

**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	)	
	)	
	)	
Minnesota Independent Equal Access	)	
Corporation	)	
	)	
Tariff F.C.C. No. 1	)	
Transmittal No. 23	)	
	)	

**MINNESOTA INDEPENDENT EQUAL ACCESS CORPORATION MOTION TO  
DISMISS PETITION FOR RECONSIDERATION OF AT&T CORP.**

Minnesota Independent Equal Access Corporation (“MIEAC”), through its undersigned attorneys, respectfully moves that the Commission dismiss the Petition for Reconsideration filed by AT&T Corp. (“Petition for Reconsideration”) on July 29, 2010. As explained below, AT&T’s Petition for Reconsideration is procedurally improper and seeks relief that the Commission lacks authority to grant.

On June 24, 2010, MIEAC filed Transmittal No. 23, proposing to reduce its interstate terminating tandem switching rate on seven days’ notice, pursuant to 47 U.S.C. § 204(a)(3) and to the procedures for annual access tariff filings announced by the Wireline Competition Bureau.<sup>1</sup> On June 28, 2010, AT&T filed a petition requesting that the Commission suspend for one day, investigate, and issue an accounting order with respect to Transmittal No. 23. MIEAC filed its Opposition to that petition with the Commission on June 29, 2010. On July 1, the Bureau

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<sup>1</sup> *July 1, 2010 Annual Access Charge Tariff Filings*, Order, DA 10-505 (Pricing Pol. Div. released March 31, 2010).

issued a Public Notice announcing that AT&T's petition had been denied and that Transmittal No. 23 had taken effect, as scheduled, on the same day.<sup>2</sup>

Now, 28 days after the price reduction proposed in Transmittal No. 23 has taken effect, AT&T has filed a Petition for Reconsideration in which it once again asks the Commission to "suspend for one day, investigate, and order an accounting" of MIEAC's tariff revisions. Petition for Reconsideration at 9. It is, however, well-established that the Commission does not have authority to suspend a tariff after it has taken effect, and the Commission has previously dismissed petitions for reconsideration of orders denying petitions to suspend and investigate as procedurally improper.

In 1986, the Commission held that it cannot suspend an already-effective tariff:

[T]he statutory scheme does not give this Commission authority to suspend a tariff after it has become effective. A suspension is essentially the equivalent of a judicial stay that preserves the status quo while a controversy is being resolved. The nature of the action requires that it be taken before the new tariff becomes effective. Our suspension power is conferred by Section 204 of the Communications Act, 47 U.S.C. Sec. 204. The language of that section indicates that the suspension must be exercised before the new rate or provision becomes effective. ... We cannot entertain reconsideration petitions [that were filed after the tariff became effective].<sup>3</sup>

In the same ruling, it found that an order declining to reject a tariff is an interlocutory action that is not subject to petitions for reconsideration:

the denial of a petition to reject a tariff should be deemed "interlocutory" because such an action is analogous to the denial of a motion for judgment on the pleadings. A decision to reject usually requires a determination that the tariff is patently unlawful. ... A decision not to reject a tariff is generally an interlocutory, rather

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<sup>2</sup> Public Notice, "Protested Tariff Transmittals, Action Taken," WCB/Pricing File No. 10-03, DA 10-1252 (Pricing Policy Div. released July 1, 2010).

<sup>3</sup> *AT&T Communications, Revisions to Tariff FCC No. 2, 9, and 10, et al.*, Memorandum Opinion and Order on Reconsideration, 1 FCC Rcd 930, para. 8 (1986).

than final, action and thus is too provisional to warrant reconsideration.<sup>4</sup>

The Common Carrier Bureau consistently followed this ruling and refused to allow petitions for reconsiderations of actions denying petitions to reject or suspend.<sup>5</sup> These precedents should come as no surprise to AT&T, since it or its corporate predecessor was a party to nearly all of those cases in some capacity.

Although the cases cited above predate the adoption of subsection 204(a)(3) in 1996, the terms of that provision, if anything, strengthen the conclusion that AT&T's petition is improper. The statute now provides that a local exchange carrier tariff filed under the streamlined process "shall be deemed lawful and *shall be effective* 7 days (in the case of a reduction in rates) ... after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) *before the end of that 7-day ... period ....*" 47 U.S.C. § 204(a)(3) (emphasis added). The statute therefore expressly excludes any possibility that the Commission might be able to suspend a tariff after it has taken effect.

Accordingly, the Commission lacks statutory power to grant the relief sought by AT&T, and its rules preclude petitions for reconsideration of interlocutory actions. The Petition for Reconsideration should be dismissed for these reasons alone.

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<sup>4</sup> *Id.*, para. 10. Although the quotation refers to a "petition to reject," the petitioners in that case had actually asked the Commission to reject *or suspend* the AT&T transmittal (*id.*, para. 1), so the Commission's reasoning is equally applicable to either type of petition.

<sup>5</sup> *Southwestern Bell Telephone Company, Tariff FCC No. 68, Transmittal Nos. 1537 and 1560*, 3 FCC Rcd 2010 (Com. Car. Bur. 1988), Erratum, 3 FCC Rcd 2992 (Com. Car. Bur. 1988); *AT&T Co., Revisions to Tariff FCC No. 1*, Order on Reconsideration, 3 FCC Rcd 3572 (Com. Car. Bur. 1988); *Bell Atlantic Tariff FCC No. 1*, Order on Reconsideration, 7 FCC Rcd 5271 (Com. Car. Bur. 1992). *Accord, Maine Public Advocate v. FCC*, 828 F.2d 68 (1st Cir. 1987) (order denying petition to reject or suspend a tariff revision is interlocutory, not a final order subject to judicial review); *Direct Marketing Association, Inc. v. FCC*, 772 F.2d 966 (D.C. Cir. 1985) (same).

## **CONCLUSION**

For the foregoing reasons, the Commission should dismiss the petition of AT&T to reconsider its decision of July 1, 2010, permitting MIEAC Transmittal No. 23 to become effective.

Respectfully submitted,

/s/

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Russell M. Blau  
BINGHAM MCCUTCHEN LLP  
2020 K Street, NW  
Washington, DC 20006  
202-373-6035  
Fax: 202-373-6001  
russell.blau@bingham.com

Counsel for Minnesota Independent Equal Access  
Corporation

August 9, 2010

## CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of August, 2010, I caused true and correct copies of the foregoing Motion to Dismiss to be served on all parties as shown on the Service List below.

/s/

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Russell M. Blau

Christopher T. Shenk  
Sidley Austin LLP  
1501 K St., N.W.  
Washington, D.C. 20005  
Fax. (202) 736-8711  
Email: cshenk@sidley.com  
**(Via Facsimile and Electronic Mail)**

Albert Lewis, Chief  
Pricing Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, S.W., Room 5-A225  
Washington, D.C. 20554  
**(Via Hand Delivery)**

Raj Kannan  
Pricing Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, S.W., Room 5-A221  
Washington, D.C. 20554  
Email: raj.kannan@fcc.gov  
**(Via Hand Delivery and Electronic Mail)**

Pamela Arluk, Assistant Division Chief  
Pricing Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
Email: pamela.arluk@fcc.gov  
**(Via Electronic Mail)**

Best Copy and Printing, Inc.  
Portals II  
445 12th St., S.W., Room CY-B402  
Washington, D.C. 20554  
Email: FCC@BCPIWEB.COM  
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