10,766,537	703,209

As the above comparison shows, overall test year expenses after taxes are projected to increase by less than seven (7) percent over 2009.

The Corporate Operations expense increase that AT&T singles out is due to a variety of factors. One significant increase is in legal expenses, due largely to litigation with the major IXC that has refused to pay its bills, as discussed in the preceding section.<sup>9</sup> These legal expenses, unfortunately, will not likely be recoverable even if MIEAC ultimately prevails fully in litigation. Other projected changes in corporate operations expense include incentive based compensa-

<sup>9</sup> Hendricks Decl. ¶ 23.

tion and a reclassification of some departmental expenses to corporate operations. Each of these are legitimate and reasonable expenses as described in the attached Declaration.<sup>10</sup>

### **III. MIEAC'S DEMAND PROJECTIONS ARE REASONABLE AND SUPPORTED**

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

AT&T also alleges that MIEAC's demand projections are "understated." Petition at 4. This claim, however, is based solely upon AT&T's extrapolation of past demand trends, without taking into account current and projected market conditions. 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 continue to increase, but the level of increase is mitigated by a number of factors. Although AT&T focuses on the overall demand projections in the TRP, citing an overall 16.23% increase in demand, Petition at 8, these projections are the net result of declining originating and increasing terminating usage. The TRP forecasts a 29.28% increase in terminating tandem switching and 8.05% increase in terminating transport, resulting in an overall increase of 18% in terminating usage for the test year as compared to calendar year 2009.

AT&T is incorrect in asserting that MIEAC's overall revenues are directly driven by the change in demand. (Petition at 5.) Since MIEAC's rates are higher for originating minutes than for terminating minutes, the projected decline in originating minutes has a greater proportional effect on revenue than does an increase in terminating minutes; in other words, a 16.23% increase in overall minutes does *not* result in a corresponding increase in revenue.

As stated above, MIEAC anticipates a continuation of the recent trend of declining originating minutes. MIEAC has been experiencing declining originating minutes of use from the 90

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<sup>10</sup> Hendricks Decl. ¶¶ 22-25.

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.

AT&T is correct that the forecast increase in terminating traffic is less than the historical growth rate percentage that MIEAC has experienced in some past periods, but this is based on MIEAC's analysis of both historical trends and market conditions that may affect future volume.<sup>11</sup> MIEAC's terminating traffic can fluctuate due to the competitive nature of the market. MIEAC has taken into account in its forecast its best estimate of traffic volume changes due to competitive activity.

The variability of MIEAC's traffic ironically is illustrated by AT&T's attempt to project overall traffic patterns based on its monthly bills. AT&T claims that *its* minutes of use terminating on MIEAC's network have increased by 39.8% (tandem switching) and 42.2% (tandem transport) in the first five months of 2010. (Petition at 9.) The problem with these claims is that AT&T's traffic volumes are definitely not reflective of MIEAC's entire customer base. In fact, MIEAC's overall terminating minutes *declined* in April and May 2010, and show a continuing 12% decline in June based on available data.<sup>12</sup> Using AT&T's traffic volume as a measure of MIEAC's overall traffic is misleading.

Based on its analysis of market trends, MIEAC's forecast of an overall 18% increase in terminating minutes for the test year over historical year 2009 is reasonable.<sup>13</sup> However, in the unlikely event that MIEAC did underestimate terminating minutes, MIEAC's projected revenues are well below its authorized rate of return, so even if minutes increased by about 9% *more* than projected, MIEAC would not be overearning.

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<sup>11</sup> Hendricks Decl. ¶¶ 11-13.

<sup>12</sup> Hendricks Decl. ¶ 15.

<sup>13</sup> *See id.* ¶ 16.

**B. AT&T's Proposed Traffic Stimulation Condition is Unnecessary**

AT&T argues that MIEAC has understated demand by claiming that “[m]ore than 90% of the traffic on MIEAC’s network is derived from traffic stimulation schemes.” Petition at 9. MIEAC, as a common carrier, must terminate all traffic that is routed through it. MIEAC 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 is not affiliated with any of the ILECs or CLECs to which it terminates traffic, and does not participate in any revenue-sharing arrangements with either these LECs or their customers.<sup>14</sup> It can only serve and account for the minutes in its forecast based upon data about the minutes that pass through its tandem.

AT&T’s proposal that the Bureau impose a requirement that MIEAC refile its rates if a traffic increase trigger is met is unjustified.<sup>15</sup> AT&T notes that the Commission imposed such conditions “on LECs engaged in traffic stimulation ... in order to protect ratepayers from significant overcharges.” (Petition at 10.) MIEAC, however, is *not* a LEC “engaged in traffic stimulation.” Unlike the LECs in the cases cited by AT&T, MIEAC has no control over the volume of traffic terminated on its network, so the proposed condition would be unreasonable.

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<sup>14</sup> Hendricks Decl. ¶ 17.

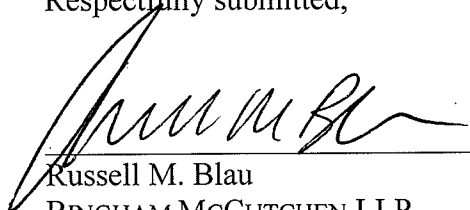
<sup>15</sup> If the Commission were to impose the condition requested by AT&T, it would also be appropriate to provide a “trigger” for MIEAC to refile with *higher* rates if traffic volumes decrease unexpectedly. This could happen, for example, if future Commission rulings make existing traffic stimulation practices unviable.



## CONCLUSION

For the reasons stated above, the Commission should deny the petition of AT&T to suspend and investigate MIEAC Transmittal No. 23.

Respectfully submitted,



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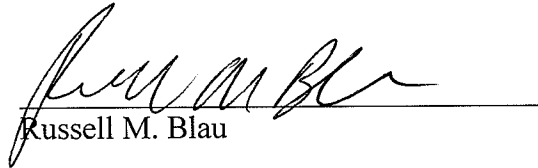
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Counsel for Minnesota Independent Equal Access  
Corporation

June 29, 2010

## CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June, 2010, 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.



Russell M. Blau

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

In the Matter of	)	
	)	
July 1, 2010	)	WCB/Pricing File No. 10-03
Annual Access Charge Tariff Filings	)	
	)	

**DECLARATION OF FRITZ HENDRICKS,  
PRESIDENT, ONVOY, INC. ON BEHALF OF  
MINNESOTA INDEPENDENT EQUAL ACCESS CORPORATION**

1. I am Fritz Hendricks, President of Onvoy, Inc. d/b/a Onvoy Voice Services ("Onvoy") which in turn is wholly owned by Zayo Group Holdings, Inc. Minnesota Independent Equal Access Corporation ("MIEAC") is a wholly owned subsidiary of Onvoy.
2. It is my responsibility as President of Onvoy to oversee the MIEAC FCC No. 1 Tariff, the filing of the 2010 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 2010 TRP filing and reply to the claims in AT&T's Petition filed June 28, 2010. 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. On June 10, 2010, just prior to its TRP filing, MIEAC proposed changes to its interstate 8XX access service that reduced revenue by more than \$500,000 per year. In this TRP filing MIEAC is proposing to reduce rates even further. Cumulatively, these rate reductions lower MIEAC's revenue by approximately \$1.4 million in the 2010-2011 test year.

6. Specifically in this TRP filing, MIEAC has reduced the Terminating Tandem Switching rate element from \$.0024 to \$.0022. Terminating Tandem Switching is offered on a competitive basis. When comparing MIEAC's Terminating Tandem Switching rate to the rate elements charged by the incumbent RBOC, MIEAC's rates are approximately 34% lower,<sup>1</sup> This rate element has the greatest volume of all MIEAC services, thus providing a significant cost reduction for all IXC's that terminate traffic through MIEAC.

7. As a result of the rate reductions, MIEAC's forecasted rate of return for the test year is 6.22%. This rate of return is based on its projection of a 29% increase in terminating tandem switching minutes when comparing the 2009 historical volume to the test year July 2010 through June 2011.

8. According to its Petition, AT&T objects to MIEAC's TRP filing because it believes (i) MIEAC has understated its demand projection; (ii) MIEAC has not explained or documented why its uncollectible expenses have increased from zero in prior years to approximately \$1.3 million; and (iii) MIEAC has not explained why its

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<sup>1</sup> The applicable RBOC rates include the Tandem Switching rate element of \$.002252 and a MRC port charge of \$6 per trunk. Assuming carrier connecting to RBOC with DS1 carrying 200,000 minutes of use per month results in an effective port charge of \$.0007 per minute for a total rate of \$.002952. This compares to MIEAC's Terminating Tandem Switching rate element of \$.0022.

Corporate Operations expenses for the 2010/2011 period have increased by about \$2.1 million compared to 2009.

### **Demand Projections**

9. AT&T disputes the reasonableness of MIEAC's demand projections based on the 2009 historical results documented in the MIEAC TRP filing and AT&T's internal traffic trends. In establishing the demand projections MIEAC's forecast is based on the originating and terminating market conditions, which includes all customers' traffic patterns rather than that of a single customer.

10. In calculating originating minutes, MIEAC relied upon historical activity which indicates a decline in originating minutes. Originating traffic sent to us by 90 Minnesota LECs has shown a consistent downward trend for several years. 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. Because as explained above MIEAC's terminating services are subject to competitive pressures, terminating traffic is more volatile than originating volumes, and a simple extrapolation of historical trends is not accurate. In projecting terminating usage, MIEAC took into account historical trends, seasonality, and inter-carrier traffic movement.

12. MIEAC's terminating traffic volumes are potentially subject to large fluctuations as the result of movement by some Interexchange Carriers ("IXCs"). IXCs have a number of alternatives for terminating their traffic to Minnesota rural LECs of which MIEAC's terminating service is only one.

13. One example of such a fluctuation occurred in connection with MIEAC's demand forecast in its 2008 TRP filing. Prior to its TRP filing that year, a major IXC notified MIEAC that it intended to pull traffic from the MIEAC network. As a result MIEAC removed the IXC's traffic from its demand projection. In fact, however the IXC continued to use MIEAC's services.

14. The AT&T Petition states based on bills to AT&T, that MIEAC's tandem switching traffic volume increased by 39.8% in the first five months of 2010. MIEAC agrees that AT&T's traffic did increase significantly in those 5 months but the AT&T increase is not representative of the traffic from other IXCs. The interstate traffic for all carriers other than AT&T actually decreased by 13%. The interstate traffic for all carriers combined for the same 5 month period increased 18% (the revenue increase was only 7%). Accordingly, it appears that AT&T is actually taking traffic from other carriers.

15. The paragraph above highlights the requirement to look at the entire customer base when developing a demand forecast. In addition, the time period selected for the measure is also critical. AT&T has extrapolated a demand forecast based on its traffic for the first 5 months of 2010, but this time period overstates current demand. For the three month period from March to May of 2010, MIEAC experienced an overall decrease of 7% in tandem switching minutes. For the same period, AT&T had an increase of 16% in traffic volume, while all other carriers combined declined 32%. As of June 28<sup>th</sup>, 2010 MIEAC terminating traffic is trending towards a 12% decrease for June when compared to May 2010. Accordingly, MIEAC's forecast of an increase in terminating tandem switching minutes of 29% for the 2010/2011 period may prove to be optimistic.

16. Spikes in terminating traffic to specific LECs and/or 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 overall terminating traffic will increase 18% from 2009 through the test year (29.28% increase in terminating tandem switching and 8.05% increase in terminating transport). 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.

17. MIEAC has no ownership interest in any of the LECs or CLECs to whom it routes traffic and no such LECs or CLECs have an ownership interest in MIEAC. MIEAC has no arrangements to share access revenue with such LECs or CLECs or their customers.

#### **Uncollectible Revenues**

18. During 2009, MIEAC began to experience an increase in its uncollectible revenues as the result of a major IXC's refusal to pay for services that such IXC ordered from MIEAC and used to complete such IXC's long distance calls. During the year 2009, MIEAC recorded a provision for uncollectibles relating to the interstate billing for this traffic in the amount of \$1.45 million. The \$1.3 million referenced in AT&T's Petition as an uncollectible expense is for this one IXC customer. MIEAC has filed an action in federal court to recover this revenue.<sup>2</sup> MIEAC intends to prosecute this action vigorously, but until the court rules, it cannot be certain of collecting the delinquent

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<sup>2</sup> *Minnesota Independent Equal Access Corporation v. Sprint Communications Company, L.P.*, Civil Action No. 10-CV-2550 (D. Minn. filed June 21, 2010).

amounts (nor can it be certain how long it will take to obtain a ruling). While the case is pending, the IXC is refusing to pay current bills, and we anticipate this refusal will continue into the test year period. MIEAC continues to bill the IXC for all traffic terminated over its network and has included this disputed traffic in its minutes of use and revenue projections for the 12 month period ending June 30, 2011.

19. AT&T's Petition suggests that MIEAC should be able to address the issue of uncollectibles by enforcing its tariff provision permitting it to collect security deposits from customers. (Petition, page 4.) As the FCC staff is aware, MIEAC has worked diligently to resolve the dispute prior to resorting to litigation. After months of negotiation, MIEAC's determined that its best remaining option was to file the action against the IXC.

20. Further, threatening to disconnect the service of a major IXC due to non-payment is not a realistic option because such an action would have a severe impact on consumers throughout Minnesota who use that IXC's services, and who are innocent parties in this business-to-business dispute.

### **Corporate Operations Expenses**

21. AT&T complains of an increase in Corporate Operations expenses of \$2.1 million for the 2010 test year as against historical results for 2009. AT&T's figures are correct, but they isolate the increase in one area and ignore the reductions in many other areas of expense. In fact, MIEAC's overall test year expenses are only about \$700,000 greater than for 2009.

22. The Corporate Operations expense increase that AT&T singles out includes legal expenses, bonus and deferred compensation, and a reclassification of some



departmental expenses to corporate operations. Each of these expenses are real and are reasonable.

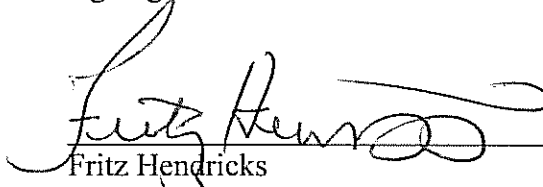
23. The legal expenses are due largely to litigation with the IXC that has refused to pay its bills. This litigation is expected to continue into the test year period.

24. The bonus and deferred compensation reflect a change to a more incentive based method for compensation and reflects the fact that the corporate stock now has realized value, unlike in previous years,

25. The reclassification of expenses into corporate operations is the result of a corporate restructure post acquisition of Onvoy Inc. by Zayo Group. This reclassification includes a transition of resources from non-specific expense to corporate operations expense and a real estate liability associated with unutilized space.

26. Declarant sayeth no more.

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

  
Fritz Hendricks  
President, Onvoy, Inc.

Executed on: June 28, 2010  
Minneapolis, Minnesota

## **ATTACHMENT 3**

10cV 2550  
RHK/FLNUNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTAMINNESOTA INDEPENDENT EQUAL  
ACCESS CORPORATION

Plaintiff,

v.

SPRINT COMMUNICATIONS COMPANY,  
L.P.,

Defendant.

Court File No. \_\_\_\_\_

**COMPLAINT**  
(with Jury Demand)

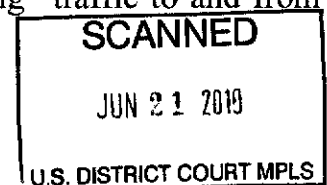
Plaintiff Minnesota Independent Equal Access Corporation ("MIEAC" or "Plaintiff"), by and through its attorneys, brings this Complaint against Sprint Communications Company L.P. ("Sprint" or "Defendant") and alleges as follows:

**NATURE OF THIS ACTION**

1. This is a collection action arising from Sprint's refusal to pay for MIEAC's interstate "centralized equal access" ("CEA") services that Sprint ordered from MIEAC and used to complete Sprint's long distance customers' calls.

2. MIEAC's interstate CEA services are offered pursuant to MIEAC's federal tariff on file with the Federal Communications Commission (the "FCC Tariff") and are governed by the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.* (the "Communications Act"). MIEAC's FCC Tariff is attached hereto as Exhibit 1.

3. MIEAC provides CEA service to 47 long distance carrier customers, including Sprint, by delivering their "originating" and "terminating" traffic to and from



several dozen local telephone companies (known as “local exchange carriers”) serving rural Minnesota that are connected to MIEAC’s network (the “Interconnected LECs”). MIEAC serves as the intermediate link between its long distance carrier customers and the Interconnected LECs, routing calls between them through MIEAC’s switches, known as “tandem switches.”

4. MIEAC provides originating interstate CEA services when a long distance company customer who is provided telephone service by one of the Interconnected LECs places an out of state long distance call. In that instance, MIEAC takes the call from the Interconnected LEC and transports the call to the long distance company for transmission to the called number

5. MIEAC provides interstate terminating CEA services when a customer of a long distance company located outside of Minnesota places a long distance call to a called number served by one of the Interconnected LECs. In that instance, the long distance company transports the call to MIEAC, MIEAC takes the call from the long distance company, and transports the call over MIEAC’s network to the Interconnected LEC. The Interconnected LEC then completes the call to the called number.

6. At issue in this Complaint are the interstate originating and terminating CEA services that MIEAC provided to Sprint. Hereinafter, all references to MIEAC’s CEA services are to MIEAC’s interstate CEA services offered pursuant to its FCC Tariff.

7. As of May 31, 2010, Sprint has failed to pay \$2,804,488.27, including late payment penalties, for the CEA services provided by MIEAC at issue in this Complaint.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant to: a) 28 U.S.C. § 1331, because MIEAC's claims arise under its FCC Tariff and the Communications Act; b) 28 U.S.C. Section 1332, because the parties are citizens of different states and the amount in controversy exceeds \$75,000 and; c) 47 U.S.C. § 207, which vests the federal district courts with jurisdiction over suits seeking monetary damages for violations of the Communications Act.

9. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Sprint does business in this judicial district and is thus subject to personal jurisdiction in this district.

### **PARTIES**

10. MIEAC is a Minnesota corporation with its principal place of business at 300 South Highway 169, Minneapolis, Minnesota. MIEAC provides its CEA services through facilities located throughout the state.

11. MIEAC is a carrier subject to the Communications Act and the FCC's regulations promulgated thereunder.

12. Sprint is a Delaware limited partnership with its principal place of business in Overland Park, Kansas. Sprint offers interstate long distance services to customers in Minnesota and throughout the United States.

13. Sprint is a carrier subject to the Communications Act and the FCC's regulations promulgated thereunder.

### **LEGAL FRAMEWORK**

14. MIEAC's CEA services are a form of "access services."

15. Access services are the services offered by LECs and intermediate carriers like MIEAC to long distance carriers for the local origination and termination of long distance calls. The fees charged for originating and terminating access services are known as “access charges.”

16. Interstate access services, including MIEAC’s CEA services at issue in this Complaint, are regulated by the FCC.

17. Pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203, providers of interstate access services, including CEA providers such as MIEAC, must file tariffs with the FCC that set forth the rates, terms, and conditions of their service offering.

18. Under Section 204(a)(3) of the Communications Act, 47 U.S.C. § 204(a)(3), access tariffs can be filed with the FCC on a “streamlined” basis. Section 204(a)(3) provides that such streamlined filings “shall be deemed lawful” and effective 15 days after the tariff is filed with the FCC, unless the FCC designates the tariff for hearing pursuant to 47 U.S.C. § 204(a)(1) prior to the end of the 15-day period.

19. Under the Communications Act and the “filed rate doctrine,” tariffs filed with the FCC, including MIEAC’s FCC Tariff, have the force of law, and constitute binding obligations on both the carrier (here, MIEAC), and the customer (here, Sprint).

20. The filed rate doctrine—also known as the filed tariff doctrine—is a common law construct that originated in judicial and regulatory interpretations of the Interstate Commerce Act. It provides that a carrier’s tariff is the “exclusive source of the terms and conditions by which . . . [it] provides to its customers the services covered by

the tariff.” *Brown v. MCI Worldcom Network Servs., Inc.*, 277 F.3d 1166, 1170 (9th Cir. 2002) (quotation and citation omitted). Under the filed rate doctrine, tariffs “bind both carriers and [customers] with the force of law.” *Lowden v. Simonds-Shields-Lonsdale Grain Co.*, 306 U.S. 516, 520 (1939). The tariffed “rate of the carrier duly filed is the only lawful charge” and “deviation from it is not permitted upon any pretext.” *AT&T Co. v. Central Office Tel., Inc.*, 524 U.S. 214, 222 (1998) (quoting *Louisville & Nashville R.R. Co. v. Maxwell*, 237 U.S. 94, 97 (1915)). “[B]ecause a tariff that is properly filed with the FCC carries the force of law, courts must strictly enforce its terms.” *MCI Worldcom Network Services v. Paetec*, 2005 U.S. Dist. LEXIS 37786, \*8 (ED VA) (citing *Bryan v. Bellsouth Commc’ns., Inc.*, 377 F.3d 424, 429 (4th Cir. 2004)). A customer must pay a carrier’s tariffed rates even if the customer alleges fraud, unreasonable practices or some other wrongdoing by a carrier. *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 130-32 (1990).

21. The filed rate doctrine was codified into the Communications Act as Section 203(c). Section 203(c) “provides that every common carrier [such as MIEAC] must file a comprehensive schedule [i.e. tariff] with the [FCC] that shows all of the carrier’s charges for interstate telecommunications services.” 47 U.S.C. § 203(c). Section 203(c) further provides that it is unlawful for a common carrier to “charge, demand collect, or receive a greater or less or different compensation for such communication or for any service in connection therewith” other than “the charges specified” in the tariff. *Id.*

22. In addition to violating the filed rate doctrine, a carrier's refusal to pay the tariffed charges it owes is unlawful under Section 201 of the Communications Act, 47 U.S.C. § 201. Under Section 201, a carrier cannot engage in self-help by refusing to pay as Sprint has done here. Even if a carrier has a legitimate complaint concerning a tariffed service—which is not the case here—its only lawful remedy is to pay the tariffed charges and then file a complaint challenging the tariff at the FCC.

### **MIEAC'S CEA SERVICES**

23. MIEAC's FCC Tariff pursuant to which it offers its CEA services was originally filed with the FCC on April 3, 1991 and became effective on July 15, 1991, and has remained in effect since.

24. The rates in the FCC Tariff are revised biannually to reflect adjustments to MIEAC's charges for its CEA services, including most recently on June 16, 2008.

25. The June 16, 2008 revision to the FCC Tariff was filed pursuant to the streamlined filing procedures of Section 204(a)(3) of the Communications Act, 47 U.S.C. § 204(a)(3). The FCC did not designate the tariff filing for hearing within the prescribed 15-day period. The revised tariff—and thus MIEAC's current rates for its CEA services—became effective 15 days after the date of its filing, or July 1, 2008.

26. At all relevant times, the rates set forth in the FCC Tariff complied and comply with the requirements of federal law.

27. Pursuant to the FCC Tariff, long distance companies can connect to MIEAC's network at MIEAC's tandem switches located in Plymouth and Minneapolis



and/or at any of several other "Points of Termination" throughout Minnesota. FCC Tariff §§ 5.1.1, 8.

28. MIEAC's network is connected to the network of each of the Interconnected LECs through several "Points of Interconnection" throughout Minnesota. FCC Tariff § 2.6.

29. MIEAC carries its long distance carrier customers' traffic to/from their respective Point(s) of Termination to/from the Interconnected LECs' Points of Interconnection, routing the traffic through MIEAC's tandem switches.

30. MIEAC functions solely as an intermediate link between its long distance carrier customers and the Interconnected LECs.

31. It is the Interconnected LECs who serve the callers/called numbers placing or receiving the calls that MIEAC carries between its long distance carrier customers and the Interconnected LECs.

32. The Interconnected LECs charge their own originating and terminating access fees on long distance carriers in addition to the CEA charges imposed by MIEAC.

33. MIEAC plays no role in providing, or setting the rates for, the access services provided by the Interconnected LECs, and receives no revenue for those services from the Interconnected LECs or any other party.

34. MIEAC's only source of revenue for the traffic at issue in this Complaint is its CEA services charges to Sprint.

**MIEAC'S PROVISION OF CEA SERVICES TO SPRINT AND  
SPRINT'S FAILURE TO PAY FOR THOSE SERVICES**

35. Sprint was one of MIEAC's first customers for its terminating CEA services and has used MIEAC's terminating CEA services from the early 1990s until the present.

36. Sprint also used and uses MIEAC's originating CEA services.

37. Over the years, pursuant to the FCC Tariff, Sprint ordered the CEA services it desired from MIEAC through multiple "Access Service Requests" ("ASRs"), specifying the number and type of connection links (known as "trunks") that Sprint wanted MIEAC to provide and the Point of Termination where Sprint would interconnect with MIEAC for exchanging traffic. FCC Tariff §§ 5.1, 5.2.

38. Sprint ordered all of the CEA services at issue in this Complaint.

39. MIEAC has submitted monthly invoices to Sprint for MIEAC's CEA services provided pursuant to the FCC Tariff.

40. Sprint paid MIEAC's monthly invoices for CEA services provided from the early 1990s through and including MIEAC's April, 2009 invoice.

41. Beginning with MIEAC's May 1, 2009 invoice (for April 2009 traffic) and continuing through this date, Sprint has refused to pay MIEAC's invoices for CEA services.

42. Despite Sprint's refusal to pay, MIEAC continued to provide both originating and terminating CEA services to Sprint, and Sprint continued to consume and benefit from those services, as they allowed Sprint's long distance customers to place and

receive interstate calls to and from the local calling areas served by the Interconnected LECs.

43. By letter dated, June 26, 2009, MIEAC formally demanded payment of the amounts withheld by Sprint. A true and accurate copy of MIEAC's demand letter is attached to the Complaint as Exhibit 2.

44. Notwithstanding MIEAC's demand letter, Sprint has refused and continues to refuse to pay MIEAC's tariffed CEA charges.

45. As of May 31, 2010, Sprint has failed to pay \$2,804,488.27, including late payment penalties as provided for by the FCC Tariff, § 2.4.1(B)(2)(b), for the CEA services provided by MIEAC at issue in this Complaint.

46. Sprint continues to use MIEAC's CEA services for interstate calls made by Sprint's customers to and from the Interconnected LECs' serving areas. Accordingly, the amount owed by Sprint continues to increase.

47. Sprint has never contended that it did not order or that it did not use the CEA services in question.

48. In response to MIEAC's attempts to resolve this dispute, in May and June of 2009, Sprint advised MIEAC that it does not dispute MIEAC's rates, or the application of its rates, but rather the "nature of the traffic" sent to one of the Interconnected LECs.

49. According to Sprint, the Interconnected LEC in question is involved in arrangements with some of its customers (such as free conference calling providers) to generate incoming calls in order to generate terminating access charge revenue for the Interconnected LEC. In connection with this arrangement, Sprint alleges, the

Interconnected LEC is improperly sharing revenue with its conference calling provider customers. Sprint refers to this phenomenon as “access stimulation” or “access pumping.”

50. Even though Sprint does not claim that MIEAC plays any role in the allegedly inappropriate relationship between the Interconnected LEC in question and the Interconnected LEC’s customers engaged in “access stimulation,” Sprint nevertheless has said that it will not pay MIEAC for the terminating CEA services provided by MIEAC.

51. Moreover, while Sprint takes issue with only the terminating CEA services provided by MIEAC for calls to a single Interconnected LEC, and does not dispute any of MIEAC’s charges for originating CEA services, Sprint is withholding payment of all of MIEAC’s CEA charges.

52. Sprint wrongfully contends that it is entitled to offset the amounts it owes for all MIEAC’s CEA services since April, 2009 against amounts Sprint paid for the terminating CEA services that it disputes for the two year period prior to May, 2009 (June 2007 to April 2009).

53. Even if Sprint’s dispute regarding certain of MIEAC’s terminating CEA charges were valid—which it is not—it would provide no basis for Sprint’s withholding of payment for services for which it does not dispute.

54. Whether there is or is not anything improper about the traffic that Sprint characterizes as access stimulation, the nature of that traffic is irrelevant to Sprint’s obligation to pay MIEAC for MIEAC’s CEA services that Sprint has ordered and used pursuant to the FCC Tariff.

55. MIEAC's sole function with respect to the terminating traffic that Sprint disputes is to take the calls delivered to MIEAC by Sprint and route them on Sprint's behalf to the appropriate Interconnected LEC.

56. MIEAC has no way of determining which of the calls it carries from Sprint to the Interconnected LECs fall into the category of calls that Sprint alleges is inappropriate. MIEAC treats this traffic just as any other type of traffic that transits its network from Sprint to the Interconnected LECs.

57. MIEAC has no involvement whatsoever in any arrangements between the Interconnected LEC in question and the Interconnected LEC's customers and receives no revenue whatsoever from either the Interconnected LEC or any of the Interconnected LEC's customers for the Sprint traffic that MIEAC carries.

58. MIEAC has no ownership interest in any Interconnected LEC, no Interconnected LEC has any ownership interest in MIEAC, and no entity has an ownership interest in both an Interconnected LEC and MIEAC.

59. It is a violation of MIEAC's FCC Tariff for Sprint to withhold payment from MIEAC based on Sprint's objections regarding the nature of services provided by another carrier. Section 2.1.1(B) of the tariff states that "MIEAC shall be responsible only for the installation, operation and maintenance of the services it provides."

60. Sprint's use of MIEAC's terminating CEA services is entirely voluntary. As Section 6.1 of the FCC Tariff makes clear, MIEAC's long distance carrier customers "may, at their option choose to terminate all or a portion of their traffic through the use of other Access Service providers other than MIEAC."

61. Sprint can purchase and could have purchased during the entire period it has used MIEAC's terminating CEA services functionally equivalent services from alternative providers.

62. At no time has Sprint submitted an order canceling CEA services from MIEAC, which it has a right to do under section 5.2.4 of the FCC Tariff.

63. To the contrary, on December 30, 2008 (just four months prior to stopping all payment to MIEAC), Sprint submitted a new ASR for substantial additional CEA services to carry additional Sprint traffic. A true and accurate copy of this ASR is attached to this Complaint as Exhibit 3.

64. The new CEA services facilities ordered by Sprint were installed by MIEAC and were paid for by Sprint on or before the payment due date of May 1, 2009.

65. Accordingly, there can be no doubt that Sprint anticipated that its traffic was increasing; Sprint ordered additional facilities to carry such increased traffic; Sprint paid MIEAC for the processing of its ASR and for the installation of additional facilities; Sprint accepted the facilities that MIEAC installed; and Sprint began sending additional traffic to MIEAC in February of 2009. At no point during the time that Sprint was increasing its capacity to use MIEAC's facilities did Sprint express dissatisfaction with MIEAC's services. Yet, by May 1, 2009, two months after Sprint began sending additional traffic to MIEAC over these new facilities, Sprint refused to pay MIEAC's tariffed rates for any and all of the traffic that it sends to MIEAC.

66. Moreover, not only did Sprint choose to send its own traffic to MIEAC, upon information and belief, Sprint sold use of its facilities to other carriers to carry the

other carriers' traffic and delivered that traffic to MIEAC as well for MIEAC to terminate.

67. While Sprint has refused to pay MIEAC since May, 2009 (for April usage), Sprint has continued to send its traffic to MIEAC and continued to bill and collect from its own customers for long distance service.

68. As a result of Sprint's failure to pay MIEAC's tariffed charges for the interstate CEA services at issue in this Complaint, as of May 31, 2010, MIEAC has been damaged in the amount of \$2,804,488.27, including late payment penalties.

69. Unpaid CEA charges are accruing daily as Sprint continues to withhold amounts due for MIEAC's CEA services, even as Sprint continues to use MIEAC's services for Sprint's economic benefit.

**COUNT I**  
**(Collection of Amounts Owed Under Interstate Tariff)**

70. MIEAC repeats and realleges each and every allegation contained in paragraphs 1 to 69 of this Complaint as if fully set forth herein.

71. MIEAC has provided interstate terminating and originating CEA services to Sprint pursuant to MIEAC's FCC Tariff.

72. Under Section 203 of the Communications Act and the filed rate doctrine, the FCC Tariff has the force of law and MIEAC is entitled to collect, and Sprint is obligated to pay, MIEAC's tariffed charges for the CEA services ordered and used by Sprint pursuant to the FCC Tariff.

73. Sprint has failed to pay the CEA charges that it owes under the FCC Tariff.

74. Sprint has failed to pay the late charges that it owes under the FCC Tariff.

75. MIEAC has been damaged, and continues to be damaged, by Sprint's refusal to pay the CEA charges and late fees it owes under MIEAC's FCC Tariff. MIEAC is entitled to recover these amounts, or such other damages as may be established at trial.

**COUNT II**  
**(Violation of Section 201 of the Communications Act)**

76. MIEAC repeats and realleges each and every allegation contained in paragraphs 1 to 75 of this Complaint as if fully set forth herein.

77. Sprint is required to pay MIEAC's interstate CEA charges as set forth in the FCC Tariff.

78. Sprint has failed to pay the interstate CEA charges and associated late fees it owes under the FCC Tariff.

79. Section 201(b) of the Communications Act requires that the practices of common carriers be "just and reasonable," and provides that all unjust and unreasonable practices are unlawful. 47 U.S.C. § 201(b).

80. Sprint has engaged in unjust and unreasonable practices by engaging in self-help by refusing to pay MIEAC's interstate CEA charges for services that MIEAC has provided to Sprint.

81. Sprint's refusal to pay MIEAC's tariffed interstate CEA charges for services MIEAC has provided, and continues to provide, constitutes an unjust and unreasonable practice in violation of section 201(b) of the Act.



82. MIEAC has been damaged by Sprint's practice of refusing to pay the access charges and late fees it owes under MIEAC's FCC Tariff. MIEAC is entitled to recover these amounts, or such other damages as may be established at trial.

83. Sprint's conduct constitutes a violation of Section 201(b) of the Act. As such, MIEAC is entitled to reasonable attorneys' fees pursuant to Section 206 of the Act.

84. MIEAC is entitled to bring this claim under Section 207 of the Communications Act, 47 U.S.C. § 207.

**COUNT III (Alternative Claim)**  
**(Quantum Meruit)**

85. MIEAC repeats and realleges each and every allegation contained in paragraphs 1 to 84 of this Complaint as if fully set forth herein.

86. While MIEAC believes that the services it has provided, and continues to provide to Sprint, constitute originating or terminating CEA services as set forth in the FCC Tariff and that the rates set forth therein apply to the services provided to Sprint, Sprint may contend otherwise.

87. MIEAC pleads this Count III as an alternative to Count I should the Court find that any of the Services that MIEAC provided to Sprint did not meet the terms and conditions of MIEAC's FCC Tariff or are not subject to the rates contained therein.

88. Sprint ordered interstate CEA services from MIEAC.

89. MIEAC has provided, and continues to provide, valuable CEA services to Sprint in response to Sprint's orders for such services.

90. Sprint has accepted, and used the CEA services that MIEAC has provided, and continues to provide, to Sprint.

91. Any alleged distinction that Sprint may assert between the MIEAC's interstate CEA terminating access services as tariffed and the service used by Sprint in no way affected Sprint's use of those services to enable Sprint's customers to place calls to called parties served by the Interconnected LECs.

92. The services that MIEAC provided to Sprint are functionally the same as MIEAC's tariffed interstate CEA service.

93. Upon information and belief, Sprint received payment from its customers for the long distance calls its customers made to called parties served by the Interconnected LECs and for which Sprint used MIEAC's services.

94. It was at all times foreseeable that MIEAC expected to be paid for the access services it provided to Sprint.

95. Sprint has received invoices from MIEAC for all of the CEA services that MIEAC has provided to Sprint.

96. Sprint has failed to pay MIEAC for the CEA services.

97. If it is found that the services that MIEAC provided to Sprint do not for some reason fall within the technical definition of interstate CEA service as set forth in MIEAC's FCC Tariff, MIEAC is entitled to receive from Sprint the value of those services under the doctrine of quantum meruit.

98. The reasonable and fair market value of the services for which Sprint has refused to pay is established by MIEAC's tariffed rates.

**COUNT IV (Alternative Claim)**  
**(Unjust Enrichment)**

99. MIEAC repeats and realleges each and every allegation contained in paragraphs 1 to 98 of this Complaint as if fully set forth herein.

100. While MIEAC believes that the services it has provided, and continues to provide to Sprint, constitute originating and terminating CEA services as set forth in the FCC Tariff and that the rates set forth therein apply to the services provided to Sprint, Sprint may contend otherwise.

101. MIEAC pleads this Count IV as an alternative to Count I should the Court find that any of the Services that MIEAC provided to Sprint did not meet the terms and conditions of MIEAC's FCC Tariff or are not subject to the rates contained therein.

102. Sprint ordered interstate CEA services from MIEAC.

103. MIEAC has provided, and continues to provide, valuable access services to Sprint in response to Sprint's orders for such services.

104. Sprint has accepted, and used the access services that MIEAC has provided, and continues to provide, to Sprint.

105. Any alleged distinction that Sprint may assert between MIEAC's interstate CEA services as tariffed and the service used by Sprint in no way affected Sprint's use of those services to enable Sprint's customers to place calls to called parties served by the Interconnected LECs.

106. The services that MIEAC provided to Sprint are functionally the same as MIEAC's tariffed interstate CEA service.

107. Upon information and belief, Sprint received payment from its customers for the long distance calls its customers made to called parties served by the Interconnected LECs and for which Sprint used MIEAC's services.

108. It was at all times foreseeable that MIEAC expected to be paid for the CEA services it provided to Sprint.

109. Sprint has received invoices from MIEAC for all of the CEA services that MIEAC has provided to Sprint.

110. Sprint has failed to pay MIEAC for the CEA services.

111. Sprint has benefited from the services provided by MIEAC in that Sprint has collected revenues from its customers for the long distance calls placed over MIEAC's facilities but has failed to pay MIEAC for the services it received.

112. Sprint has thus been unjustly enriched by receiving the benefits of MIEAC's services without paying for those services.

113. If it is found that the services that MIEAC provided to Sprint do not for some reason fall within the technical definition of interstate CEA service as set forth in the FCC Tariff, MIEAC is entitled to receive from Sprint the value of the benefit conferred under the doctrine of unjust enrichment.

114. The reasonable and fair market value of the benefit that Sprint has received but for which Sprint has refused to pay is established by MIEAC's tariffed CEA rates.

115. Sprint would be unjustly enriched if it were permitted to use MIEAC's CEA charges without paying the reasonable value thereof.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Enter judgment against Sprint for all direct and consequential damages incurred by Plaintiff, in an amount to be determined at trial, but no less than the interstate CEA charges that Sprint owes MIEAC or would owe MIEAC under the FCC Tariff, together with the associated tariffed late fees and prejudgment interest;
2. Award Plaintiff reasonable attorneys fees and the costs of this action, pursuant to 47 U.S.C. Section 206;
3. Issue a preliminary injunction barring Sprint from continuing to engage in conduct alleged herein and directing Sprint to pay MIEAC's tariffed CEA charges if Sprint continues to use Plaintiff's services; and
4. Grant such other relief as the Court deems just and proper.

Dated: June 21, 2010

LOCKRIDGE GRINDAL NAUEN P.L.L.P.



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